MANUAL OF MORAL THEOLOGY

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VOLUMES I AND II

The whole Manual in one

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Dedication

To the distinguished Father and Doctor of the Church,

Saint Alphonsus Maria de Liguori,

on the second centenary of the Congregation of the Most Holy Redeemer,

this work is piously dedicated.

Approval

Nihil obstat.

Nijmegen, 15 August 1932.

W. Duynstee, C. SS. R.

Imprimatur.

's-Hertogenbosch, this 17 August 1932.

- A. F. Diepen.

Bishop of 's-Hertogenbosch.

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Abbreviations in Citations

I. Ecclesiastical Documents

1. A. S. S. = *Acta Sanctae Sedis*.
2. A. A. S. = *Acta Apostolicae Sedis*.
3. C. I. C. = Code of Canon Law.
4. S. R. C. = Sacred Congregation of Rites. The Collection which is cited is the one approved by the Holy See as authentic.
5. P. c. = Pontifical Commission for interpreting the canons of the Code.
6. Collect. = *Collectanea* of the Sacred Congregation de Propaganda Fide. The 1907 edition is cited.

II. Works of St. Alphonsus

1. S. Alf. Theol. Mor. I, 2 = St. Alphonsus, *Theologia Moralis*, book I, number 2. The Vatican critical edition of Father Gaude is cited.
2. S. Alf. Hom. Ap. tr. 3, a. 3 = St. Alphonsus, *Homo Apostolicus*, tract 3, number 3.
3. S. Alf. Op. Dogm. = St. Alphonsus, *Opera Dogmatica*. The Walter edition is cited.

III. Various

1. Denz. Bannw. = The *Enchiridion Symbolorum et Definitionum*, compiled by Denzinger, is meant. The Bannwart edition is cited.

2. Ius. pont. = *Ius pontificium*, or the Roman periodical concerning canonical disciplines.
3. Mon. eccl. = *Il Monitore ecclesiastico*.
4. N. R. theol. = *Nouvelle Revue theologique*.
5. Linz. Quart.-Schr. = *Theologisch-praktische Quartalschrift*.
6. Eccl. rev. = *The Ecclesiastical Review*.
7. N. Kath. St. = *Nederlandsche Katholieke Stemmen*.

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Prooemium

Permit me, kind reader, to set forth briefly the reasons which have led me to publish this *Summa of Moral Theology*. Besides the wishes of friends who urged me to this, there were chiefly two reasons for publishing it.

The first lies in this: often a great usefulness already comes to readers from the fact that the same doctrine is found set forth in different ways by different authors. For such is the condition of human understanding that things said in this way seem obscure to some, while those same things seem clear to others. And while I pondered this, a great hope held me: that my own manner of speaking also might not be without all usefulness, at least for some readers. This consideration gave me the greater courage when I found it confirmed by these words of St. Augustine:

"Whoever, when he reads, says: this has not been well said because I do not understand it, let him blame my expression, ... and perhaps it truly could have been said more plainly; nevertheless no man has spoken in such a way that in all things he was understood by all. Therefore let him to whom this in my discourse is displeasing see whether he understands others who are engaged in such matters and questions, while he does not understand me, and let him spend his effort and time rather on those whom he understands. Yet on that account let him not think that I ought to have been silent, ... For not all things which are written by all come into the hands of all; and it can happen that some who are able to understand even these writings of ours do not find those plainer books and at least come upon

these. And therefore it is useful that many books be made by many persons, in different style, not with different doctrine, even about the same questions, so that the matter itself may reach very many: to those in this way, and to others in that way" (*De Trinitate*, book I, chapter 3, number 5).

The other reason is founded on a wish which, as I read the authors who have treated moral doctrine, often came into my mind. For it is certain that clarity and perspicuity in teaching chiefly receive a greater increase in proportion as the different treatises of doctrine and their different chapters cohere with one another in a more continuous connection, and follow one another in a more lucid order. I thought that this intimate connection of order in books written on moral doctrine often had not escaped the notice of an attentive reader as something wanting. For that reason I also tried to direct my labor in writing to this: that order and connection, both in the various treatises and in the different chapters of each treatise, and also in the very handling of the matter, should be observed as much as possible, hoping that by acting thus I might be able to bring some advantage.

But, to use again the words of St. Augustine, "I am mindful not only of my will, but also of my weakness. From those also who are going to read these things I ask that they forgive me where they notice that I have rather wished than been able to say what either they themselves understand better, or do not understand because of the difficulty of my expression: just as I forgive them where, because of their own slowness, they are unable to understand" (*De Trinitate*, book V, chapter 1, number 1).

I was writing at Nijmegen, in the College of St. Alphonsus, on 2 August 1932.

L. Wouters, C. SS. R.

Introduction. On the Notion, Sources, History, Method, and Division of Moral Theology

I. Notion

The notion of moral theology - as the notion of every science - must be drawn from its object. For since knowing is an action or direction of the mind, and every action is directed by its object, it follows that any science whatever is defined from the notion of its object. Considering these things, moral theology can be defined: the science which teaches, from supernatural principles, what is commanded or forbidden in order to the ultimate supernatural end. It is said:

1. **What**, or what human actions are commanded or forbidden. By these words the material object of moral theology is indicated. Human actions constitute it, and indeed those actions which fall under command or prohibition. Namely, moral theology, strictly speaking, generally teaches how man is directed to the ultimate end. But lest its matter grow out beyond measure, it does not dwell on each individual act of the Christian life; rather, content with narrower limits, it regards those things, at least chiefly, which are imposed or forbidden by law or precept.
2. **In order to the ultimate supernatural end.** By these words the formal object *which* of moral theology is assigned. Human actions constitute it insofar as they are commanded or forbidden in order to the ultimate supernatural end.
3. **From supernatural principles.** By these words the formal object *by which* of moral theology is indicated. That is, the said science draws its knowledge of commanded or forbidden human actions from principles taught by God immediately or mediately. Yet in the course of the treatises we shall not pass over principles founded upon natural reason, as will appear more clearly from the sources to be assigned under II.

From what has been said it is gathered that moral theology differs: 1. from dogmatic theology, which regards speculative truths more, while moral theology dwells on practical matters. Yet both constitute one science, which is called theology; 2. from ascetical theology and mystical theology, which regard those things that are not commanded but are supererogatory and pertain to the perfection of the Christian life;[1] 3. from canon law, which treats human actions insofar as they are directly ordered to the common good of the Church; 4. from moral philosophy, which, founded on principles known by the natural light of reason, considers human actions in order to the natural end.

[1] Moral theology, as we have said, by force of the term certainly comprehends all morals or human actions; but lest its matter be extended too far, it regards only those things which, by the law of God, fall under command or prohibition. The rest are left to ascetical theology or mystical theology, according as the discussion concerns the ordinary way or the more or less extraordinary way.

As regards St. Alphonsus, he is not only Doctor of moral theology, but also of ascetical and mystical theology. His spiritual works contain ascetical theology, not indeed written systematically, but nevertheless written with great wisdom and abundance of matter. In them the chief point is the doctrine concerning loving and imitating Jesus Christ, concerning constancy in praying, concerning invoking the Blessed Virgin Mary, and concerning the method of meditating. You will find mystical theology concisely and briefly, yet almost completely, in the *Praxis Confessarii*, which is at the end of the *Theologia Moralis*, chapter VII and especially chapter IX.

II. Sources

From the formal object indicated, it is plain that the proper sources of moral theology are revelation, and likewise the magisterium and discipline of the Church, whether they have been consigned to writing or sanctioned only by tradition or use. Now the Church speaks both by her express edicts, and by commending the doctrine of doctors, and by the consent of believers or teachers concerning some doctrine, if it truly exists.[1] Moreover, as we have already noted under I, we shall not pass over principles known by the natural light of reason: both because many obligations occur in life concerning which revelation is silent, and because natural reason itself can bring very much light to those things which have been revealed. And thus it will come about that the whole hall of moral theology is continually and most beautifully illuminated by the doubled light of divine Wisdom, namely both supernatural and natural.

[1] We say "if it truly exists"; for this is sometimes asserted too hastily. Besides, that consent is then only a criterion of Catholic truth if, for a long time and constantly, it presents something as certain and necessarily connected with a dogma of faith. But as regards theological doctrines, insofar as they are handed down in the schools only as such and are defended by authors in books, Cardinal Franzelin says: "It is certainly not repugnant that some opinion, common for some time among theologians, should afterwards, when arguments and documents have been better examined, cease to be common or even become obsolete" (*De divina traditione*, thesis 17). Cardinal de Lugo says: "An opinion which in this century is very frequent in the schools, and is defended by almost all, in the next century, after the matter has been better examined and new foundations have appeared, is retained by few" (*De fide*, disputation 20, number 128). Cf. Ter Haar, *De systemate morali antiquorum probabilistarum*, p. 98.

III. History

In the history of moral theology three principal epochs can be distinguished.

1. The first runs from the beginnings of the Church up to the Middle Ages. The Fathers of the first century, or the Apostolic Fathers (St. Clement of Rome, St. Ignatius, St. Polycarp, Hermas, and

others), discussed many things concerning Christian ethics, especially commending faith, charity toward neighbor and toward God, and also patience. The apologists of the second and third centuries, opposing the practice of Christian life to pagan morals, preached contempt of the world, beneficence, virginity, and martyrdom. Clement of Alexandria, Origen, Tertullian, and St. Cyprian excellently developed Christian practice. They are followed by Sts. Ambrose and Augustine, whose works contain the first rudiments of a systematic exposition of Christian ethics. You will find many moral matters in the works of St. Jerome, St. Basil, St. Gregory of Nyssa and St. Gregory Nazianzen, St. John Chrysostom, St. Ephrem, and St. Cyril of Jerusalem. Finally, St. Gregory the Great, in the thirty-five books of the *Moralia* and in the *Book of the Pastoral Rule*, left to the Church something like a repertory of moral and pastoral theology.

2. The second epoch extends from the Middle Ages up to the Council of Trent. At the beginning of this age, once the moral documents of the Holy Fathers and the penitential canons had been collected, St. Isidore of Spain, St. Bede the Venerable, St. John Damascene, and others brought forth little from their own store. From the eleventh century, moral science began to be handed down scholastically as a part of all theology by very great doctors; among these, after Peter Lombard, St. Albert the Great, and Alexander of Hales, the Angelic Doctor Aquinas especially stands out, chiefly in the second part of the *Summa Theologica*. After others, St. Raymond of Pennafort (d. 1275) and others greatly promoted casuistry. St. Antoninus (d. 1459) treated moral theology separately from dogmatic theology.

3. The third epoch was opened after the Council of Trent. From that time moral doctrine was set forth and developed in very ample treatises, either joined with dogmatic theology or - from the end of the sixteenth century - separated from it. Some illustrated the moral doctrine of St. Thomas with commentaries; others treated the entire abundance of moral theology by a scholastic-casuistic method; or they also commented on particular matters in a fuller style. This was a golden age, which lasted almost to the middle of the eighteenth century. From that time both the excessive benignity of many theologians in moral matters, and the immoderate rigor of others, and the very sharp controversies which blazed up from these things, with the Jansenists applauding and instigating, long obscured the splendor of moral theology. Meanwhile the Supreme Pontiffs tried to bring a remedy to this, whether by condemning exaggerated propositions or by indicating the way to be followed in moral matters. Finally St. Alphonsus Maria de Liguori (1696-1787) "not without a most provident counsel of God undertook to compose moral theology, so that he might accurately and solidly set forth a truly Catholic doctrine of morals, holding the middle between excessive severity and excessive benignity,"[1] in such a way that through it "the directors of the souls of Christ's faithful could walk with unoffending foot."[2]

After the accusations of laxity against the doctrine of St. Alphonsus had died away in the earlier decades of the last century, all who wrote on moral matters professed to teach at least according to the mind of St. Alphonsus; so that, as a doctor whose authority is not suspect testifies, "the moral theology of today can be called Alphonsian."[3] To this result, besides the internal character of Alphonsian doctrine, the continued commendation of his doctrine by the Supreme Pontiffs and the honors of Doctor of the Church conferred upon the Saint contributed much.

Especially in recent decades, serious detractions and calumnies have been raised almost everywhere on earth against Catholic moral theology. The Holy Fathers of the Church, as though anticipating these, already answered them by demonstrating to their contemporaries both the precepts and the practice of

the Christian life. St. Augustine did this most beautifully in the book *On the Morals of the Church*, addressing the Catholic Church;[4] likewise in the book *The City of God*;[5] and finally in his Letter to Marcellinus.[6] "Those who say that the doctrine of Christ is opposed to the republic, let them give such an army as the doctrine of Christ has ordered soldiers to be; let them give such provincials, such husbands, such wives, such parents, such children, such masters, such servants, such kings, such judges, and finally such payers and collectors of the taxes of the treasury itself, as Christian doctrine commands them to be, and let them dare to say that it is opposed to the republic; or rather, let them not hesitate to confess that, if it is obeyed, it is a great salvation of the republic."

[1] Thus E. Muller, *Theologia moralis*, I, p. 55.

[2] Pius IX, Apostolic Letter concerning St. Alphonsus Maria de Liguori being honored with the title Doctor of the Church, 7 July 1871.

[3] Bouquillon, *Theologia moralis fundamentalis*, Introduction, number 137.

[4] Book I, chapter 30, numbers 62-63.

[5] Book XIX, chapter 17.

[6] Letter 138.

IV. Method

A threefold method can be distinguished in treating moral theology: the speculative-scholastic method, which dwells on elucidating and proving principles, and thus provides the foundation on which casuists, as they are called, can rely; the casuistic method, which, after briefly setting forth the principles, inquires what is lawful or unlawful in various circumstances, especially in complicated ones; and the mixed method, which joins both methods. The latter method, that is, the mixed method, is to be preferred. For since moral theology is indeed a science, but one that is plainly directed to practice, it is clear that in learning and handing it down, not only the speculative-scholastic method, which deduces more general rules of morals from principles, but also the casuistic method must be employed. For this latter method supplies a very useful and almost necessary exercise for rightly weighing the minute circumstances in which human actions often happen to be immersed. Nor therefore can it be excluded, provided that the solutions of the proposed questions are exhibited with the greatest discretion and with perpetual attention to the principles themselves. Indeed, you will rightly call casuistry the very collection of decisions of ecclesiastical authority which regard the manifold practical cases of the Christian life; and no one fails to see that the study of this is necessary in itself.

To the point St. Alphonsus says: "They assert that knowledge of principles is enough, and that, for acquiring moral theology, it is sufficient to turn through only those books which, bearing before themselves a display of erudition, think that the whole sequence of this long art consists in general principles, while necessary questions and doubts are passed over, and while they loftily and foolishly despise the authorities of the more celebrated authors; but they are entirely mistaken.... For the greatest difficulty of this science consists in this: that principles be well applied to particular cases, and in a different way according as different circumstances occur, on which the variation of resolutions depends" (*Dissertation on the moderate use of probable opinions*). And already the Angelic Doctor observed: "Universal moral discourses are less useful, because actions are in particulars" (II-II, Prologue).

V. Division

Moral theology is divided into general or fundamental theology and special theology. For the division of a science must be drawn from its matter or object. Now the whole of moral theology consists in this: that it teach how human acts are directed to the ultimate end, or - what comes to the same thing - how one lives in a Christian manner. It teaches this by discussing first the general principles of the Christian life, which general moral theology will set forth; then the very exercise of the Christian life, or the cultivation of the virtues; then the principal aids of the Christian life, or the sacraments; and finally the sanction of the Christian life, or ecclesiastical penalties, which special moral theology will set forth. And thus the whole of moral theology will be completed in four books.

Book I. On the General Principles of the Christian Life

In the first book, which will present general moral theology, we shall speak first of the final end of man; then of motion in order to the final end, or of the human act considered according to its moral being; then of those things which dispose toward a human act, or of habits, especially good habits.[1]

[1] Cf. John of St. Thomas, *Cursus theologicus*, on St. Thomas I-II; Cajetan, on II-II, qq. 1-5; Billuart, I-II, *De ultimo fine*; the Salmanticenses, *Cursus theologicus*, tract 8, *De ultimo fine*, tract 9, *De Beatitudine*; Pesch, *Praelectiones dogmaticae*, t. III, tr. II, *De Deo fine ultimo*, section I, *De ultimo fine hominis*; Lehu, *Philosophia moralis et socialis*, t. I; Sertillanges, *La philosophie morale de St. Thomas d'Aquin*; Cathrein, *Moralphilosophie*, vol. 1; Pegues, literal French commentary on the *Summa* of St. Thomas, tract VI; Meyer, *Institutiones Iuris naturalis seu Philosophia moralis universa*, part I, general natural law; Potters, *Compendium Ethicae generalis*; Sweens, *Theologia moralis fundamentalis*.

Treatise I. On the Final End of Man

We shall deal first with the end in general, and then with the final end of man.

Dissertation I. On the End in General

1 **I. Notion of end.** An end is said to be: that for the sake of which something is done, or that for the sake of which an agent operates, or that which, by exciting the appetite of the one about to operate, draws him to acting. Now the appetite is drawn only by an apprehended good. Hence good and end, although they differ in formal concept, materially fall into the same thing. That is, one and the same thing is called a good insofar as it is fitting to the appetite; it is called an end insofar as, through that fittingness, it draws to acting.

Good, by reason of appetibility, is distinguished as threefold: honorable, delectable, and useful. The honorable is that which is conformable to the rules of morals; the delectable, that which is apt to satisfy the appetite; the useful, that which is apt for attaining some other good. Now since an end is that which by its goodness moves one to acting, a useful good as such does not have the character of an end but only of a means (St. Thomas, I, q. 5, a. 6, ad 2); for that which is chosen by reason of another is called a means. Thus, for example, victory is the end of those fighting, while the fight is the means.

2 **II. Division of end.** End is distinguished:

1. Into the end of the work and the end of the worker. The end of the work, or the intrinsic end, is the end to which the work by its nature is ordered. The end of the worker is the end which the worker intends in acting, whether it is the end of the work itself or some other end. Thus in almsgiving the end of the work is the relief of the poor person; the end of the worker can be the relief of the poor person, or vainglory, or something else (cf. St. Thomas, II-II, q. 141, a. 6, ad 1).
2. Into the end *which*, the end *for whom*, and the end *by which*. The end *which* is the very good that is intended; the end *for whom* is the person for whom the good is desired; the end *by which* is the very possession or acquisition of the intended good. Thus health is the end *which*, the sick person is the end *for whom*, and the acquisition of health is the end *by which* intended by the physician.[1]
3. Into the primary end and the secondary end. The primary or principal end is the one intended by the worker in such a way that, if it were lacking, he would not act, and for its sake he would act even if other ends were lacking. The secondary end is the one intended in such a way that without it the action would nevertheless be placed.
4. Into the final end and the intermediate end. The final end is the one intended only by reason of itself, and therefore not referred to another end. An intermediate end is said to be one which is indeed intended by reason of itself, but with a relation or subordination to a further end.
5. Into a natural end and a supernatural end, according as it can be attained by natural means or - as with the beatific vision - only by a supernatural means.

[1] The end *which* and the end *by which*, for example health and its acquisition, likewise the end *which* and the end *for whom*, for example health and the sick person for whom health is desired, should not be taken as simply several ends, but rather as two quasi-parts of one total end (Billuart, same place, article 1).

Dissertation II. On the Final End of Man

In treating this question, a distinction must be made between the end *for whom* and the end *which*, or, in other words, between the subject into which some good is ordered and the good itself which is ordered into that subject.

3 **I. The final end for whom of man - as also of every creature - is God, or the divine goodness.** This is clear: 1. from Sacred Scripture: "For whom are all things, and through whom are all things"; "The Lord has made all things for himself, the wicked also for the evil day."[1]

It is proved 2. by reason. He who is the first cause and therefore the absolute Lord of all things is necessarily the end to which all things are subordinated. But God is the first cause and therefore the absolute Lord of all things.

[1] Heb. 2:10; Prov. 16:4.

4 **II. The final end which of man is the external glory of God, both objective and formal.**[1] This is clear 1. from Sacred Scripture: "And everyone who calls upon my name, I have created him for my glory, I have formed him and made him."[2] It is clear 2. from reason; for from the fact that God is the final end *for whom* of man, it follows that man is ordered to the good of God. But the good of God to which man is ordered can be nothing other than the external glory of God, and that both objective and formal. For that good cannot be some intrinsic good, since God is infinite and therefore his intrinsic good cannot be perfected. Nor can it be some extrinsic good which is useful to God, since God is infinitely blessed. It remains, therefore, that that good is the external glory of God, or consists in the fact that man glorifies the divine goodness.

Now the end of man is the external glory of God, and that both objective and formal. For every creature ought to glorify God in the manner in which it can accomplish this. Now man can glorify him not only objectively - that is, by displaying a likeness of his goodness - but also formally, that is, by knowing, loving, and extolling him (St. Thomas, *Contra Gentiles*, book 3, chapter 20). Hence the Vatican Council says: "God, by his goodness and almighty power, not for increasing his beatitude, nor for acquiring it, but for manifesting his perfection through the goods which he imparts to creatures, by a most free counsel... created the creature from nothing." And: "If anyone denies that the world was made for the glory of God, let him be anathema."[3]

[1] Glory is taken in two ways: improperly, for the excellence itself by force of which someone deserves to be known, praised, loved; properly, for knowledge, praise, and love of excellence, and taken in this sense it is usually defined as: clear knowledge with praise. The glory of God is distinguished as twofold, internal and external, according as it is in God or is offered to him by creatures.

Internal glory again is twofold, objective and formal. Objective glory is the divine excellence itself; formal glory is God's own infinite knowledge, love, and joy concerning his infinite excellence.

External glory also is twofold, objective and formal. Objective glory consists in this, that divine excellence or perfection shines forth in creatures. Formal glory is situated in this, that divine perfection is known, loved, and extolled by creatures. Now irrational creatures glorify God only objectively; rational creatures, however, are also bound to formal glorification. Besides, objective glory is ordered to formal glory and is completed by it; in other words, irrational creatures are ordered to manifesting the divine perfections to man and to arousing him so that he may formally glorify God. Hence irrational

things are said to be ordered into God through man as mediator; man, however, is ordered immediately into God.

[2] Isa. 43:7.

[3] Constitution *Dei Filius*, chapter 1 and canon 5.

5 **III. Besides the absolutely final end, which man has in common with every creature and which consists in the external glory of God, there is also another final end proper to man.** "In the parts of the universe," says St. Thomas, "each creature is for the sake of its own proper act and perfection" (I, q. 65, a. 2). Now the final end proper to man is beatitude. For that is rightly called the proper end of man toward which he himself tends by a natural appetite, and therefore by one implanted by the author of nature. But man tends by a natural appetite toward beatitude.

Corollary. Beatitude, although rightly called the final end proper to man, is nevertheless subordinated to the glory of God, which is the absolutely final end. For from the fact that God is the final end *for whom* of man, it follows that all things which pertain to man or regard him, and therefore also the beatitude itself of man, are ordered to the good of God, that is, to his external glory. Besides, the beatitude of man and the external glory of God are so connected with each other that they are constituted by the same acts. Lessius explains this in these words: "The highest glory of God is our highest good, and our highest good cannot be anything except his highest glory. The reason is that his highest external glory is that he be perfectly known, loved, and tasted by us. Hence it consists in three vital acts; and in the same acts our highest good formally consists.... For our highest good and formal beatitude is to see, love, taste God, or, what can be said in one word as the same thing, to enjoy God. And so in the highest glory of God our highest good is formally and intrinsically included, so that it cannot be conceived without it; and by this very fact, that God intends and seeks that glory, he intends and seeks our highest good and advantage."[1]

[1] Lessius, *De perfectionibus divinis*, book 14, chapter 3.

6 **IV. In order that beatitude, which we have proved to be the end proper to man, may be more fully clarified, several things must be set forth concerning beatitude.**

1. In what does beatitude consist? Beatitude, which by its concept implies the presence of every good and the absence of every evil, is taken objectively or materially, and subjectively or formally. Objective beatitude is the "perfect good which totally quiets the appetite" (St. Thomas, I-II, q. 2, a. 5). Subjective beatitude is the very attainment or possession of the fully beatifying good. Therefore:

a) Objective beatitude, or the perfect good which totally quiets the human appetite, is not a created thing but God. For that good totally quiets the human appetite which perfectly quiets the intellect and the will. But no creature can perfectly quiet the aforesaid faculties; God, however, does quiet them.

The major is proved. The sensitive and vegetative parts of man are subordinated to the rational part, so that they are not for their own sake, but so that they may render rational life possible. Hence they have one final end together with the rational part. Given this, they attain their end by the very fact that the rational part is perfectly quieted.

The minor is proved. Since intellect and will are capable of every truth and good, and have an innate desire for them, that good alone can perfectly quiet the said faculties which contains in itself every truth and good. But no creature contains every truth and good; God, however, contains them (St. Thomas, I-II, q. 2, a. 8).

b) Subjective or formal beatitude, by the consent of all, consists in some operation, and indeed in an operation of the rational part. It consists in some operation: "for beatitude is the ultimate perfection of man; but each thing is perfect insofar as it is in act" (St. Thomas, I-II, q. 3, a. 2). It consists in an operation of the rational part, not of the sensitive part; "for the beatitude of man consists essentially in his conjunction to the uncreated good, which is the final end, as was shown above, to which man cannot be conjoined through an operation of the senses" (St. Thomas, I-II, q. 3, a. 3), as is plain. But it is disputed in which act of the rational part beatitude consists. According to some, it is situated in an act of the will alone, whether of love, as the Scotists teach, or of joy, as others judge. According to others, it consists in an act of intellect and will. According to others, it consists in an act of the intellect alone, namely in the perfect knowledge of God. This is the opinion of St. Thomas (I-II, q. 3, a. 4), and it seems true. For beatitude formally consists in the act by which we formally attain the highest good. But that act is not love, nor joy, but the perfect knowledge or vision of God. It is not love, by which we are inclined toward the object but do not attain it; nor joy, which concerns a possessed good and therefore supposes its acquisition; but perfect knowledge or vision, since by it the knower unites to himself, and therefore attains, the known object.

7 **2. How is beatitude divided?** Beatitude is divided into natural and supernatural. Natural beatitude "is proportioned to created nature, namely that which a created thing can attain according to the power of its nature" (St. Thomas, I, q. 23, a. 1). Supernatural beatitude is that which "exceeds the proportion and capacity of created nature" (St. Thomas, same place).

Now natural beatitude consists in "a knowledge of God that is indeed perfect, relatively to the capacity of nature, but mediate and only abstractive, insofar as he is the Author of nature. Namely, this contemplation of divine things, although as to clarity far more perfect than every knowledge of this mortal life, in the state of pure nature would not have reached the vision of God, but would have been knowledge of God from creatures, and chiefly through infused science. From that knowledge would have flowed perfect natural love of the infinite Good and endless joy. And so in the state of natural beatitude man, wholly immune from every physical and moral evil, would have been naturally perfectly blessed by the perpetual possession of the infinite Good."[1]

Supernatural beatitude consists in the immediate or intuitive vision of the highest Good, or of the divine Essence (n. 8).

Note. The state of supernatural beatitude is the complex of all those things which render man blessed in every respect in the supernatural order. To this, besides those things which are required for the essence, belong beatific love, joy, perpetuity, impeccability, the resurrection and glorification of the body, etc.

[1] Potters, *Compendium Ethicae Generalis*, number 43.

8 **3. What beatitude is the end of man?**

Supernatural beatitude is truly the end of man. This is clear both from Sacred Scripture[1] and from the doctrine of the Church.[2] From these things, however, it does not follow that natural beatitude has been taken away. "Now there is the same nature, and consequently the same capacity; hence, since grace does not destroy nature, but perfects it, it does not deprive it of this natural perfection. And so it is certain that in supernatural beatitude man will have every perfection connatural to himself, in the way in which St. Thomas proves that a man seeing God is not deprived of the natural knowledge of God; rather, he is perfected in it to the highest degree; and the same is proportionally true of love."[3]

[1] Cf. 1 Cor. 13:12; 1 John 3:2.

[2] Benedict XII, Constitution *Benedictus Deus*; Council of Florence, in the Decree of Union, Denzinger-Bannwart, numbers 530, 693.

[3] Suarez, *De ultimo fine*, disputation 4, section 3, number 4.

9 **4. The destination of this life is the imperfect glorification of God, and secondarily imperfect beatitude.** Since the final end, that is, the external glorification of God and beatitude, cannot be perfectly obtained in the present life, it remains that this life must be the way and preparation for attaining the perfect or consummated glorification of God and beatitude in the other life. Now earthly life cannot be the way, preparation, or disposition toward the glorification of God and our consummated beatitude unless we begin the said glorification and beatitude in this life. Therefore the destination of this life is the begun or imperfect glorification of God, and secondarily imperfect beatitude, consisting in the knowledge and love of God, and in the joy and peace that will arise from them.

Scholion. On the Necessity of Acting for the Sake of an End

10 **I. Man, when he acts deliberately, always acts for the sake of some end.** For always, when he acts deliberately, he intends some effect or some good. But that effect is truly an end: for an end is that for the sake of which something is done (St. Thomas, I-II, q. 1, a. 1).

11 **II. Man, when he acts deliberately, always acts for the sake of some final end.** For man, whose rational appetite regards the good as its object and is satisfied only by a good apprehended as perfect, man, I say, whatever he deliberately desires, desires either as a perfect good or as tending toward a perfect good. But in either case he acts for the sake of the final end: in the former case, because the perfect good has the character of the final end; in the latter case, because one desiring something as tending toward the perfect good desires it in order to the perfect good or to the final end (cf. St. Thomas, I-II, q. 1, a. 6).

12 **III. The final ends for which man can in fact act are distinguished as three, namely God, the creature, and beatitude in common.** Of these, God and the creature are final ends in the concrete, as regarding a concrete object, and are called material ends. Beatitude is the final end in the abstract, as regarding the indeterminate perfect good, or whatever that may be; and it is usually called the formal end. Now that God and the creature can be intended as the final end is plain and admitted by all. The same seems to be said of beatitude in common. For by the consent of all, there are acts that are venially evil. But acts of this kind are neither referred to God as to the final end, nor to the creature as to the final end, because then they would be mortal sins. It remains, therefore, that they are referred to beatitude in common. Moreover, there are good acts placed without charity. But acts of this kind do not seem to be referred to God as to the final end (n. 243); nor are they referred to the creature as to the final end, because then they would be gravely evil. Hence it seems necessary to admit that they are referred to beatitude in common. Others, however, teach otherwise, and judge that acts that are venially evil and good acts placed without charity are referred to God positively, to the creature negatively, or - as others say - to God efficaciously, to the creature inefficaciously.[1]

[1] Cf. Billuart, *De ultimo fine*, dissertation I, articles 4 and 5.

13 **IV. Man cannot act at the same time for several final ends.** For someone desires as the final end that which he desires as the perfect good. Hence the final end so fills the appetite of man that nothing

outside it remains to be desired by man. Given this, neither can he desire anything outside it (St. Thomas, I-II, q. 1, a. 5). Hence a deliberate act is referred either to God alone, or to the creature alone, or to beatitude in common alone, as to the final end. If to God, the act is good; if to the creature, it is gravely evil; if to beatitude in common, it is good or venially evil, according as it is or is not referable to God (n. 243). Others, however, think otherwise according to what was said under III.

14 **V. A man acting for the sake of some final end refers his act at least virtually to that end, or at least virtually intends that end.** Therefore first note that intention is distinguished into actual, virtual, habitual, and interpretative intention; and into explicit and implicit intention. Actual intention is had when someone actually intends or wills some end. Virtual intention is had when someone has actually willed some end and acts by force of the past willing, although he does not actually think about the end. Habitual intention is had when someone intends the end and has not revoked the intention, but nevertheless does not act by force of that intention. Interpretative intention is had when someone does not intend the end, but would intend it if he thought about it. Others, however, by the name of interpretative intention understand that which others call implicit. Explicit intention is had when some end is intended distinctly, or according to its proper concept. Implicit intention is had when some end is contained in another thing explicitly willed. With these things noted beforehand, the proposition is proved: no one truly acts for the sake of some end unless the intention of the end in some way exercises influence on the act on the part of the agent. But neither interpretative nor habitual intention suffices for that; virtual intention, however, does suffice, as is gathered from the notions handed down.

Treatise II. On Motion in Order to the Final End, or on the Human Act, Considered according to Moral Being

After the final end of man has been set forth, we must speak of motion in order to the final end, or of the human act considered according to its moral being. But so that the things which must be said about it may become clearer, we shall first deal with the human act considered according to its physical being.

Dissertation I (Preliminary). On the Human Act, Considered according to Physical Being

(St. Thomas, I-II, q. 1, a. 1; qq. 6-21; St. Alphonsus, *Theologia Moralis*, book V, I-XXXIII; *Homo Apostolicus*, tract 3, nn. 1-18.)[1]

We shall first present the summary doctrine of the human act considered physically; then we shall consider its individual elements separately.

[1] Cf. John of St. Thomas, on I-II, t. I; Cajetan, on I-II, qq. 6-17; qq. 22-48; Billuart, I-II, *De actibus humanis*; Gonet, *Clypeus Theologiae Thomisticae*, part 2, tract I, *De actibus humanis*; Suarez, on I-II, *De voluntario et involuntario in genere deque actibus voluntariis in speciali*; Pegues, literal French commentary on the *Summa Theologica*, vols. VI and VII; Bouquillon, *Theologia moralis fundamentalis*, tract 4, section 1, *De actu libero*; Frins, *De actibus humanis*; Walsh, *Tractatus de actibus humanis*; Pesch, *Praelectiones dogmaticae*, vol. III, tract II, *De Deo fine ultimo*, section II, *De actibus humanis in se consideratis*; Lehu, *Philosophia moralis et socialis*; Walter McDonald, *The Principles of Moral Science*; Potters, *Compendium Ethicae generalis*; Sweens, *Theologia moralis fundamentalis*.

Part I. Summary Doctrine of the Human Act

15 **I. Notion of a human act.** A human act is an act which proceeds from the deliberate will of man. For "those actions alone are properly called human which are proper to man insofar as he is man. Now man differs from irrational creatures in this, that he is master of his acts. Hence those actions alone are properly called human of which man is master. But man is master of his acts through reason and will; hence free choice is said to be a faculty of will and reason. Therefore those actions are properly called human which proceed from deliberate will" (St. Thomas, I-II, q. 1, a. 1; St. Alphonsus, V, I).

Other acts, which do indeed proceed from man, but not from the will, or not from deliberate will, are called acts of man. Such are, for example, the first thought of the intellect, the desire for beatitude, and the beatific love of the saints (St. Alphonsus, V, II).

16 **II. Intrinsic principles of the human act.** As follows from the definition handed down, the intrinsic principles of the human act are intellect and free will, or, as others prefer, intellect, will, and liberty: the intellect deliberates; the will, once deliberation has been placed, freely chooses.

17 **III. Division of human acts.** Human acts are distinguished:

1. Into elicited and commanded acts. Elicited acts are those elicited by the will itself, such as the act of loving. Commanded acts are those elicited by another faculty from the command of the will, such as the act of walking; likewise acts elicited by the will, but from the command of a preceding act of the will. Acts of this kind can be called both elicited and commanded, as when someone detests sin from charity toward God.
2. Into internal and external acts, according as they are completed by the internal powers alone, as thought is, or proceed to the external powers, as the act of speaking does.
3. Into commanded, forbidden, and free acts. Of free acts, some are simply permitted, some are advised, and some are dissuaded.
4. Into good and bad acts, according as they agree with the divine law or differ from it (n. 60). Good acts are distinguished into natural and supernatural acts, according as they are elicited by the powers of nature alone or with the help of grace.
5. Into valid and invalid acts, according as they produce or do not produce the effect for which they are destined. Then, of valid acts, some are irrescindable or firm, while others are rescindable or infirm (St. Alphonsus, V, III and IV).

Part II. The Elements of the Human Act Considered Separately

For an act to be human, two things are required: namely, that it be voluntary and free. Hence:

Section I. On the Voluntary

18 **I. Notion of the voluntary.** The voluntary is that which proceeds in any way whatsoever from the will, whether it is the actuation of the will itself, as the willing of drunkenness; or the actuation of another faculty from the command of the will, as drunkenness committed. Moreover, an effect following from an action or omission is usually called voluntary when it could and ought to have been foreseen, as pollution following from drunkenness and foreseen.

Since the will is a rational appetite, it cannot act except from a prior cognition of reason or intellect. Besides, for the sake of completeness and clarity, note:

1. The voluntary differs:

a) From the willed, insofar as the willed extends more widely than the voluntary. For the willed is the object of the will, or that toward which the will is borne, whether it depends on the will and is voluntary, or does not depend on it, as, for example, excellent weather, which is willed by farmers but is nevertheless not voluntary.

b) From the violent, which is from a principle extrinsic to the will, while the will resists or at least contributes nothing, as motion inflicted on someone by an external cause.

c) From the spontaneous, which proceeds from the sensitive appetite, from sensitive cognition, as the anger of a beast.

d) From the natural, which proceeds from an intrinsic principle without cognition, as a vegetative act (cf. St. Alphonsus, V, nn. VI-VIII).

2. Since the voluntary, as we have said, requires prior knowledge, it extends only to things known. Hence, in order that "some action be called wholly voluntary, it is necessary that it be known according to all its parts and circumstances. If any one of these is unknown, the action is not called voluntary with respect to that unknown circumstance. Thus, one who approaches a woman whom he does not know to be married does not commit the sin of adultery, but of simple fornication, since he is involuntary with respect to the circumstance of marriage, which he does not know" (St. Alphonsus, V, VIII).

3. The involuntary is opposed to the voluntary. It is taken in two senses, negatively and positively. Taken negatively, it is the same as the merely non-voluntary, or signifies that which the will neither positively wills nor positively does not will. Taken positively, that is called involuntary which the will by a positive act does not will or turns away from (St. Alphonsus, V, XIII).

19 **II. Division of the voluntary.** The voluntary is distinguished:

1. Into elicited and commanded (n. 17).

2. Into perfect and imperfect, according as cognition and deliberation, and therefore the consent of the will, are sufficiently perfect or only half-full. Imperfectly voluntary are the acts of one half-mad, half-asleep, half-drunk, or otherwise distracted (St. Alphonsus, V, 3).

3. Into pure and mixed, or voluntary in a qualified sense, according as the will chooses something without, or with, some rational or deliberate repugnance. Thus the throwing overboard of merchandise, lest a ship sink, is voluntary in a qualified sense. From what has been said, it is plain that the voluntary in a qualified sense can be perfectly voluntary (St. Alphonsus, V, IX).[1]

4. Into express and tacit, according as it is signified by words or equivalent signs, or can only be gathered from some act or omission.

5. Into explicit and implicit, according as something is willed distinctly or according to its proper concept, or is contained in another thing explicitly willed, as if one about to baptize says or at least confusedly thinks: I wish to do what Christ instituted, or what the Church intends in these things.

6. Into actual, virtual, habitual, and interpretative, as was said concerning intention (n. 14), and as is usefully applied to the voluntary. The actual is that which depends on the will actually influencing, or that which is elicited or commanded by the will under attention of mind. The virtual is that which depends on a will that has been had and is influencing only virtually, or that which is done by force of a past act, as if a priest wills to celebrate Mass and by force of that will celebrates, without attending to the things which he performs.[2] The habitual is that which depends on a will that has been had and not retracted, but nevertheless is not virtually influencing, although, since it has not been retracted, it morally perseveres. Thus the reception of Extreme Unction is habitually voluntary for a dying person deprived of the senses, who previously wished to receive that sacrament and did not retract that will. The interpretative is taken in different senses. Some, by the name of interpretative voluntary, understand the implicit voluntary; thus according to some, one who has willed or wills the means of salvation has implicitly willed or wills Baptism. Others call that interpretatively voluntary which the will neither actually wills nor has willed, but nevertheless would will if it thought about it (St. Alphonsus, VI, 15).

7. Into the directly voluntary, or voluntary in itself, and the indirectly voluntary, or voluntary in another, or in the cause. The direct is that which is intended in itself, whether as an end or for its own sake, or as a means. Hence, if someone makes himself drunk in order to suffer pollution, both the drunkenness and the pollution are directly voluntary: the former is intended as a means, the latter as an end. As is plain from the example given, even an effect can be directly voluntary. The indirectly voluntary is usually said to be that which is not intended in itself, yet is foreseen as going to follow from another thing, whether from an action or from an omission, and is permitted when someone can and ought to avoid the action or omission so that the effect may be avoided. Thus if someone makes himself drunk, with pollution foreseen but not intended, the pollution is indirectly voluntary (St. Alphonsus, V, IX, 3). Others call what follows from an action that should be avoided voluntary in the cause, and what arises from an omission that should be avoided indirectly voluntary (cf. St. Thomas, I-II, q. 6, a. 3; q. 77, a. 7).

Objection. What is foreseen as going to follow from an action cannot be said to be permitted.

Response. I deny the assertion, because nothing prevents the will from being borne toward the cause, for example toward horseback riding, but not toward the effect, for example toward the pollution going to follow (St. Thomas, I-II, q. 77, a. 7). It is rightly said, however, that what follows from an action is not merely permitted, because someone at least in some way cooperates toward it. But this must also be said of that which follows from an omission, if the omission, for example neglect of a precept, exercises a moral influence, for example, on the sin of one's neighbor.

[1] Others, however, take the said words in another sense.

[2] There are some who explain the virtual voluntary in another way, so that it is nothing other than the actual unconscious. Thus, for example, Lugo (*De sacramentis in genere*, disputation 8, section 5, and *De poenitentia*, disputation 7, number 40) teaches that that by which the will previously conceived perseveres in the virtual will is "the very act of the will, now confused and imperceptible, which almost escapes our attention and of which we cannot give an account." We freely concede indeed that the intention which is called virtual is often in fact such as Lugo describes it, namely properly actual, but unconsciously. Yet psychological consciousness seems to testify that there is also another merely virtual volition, which does not in fact include an act, but is merely the effect of that action previously willed.

Section II. On the Free

We shall speak first of liberty considered in itself, then of those things which influence liberty, and finally of the consequence of liberty, or imputability.

Chapter I. On Liberty Considered in Itself

20 Liberty taken generally is immunity from necessity. Necessity, however, is distinguished as twofold: moral necessity, which arises especially from law, and physical necessity. Hence liberty too is twofold, moral and physical. Moral liberty is immunity from the bond of law. Physical liberty is again distinguished as twofold: liberty from coercion and liberty from necessity. "Liberty from coercion (or of spontaneity) is immunity from every violence brought against the inclination of the will" (St. Alphonsus, V, XXX; n. 27). We must speak of liberty from necessity.

21 **I. Notion of liberty.** Liberty from necessity, or liberty of indifference, is an attribute of the will, by force of which, once all things required for acting have been placed, it is indifferent toward several things, or is not determined to one thing, but can determine itself (St. Thomas, I-II, q. 83, a. 4†; St. Alphonsus, V, XXX). And since the whole account of the will and of its properties is drawn from the intellect, the root of the said indifference, as St. Alphonsus says, is the indifference of judgment, "which is nothing other than the deliberation of the good or evil which is considered in the action" (*Homo Apostolicus*, tract 3, n. 11). "This indifference of judgment," St. Alphonsus continues in the same place, "does not now constitute liberty, but, as has been said, is the root of liberty, so that afterward the will may freely and indifferently choose what has pleased it."

22 **II. Division of liberty.** Liberty from necessity is threefold: namely, liberty of contradiction or of exercise, which is indifference toward two contradictories, such as willing and not willing the same thing, for example loving and not loving one's neighbor; liberty of contrariety, which is indifference toward two contraries, such as loving and hating; and liberty of specification, which is indifference toward acts not opposed to one another but diverse in species, such as praying and playing (St. Thomas, *De veritate*, q. 22, a. 6; St. Alphonsus, V, XXX).

Corollary I. Liberty of contradiction suffices for the essence of liberty. For it suffices for the essence of liberty that the will be mistress of its act. But by the very fact that it can place or not place the act, it is mistress of its act.

Corollary II. Indifference toward moral good and evil, or the faculty of sinning, is not required for the essence of liberty. For: 1. God is truly free. But in God there is not indifference toward evil, or the faculty of sinning. 2. "It does not pertain to the account of free choice," says St. Thomas, "that it stand indeterminately toward good or evil, because free choice of itself is ordered to the good, since the good is the object of the will, nor does it tend toward evil except because of some defect which it apprehends

as good, since there is no willing or choice except of good or apparent good; and therefore where free choice is most perfect, there it cannot tend toward evil, because it cannot be imperfect" (St. Thomas, *In II Sent.*, dist. 25, q. 1, a. 1, ad 2; St. Alphonsus, V, XXXIII).[1]

[1] Leo XIII, Encyclical *Libertas*, 22 June 1888.

23 **III. Existence of liberty.** Man, even in the state of fallen nature, enjoys liberty of indifference or free choice. This proposition is of faith from the Council of Trent: "If anyone says that the free choice of man, after the sin of Adam, was lost and extinguished, or that it is a thing only in name, indeed a name without a reality, finally a fiction introduced into the Church by Satan, let him be anathema."[1] Moreover, the true character of this human liberty against the innovators is set in clearer light by propositions condemned by the Supreme Pontiffs: "What is done voluntarily, even if it is done by necessity, is nevertheless done freely" (the 39th proposition of Baius, condemned by Pius V and other Pontiffs).[2] "Only violence is opposed to the natural liberty of man" (the 66th proposition of Baius).[3] "Man sins, even damnably, in that which he does necessarily" (the 67th proposition of Baius).[4] Likewise Innocent X condemned the third proposition of Jansenius: "For meriting and demeriting in the state of fallen nature, liberty from necessity is not required in man, but liberty from coercion suffices."[5]

The proposition is established: 1. against the Fatalists, Materialists, and Positivists; 2. against Wyclif, Luther, and Calvin, who contend that through original sin man was deprived of liberty; 3. against Baius and the Jansenists, who admit liberty from coercion, but deny liberty from necessity. They teach, namely, that man is moved insuperably to good by the greater delight of grace, and insuperably to evil by the greater delight of concupiscence.

It is proved: 1. from Sacred Scripture. "God made man from the beginning, and left him in the hand of his own counsel. He added his commandments and precepts: if you will to keep the commandments, they will preserve you, and to perform pleasing faith forever. He has set before you water and fire: stretch out your hand to whichever you will. Before man are life and death, good and evil; what pleases him shall be given to him."[6] There are added: 2. the unanimous consent of the Holy Fathers; 3. the consent of the human race; 4. the testimony of one's own conscience; 5. the absurd consequences of the contrary opinion. If liberty is denied, the distinction between virtue and vice, moral obligation, and imputability vanish (St. Thomas, I, q. 83, a. 1); 6. the intrinsic reason, which can be proposed thus: the will is free, or, once all things required for acting have been placed, it can act or not act, that is, determine itself to either one, if it is not determined by another, that is, by the object. But no object determines the will. For the will cannot be determined except by an adequate object, and as such proposed to it by the intellect. But such an object is not had; since neither particular goods, nor the indeterminate good or good in common, nor the determined infinite good or God, are of this sort. Not particular goods; for these do not satisfy the appetite for good in the universal, such as the will is, because it follows the universal cognition of the intellect. Not good in common, which is not the adequate object, because it is not a determined good, but vague or abstract, and therefore does not quiet the will. Not the determined infinite good or God, who indeed is the adequate object, but is not proposed to the will as such, because he is not yet seen in himself, but only through a mirror in an enigma (cf. St. Thomas, I, q. 10, a. 2).

[1] Session 6, canon 5; cf. canons 6 and 4; Vatican Council, dogmatic constitution *De Fide*, chapter 3; Denzinger-Bannwart, number 1039.

[2] Denzinger-Bannwart, number 1039.

[3] Denzinger-Bannwart, number 1066.

[4] Denzinger-Bannwart, number 1067.

[5] Denzinger-Bannwart, number 1094.

[6] Sirach 15:14-18; cf. Genesis 4:6.

24 **IV. Extension of liberty.** Man as wayfarer is free with respect to different goods as follows:

1. Concerning good in common or beatitude, he enjoys only liberty of contradiction or of exercise, but not liberty of contrariety. The reason for the former is the very intrinsic reason by which, in the preceding number, we proved liberty. The reason for the latter is that good in common or beatitude cannot be apprehended under any aspect of evil by which the will could turn away from it.
2. Concerning the determined infinite good or God, man is fully free. For "although God in himself is a greater and more eminent universal good than beatitude in common, nevertheless he is not evident and apparent to us under such an aspect, as beatitude is."[1]
3. Concerning particular goods, man is likewise fully free. For "any particular goods, insofar as they fall short of some good, can be taken as non-goods, and according to this consideration can be rejected or approved by the will, which can be borne toward the same thing according to different considerations" (St. Thomas, I-II, q. 10, a. 2).

[1] Cf. St. Bellarmine, *De gratia et libero arbitrio*, book V, chapter 25; Cajetan, on I, q. 82, a. 2.

Scholion I. On the Acts which Concur to Constitute a Deliberate Act of the Will

25 To constitute an entire deliberate act of the will, twelve acts concur, six of which pertain to the intellect and just as many to the will.

The first act of the intellect is simple apprehension, by which it apprehends some good, for example an act of lust, and proposes it to the will.

To simple apprehension there corresponds in the will simple volition, by which it is inclined by affective love toward the good proposed to it. This inclination is not free, but natural.

If the simple volition is efficacious,[1] the will applies the intellect to inquiring whether that good is expedient and possible to attain. Hence there follows an act of the intellect which is called judgment, by which the intellect proposes that good to the will as possible and fitting.

Judgment is followed by the intention of the will, by which the will determines to attain the good by the means which conduce to it.

Intention is followed by the first counsel of the intellect; that is, the will applies the intellect to inquiring into the means more suitable for attaining the end and proposing them to the will.

The first counsel is followed by the consent of the will, by which the will approves or accepts in general the proposed means.

By force of this consent, the intellect is moved to the second counsel, that is, to discerning and proposing to the will the more fitting means.

The second counsel is followed by the choice of the will, by which the will embraces and chooses the means proposed as more fitting.

The choice of the will is followed by the command of the intellect; that is, by force of the said choice, the intellect intimates and declares what must be done through the other powers, so that the will may attain what it chooses (St. Thomas, I-II, q. 17, a. 3, ad 3).

The command of the intellect is followed by the use of the will, by which the will employs the powers subject to it for assuming and executing the means.

Through the operations of the powers which the will uses, the end is obtained; from possession of it there follows fruition of the will, or its rest in the possessed good. By this fruition the whole deliberate act is completed.

It is disputed, however, whether command is formally an act of reason or of the will; concerning this dispute, see n. 73.

[1] Often simple apprehension and simple volition are inefficacious and pass away without effecting anything.

Scholion II. On the Distinction of Acts of the Will, Considered with Respect to the Defect or Degree of Deliberation

Acts of the will, considered with respect to the defect or degree of deliberation, are usually distinguished:

26 **I.** Into first-first motions, which follow the first apprehension of the object, but anticipate every advertence to the morality of the act, as a sudden motion of anger. Motions of this sort are immune from all fault.

II. Into second-first motions, which occur with some advertence, but only imperfect or half-full advertence, to the morality of the act. These motions do not exceed venial sin.

III. Into second motions, which occur with full advertence to the morality of the act. They are therefore fully deliberate or perfectly voluntary, and consequently capable of grave malice (St. Thomas, *De Malo*, q. 7, a. 6, body, ad 6 and 8; St. Alphonsus, III, 3).

Chapter II. On Those Things which Influence Liberty

Of those things which influence liberty, some impede it, such as physical violence, or force brought upon the faculties which must execute the commands of the will, and ignorance, by which the root of liberty, that is, reason, is impeded in the exercise of its activity. Others concur, proximately or remotely, toward the impediment or diminution of liberty, or at least can concur, insofar, namely, as they proximately or remotely conduce, or at least can conduce, to obscuring the light of reason. Of this sort especially are the passions, habit, temperament, disposition, character, and psychic abnormalities. We shall speak of each.

[1] It seems practical to add these things, although logically the things to be said would rather be referred to another place.

Article I. On Physical Violence

27 **I. Notion.** Physical violence is a physical motion proceeding from an extrinsic principle, while the one who suffers it resists or at least contributes nothing. What proceeds from violence is called violent

or coerced. Now:

1. The will cannot suffer violence in its elicited acts; in other words, elicited acts of the will cannot be coerced. For elicited acts are nothing other than inclinations of the will toward something, while violence supposes that the one who suffers it resists or at least is not inclined. And it is repugnant that the will be inclined toward something and at the same time not be inclined toward it, or even resist it. Hence not even God can coerce the will; nevertheless he can "change the will, and from one unwilling make one willing through efficacious grace. But then this is not to coerce, but to supply, in place of the old inclination by which it was unwilling, a new inclination by which it wills what before it did not will" (St. Alphonsus, V, XIX).
2. The will can suffer violence in commanded acts to be elicited by another power; or rather, acts commanded by the will but to be elicited by another power are subject to violence. For that other power can be impeded from an act against the command of the will, or moved to it. Thus, for example, the will can command speech, and the tongue can be impeded by external force from uttering words (St. Thomas, I-II, q. 6, a. 4; St. Alphonsus, V, XIX).

28 **II. Division.** Violence is usually distinguished as absolute and qualified, according as the one who suffers force resists, or does not resist, as much as he can and ought (St. Alphonsus, V, XVI).[1]

[1] This division, however, is not a division of violence as such, because resistance is not required for the essence of violence.

29 **III. Influence on the voluntary-free.**

1. Absolute violence removes the voluntary; indeed, it causes the involuntary. For the involuntary is that which not only does not depend on the will, but besides is rejected by it; this has place in absolute violence.
2. Qualified violence does not remove the voluntary, but nevertheless lessens it. It does not remove the voluntary, because where the will does not resist as much as it can and ought to resist, there remains some aspect of the voluntary. Yet it lessens the voluntary, because, when the will resists to some extent, less of the voluntary is had (St. Alphonsus, V, XVIII).

Article II. On Ignorance

30 **I. Notion.** Ignorance is the habitual lack of knowledge. It differs, therefore, from inadvertence, which is the actual lack of knowledge in one who habitually knows the matter.

31 **II. Division.** Ignorance is divided:

1. By reason of the subject, into negative, privative, and positive ignorance. Negative ignorance is ignorance in a subject not capable of knowledge, as in an infant or in a madman; it is usually called nescience. Privative ignorance is ignorance in a subject capable of knowledge. Positive ignorance is ignorance joined with error or the admission of the false; it is called simply error (St. Alphonsus, *Homo Apostolicus*, tract 3, n. 13; cf. St. Thomas, I-II, q. 76, a. 2; *De Malo*, q. 3, a. 1).[1]
2. By reason of the object, into ignorance of law and ignorance of fact. The former is that by which either the existence, or the meaning, or the extension, or the cessation of the law is unknown. The latter is that by which a fact or some circumstance is unknown, on which the application of the law depends. If someone does not know that the fast before Holy Communion is to be observed from

the twelfth hour, there is ignorance of law. If someone does not know that he has eaten after the twelfth hour, there is ignorance of fact (St. Alphonsus, same place).

3. By reason of influence on the act, into antecedent and concomitant ignorance. Antecedent ignorance is that which is the cause of the act, so that the act would not have been placed if the ignorance had not existed, as if you kill a man thinking he is a wild beast. Concomitant ignorance is said to be that which accompanies the act but is not its cause, so that, even if it had been absent, the act would nevertheless have been placed, as if, prepared to kill an enemy, you kill him thinking he is a wild beast (St. Thomas, I-II, q. 6, a. 8; St. Alphonsus, same place).
4. By reason of perfection, into full and half-full ignorance, according as the truth, for example the malice of the act, is not at all adverted to or is adverted to in some measure, as if someone doubts whether some act is evil, or whether from some action an evil effect is going to follow.
5. By reason of the power to dispel it, into invincible and vincible ignorance, according as it cannot or can be overcome by moral diligence. Invincible ignorance is, for example, the ignorance of one who does not even think about some matter, say, about the malice of an act.
6. By reason of fault, into inculpable and culpable ignorance, according as it ought not to have been dispelled, or ought to have been dispelled and was not dispelled. Thus, for example, one who does not know the duties of his state and does not learn them labors under culpable ignorance.

Culpable ignorance is distinguished into affected and non-affected. Affected ignorance is had if the truth is not sought precisely so that one may sin more freely. Otherwise it is non-affected. This latter is divided into crass or supine, simply grave, and light ignorance, according as one was wholly, or almost wholly, gravely, or lightly negligent in seeking the truth which ought to have been sought.

[1] Others do not call the ignorance which we have called negative ignorance properly so called, but nescience; and they distinguish ignorance properly so called into negative and privative, according as it is ignorance of knowledge not owed, as jurisprudence in a farmer, or of knowledge owed, as the Decalogue in a Christian.

32 **III. Influence on the voluntary-free.**

1. Full ignorance removes the voluntary-free character of a work placed from it or with it, and excuses from fault. For ignorance of this kind excludes all cognition. Now what is entirely unknown cannot be willed, according to the saying: nothing is willed unless known. Add the second proposition condemned by Alexander VIII: "Even if invincible ignorance of the natural law is granted, in the state of fallen nature this does not excuse the one acting from formal sin."[1]
2. Half-full ignorance operates thus:

a) If the truth can be sought, and is not sought at all or not sufficiently sought, it does not remove the voluntary-free character of the work placed from it or with it, nor does it excuse from fault. For one who acts thus admits the work, whatever it may be, and rashly exposes himself to the danger of doing what is forbidden. Nevertheless, the aforesaid ignorance generally lessens the voluntary and the fault, since the cognition is less perfect. I said generally, because with respect to affected ignorance it is disputed whether it increases or lessens the voluntary. St. Thomas teaches: "Such ignorance seems to increase the voluntary and the sin" (I-II, q. 76, a. 4). Yet it does not seem to increase it by reason of itself or as such, since it involves a more imperfect knowledge; rather, it points to a greater inclination toward the evil act, and under this respect a greater sin.

b) If the truth cannot be sought, or has been sufficiently but fruitlessly sought, it removes the voluntary-free character and excuses from fault, according as the ignorance or doubt concerning the lawfulness of the work has been practically set aside, or has not been set aside, by the aid of a reflex principle; as will be explained more fully in the treatise on conscience. There we shall likewise say how great a diligence must be used in seeking the truth.

Note 1. Under the name of ignorance, forgetfulness is also understood; likewise inadvertence, which is actual ignorance in one who enjoys habitual knowledge.

Note 2. A sin committed with half-full ignorance and with the truth not sufficiently investigated is of the same species as a sin knowingly committed in the same matter.

[1] Denzinger-Bannwart, number 1292.

Article III. On the Passions

We shall first treat the passions in general, then the passions which especially regard practice, namely concupiscence and fear in particular.

Section I. On the Passions in General

33 **I. Notion.** Passion is usually defined: a more vehement motion of the sensitive appetite from the imagination of good or evil, with an unusual transmutation of the body. It is said:

1. **Motion**, that is, an act, not a faculty or a habit. **More vehement** is added because although all motions of the sensitive appetite can be called passions, by usage only the more vehement motions are designated by this name.
2. **Of the sensitive appetite.** Therefore passion is a motion of the appetitive faculty, not of the cognitive faculty, and indeed of the sensitive appetitive faculty, not of the rational faculty or will.
3. **From the imagination of good or evil.** By these words the mode by which passion is excited is indicated.
4. **With an unusual transmutation of the body.** By these words the effect of passion is assigned. It is called an unusual or graver transmutation because the graver motions, which alone come under the name of passions, produce graver bodily transmutations (cf. St. Thomas, I-II, q. 22).

Note. Motions of the rational appetite or will are called affections, not passions, because of themselves they do not produce a bodily transmutation, which is a kind of passion.

34 **II. The principle eliciting passion, as follows from the definition, is the sensitive appetite,** that is, the faculty which pursues sensible good or flees sensible evil. The sensitive appetite is twofold: concupiscible and irascible. The concupiscible appetite pursues sensible good or flees sensible evil taken simply. The irascible appetite pursues sensible good as arduous, or difficult to attain, or flees sensible evil as arduous, or difficult to avoid (St. Thomas, I-II, q. 23, a. 1).

35 **III. Enumeration of the passions.** Eleven are enumerated, namely:

1. On the part of the concupiscible appetite:

a) Love, which is the complacency of the concupiscible appetite in sensible good, abstracting from its absence and presence (St. Thomas, I-II, q. 26, aa. 1 and 2).

b) Desire, which is the motion of the concupiscible appetite tending toward an absent sensible good (St. Thomas, I-II, q. 30, a. 2).

c) Joy, which is the complacency or rest of the concupiscible appetite in an attained sensible good (cf. St. Thomas, I-II, q. 31, a. 1).

Each is clarified by these words of St. Thomas: "The first change of the appetite by the appetible is called love, which is nothing other than complacency in the appetible; and from this complacency there follows motion toward the appetible, which is desire; and finally rest, which is joy" (I-II, q. 26, a. 2).

d) Hatred, which is the motion of the concupiscible appetite by which it turns away from sensible evil, abstracting from its absence and presence (cf. St. Thomas, I-II, q. 30, a. 1).

e) Flight, which is the motion of the concupiscible appetite by which it turns away from an absent sensible evil (cf. St. Thomas, I-II, q. 30, a. 2, ad 3).

f) Sadness, which is the motion of the concupiscible appetite by which it turns away from sensible evil that is present or joined to it (cf. St. Thomas, I-II, q. 35, aa. 1-3).

2. On the part of the irascible appetite:

a) Hope, which is the motion of the irascible appetite by which it tends toward a future sensible good that is arduous and possible to attain. "Concerning the object of hope," says Aquinas, "four conditions are considered. First, indeed, that it be good; and by this hope differs from fear, which concerns evil. Second, that it be future; for hope does not concern a present thing already had, and by this hope differs from joy, which concerns a present good. Third, it is required that it be something arduous, attainable with difficulty; for someone is not said to hope for something minimal which is immediately in his power to have, and by this hope differs from desire, which concerns future good absolutely. Fourth, that that arduous thing be possible to attain; for no one hopes for that which he cannot attain at all" (I-II, q. 40, a. 1).

b) Despair is the motion of the irascible appetite by which it turns away from an arduous sensible good which seems impossible to attain. "Now the object of hope, which is an arduous good, has the character of something attractive insofar as it is considered with the possibility of attaining it; but insofar as it is considered with the impossibility of obtaining it, it has the character of something repulsive; and thus despair regards this object, whence it implies a motion of a certain withdrawal; and for this reason it is contrary to hope, as withdrawal is contrary to approach" (St. Thomas, I-II, q. 40, a. 4).

c) Daring is the motion of the irascible appetite by which it rises up against a terrible sensible evil in order to overcome it. Now daring follows upon hope. For from the fact that someone hopes to overcome the terrible thing threatening him, from this he boldly pursues it (St. Thomas, I-II, q. 45, a. 2).

d) Fear is the motion of the irascible appetite by which it is cast down because of a sensible evil that is arduous, threatening, and scarcely possible to overcome. It is called threatening, for on the one hand it does not concern present evil, but future evil, in which respect it differs from sadness (cf. St. Thomas, I-II, q. 42, a. 3, ad 2); on the other hand, it does not concern a remote and distant future evil: "for because of its distance we imagine this as not going to happen, and therefore we either do not fear it or fear it little. For as the Philosopher says in *Rhetoric* II, chapter 5, number 1, things very far away are not

feared; for all know that they will die, but because it is not near, they care nothing" (St. Thomas, same place, a. 2).

e) Anger is the motion of the irascible appetite by which it seeks vengeance against something harmful, because of harm inflicted. "For whoever is angry seeks to be avenged against someone, and thus the motion of anger tends toward two things: namely, toward the vengeance itself, which it desires and hopes for as a certain good, whence it is also delighted in it; it tends also toward the one against whom it seeks vengeance, as toward something contrary and harmful, which pertains to the character of evil" (St. Thomas, same place).

No passion is opposed to anger. "The Philosopher says in his *Rhetoric*, book 2, chapter 3, number 1, that becoming mild is opposed to being angry; and this is not a contrary opposite, but a negative or privative one" (St. Thomas, I-II, q. 45, a. 2).

Love is the cause of all passions, for "there is no other passion which does not presuppose some love. The reason for this is that every other passion of the soul implies motion toward something or rest in something. But every motion toward something, or rest in something, proceeds from some connaturality or fittingness, which pertains to the character of love" (I-II, q. 27, a. 4).

36 **IV. Influence on the free.**

1. The passions exercise influence on the free will. "According to the order of nature, because of the binding together of the powers of the soul in one essence, and of soul and body in one being of the composite, the higher and lower powers, and also soul and body, mutually influence one another with what abounds in any of them" (St. Thomas, *De veritate*, q. 26, a. 10).
2. The passions influence the will through the imagination. Namely, this faculty, through the image of sensible good or evil, excites motions in the sensitive appetite; and by presenting the same image to the intellect, it supplies matter to it for presenting the same object to the will. But since the soul according to the sensitive appetite is inclined toward the object or turns away from it, the will too easily freely admits or turns away from that same object.
3. As to the efficacy of this influence, take this: the passions generally do not remove the free, but only lessen it. The reason is that the passions generally do not remove deliberation, but only lessen it (St. Thomas, I-II, q. 77, a. 8; St. Alphonsus, V, III). These matters are developed more where concupiscence and fear are treated in particular.

Note. As we noted in n. 32, in the rational appetite or will there are also, not indeed passions properly so called, but spiritual motions or affections, such as of love, desire, joy, hatred, etc. Now if a similar motion of the sensitive appetite corresponds to a motion of the will, peace is said to be had. If a motion of the sensitive appetite resists a motion of the will, there is conflict, concerning which St. Paul says: "I see another law in my members, resisting the law of my mind."[1] If a motion of the sensitive appetite neither corresponds to nor resists a motion of the will, there is aridity.[2]

[1] Rom. 7:23.

[2] Cf. Potters, *Compendium Ethicae generalis*, numbers 112 and 113.

Section II. On Concupiscence in Particular

37 **I. Notion.** Concupiscence is sometimes taken for the tinder of desires following from original sin in fallen man; sometimes for one of the passions of the concupiscible appetite, namely desire. Here,

however, it is taken somewhat more broadly and is understood as any motion whatever of the concupiscible appetite toward some sensible good (St. Alphonsus, V, XXIII).

38 **II. Division.** Concupiscence is usually distinguished as antecedent and consequent.

Antecedent concupiscence is that which "precedes the consent of the will and draws and inclines it to acting" (St. Alphonsus, V, XXIII).

Consequent concupiscence is that which "follows the consent of the will; indeed, it arises from a previous consent of the will already given to some matter, as when, for example, a man vehemently desires something, a vehement passion of concupiscence is excited in him" (St. Alphonsus, V, XXIII); "for the will cannot be intensely moved toward something without some passion being excited in the sensitive appetite" (St. Thomas, I-II, q. 77, a. 6).

39 **III. Influence on the free.**

1. Antecedent concupiscence, which is chiefly considered here, generally does not remove the free, but lessens it. The reason is that generally it does not remove but only lessens the indifference of judgment, on which the free is founded. I said:

a) **Generally it does not remove the free,** "because sometimes passion is indeed so great that it totally takes away the use of reason, as is plain in those who become insane because of love or anger" (St. Thomas, I-II, q. 77, a. 7; St. Alphonsus, V, XXV).

b) **It lessens it;** nevertheless concupiscence for the most part leaves enough deliberation to suffice for perfect freedom and therefore, if the required conditions are present, for mortal sin (cf. St. Thomas, I-II, q. 77, a. 8). Sometimes, however, because of the defect of full deliberation, only imperfect freedom is had, which does not suffice for mortal sin.

2. Consequent concupiscence "does not diminish sin, but rather increases it, or rather is a sign of its magnitude, insofar namely as it demonstrates the intensity of the will toward the sinful act" (St. Thomas, same place, a. 6; St. Alphonsus, V, XXIII).

Section III. On Fear in Particular

40 **I. Notion.** Fear is here understood as any motion whatever of the irascible appetite following upon the apprehension of a present or future evil.

41 **II. Division.** Fear is divided:

1. By reason of intensity, into grave and light, according as the motion is grave or light.
2. By reason of influence on the act, into antecedent and concomitant, according as the act is placed from it or only with it. A traveler from fear hands over money to one lying in ambush; with fear he passes through unsafe places.

42 **III. Influence on the free.** Fear generally does not remove the free character of a work placed from fear; nevertheless, if one acts from fear alone, it causes the involuntary in a qualified sense, or lessens the voluntary. The reason for the former is that fear generally does not wholly disturb judgment. The reason for the latter is that what proceeds from fear alone is done with some repugnance and therefore is chosen by the will with lesser affection (St. Thomas, I-II, q. 6, a. 6; St. Alphonsus, V, XXI).

Note. To what extent fear of harm excuses from observing a positive law will be explained elsewhere. For that is not to be sought from the passion of fear, but from the gravity of the evil which threatens, and which, from the reasonable will of the legislator, one generally is not bound to undergo.

43 **IV. Practical question.** Having set forth the influence of the passions on liberty, we add a sufficiently practical question: namely, whether there is an obligation of positively resisting the passions, or whether it suffices to behave negatively, that is, not to consent. Concerning this, note:

1. Temptation to sin ordinarily proceeds thus:

a) In the imagination there occurs the image of a delectable thing, which is followed by a motion of the sensitive appetite, or a sense of delight. This motion in itself is indifferent.

b) The intellect adverts to the motion, first as delectable, then as moving toward an evil act.

c) The will either positively consents, whether to the evil act or only to the sense of delight; or positively resists the motion; or behaves negatively toward the motion. Positive resistance can be made directly or indirectly: directly, for instance, by attacking the motion either through a contrary act or through an act of simple displeasure; indirectly, for example, by praying, thinking about other things, performing an external work, etc.

2. The question regards all passions, that is, all motions of the sensitive appetite which tend toward an illicit object. Now one who behaves negatively toward sensual motions:

a) Generally sins by not resisting. The reason is that generally there is danger of consenting. Namely, when the soul according to the sensitive part has been moved toward an illicit object, the will easily freely embraces that same object unless the disordered motion is positively resisted.

b) Sins gravely if the sensitive appetite is borne toward an object gravely evil, and, unless it is resisted, the danger of consenting is grave. Otherwise he sins only lightly. Now the danger of consenting is especially grave when the matter concerns a venereal and vehement motion, as will be said more fully in the treatise on chastity (St. Alphonsus, V, 6-9; *Homo Apostolicus*, tract III, nn. 41, 42, 44). Besides, note that indirect resistance is often practically to be preferred to direct resistance, especially if the motions of the sensitive appetite toward illicit things are lighter, more frequent, or longer-lasting.

Article IV. On Habit

44 **I. Notion.** Habit is here understood as a certain disposition acquired from multiplied similar acts, by which someone easily proceeds to similar acts. It is also called an acquired habit. It is good or bad according as it disposes toward good or bad acts.

45 **II. Division.** A bad habit, of which there is chiefly discussion here, is distinguished into voluntary and non-voluntary. It is voluntary when someone does not try, according to his powers, to uproot the habit, whether it was contracted advertently or inadvertently.[1] If someone tries to do this according to his powers, it is called non-voluntary.

[1] If someone has advertently contracted a habit and does not try to uproot it, it can be called voluntary under a twofold heading.

46 **III. Influence on the free.** Habit, or acquired habit, removes or lessens the free insofar as it removes or lessens the deliberation of the intellect. Yet it increases the voluntary as such, insofar as it causes someone to be borne into the act with greater inclination. Besides, a habit, say, of blaspheming,

etc., generally leaves some advertence or deliberation, indeed for the most part such deliberation as suffices for the perfectly voluntary.

"Although," as St. Alphonsus observes, "sinners entangled in depraved habits have a less ready cognition than others, nevertheless they always have some cognition of their crimes sufficient to render their acts deliberate and mortal. For since they themselves make little of sin, there is not made in their souls that sensible and memorable impression which is made in another who has a less depraved conscience; and hence it happens that in their memory there does not remain a trace of that actual cognition which they sufficiently had before concerning the sin, or the trace is so slight that, when questioned, they easily answer that they did not advert; but a cautious confessor ought not to give credence to them" (St. Alphonsus, V, 4).

But with respect to those who have retracted the habit and fight it as they can, Reuter rightly notes: "It happens not rarely that a man who before was accustomed to sins in venereal matter, or whose imagination has been infected by venereal images from long-lasting temptations, is immediately carried off into venereal delight and thinks that he consents, but soon retracts himself and shudders, fearing lest he has consented. But let him not judge that he has consented. For although the sensitive appetite has conceived delight, and some connatural complacency of the will also has followed, this was not free. For old habits connaturally operate the first motion, and man cannot repress it before it is present.... From the same reason authors note that it often happens that a man who has begun to be seriously converted dwells for a long time on a thought and yet does not consent, because acquired habits are operating, and a man occupied with other things cannot so quickly turn his mind to resisting. The common opinion of many is also that reason, through troublesome incidents, often even comes into delight, and this for a sufficiently long delay before it becomes fully master of itself through mature deliberation; and in such a matter men ought not to fear mortal sin. If persons of this kind afterward examine themselves, and at first seem to themselves not to have consented, or only doubt or fear about consent, let them presume that they did not consent, and let them not depart from this resolution."[1]

[1] *Neo-Confessarius*, nn. 261-268.

47 How greatly it matters that a man be clothed with good habits from tender age can be hidden from no one. For without habits he is wavering toward every good, inconstant, and liable to every assault of temptation; nor, in a doubt about consent, will presumption favor him. But with habits rightly rooted, by which he puts on, as it were, another nature over himself, he will stably do good; nor, in a doubt, is he easily to be believed to have yielded to sin. Therefore parents, teachers, and confessors should try with all force to uproot bad habits as they arise; and with watchful diligence, exhortation, praise, and reward, let them foster the beginnings of good habits.

Article V. On Temperament, Disposition, and Character

Temperament, disposition, and character influence the voluntary-free more remotely. Concerning these, the following things should be noted:

48 **I. Temperament.** According to the opinion of Galen, temperament was formerly thought to arise from the prevalence of one of the four humors which were said to exist in the human body: namely blood, bile, black bile, and phlegm. According to modern psychophysiologists, it is more rightly said to have its origin from the prevalence of one of the systems from which the principal physiological

functions in the human body proceed. This prevalence causes special dispositions and affections to arise in individual persons. The complex of these dispositions and affections is called temperament. But authors do not agree on how many temperaments ought to be distinguished. Since, however, three systems of functions can be prevalent, three types of temperaments are conveniently distinguished, though they admit some subdivisions. They are: 1. the sanguine temperament; 2. the nervous temperament; 3. the lymphatic temperament.

1. The sanguine temperament arises from the prevalence of the circulatory system and the suitable development of the organs of respiration. If you seek the characteristic marks of this temperament: sanguine persons usually enjoy an easy intelligence; they feel promptly and vividly, but not in an intense or constant way; they are lively, prone to amusements, even carnal ones; they are courteous, easily indulge affections, and are liberal and beneficent; their face is ruddy, cheerful, and animated.

2. The nervous temperament arises from the prevalence of the nervous system, highly sensitive, to which all operations are subjected. Nervous persons feel more intensely and more constantly than sanguine persons, although from the diversity of their emotions they display a certain instability. Excessive sensitivity renders them restless; and they are rather easily disgusted if the matter does not proceed prosperously. They are prone to sensual pleasures; their love sometimes turns into aversion. Persons who show this temperament are usually thin, slender, and stirred by continuous motions of the muscles. It can be varied in three ways.

a) By the bilious temperament, which is named from the great activity of the hepatic gland. Persons endowed with it usually show a yellowish face, lively eyes, and a grave and severe appearance. As regards psychological marks, irritability, ambition, and desire of ruling are especially enumerated. They usually enjoy a lively and reflective intelligence, and show a firmer spirit than nervous persons.

b) By the erotic temperament, when the sexual apparatus manifests great vitality and irritability. What the specific characters are is rather difficult to say; a lascivious appearance not rarely reveals it sufficiently. It can be received by heredity from parents; often it is developed more from other external causes, such as readings of depraved books, immodest scenes, and insane loves.

c) By the melancholic temperament, which usually displays a pale face, an anxious and sad appearance, and a slow gait. The nervous system is especially affected by sad affections, which take their origin from depressing thoughts. They are complacent in this sense of sadness, and therefore seek solitude, and are misanthropic and intractable. Yet they sometimes allow themselves to be swept away by vehement passions which they had previously concealed. Besides, they are usually endowed with the good qualities which the nervous temperament carries with it, such as lively intelligence and warmth of speech.

3. The lymphatic temperament, which seems opposed to the nervous temperament and in many respects also to the sanguine, is often recognized from a white or slightly red face, from blue eyes, and still more from a slow gait and difficult motion. They are agitated by no vehement passions, and when they grow angry, anger is easily restrained. Generally, lymphatic persons feel less intensely and act slowly but with unconquered constancy.

It is worthy of note that temperament is almost always constituted in an individual from the mixture of one with another, or even that different temperaments are mixed in equal proportion. From this

arise, for example, the sanguine-nervous temperament and the sanguine-bilious temperament. Namely, since the nervous system and other organs continually have various relations with surrounding things, the changes of these must necessarily exercise corresponding changes upon constitution and temperament. Moreover, excessive elements, which are in unstable equilibrium among themselves, exercise influence on the development of a certain complexion and temperament; hence mixed temperaments, as they are called, arise.[1]

[1] Antonelli, *Medicina pastoralis*, I, n. 328.

49 **II. Disposition.** Disposition seems to be constituted by native inclinations, and especially by those arising from temperament.[1]

From disposition, human beings can be distinguished especially into three types, that is, into the sensitive, the temperate, and the cold. The sensitive are those in whom the passions rule more than reason, so that they are usually directed by the former rather than by the latter. The temperate are those in whom reason moderates and rules the passions, although they are intense. The cold are those who are scarcely subject to the more vehement passions.

[1] "From birth there follows in the body of the one born some disposition, both from the power of the heavenly bodies and from lower causes, which are the seed and the matter conceived, through which the soul is in some way made prone toward choosing something, according as the choice of the rational soul is inclined by the passions which are in the sensitive appetite, which is a bodily power following the dispositions of the body. But from this no necessity is induced upon it for choosing, since it is in the power of the rational soul to accept or even to reject the passions that have arisen" (St. Thomas, *De veritate*, q. 24, a. 1, ad 19; cf. *Quaestiones disputatae de Potentia*, q. III, a. 9, ad 7).

50 **III. Character.**

1. Character is called disposition insofar as, strengthened or modified by frequency of acts, it has acquired a certain stability.
2. The formation of character consists in this: that a certain stable direction toward good is impressed upon the soul and is fostered more and more. Concerning the manner of forming character, certain special things are to be noted both with respect to children and with respect to others.[1]

a) With respect to children. For forming the character of children, not only children themselves, but even more parents and teachers, should cooperate. To this belong: 1. care of health, by which the nervous system is strengthened; 2. development of the moral sense, by which the child is spontaneously drawn toward honorable things and turns away from dishonorable things. This development should be made both by little exhortations and by the narration of those things which were done by Christ and the saints; 3. instruction in matters of faith and morals; 4. cultivation of study and of diligence in religiously fulfilling duty, by which the will is especially strengthened; 5. removal of those things which expose faith or morals to danger; 6. use of supernatural means, especially prayer and the sacraments, by which the will is strengthened more and more.

b) With respect to others. For forming character, the following especially conduce:

a) Knowledge of oneself, that is, of good and depraved inclinations, to be obtained both by examination of conscience and by the counsel of faithful friends, especially of a spiritual director.

b) The fight against disordered motions, and the practice, even in time of peace, of those acts which oppose depraved inclinations. By this it comes about that the energy of the will, which languishes in so many persons, is exercised, sharpened, and increased; that man learns to bring force upon himself and

either to block the way to disordered motions or most strongly restrain them once they have arisen. This violence the demons dread, as the Apostle says: "Resist the devil, and he will flee from you."[2]

c) Supports of moral vigor, which are: repeated meditation, even if briefer; prayer; frequenting of the sacraments; the choice and use of a wise spiritual director; finally, a daily order of living well arranged and, as far as can be done, fixed, by which equilibrium of soul is fostered and the vigor of the will is strengthened.

[1] Cf. Guibert, *Le Caractere*; Dupanloup, *De l'Education*; Martin, *Education du caractere*; Spencer, *Education*.

[2] Jas. 4:7.

Article VI. On the Principal Psychic Abnormalities

Psychic abnormalities can be distinguished into those which arise from the defective and slow evolution of the psychic faculties, and abnormalities which arise from a morbid disturbance of the same faculties.

Section I. Psychic Abnormalities which Arise from Defective Evolution of the Psychic Faculties

Three of these can be distinguished according to the degree of defectiveness and slowness. They are:

51 **I. Idiocy,** which is the state in which the evolution of the sensitive cognitive powers is so defective and slow that no evolution at all of the intellect is had.

II. Imbecility, in which there is a lesser defectiveness and slowness, so that a certain degree of intellectual evolution can be acquired; however, its defectiveness and slowness remain notable in forming notions and judgments.

III. Debility, in which the defectiveness of intellectual evolution is not so notable; nevertheless, the weak are unable to make practical use of the things which they perceive by intellect. Therefore they are easily placed under the rule of another, and they always need someone who may direct their acts.

Corollary. The moral responsibility of these persons depends both on the degree to which they can perceive things by intellect and judge concerning them, and on the possibility of putting their judgments into practice.

Section II. Abnormalities which Arise from Morbid Disturbance of the Psychic Faculties

52 Here it is necessary to distinguish: 1. amentia properly so called, by which the operation of the intellect is wholly disturbed with respect to certain matters; 2. a habitual psycho-somatic abnormal disposition, which nevertheless does not reach a full disturbance of reason; 3. psychogenic reactions. We shall speak of each.

Point I. Amentia Properly So Called

Today amentia properly so called is reduced, for the most part, to two species, namely endogenous psychoses and exogenous psychoses. The latter lead to complete intellectual degeneration or dementia; not so the former.

53 **I. Endogenous psychoses** have the cause of their origin in the very physical habitual disposition of the subject. But exogenous psychoses come from an added cause, namely from the fact that the

cerebral cells are affected by certain poisonous materials, which either come from outside or are produced by the body itself. To endogenous psychoses are reduced: manic-depressive psychosis and paranoia.

1. **Manic-depressive psychosis** occurs in a twofold way, namely as mania and as depressive or melancholic psychosis.

a) The manifestations of mania are cheerfulness and mobility, which exceed the ordinary and normal mode.

b) The sign of depressive psychosis is the highest melancholy. This psychosis carries with it great danger of suicide, since the one affected by this psychosis is vexed by various thoughts of desperation and anxiety.

c) Both mania and depressive psychosis usually remit after an intervening time; nevertheless, it can happen that they endure chronically.

2. **Paranoia** is a certain chronic amentia by which a certain delusional persuasion rules the whole life. The operation of the intellect, especially at the beginning of the disease, is not immediately ruined; from this it happens that such sick persons, if there is question of matters which are not found within the sphere of the disease, can judge perfectly. Gradually one idea or another invades the soul more and more, so that at last they hold fictive and vain things for true. These fictive things have various objects. Some persuade themselves that they are suffering persecution; others, that they have been called to great things; others, that some person, especially a noble one, has been seized with love for them; others finally are disturbed by religious ideas. They think that they converse with angels and saints, whose voices they perceive; they wish always to be occupied with vocal prayer, etc.

54 **II. Exogenous psychoses.** To exogenous psychoses belong: 1. schizophrenia or dementia praecox; 2. paralytic dementia; 3. epilepsy.

1. **Schizophrenia, or dementia praecox,** generally arising at a rather younger age, usually before the thirty-fifth year of age, ends in total hebetude, or dementia. The distinctive marks of this disease are: the dissolution of the unity and coherence which, in the normal condition, exist among a person's thoughts, affections, and actions, and the loss of the sense of the reality of things.

2. **Paralytic dementia,** which is a consequence of syphilis. About three percent of those who suffer from syphilis fall into this psychosis. It generally appears eight to ten years after the infection has begun, and at first it is manifested by the greatest forgetfulness and carelessness. Generally it progresses quickly and after two or three years brings on death. They say, nevertheless, that a remedy by which it is checked has been found.

3. **Epilepsy** is a disturbance of the nerves which periodically recurs and brings on a crisis in which the patient is not master of himself. When the crises take place rather rarely, sick persons of this sort, outside the time of the attack, enjoy an almost normal use of the intellectual faculties. But if the crises recur more often, the soul is changed at its foundation, so that there can be discussion of an epileptic character.

Corollary. Concerning the moral responsibility of the insane, two very expert physicians speak thus: "In the demented, whose sensitive life, both cognitive and concupiscible, is disturbed, for this reason

almost never can full moral responsibility be present. It is clear that moral responsibility is especially diminished with respect to those acts which cohere directly with psychic abnormalities; hence it is evident that the temptation to kill someone cannot be imputed to him who, either because of hallucination, thinks that this has been commanded him, or imagines that someone is persecuting him. Partial responsibility can be present in those acts which do not cohere with psychic abnormalities."[1]

[1] Schim van der Loeff and Barnhoorn, o.c., p. 94.

Point II. Abnormal Psycho-Somatic Dispositions

Abnormal psycho-somatic dispositions must be distinguished from psychoses properly so called, though by them the use of reason is not wholly disturbed. Three species of these can be distinguished: 1. psychopathies; 2. psychasthenia; 3. neurasthenia.

55 **I. Psychopathies** are physical abnormalities which are manifested especially by abnormal acts of the sensitive appetites, especially of the concupiscible appetite. In those who are physically constituted in such a way, the vehemence of the acts of the sensitive appetites is by no means proportionate to the causes which are truly present; therefore the sensitive life dominates in an abnormal way. Very many specimens of psychopaths are distinguished, the principal ones of which are: 1. hysteria; 2. the asocial-criminal specimen. There are added, 3. sexual abnormalities, which, although in themselves they do not belong to psychopathy, are nevertheless akin to it.

1. **Hysteria.** Its distinctive mark is that those who are affected by hysteria desire to seem, both to themselves and to others, greater than they really are, and they desire that greater and more wonderful things should happen to them than really and ordinarily are accustomed to happen. But hysterical persons, since their wishes are by no means fulfilled in the truth of things, with the help of a lively imagination do this: they seek to become possessors of their wishes in another way. They desire that others be concerned with them, that they themselves be, as it were, the center of all thoughts, that marvelous and wonderful things which increase the liveliness of their imagination happen to them. On account of these things, which are, as it were, certain notes and distinctive marks of hysterical persons, such persons, who occur especially among women, must be treated with every prudence. Thus it can happen that, desiring in an insane way that something marvelous happen to them, they tend toward a sexual relation with ecclesiastics or confessors. Likewise it happens that they invent violence brought against themselves or solicitations proposed to them.

Crises can occur in hysterical persons; then they are shaken by convulsions, or they are as if in a state of sleep and torpor, or they are affected by vehement depression. These things, however, occur only by way of exception, for the essence of hysteria consists in the hysterical complexion itself.

2. **The asocial-criminal specimen.** These persons plainly lack all higher affections, feel nothing humanely, and are led only by concern for themselves, or egoism. To this specimen of psychopathy the name "moral insanity" is also given.

Corollary. In those whose complexion is affected psychopathically, moral responsibility will often be present only in a diminished way; indeed, in certain psychotic states, occurring extraordinarily, responsibility will be plainly removed.

3. **Sexual abnormalities,** which consist in this, that the venereal appetite departs from the normal manner, whether with respect to the time of manifesting itself, or with respect to intensity, or with

respect to object. It is said:

a) With respect to the time of manifesting itself. Namely, it happens that in children, with respect to the venereal appetite, a precocious maturity, and one of a higher degree, is found; this disposition can indeed render the said children very dangerous for others.

b) With respect to intensity. Namely, some labor under a wholly unbridled and insatiable propensity toward venereal things; if this reaches the extreme degree, in men it is called satyriasis, as if making satyrs, and in women uterine fury or nymphomania.

c) With respect to object. Namely, the venereal passion in some persons is borne toward objects which of themselves are in no way, or not in that way, ordered to venereal sensations. To this are referred: homosexuality, sadism, masochism, fetishism, and exhibitionism.

a) Homosexuality is had when the sexual inclination is borne toward persons of the same sex. In a woman it is called Lesbian or Sapphic love; if it is borne toward boys, it is called pederasty.

b) Sadism, from the Marquis de Sade, who was affected in this way and described his own foul deeds, exists if libido is excited by perpetrating acts of cruelty, for example by piercing a girl with a knife.

c) Masochism, from Sacher-Masoch, who describes these things in works of fiction, is so called if libido is excited by suffering acts of cruelty.

d) Fetishism exists if libido is excited by imagination or handling of things or parts of the body which do not pertain to venereal matters, such as the hand, foot, hair, clothing, etc.

To the aforesaid there is added exhibitionism, which consists in the propensity of a man to exhibit his body or naked genitals to women.

Corollary I. Sexual abnormalities, as we have already suggested, are not yet in themselves signs of a true psychopathy, since they can also be consequences of psychogenic reactions, of which we shall speak in Point III. Therefore it must be seen whether or not symptoms of true psychopathy concur.

Corollary II. Concerning moral responsibility: if symptoms of true psychopathy are present, the things that have been said about those who are affected psychopathically hold good (cf. corollary, n. 54). If the said symptoms are absent, much discretion is still needed for rendering a judgment concerning the imputability of those who are borne with the greatest force into venereal matters. For it seems that credence often cannot be given to the testimony of those themselves who suffer these things; for sometimes they falsely think that they acted voluntarily, although from other indications it appears that this is not true. A more secure judgment indeed is formed concerning those who live piously; the difficulty is much greater in those who care little for piety.

II. Psychasthenia is a state of soul whose distinctive marks are consciousness of culpability and anxieties, increased in an abnormal and vehement way. Many scrupulous persons are to be counted among these.

Corollary. With respect to acts which are placed under the influence of these affections, for example imprecations or pollutions, moral responsibility will be diminished or plainly removed.

III. Neurasthenia is a morbid state of soul whose distinctive mark is fatigue and weariness of the entire nervous system together with the greatest irritability of the sensitive life; therefore neurasthenic persons can remain masters of themselves with greater difficulty.

Point III. Psychogenic Reactions

56 Psychogenic reactions are called abnormal actions, affections of soul, or sensations which arise from psychic conflicts that previously occurred in the soul of the one who is subject to these reactions. They arise both in those who are psychically constituted in a normal way and in those who are constituted in an abnormal way.

Corollary. Concerning moral responsibility it must be said that the influence of the will regarding a matter which coheres with a psychic conflict is diminished.

[1] Cf. Schim van der Loeff and Barnhoorn, *Zielszieken en hunne verpleging*; Huber, *Die Hemmnisse der Willensfreiheit*; Beszmer, *Storungen des Seelenlebens*.

Chapter III. On the Consequence of Liberty, or on Imputability

57 **Preliminary.** In order that the doctrine concerning imputability may be rightly proposed, certain things are to be noted concerning the efficient cause.

An efficient cause is called that which by its own power influences an effect. It is distinguished:

1. Into a physical and a moral cause, according as it influences an effect physically or morally, that is, by moving another free cause to act. Thus, for example, a thief is the physical cause of theft; but the one who impelled the thief to steal is the moral cause of the theft.
2. Into a cause per se and a cause per accidens. The former is that which by its nature, or by reason of its proper form, produces an effect or influences an effect, whether physically or morally. Thus, for example, immoderate drinking is the per se and physical cause of drunkenness; evil counsel is the per se and moral cause of a proximate sin. The latter is that which, by reason of a form or circumstance which happens to it, produces an effect or influences an effect. Thus, for example, immoderate drinking can be the per accidens and physical cause of pollution.

Note. An occasional cause, which properly is not a cause, is called that upon the positing of which another cause produces an effect. Thus, for example, one who gives a sum of money to someone can be for him the occasional cause of drunkenness.

3. Into a proximate and a remote cause, according as it concurs proximately or remotely in producing the effect. Thus one who arranges the type is the proximate cause, and one who prepares the paper is the remote cause, of printing a book.
4. Into a cause influencing gravely, moderately, and lightly, according as it exercises a grave, moderate, or light influence on the effect. Thus, for example, very immodest touches influence venereal commotion gravely, moderately immodest touches moderately, and lightly immodest touches lightly.

58 **I. Notion.** Imputability is the property by virtue of which an act, or the effect of an act, must be attributed to someone as to its author and master. The root of imputability is liberty, not morality, as some think. For that is the root of imputability on account of which an act must be ascribed to someone as to its master. But an act must be ascribed to a human being as to its master because and insofar as he placed it freely. To the imputability of an act, or of the effect of an act, there corresponds responsibility in the agent, by virtue of which the agent must be held as the author and master of the act or of its effect.

59 **II. Imputability of acts.** It is clear that a human act must be imputed to the human being. For a human act is an act of which a human being is master (n. 15). But from the fact that you are master of some act, that act is imputed to you. More difficult to determine is:

60 **III. Imputability of effects.** The discussion concerns evil effects; moreover, acts, although undeliberated, that are going to follow from a cause, for example in drunkenness, are also referred to effects. Therefore we ask:

1. What is required in order that an evil effect be imputed? It is required:

a) That the agent advert, at least confusedly, that the effect will certainly or probably follow. For nothing is willed unless it is at least in some way known.

b) That the agent be able not to posit the cause, or to remove it once posited, or to posit a cause which may impede the effect. Otherwise liberty is lacking, which is the foundation of imputation.

c) That the agent ought not to posit the cause, or ought to remove it once posited, or ought to posit a cause which may impede the effect; and precisely for this reason, lest the evil effect follow (St. Thomas, I-II, q. 6, a. 3; q. 20, a. 5; q. 73, a. 8, ad 1; St. Alphonsus, V, nn. X and XI). Therefore the effect is not imputed: 1. if the action, as being sinful, must indeed be omitted, yet not on account of the evil effect. If someone, for example, gets drunk on Thursday, foreseeing that he will not be present at Mass on the following Sunday, he does indeed sin by making himself drunk, but the neglect of Mass is not imputed to him, because he is not bound on Thursday to abstain from drunkenness in order to avoid the neglect of Mass; indeed, positive precepts do not carry with them the obligation of removing remote impediments. 2. The effect is not imputed if the action can be placed notwithstanding the evil effect. This has place especially, though with the things that must be posited being posited, in the case in which the action, besides an evil effect, also has a good effect. I have said "with the things that must be posited being posited"; since the assigned case is very practical, these things must be explained more fully. Therefore let there be this:

Proposition. It is permitted to place an action from which a double effect is going to follow, one good, the other evil, if the following conditions are present:

a) The action is good in itself, that is, abstraction being made from the evil effect, or at least indifferent, according to these words of St. Paul: "Let us not do evil that good may come."[1] It is said, "abstraction being made from the evil effect"; understand this of an evil effect distinct from a formally evil effect, because an action which has a formally evil effect, that is, which produces an evil effect by the very fact that it is placed, is evil in itself. In a word: here and in what follows we speak of effects which are not formal.

b) The evil effect is not intended; and moreover there is absent any grave danger of approving it, for example a pollution that will follow from the action, or of consenting to it.

c) The good effect does not follow by means of the evil effect. Otherwise evil would be done so that good might come. Nevertheless, it is not required that the good effect follow as immediately, nor that it follow as probably, as the evil effect. This required condition is present when, for example, medicine taken by a pregnant and sick mother produces the expulsion of the fetus and the health of the mother, yet does not produce the latter effect by means of the former. It must be said otherwise if a pregnant girl or wife were to procure reputation or health for herself by means of abortion (St. Alphonsus, III, 394).

d) There is present a proportionate cause for permitting the evil effect; for since this effect is evil, it must of itself be guarded against, so that of itself it cannot be permitted, much less contributed to in any way, unless a proportionate cause excuses. Besides, concerning the proportionate cause, observe:

a) The cause for permitting the evil effect of the action is situated in the good effect of the same action. Nevertheless, the effects are not only to be considered as if in particular, but the advantage and disadvantage of the whole of human society must be weighed.[2]

b) A graver cause is required: a) the greater, of itself, the obligation is of impeding the effect,[3] or the weaker, of itself, the right is of placing the action;[4] b) the greater the causal connection is between the action and the evil effect, so that a greater cause is required if the action influences it per se than if it influences it per accidens, and a greater cause if it influences it gravely than if lightly;[5] c) the more closely the evil effect is joined with the action;[6] d) the more necessary the action is for the evil effect;[7] e) the more certainly the effect is going to follow; f) the worse the evil effect is.

Therefore, when there is question of an action whose effect is twofold, good and evil, it is certainly permitted to place it when the explained conditions have place. But it is another question whether each of the said conditions is always required. Moreover, this seems to be denied concerning the second and third conditions when the evil effect consists either: 1. in the privation of a good which is ordered to the good effect that will follow from the action; or 2. in the privation of a good which an unjust aggressor has lost the right of retaining. Hence it is permitted, for example, to amputate a member in order to save the whole; likewise, with the things to be observed having been observed, to wound or kill an unjust aggressor, although in the examples adduced the good effect is obtained by means of the evil effect, and the evil effect is intended as a means.[8]

2. To how much fault is the evil effect imputed? The solution depends on so many circumstances that it cannot be answered completely here. It will suffice to have noted these things, while more matters are referred to the diverse treatises.

a) A lightly evil effect is imputed to light fault.

b) A gravely evil effect is imputed to grave fault if the cause, both by its own nature and gravely, influences it, as pollution from gravely immodest touches. It is imputed of itself to light fault if the cause influences either lightly, as pollution from a less immodest touch, or remotely, per accidens, or occasionally, even gravely, as pollution from drunkenness, provided nevertheless that the danger of consenting is absent. I have said "of itself," because it can happen that the effect is imputed to grave fault even if the cause posited influences it only remotely, per accidens, or occasionally. This has place if the effect must be guarded against by reason of a stricter virtue, especially justice or religion, or by reason of the common good. Hence, for example, blasphemies and homicide committed in drunkenness, and foreseen, are imputed to grave fault, although drunkenness does not influence the aforesaid effects per se.

3. When is the evil effect imputed? The whole malice is contracted at the time when the cause is posited or not removed, or at least when the will of positing or not removing it is present. The reason is that every fault resides in the free will. But the malice is contracted whether or not the effect follows, because the event does not influence the depraved will, which has already preceded (St. Alphonsus, V, 10).

Question. Whether the evil effect itself, if it can no longer be impeded, for example homicide committed in perfect drunkenness, is infected with the malice of the will, or whether it is a merely material sin.

Response I. The evil effect of which we are speaking is a merely material sin if the depraved will was sincerely retracted before the event of the effect; for when it has been retracted, there is not that from which true morality could accede to the effect.

Response II. It is disputed if the will has not been sincerely retracted; but with St. Alphonsus (IV, 149; V, 10), it seems it must be said that the said effect is not a merely material sin. For what has been chosen by the will, or at least culpably permitted, and is committed while the will persists, cannot be called a merely material sin, but seems infected with the malice of the will. Finally, observe that this effect can consist both in a deed or in a positive act, and in an omission, for example of hearing Mass (St. Alphonsus, l.c.). Thus also Cajetan,[9] the Salmanticenses,[10] and Billuart.[11]

St. Thomas has these words: "It must be said that in drunkenness two things are attended to, as was said: namely, the consequent defect and the preceding act. From the part of the consequent defect, in which the use of reason is bound, drunkenness has the effect of excusing from sin, insofar as it causes the involuntary through ignorance. But from the part of the preceding act, a distinction seems to have to be made; because if from that preceding act drunkenness has followed without sin, then the following sin is totally excused from fault, as perhaps happened to Lot. But if the preceding act was culpable, then someone is not totally excused from the following sin, which namely is rendered voluntary from the will of the preceding act, insofar as someone giving himself to an unlawful thing falls into the following sin. Yet the following sin is diminished, just as the nature of the voluntary is diminished" (II-II, q. 150, a. 4).

[1] Rom. 3:8.

[2] Frins, *De actibus humanis ontologice et psychologice consideratis*, n. 197.

[3] For example, a graver cause is required for a public official than for a private person to cooperate in theft.

[4] For example, a graver cause is required for a stranger than for a parishioner to seek the sacraments from an unworthy pastor.

[5] For example, a graver cause is required so that, notwithstanding a pollution that will follow, a very immodest touch may be admitted, than so that a less immodest touch may become lawful.

[6] For example, if there is question of printing an evil book, a greater cause is required if there is discussion of arranging the type than if there is discussion of preparing the paper.

[7] For example, a graver cause is required for it to be permitted to give drink to a drunkard if other innkeepers who would give drink are lacking, than if they are present.

[8] Concerning these things, which are denied by many, something will be said later.

[9] In II-II, q. 150, a. 4.

[10] *De princ. mor.*, tr. 20, c. 10, n. 26.

[11] *De pecc.*, diss. 1, a. 4, § 3.

Dissertation II. On Human Acts Considered according to Moral Being

We shall speak first of morality in general, then of morality considered according to its supreme species, namely concerning the good, evil, and indifferent act.

Part I. On Morality in General

Section I. On the Notion and Division of Morality

(St. Thomas, I-II, q. 10, aa. 4 and 9; q. 21, a. 1; q. 71, a. 6; St. Alphonsus, bk. V, XXXIV-XXXV.)[1]

[1] Cf. John of St. Thomas, *In I-II*, t. I; Suarez, *In I-II, De bonitate et malitia humanorum actuum*; the Salmanticenses, *Cursus theologiae*, tract II, *De bonitate et malitia humanorum actuum*; Lehu, *La raison, regle de la moralite d'apres St. Thomas*; Pegues, *Commentaire francais litteral de la Somme theologique*, tt. VI and VII; Pesch, *Praelectiones dogmaticae*, tract II, sect. III, *De relatione actuum humanorum ad finem ultimum seu de moralitate actuum humanorum*; Frins, *De actibus humanis*; Walter McDonald, *The Principles of Moral Science*; Potters, *Compendium Ethicae Generalis*; Sweens, *Theologia moralis fundamentalis*.

61 **I. Notion.** The morality of human acts consists in their relation, for example of agreement or disagreement, to the divine law. For morality is the property of acts by virtue of which they are called good or evil, or indifferent (n. 61), worthy of praise or blame. But they must be called such from their relation to the divine law, since by commanding, forbidding, and permitting, it is the supreme director of all acts toward the ultimate end and toward proper secondary ends. "The will of any creature whatever," says Aquinas, "does not have rectitude in its act except according as it is ruled by the divine will, to which the ultimate end belongs, just as any lower will ought to be ruled according to the will of a superior, as the will of a soldier according to the will of the commander of the army" (I-II, q. 19, a. 1).

But since right reason indicates what the law or ordinance of God, commanding, forbidding, and permitting, includes, morality can also be called: the relation of a human act to right reason and law. "Now," as St. Thomas says, "a human act has that it is evil from the fact that it lacks due commensuration. But the commensuration of any thing whatever is attended to by comparison with some rule; if it turns aside from this, it will be incommensurate. Now the rule of the human will is twofold: one is proximate and homogeneous, namely human reason itself; the other is the first rule, namely the eternal law, which is, as it were, the reason of God" (I-II, q. 71, a. 6). Likewise St. Alphonsus: "The moral goodness of a human act consists in a certain conformity and agreement of the free act with right reason and law, so that that act is called good which is conformed to law and reason. Hence St. Augustine says: 'In no way can that have been rightly done which does not proceed from right reason.' Conversely, the moral malice of a human act consists in discrepancy or deformity from right reason. That act is called evil which is not according to the dictate of right reason, whether uncreated, which is the eternal law, or created, which is the natural light of man, or a participation in the eternal law according to St. Thomas. Both of these reasons are the rule of human acts, from which the measure of the goodness or malice of a human act is taken" (V, XXXIV).

Furthermore, since the relation of a human act to the divine law, which directs all acts to the ultimate end, and its relation to the ultimate end itself correspond to each other, morality can also be called: the relation of a human act to the ultimate end. Hence elsewhere St. Thomas says: "The formal account of a moral act is taken by comparison to the end" (*De malo*, q. 4, a. 2, c.). "According to relation to the end all moral habits are distinguished, from which the first difference of good and evil was taken, because good imports an end... but evil a disordering from the end" (*In III Sent.*, dist. 33). "On the ultimate end depends the whole goodness or malice of the will, because whatever good things someone wills in order to a good end, he wills well; but whatever things are in order to an evil end, he wills badly" (*Contra Gentiles*, bk. 4, c. 95).[1]

Corollary I. The morality of a human act does not consist in its liberty; nevertheless, liberty is the foundation of morality. "There the genus of morals begins, where the first dominion of the will is found" (St. Thomas, *In II Sent.*, dist. 24, q. 3, a. 2; St. Alphonsus, V, XXXV). Nor is it situated, as Scheeben teaches,[2] in advertence of reason to the morality of the object; this advertence is a condition of morality. Nor does it consist in the relation of the act to human nature, unless this is taken as subject to the divine law.

Corollary II. Morality properly so called belongs only to elicited acts; to commanded acts it belongs only extrinsically.

Hence a commanded act, especially an external one, "does not add intrinsic and per se moral goodness or malice over and above the interior act, but enjoys only extrinsic goodness or malice taken from the act of the will commanding it" (St. Alphonsus, V, XL; St. Thomas, I-II, q. 20, a. 4). Thus authors, with the exception of the Scotists, teach sufficiently commonly, relying on this reason: morality is founded in liberty, which is found intrinsically in the elicited act alone. Consonant with this doctrine is the fact that although Abraham wished to immolate his son, and could not, nevertheless God says to him: "Because you have done this thing and have not spared your son... I will bless you."[3]

Nevertheless, a commanded act, especially an external one, per accidens increases the formal morality of the internal act, namely insofar as it causes the internal act to become more intense, to be prolonged longer, and to be repeated more often (St. Thomas, l.c.; St. Alphonsus, l.c.).

Corollary III. Having considered the nature of morality, which imports a relation to divine law, one must truly say with St. Thomas: "Every sin is evil because prohibited" (I-II, q. 71, a. 6, ad 4); and with St. Alphonsus: "No moral good, no evil, can be understood without respect at least to the natural law. When it is commonly said that certain things are prohibited because they are evil, this is rightly to be understood thus: certain things are forbidden by positive law as things repugnant to natural law. For nothing is intrinsically evil if it is not compared at least with the right of nature" (V, XXXV).

[1] Several definitions handed down by others likewise fall under the definitions handed down above, such as: morality is situated in the relation of the act to rational nature, insofar as it is subject to divine law; or: in the relation of the act to its object, insofar as it is subject to the rules of morals.

[2] *Handbuch der katholischen Dogmatik*, I, 1.2, n. 594 sq.

[3] Gen. 22:16-17.

62 **II. Division.** Morality is divided:

1. Into objective and subjective morality. Objective morality is that which belongs to the act considered in itself; subjective morality is that which inheres in the act according as it proceeds here and now from the will.

2. Into goodness and malice. It is disputed whether a third species of morality ought to be added, namely indifference. Concerning this, observe the following things. It is commonly admitted indeed that there are acts indifferent from the object or according to species, as, for example, to lift a straw, etc. But it is asked, and even in the Thomistic school it is disputed, whether indifference is a species of morality. Moreover, it seems it must be affirmed, because even an indifferent act has order to the divine law, insofar as by force of that law it can be ordered to the ultimate end, is permitted by that law, and from it there belongs to man a right, that is, a moral faculty of placing the said act. And this opinion seems conformed to the mind of St. Thomas, who says thus:

"Therefore if we speak of a moral act according to its species, in this way not every moral act is good or evil, but some are indifferent" (*De malo*, q. 2, a. 5). And again: "There are three differences of human acts. For as was said above, certain acts are good from their genus, which are acts of virtues; and with respect to these there is posited the act of law to prescribe or command, for law prescribes all acts of virtues, as is said in book 5 of the *Ethics*. But certain acts are evil from their genus, as acts of vices; and with respect to these law has to prohibit. Certain acts, however, from their genus are indifferent; and with respect to these law has to permit" (I-II, q. 92, a. 2).

3. Into intrinsic and extrinsic morality, according as the act is subject to natural law or to positive law, whether divine or human.

Scholion. On Morality Founded in the Nature of the Act

63 Having assigned the species of morality, which are goodness, malice, and indifference, it remains to inquire whether morality, especially goodness and malice, is sometimes also founded in the nature of the act, ultimately in the divine intellect. Now many non-Catholics assume that goodness and malice are never in any way founded in the nature of the act, but are always and only to be derived either from a human cause, for example from education (Montaigne), or from public opinion and custom (Saint-Lambert), or from the invention of men of great genius and authority (Mandeville); or from the free will of God (the Nominalists, Descartes, Pufendorf). Against all these, it is established:

Proof. Many acts are by their own nature morally good or evil. For morally good by its own nature is what by its own nature agrees with human nature adequately considered, that is, considered insofar as it has essential relations to God and created things; morally evil is what by its own nature is repugnant to human nature so considered. But many acts by their own nature agree with, and many by their own nature are repugnant to, human nature adequately considered. For example, love and worship of God agree with it; hatred of God, blasphemy, etc., are repugnant to it. Added to this is that, if this opinion is denied, God would not necessarily prescribe, for example, love of himself; indeed he could even impose on human beings, for example, hatred of himself. This, however, cannot be reconciled with his divine attributes.

Section II. On the Sources of Morality

64 The sources of morality are called those things from which a human act takes, or, as from sources, draws, its morality, that is, goodness or malice. The sources are: the object and circumstance of the act, and finally the end on account of which it is placed. They are sources of morality because and insofar as they themselves are subject to the rules of morals, so that morality can be contracted from them. We shall speak of each.

Chapter I. On the Object

65 **I. Notion.** Object is here understood as that toward which, insofar as it is subject to the rules of morals, a human act is borne per se. Thus another's property is the object of theft; God is the object of the act of love (St. Alphonsus, V, XXXVI; cf. St. Thomas, I-II, q. 18, a. 2, ad 1 and ad 2).

66 **II. Morality from the object.** A human act takes specific morality, goodness or malice, from its known object, good or evil. The reason is that an act takes specific morality from that toward which it is borne per se; such is the object (St. Thomas, I-II, q. 18, a. 2; St. Alphonsus, V, XXXVII). I have said

"from its known object, good or evil," namely so that morality can be contracted or become formal; for nothing is willed unless known.

Nevertheless, circumstance and end, as we shall note later, sometimes destroy the goodness of the object. Moreover, if the object and the circumstances are indifferent, for example the act of walking, specific morality is taken from the end[1] (St. Alphonsus, V, XXXVIII; XLI).

[1] In this case circumstance or end is said to put on the account of the object. But when the matter is taken in this way, it can be said that even in this hypothesis specific morality is derived from the object.

Chapter II. On Circumstances

67 **I. Notion.** Circumstance is an accident which stands around a human act already constituted in some moral species, and is subject to the rules of morals (St. Thomas, I-II, q. 18, a. 3; St. Alphonsus, V, XXXIX). Therefore two things are required: 1. that the act already have morality independently of the circumstance; 2. that the circumstance be subject to the rules of morals, or that it morally affect the act.

68 **II. Enumeration of circumstances.** "A circumstance is so called as existing, as it were, outside the substance of the act, yet so that in some way it touches the act itself. Now this can happen in three ways. In one way, insofar as it touches the act itself; in another way, insofar as it touches the cause of the act; in a third way, insofar as it touches the effect. It touches the act itself either by way of measure, as time and place; or by way of quality of the act, as the mode of acting. From the part of the effect, it is when what someone has done is considered. From the part of the cause of the act, as regards the final cause, there is taken on account of what; from the part of the material cause or object, there is taken about what; from the part of the principal agent cause, there is taken who has acted; and from the part of the instrumental agent cause, there is taken by what aids" (St. Thomas, I-II, q. 7, a. 3; St. Alphonsus, V, XXXIX).

69 **III. Morality from circumstance.** That an act takes some morality from circumstance is clear from the fact that circumstance, as we posited, is subject to the rules of morals. Take these things especially:

1. Some circumstances increase or diminish morality within the same species. They are called aggravating or diminishing when they simply increase or diminish morality, for example the circumstance that someone steals a greater, but not yet grave, matter. When circumstances so increase or diminish morality that they make a mortal sin out of a venial one, or a venial sin out of a mortal one, they are called changing the theological species, for example the circumstance that someone steals grave matter, or consents semi-fully to a temptation.
2. Others cause the act to receive a new moral species, a new specific goodness or malice. Thus, for example, theft of a sacred thing involves a twofold diverse malice (St. Thomas, I-II, q. 18, a. 10; St. Alphonsus, l.c.).[1]
3. An evil circumstance influences an act good from its object in this way:

a) A lightly evil circumstance causes the act to be partly good, partly evil; good insofar as the honesty of the object is intended. For nothing prevents the one who does not repudiate a lightly evil circumstance of the object from sincerely seeking the honesty which inheres in the object. Added to this is that, if this opinion is rejected, even devout persons would perform a good work with greater difficulty, because a lightly evil circumstance or end is so easily mixed into the act. Hence, if someone,

by praying, were to neglect only a light obligation of helping a sick person, he would contract the goodness which the act of praying has from its object (St. Alphonsus, V, XXXIX).

b) A gravely evil circumstance certainly prevents the act from being meritorious. But it does not seem to prevent the act from being partly good, partly evil; partly good, I say, because the agent, as it seems, can also in that case sincerely will the honesty which inheres in the object. Yet most authors hold an act of this sort as simply evil. According to the former opinion, one who, while neglecting a grave obligation of helping a sick person, assists at Mass contracts the goodness which inheres in the object of the act.

[1] According to some, other circumstances cause the act, rather than receiving a twofold malice, to receive a malice distinct from that which inheres in the act and the circumstance considered in themselves, and which, as it were, coalesces from a twofold malice. Thus, for example, the circumstance that a married person has intercourse with a third party, according to those authors, causes the act to have one specific malice, distinct from fornication and injustice, from which it, as it were, coalesces.

Chapter III. On the End

The principal one among the circumstances of an act is the end, concerning which we must deal especially.

70 **I. Notion.** What the end is, and how manyfold it is distinguished, was explained in nn. 1 and 2.

71 **II. Morality from the end.** That an act takes some morality from the end follows from what has been said about morality taken from circumstances, since the end, as we have noted, is the principal circumstance of an act. Take these things especially:

1. An act good from its object:

a) Referred to a good end, distinct from the intended end of the work, receives a new species of goodness; indeed, it obtains as many species of goodness as the good ends appointed for it. Thus, for example, fasting in honor of the Blessed Virgin Mary and in satisfaction for sins has a threefold goodness: of temperance from the object, of religion and penance from the ends (St. Thomas, I-II, q. 18, aa. 4, 6, and 7; St. Alphonsus, V, XXXVIII).

b) Referred to an evil end:

a) It becomes simply evil if the evil end, whether gravely or lightly evil, is the only end, as if someone gives alms to a poor woman solely in order to seduce her, or solely to seek vain glory. The reason is that in this hypothesis the object is not intended insofar as it is honorable, but only insofar as it is useful for obtaining the evil end. "The will," says St. Thomas, "cannot be called good if an evil intention is the cause of willing. For one who wills to give alms for the sake of obtaining vain glory wills that which of itself is good under the account of evil; and therefore, insofar as it is willed by him, it is evil; hence his will is evil" (St. Thomas, I-II, q. 19, a. 7, ad 2; St. Alphonsus, V, XXXVIII).

b) It is partly evil, partly good, if the end is venially evil, as if someone prays also from vain glory. The reason is that a venially evil end does not prevent the object, insofar as it is honorable, from being intended, and thus the honesty of the object from being contracted. Added to this is that, as we noted in n. 68, if this doctrine is rejected, even among devout persons a good act would be found with greater difficulty, since a lightly evil end is easily mixed into the work (St. Thomas, II Sent., dist. 38, q. 1, a. 4, ad 4; cf. I-II, q. 18, a. 4, ad 3).

c) It is disputed if the evil end is not indeed the only end, but nevertheless is gravely evil. But even such an end does not seem to prevent the act from being able to be partly good, partly evil; partly good, I say, because the agent can, as it seems, even in this hypothesis intend the object insofar as it is honorable, and thus contract its honesty (n. 68). Yet most authors hold acts of this sort as simply evil. Therefore, according to our opinion, one who gives alms to a poor woman in order to seduce her, though not solely for that reason, can contract the goodness which inheres in the object.

We spoke above of an act partly good and partly evil. But it should be noted that, in the cases adduced, strictly speaking a multiple elicited act of the will should rather be admitted, of which one is good, the other evil; or that by appearance rather than in the reality itself there is had one elicited act of the will which is partly good and partly evil (cf. St. Thomas, I-II, q. 20, a. 6). Apply these things also to what has been said about circumstance (n. 68).

2. An act evil from its object:

a) Referred to an evil end, receives a new species of malice; indeed, it obtains as many species of malice as the evil ends appointed for it. Thus, for example, theft committed in order to make oneself drunk has a twofold malice: of injustice from the object, of intemperance from the end.

b) Referred to a good end, remains evil and contracts no goodness: not from the object, since this is not changed by intention and therefore retains its malice; nor from the end, because the end, as it is intended in the concrete, that is, as to be obtained through an evil means, is evil. Hence, for example, a lie committed in order to save the life of a neighbor is good under no heading. Nevertheless, ignorance or good faith rather often excuses from grave fault, or even from every fault.

3. An act indifferent from its object:

a) Referred to a good end, is good.

b) Referred to an evil end, is evil.

c) Concerning an act referred to an indifferent end, or placed on account of a pleasurable good, something will be said later.

Section III. On the Rules of Morality

72 Rules of morality are understood as the rules from relation to which morality arises. A twofold rule is distinguished, namely law, which is the primary rule, and conscience, which is the secondary rule.

Chapter I. On Law

(St. Thomas, I-II, qq. 90-108; St. Alphonsus, *Theologia Moralis*, bk. I, nn. 90-208; *Homo Apostolicus*, tr. 2.)[1]

We shall speak of the nature of law in general, of the nature of laws in species, of the power of making laws, of the object or matter, of the subject, of interpretation, of the effect or obligation, and of the cessation of law; we shall add those things which complete the doctrine of laws.

[1] Cf. Gonet, *Clypeus Theologiae Thomisticae*, II-II, *De legibus*; the Salmanticenses, *Cursus Theologiae moralis*, tract XI, *De legibus*; Reiffenstuel, *Ius canonicum universum*, tom. I; Schmalzgrueber, *Ius ecclesiasticum universum*, I; Suarez, *Tractatus de legibus et legislatore Deo*; d'Annibale, *Summula Theologiae moralis*; Bouquillon, *Theologia moralis fundamentalis*, tract III, pars I, *De lege*; Kuhlmann, *Der Gesetzbegriff beim hl. Thomas von Aquin*; Wernz, *Ius Decretalium*, I; Michiels, *Normae generales Iuris Canonici*; Potters, *Compendium Ethicae Generalis*; Sweens, *Theologia moralis fundamentalis*; Cathrein, *Recht, Naturrecht und positives Recht*.

Article I. On the Nature of Law in General

73 **I. Definition.** Law is said: according to Tully (*De legibus*, bk. 1), from *legendo*, that is, from choosing, because among many things it chooses what must be done or omitted; according to St. Isidore (*Etymologies*, bk. 2, c. 10), from *legendo*, because it is usually written and therefore read; according to St. Thomas (I-II, q. 90, a. 1), from binding, because it binds or obliges; according to today's philologists, from a root common with the Greek verb *legein*, that is, to say. But law, with St. Thomas, is usually defined: "A certain ordinance of reason for the common good, promulgated by him who has care of the community" (I-II, q. 90, a. 4). It is said:

1. **Ordinance,** that is, a disposition or direction to an end through proportionate means.
2. **Of reason;** concerning this, observe: by the consent of all, both reason and will concur in constituting law; but it is disputed whether law or command is formally an act of reason or of will.

Some teach that it is formally an act of the will, although of a will ruled by reason, because it belongs to reason, even practical reason, only to judge. But the concept of judging excludes the concept of commanding or imposing something. Added to this is that the Sacred Scriptures continually speak of the divine will, never of the divine reason, as needing to be fulfilled. Others with St. Thomas (I-II, q. 90, a. 1; q. 14, a. 1) judge that law is formally an act of reason, "with an act of the will presupposed, however, in virtue of which reason moves through command to the exercise of the act" (St. Thomas, I-II, q. 17, a. 1). The reason brought forward by the defenders of this opinion can be proposed thus: to command belongs to that power to which it belongs to order; for to command is to order someone to perform something. For the one commanding intentionally joins the operation to be done with the practical intellect of the subject, in other words, he imposes the work to be done. But to order formally is an act of reason.

3. **For the common good.** For law is not ordered to the good of one or of a few, but to the good of the whole community, that is, of all who constitute the community. Nevertheless, this does not prevent a law from sometimes establishing something which directly yields to the good of the prince or of some persons, provided that good is ordered to the common good. Nor does it prohibit a law from being made for a determinate class of persons, for example for soldiers, because a law of this sort can regard the common good, or the good of the whole community (St. Thomas, I-II, q. 90, a. 2; St. Alphonsus, I, 140).
4. **By him who has care of the community.** For "law properly, first and principally, regards order to the common good. But to order something to the common good belongs either to the whole multitude, or to a public person who has care of the whole multitude; and therefore to establish law belongs either to the whole multitude or to a public person who has care of the whole multitude; because also in all other matters to order to an end belongs to him whose proper end it is" (St. Thomas, I-II, q. 90, a. 3).
5. **Of the community.** But a perfect community is understood primarily, that is, one which, with respect to its end and the means ordered to that end, is not directly subordinated to another community. Such are the community of the whole human race, the Church, and the civil State. An imperfect community is one which is directly subordinated to another community. Such are a diocese, a religious order, a parish, a municipality, and a family. But to what extent the governors of imperfect communities enjoy legislative power will be explained in n. 107.

6. **Promulgated.** Several things must be noted concerning promulgation.

a) **Notion of promulgation.** Promulgation is the authentic intimation of a law to the community as such; authentic, that is, made by the legislator himself or by another in the name of the legislator. It must be done by the legislator or in his name, because it belongs only to the governor of the community to apply law to the community.[1]

Promulgation differs: 1. from the divulgation of law, by which, namely, the law is published in several places; 2. from knowledge of the law, by which the law is known in fact. Nevertheless, knowledge is required in order that someone be obliged here and now.

It is disputed whether promulgation pertains to the essence of law (cf. St. Thomas, I-II, q. 90, a. 4);[2] but the dispute is not practical, because promulgation is at least required in order that law may oblige. This we shall now explain.

b) **Necessity of promulgation.** Promulgation is necessary in order that a law enjoy the force of obliging. For law holds itself "by way of rule and measure; but rule and measure are imposed by the fact that they are applied to those things which are ruled and measured. Hence, in order that law obtain the force of obliging, which is proper to law, it must be applied to human beings," understand: to the community, "who ought to be ruled according to it" (St. Thomas, I-II, q. 90, a. 4; St. Alphonsus, I, 89). But it is applied to the community through promulgation. Hence one who knows from some other source that a law has been made is not bound to observe it before it has been promulgated (St. Alphonsus, l.c.). And in at least that sense it is declared: Laws are instituted when they are promulgated (can. 8, § 1).

c) **Mode of promulgating a law.**

a) Of itself, an act placed by the legislator or in his name suffices, from which, morally speaking, the law can come into the knowledge of the community. This is clear from the practice of legislators; likewise from the fact that pontifical laws are promulgated by the very fact that they are inserted into the official commentary (n. 91). Therefore an act is not required by which, morally speaking, the whole community immediately comes into knowledge of the law. It also does not matter which act of promulgating is chosen, provided such an act is employed from which knowledge can be diffused among the members of the community. Hence a law can be promulgated either by affixing it in a public place, or by announcing it by the voice of a herald, or by inserting it into public tablets, or by explicitly or tacitly signifying that a divulgation already made, for example through newspapers or periodicals, is to be held as promulgation.

b) How diverse laws have in fact been promulgated or are promulgated, see, with respect to the positive divine law, n. 80; with respect to ecclesiastical laws, n. 91; with respect to civil laws, n. 91.

Corollary. As soon as law has been promulgated, it obliges of itself all members of the community in first act, as it is said; as soon as, after promulgation, it is known to someone, it obliges him in second act or subjectively.

[1] In Holland, civil laws, adopted by the Assemblies of Deputies and sanctioned by the King, are promulgated by the King (*Grondwet*, art. 121).

[2] Cf. Billuart, *De legibus*, diss. 1, a. 3.

74 **II. Acts of law.** Four acts of law are enumerated by St. Thomas, namely: to prescribe, to prohibit, to permit, and to punish. To these, by others, is added to invalidate (cf. the words of the holy Doctor, n. 62).

75 **III. Difference between law and precept.** Law and precept differ:

1. **By reason of the end.** Law essentially tends to the common good, but precept can also be ordered to private good alone.
2. **By reason of the author.** Law cannot be made except by one who enjoys the power of jurisdiction.[1] A precept can also be imposed by one who has either dominative power, as a father, or economic power, as a master.
3. **By reason of the subject.** Law is essentially made for a community, or for such a class of persons as offers a sufficient foundation both for the essential end of law, which is the common good, and for its perpetuity (St. Thomas, I-II, q. 96, a. 1), for example for merchants, soldiers, clerics, etc. A precept can also be imposed on a particular person or particular persons, or on a particular class of members of the community; and on the whole community, but not forever.
4. **By reason of place.** Law, if it is made for a local community, is generally territorial, that is, it directly affects the territory, and the members by means of the territory, so that it does not bind them when they are staying outside it. I have said generally, because an ecclesiastical legislator, not only the Supreme Pontiff, but also a bishop,[2] can impose laws on a local community which are also personal; but personal laws also bind subjects staying outside the territory. Nevertheless, a law made for a local community is presumed territorial, not personal, unless something else is established (can. 8, § 2). Likewise a civil legislator can make some laws which oblige even outside the territory; for the common good requires this. Thus, for example, the law of military service also binds those who are staying outside the kingdom, unless they can and wish to renounce the right of their homeland. A precept generally directly affects the subject, so that he is bound by it everywhere. Hence the saying: Law affects the territory, but precept clings to the bones.
5. **By reason of duration.** Law by its nature, or of itself, is perpetual, so that it endures when the life or office of the legislator has ceased. The principal reason is that law is ordered to the common good, which of itself is stable; precept is ordered to the good of a private person, which easily changes. "Precepts," as canon 24 says concerning ecclesiastical superiors, "given to individuals, urge those to whom they are given everywhere, but cannot be judicially urged and cease when the right of the one prescribing has been dissolved, unless they were imposed through a legitimate document or before two witnesses." Moreover, a precept, when the life or office of the one prescribing has ceased, endures as if per accidens if it has been confirmed by a higher superior who has not yet finished life or office. Finally, judges give a definitive sentence.

[1] Nevertheless, not every person enjoying such power can make laws (n. 106).

[2] That this faculty belongs to a bishop is deduced with sufficient certainty from can. 8, § 2; likewise from the fact that travelers are said in can. 14, § 1 to be bound by the personal laws of their territory, from which they are absent; certainly, from the obvious sense, also by the personal laws of the bishop of their territory.

76 **IV. Difference between law and other things which present the appearance of law.** Law differs:

1. From a decree, which is made by public power, not insofar as it is legislative, but insofar as it is executive.

2. From a judicial sentence, which is the application of law to a particular case.

3. Finally, law, insofar as it is taken for a prescriptive or prohibitive ordinance, differs from counsel. "This is the difference between counsel and precept, that precept imports necessity, but counsel is placed in the option of him to whom it is given" (St. Thomas, I-II, q. 108, a. 4). These things are also to be applied to prescribing and prohibiting law, which likewise import necessity.

Question. On what communities can law be imposed?

Response. It can be imposed on the Church and on the civil state, as follows from what has been said (n. 74); likewise, as was explained in the same place, on a certain class of persons; likewise on a diocese and an entire order or congregation, as practice itself also proves. It is doubtful whether it can be imposed on a religious province, a parish, and a religious house; these things are difficult to determine accurately.

Article II. On the Nature of Laws in Species

77 **I.** Laws are divided by authors in many ways. Namely:

1. By reason of duration, into eternal law and temporal laws. The former is that which exists from eternity in the divine mind. The others have been made in time.

2. By reason of the immediate author, into divine and human laws. Human laws are ecclesiastical or civil.

3. By reason of foundation and promulgation, into natural and positive law. The former is founded in human nature and is promulgated by the natural light of reason. The latter is not founded in human nature and is promulgated by some external sign.

4. By reason of obligation, into moral, penal, and mixed law, according as it obliges either to the act or omission alone, or to the penalty alone, or to the act and the penalty (St. Alphonsus, *Homo Apostolicus*, tr. 2, n. 14).

5. By reason of acts, into prescribing, prohibiting, permitting, punishing, and invalidating law. A prescribing law, which is also called affirmative, commands an act to be placed; a prohibiting or negative law forbids placing an act.[1] A permitting law grants the agent a moral faculty or right of acting, and obliges others not to impede the agent (n. 62). A punishing law establishes the penalty to be undergone on account of transgression of the law. Finally, an invalidating law renders the act invalid.

We shall have regard to this division in its own place (n. 150 sq.). But for our present purpose the division already indicated, but now to be assigned again and extended, is more practical.

[1] Here note the saying: an affirmative law obliges always, but not for always; a negative law obliges always and for always.

78 **II.** Law is divided into eternal and temporal. Temporal law is distinguished into natural and positive. Positive law is divine or human; human law is ecclesiastical or civil (St. Alphonsus, *Homo Apostolicus*, tr. 2, n. 1). We shall speak of each.

Section I. On Eternal Law

79 **I. Notion of eternal law.** Eternal law taken broadly, or insofar as it regards creatures both irrational and rational, is defined: "the reason of divine wisdom insofar as it is directive of all acts and motions" (St. Thomas, I-II, q. 93, a. 1). Taken more strictly, it is the reason of divine wisdom insofar as it is directive of human acts; or, as St. Augustine defines it: "the reason or will of God commanding that the natural order be preserved, forbidding that it be disturbed."[1] By the natural order is understood the order founded in rational nature.

[1] *Contra Faustum*, bk. 22, c. 27.

80 **II. Existence of eternal law** is clear from this: in God, as Governor of the whole human community, there must be admitted an ordinance or law by which he directs human beings to the end. But the aforesaid ordinance is eternal, since God conceives or establishes nothing in time. Therefore there exists in God an eternal law (St. Thomas, I-II, q. 91, a. 1).

81 **III. Acts of eternal law.** Eternal law either prescribes, or prohibits, or permits, or counsels. By prescribing and prohibiting it imposes duty, but by permitting and counseling it grants right. "For the force of law," says Leo XIII,[1] "since it is to impose duties and to grant rights, rests entirely on authority, that is, on the true power of establishing duties and describing rights." Again: "It is wholly understood that in the eternal law of God there has been placed the norm and rule of liberty." St. Alphonsus teaches the same: "Every law," he says, "is from God; every natural right is from God.... The will of God alone, as most holy, most wise, and most upright, is the sole source of every right, every order, every law, every rule and measure of honesty. And to this purpose tends this sentence of St. Augustine: Nothing is done which is not either commanded or permitted from the invisible court of the Supreme Emperor" (*Dichiarazione del sistema*, n. 18).

Corollary. Human actions, although taken physically they are logically prior to law, nevertheless taken morally, or insofar as they can be placed by right, whatever they are, are posterior to eternal law. And just as obligation flows from law, so also liberty, insofar as it constitutes a moral faculty or insofar as it is a right, is derived from law and therefore is posterior to law.

[1] Encyclical *Libertas*, June 20, 1888.

Section II. On Natural Law

82 **I. Notion of natural law.** "Natural law," says St. Thomas, "is nothing other than a participation of the eternal law in the rational creature" (I-II, q. 91, a. 2). But a natural participation is understood, so that it may be distinguished from the participation of eternal law which is made by means of divine revelation. Now the said natural participation consists in human reason itself, insofar as it naturally knows what must be done or avoided, and intimates or announces this as something to be done or avoided. It is said "naturally," that is, by means of nature itself or by means of the inclination of nature; these things will be clearer from what is to be said.

Corollary. Natural law differs from eternal law insofar as the latter is supreme, unparticipated, eternal, and in God; but natural law is lower, participated, temporal, and in man.

83 **II. Existence of natural law.** This is clear: 1. from Sacred Scripture. St. Paul[1] declares: "For when the gentiles, who do not have the law, do by nature those things that are of the law, such persons, not having the law, are a law to themselves. They show the work of the law written in their hearts, their

conscience bearing witness to them, and their thoughts among themselves accusing or also defending them, on the day when God will judge the hidden things of human beings, according to my Gospel, through Jesus Christ." 2. Leo XIII teaches thus: "Such is the chief of all laws, the natural law, which is written and engraved in the souls of individual human beings, because it is human reason itself commanding them to do rightly and forbidding them to sin."[2] 3. Natural law, as we have said, is a participation of eternal law, which consists in human reason, insofar as this naturally knows what must be done or avoided and intimates or announces it as something to be done or avoided. But such a participation of eternal law is found in man. Human reason is in him, as is clear. But it naturally knows what must be done or avoided, namely by means of the inclination of nature; for from the fact that nature is inclined toward something, reason apprehends that as agreeing with nature or as a good of nature, and therefore as to be pursued; but from the fact that nature turns away from something, reason apprehends that as repugnant to nature or as an evil of nature, and therefore as to be avoided. Once the said apprehension of a good to be pursued or an evil to be avoided is posited, reason naturally intimates or announces the pursuit or flight as to be carried out in deed. And thus it has been proved that all those things which are comprehended in the notion of natural law are found in man; in other words, that natural law exists. 4. There are added the testimony of conscience and the common persuasion of human beings.

[1] Rom. 2:14-16.

[2] Encyclical *Libertas*, June 20, 1888.

84 **III. Object of natural law** is that which man naturally apprehends as good or evil; naturally, that is, as we said above, by means of nature itself or the inclination of nature. And because the inclinations of nature are distinguished in three ways, namely according to the nature of substance, according to the nature of animal, and according to the nature of reason, therefore the objects themselves of natural law can also be distinguished in three ways.

"For there is first in man," says St. Thomas, "an inclination to good according to the nature in which he shares with all substances, namely according as any substance desires the conservation of its own being according to its nature; and according to this inclination there pertain to natural law those things by which the life of man is conserved and the contrary is impeded. Second, there is in man an inclination to certain more special things according to the nature in which he shares with other animals; and according to this those things are said to be of natural law which nature has taught all animals, such as the union of male and female, the education of offspring, and similar things. In the third way, there is in man an inclination to good according to the nature of reason, which is proper to him, as man has a natural inclination to this: that he know the truth about God, and that he live in society. And according to this, those things which pertain to an inclination of this kind belong to natural law, for instance that man avoid ignorance, that he not offend others with whom he ought to live, and the other things of this sort which pertain to this" (St. Thomas, I-II, q. 94, a. 2).

85 **IV. Subject of natural law** is all human beings, because the light of reason is infused into all, by which, at least of itself and in potency, they naturally know what must be done and what must be avoided. Hence all, even infants and the perpetually insane, are bound by the said law objectively or in first act, as it is said; but in order that someone be bound by it subjectively or in second act, knowledge of it is required.

86 **V. Knowability of natural law.** Concerning this, it must first be seen how far the objects, and consequently the precepts, of natural law are distinguished when their knowability is considered; then how far ignorance can in fact have place concerning them.

1. The objects, and consequently the precepts, of natural law, by reason of knowability, are distinguished into primary, secondary, and tertiary. Primary precepts are those which become known at first glance, as: good is to be done; evil is to be avoided; order is to be preserved. Secondary precepts are those which are immediately and easily deduced from the primary ones. To these belong the precepts of the Decalogue, except the circumstance of the third precept by which the day to be sanctified is determined. Tertiary precepts are those which are deduced mediately and with more difficulty from the primary or secondary ones, such as, for example, precepts concerning certain contracts to be avoided (St. Thomas, I-II, q. 94, aa. 4 and 6; q. 100, a. 1; St. Alphonsus, I, 171; *Homo Apostolicus*, tr. 1, n. 5).

2. Ignorance with respect to the precepts of natural law can have place in a human being of sound mind as follows:

a) Ignorance cannot be given with respect to primary precepts, because "these stand to practical reason as the first principles of demonstrations stand to speculative reason" (St. Thomas, I-II, q. 94, a. 2). Moreover, first principles become known to each person (St. Alphonsus, I, 170).

b) Generally ignorance is not given with respect to secondary precepts considered in themselves. This is clear both from the notion of them handed down and from experience. I have said "generally" and "considered in themselves," because sometimes ignorance is present "in rude persons and for a brief time, or... with some apparently honorable circumstance added" (St. Alphonsus, *Homo Apostolicus*, tr. 1, n. 5; St. Thomas, I-II, q. 94, a. 6), for example if there is question of a lie for saving the life of an innocent person.

c) Concerning tertiary precepts, ignorance is more easily had, as is deduced from their notion and from daily experience (St. Thomas, I-II, q. 100, a. 1; St. Alphonsus, I, 171).

87 **VI. Mutability of natural law.** First it must be noted that change is taken in two ways, improperly and properly. Change improperly so called is had: 1. when something is added to natural law through positive law; 2. when the matter which was the object of the law is so changed that it ceases to be the object of the law, as when God, as supreme Lord of all goods, transferred the spoils of the Egyptians into the dominion of the Hebrews.

Change properly so called is had when, while the matter of the law persists, the law ceases, or at least does not oblige someone.

Change properly so called is distinguished in two ways, from within and from without. Change from within has place when the law becomes useless or harmful, or the time for which the law was established has elapsed. Change from without has place when a superior totally or partially removes the law or dispenses in it. Having noted these things, I say:

1. Change improperly so called, if it is understood in the sense that something is added to natural law, manifestly can have place. "For many things useful to human life have been added over and above natural law both through divine law and also through human laws" (St. Thomas, I-II, q. 94, a. 5).

2. Change improperly so called, which consists in the change of matter, can be had in those things which are constituted as the object of law dependently on some act, whether of God or of man, for example dependently on the act by which someone has made some good his own, or has taken some person to himself as wife, etc. The reason is that at least God can invalidate the said act or deprive it of its effect (cf. Corollary II). Change improperly so called cannot have place in those things which through themselves, or independently of some act, constitute the object of law, whether prescriptive or prohibitive, such as love and hatred of God, truthful speech and lying, etc. The reason is that the essence itself of the thing cannot be changed; hence the aforesaid things necessarily remain objects of law.

3. Change properly so called and from within is impossible; for natural law is founded in human nature itself, and therefore, if this nature persists unchanged, it cannot become useless or harmful to that nature. But human nature is immutable.

4. Change properly so called and from without, for example by dispensation, likewise seems impossible. For the goodness and malice of the acts which natural law prescribes or forbids do not depend on the free will of God. But what is evil, for example, independently of the free will of God, cannot be permitted by him. Thus teach St. Thomas (I-II, q. 100, a. 8) and authors much more commonly, against Scotus and his disciples, who judge that God can dispense in the precepts of the second table of the Decalogue, as it is called, except for the precept concerning lying.

Corollary I. No change of natural law has place where the law itself does not extend itself to some case. Thus, for example, natural law forbids killing a human being; nevertheless, with the things that must be posited being posited, it is permitted to kill an unjust aggressor. Natural law forbids marriage between brothers and sisters; nevertheless, marriage between the sons and daughters of Adam was lawful on account of the necessity of propagating the human race. From these and other examples it is clear that natural laws, for example the law of not killing, are rather often not adequately expressed by the formulas customarily employed by us.

Corollary II. Several cases occur in Sacred Scripture in which, according to St. Thomas and others, change improperly so called had place. Namely, God, as the supreme Lord of all persons and things, can grant and take away rights. "And therefore when the children of Israel took the spoils of the Egyptians by the command of God, it was not theft, because this was owed to them by the sentence of God. Similarly, when Abraham consented to kill his son, he did not consent to homicide, because it was owed that he be killed through the command of God, who is Lord of life and death; for he himself is the one who inflicts the penalty of death on all human beings, just and unjust, for the sin of the first parent. If a human being is the executor of this sentence by divine authority, he will not be a murderer, just as God is not. And likewise Hosea, approaching a fornicating wife or an adulterous woman, did not commit adultery or fornication, because he approached her who was his according to the divine command, from him who is the author of the institution of marriage" (St. Thomas, I-II, q. 100, a. 8).[1] By the same reason, God, on account of a special reason, can grant divorce even with respect to the bond, polygamy, by dividing the power over the body of the man among several women, etc. Whether and to what extent such power has also been entrusted to the Church will be explained in its own place.

Corollary III. Dispensation in vows rests on the fact that the competent authority remits in the name of God a debt owed to God.

[1] Others explain these and similar cases otherwise, or even have recourse to the said cases to prove that change of natural law properly so called, or dispensation, is possible (cf. Billuart, *De legibus*, diss. 2, a. 4).

88 **VII. Source of obligation.** Natural law does not oblige independently of God. This is established against the supporters of independent morality, who indeed admit natural obligation, but derive it not from God but from elsewhere, for example from human reason, Kantianism or autonomy of reason.[1] The proposition is proved from the fact that obligation, that is, an intrinsic and moral restriction of physical liberty, cannot come except from a Superior. But man's reason is not superior to man himself; nor, when authority granted by God to someone has been set aside, is one person subject to another. Of themselves, all are equal, and God alone is man's superior. Hence the third proposition of the Syllabus was condemned: "Human reason, with no regard at all had for God, is the only arbiter of the true and the false, of good and evil; it is a law to itself."[2] (St. Thomas, I-II, q. 93, a. 3).

[1] Others derive the obligation of placing or omitting an action from the fact that it is useful or harmful. Thus utilitarianism, the philosophy of positivism, and Darwinian ethics. Vasquez (*In I-II*, disp. 150, c. 3), Grotius (*De iure belli ac pacis*, Proleg. 11), and others judge that some obligation arises antecedently to divine ordinance from the conformity of actions with human nature; by approving and willing this obligation, God induces a new obligation.

[2] Cf. Encyclical *Libertas*, June 20, 1888.

Section III. On Positive Law

89 Positive law, as we have said, is divine or human; human law is ecclesiastical or civil.

I. Positive law taken generally.

1. Positive law strictly accepted is law which has for its object that which is neither prescribed nor prohibited by natural law. Therefore it regards either acts indifferent in themselves, which it prescribes or forbids, or good acts but not obligatory ones, which it renders obligatory. But in a broader sense positive law is taken for every law which is promulgated not by the light of reason, but by some external sign, whether it regards the same matter as natural law or another matter.

2. That positive laws are necessary follows from the fact that, when the exigency of social life is considered, natural law does not suffice for ruling human beings. This law is unequal to attaining the said end, first, because with respect especially to more remote conclusions, there is great diversity of opinions. But since the order of society requires unity in acting, an authority is necessary which may explain the more remote conclusions and impose them on all as a norm. Furthermore, natural law contains many things only indeterminately. For example, it prescribes that all should concur toward the common good, but it does not determine in what way they ought to provide this. Hence there is need of authority which may determine indeterminate things according to the diverse circumstances of things and times (St. Thomas, I-II, q. 91, a. 3).

90 **II. Positive divine law.**

1. **Notion.** Positive divine law is positive law made by God. It has been promulgated through revelation. Moreover, this law, insofar as it regards the precepts of natural law, is morally necessary in the present condition of fallen nature, namely so that the said precepts may be known more fully, firmly, and without admixture of error.[1] But once the supernatural order has been posited, positive divine law is absolutely necessary with respect to the precepts of that order, because without it the obligations annexed to the said order cannot be known in any way (St. Thomas, I-II, q. 91, a. 4).

2. **Division.** Positive divine law is distinguished into primeval, Mosaic, and Christian law.

a) **Primeval law** is little known to us. It embraces the time which flowed from Adam until the Mosaic law was given; it is usually called the time of the law of nature.

b) **Mosaic law,** also called the old law, is the law made by God for the Israelite people and promulgated through Moses. I have said: made by God, as is clear from Sacred Scripture.[2] I have said: for the Israelite people, that is, for the people whom God led out of Egypt, and for their descendants. Therefore the gentiles were not bound by the Mosaic law, except insofar as it was natural. I have said: promulgated through Moses, as Sacred Scripture likewise testifies.[3]

a) The precepts of the Mosaic law were threefold: moral, ceremonial, and judicial. The notion of these can be gathered sufficiently from the terms themselves.

b) The special end of the said precepts was threefold: to preserve from universal corruption the people from whom the Messiah was going to arise; to join families and individuals more closely with God by ceremonial precepts and prepare them for the coming of the Messiah; finally, to give honorable security of temporal life, abundance of goods, and health of body.

c) The Mosaic law ceased from the death of Christ, or at least from the day of Pentecost, on which the Christian law began to be in full force. Namely, ceremonial and judicial laws are dead, as it is said. Moral laws, although they no longer bind as Mosaic laws, nevertheless bind as natural laws, with the indults of the Old Law also removed. Furthermore, the ceremonial laws are not only dead, but have even become deadly, that is, bringing spiritual death (St. Thomas, I-II, q. 103, a. 4), namely insofar as one would sin who observed them either as having force from the Mosaic law, or with the intention of worshiping God through faith in the Messiah who was to come. But one who observed it with the intention indeed of worshiping God, although not in a prefigurative sense, would place a worship alien from that which God prescribed by himself or through his Church.[4]

c) **Christian law,** which is also called new, is the law made by Christ for the whole world. Christ promulgated his law by his own mouth, while the Apostles and their successors divulged it and continually divulge it. Moreover, to the Christian law also belong the laws which the Apostles received from the Holy Spirit and promulgated.[5] The former are called dominical laws, the latter divine-apostolic. There are added the evangelical counsels, namely of poverty, chastity, and obedience, which together with the precepts constitute divine law, which now cannot be removed or changed. Besides, observe:

a) The precepts of the New Law are distinguished into: 1. moral precepts, by which natural law is confirmed; 2. ceremonial precepts, which regard the sacraments and the Sacrifice of the Mass; 3. precepts of faith, whose mysteries Christ explained, increased, and imposed as to be believed.

b) The New Law, as it seems, began to be in full force, or at least to oblige all in first act, from the time at which the Mosaic law ceased, that is, from the death of Christ, or at least from the day of Pentecost.

[1] Vatican Council, constitution *Dei Filius*, c. II.

[2] Exod. 19:5-8; 31:18; Lev. 1:1 sq.; Matt. 15:3 sq.

[3] Acts 7:53.

[4] Sweens, *Theologia moralis fundamentalis*, n. 311.

[5] Laws which the Apostles made by their own authority are human laws, namely ecclesiastical laws.

91 **III. Positive ecclesiastical law** is law made and promulgated by ecclesiastical authority. Now laws made by the Apostolic See are promulgated by publication in the official commentary of the *Acta Apostolicae Sedis*, unless in particular cases another mode of promulgating has been prescribed (can. 9). Hence the opinion of those who judged that pontifical laws had to be promulgated in individual dioceses in order that they have the force of obliging there must now be altogether rejected. Laws of Ordinaries are usually inserted, and thus promulgated, in the diocesan bulletin.

92 **IV. Positive civil law** is law made and promulgated by civil authority. Civil laws are promulgated almost everywhere by the fact that they are inserted in an authentic collection of laws.[1]

Note. Law, and especially a collection of laws, is often called *ius*. Taken in this way, it is usually divided into natural law, the law of nations, ecclesiastical law, and civil law. Concerning the three latter, certain things are to be noted in scholia.

[1] This also has place among us (*Wet houdende algemeene bepalingen*, art. 2).

Scholion I. On the Law of Nations

93 According to some, the law of nations is referred to positive law, which is a determination of the law of nature, and thus can be defined: positive law determining the law of nature, introduced by the human race, and indeed through custom. To this belong, for example, the immunity of legates, the commerce of letters and markets with other nations, the prohibition of slavery strictly so called, the prohibition of injuring private goods in war, with the things to be excepted being excepted, etc. It differs from civil law insofar as the latter has been established by individual states and therefore can also be abrogated by individual states, whereas the law of nations has been introduced by the human race and can be abrogated by it alone.

According to others, the law of nations pertains to natural law, from which its precepts are derived as necessary conclusions. Hence, just as natural law, it is immutable. Thus, for example, "the law of nature... neither prescribes nor prohibits the division of stable properties; for it does not absolutely and per se prescribe that this field should belong to Peter rather than Paul, or be common to all. But it is of the law of nature that human beings live peacefully with one another. But human beings cannot live peacefully among themselves unless stable properties have been divided. Therefore stable properties are to be divided."[1]

According to some, the distinction from natural law is in this: that natural right belongs to man as an animal, or regards actions which are common to man with brute animals, such as living and procreating; the law of nations belongs to man as such. According to others, the distinction comes from this: that natural law holds absolutely, while the law of nations holds conditionally, that is, once some fact has been posited, for example occupation.

St. Thomas, concerning whose opinion there is dispute, has these words in I-II, q. 95, a. 4: "To the law of nations belong those things which are derived from the law of nature as conclusions from principles, such as just purchases, sales, and other things of this sort, without which human beings cannot live together with one another; this is of the law of nature, because man is naturally a social animal, as is proved in book 1 of the *Politics* (c. 2, at the beginning). But those things which are derived from the law of nature by way of particular determination belong to civil law, according as each state determines something adapted to itself." And in the same place, ad 1: "It must be said that the law of nations is indeed in some way natural to man, according as he is rational, insofar as it is derived from natural law

by way of a conclusion which is not very remote from the principles. Hence human beings easily consented in matters of this sort. Nevertheless it is distinguished from natural law, especially from that which is common to all animals."

Corollary. The law of nations differs from law between nations, or international law, which is constituted by express pacts entered into among the rulers of nations (n. 94).

[1] Zigliara, *Ethica*, n. 26, III.

Scholion II. On Ecclesiastical Law

94 **I.** Ecclesiastical law strictly so called is the complex of canons or laws which have been made by ecclesiastical authority.

II. Ecclesiastical laws are distinguished:

1. By reason of the legislator, into papal, episcopal, and synodal laws.
2. By reason of matter, into dogmatic and disciplinary canons. The former propose truths pertaining to faith and morals; the latter regard the external government of the Church.
3. By reason of the mode in which they were made, into written and unwritten law. Unwritten law is divided into handed-down and customary law, according as it has been established orally or by the consent of the legislator in custom.
4. By reason of territory, into universal and particular laws, according as they bind the universal Church or only certain regions.
5. By reason of time, into: 1. ancient law, from the beginning of the Church until Gratian around 1150; 2. the law of the Middle Ages, from Gratian until the Council of Trent, 1545; 3. new law, from the Council of Trent until the Vatican Council, or rather until the new Code; 4. newest law, from the new Code.

III. Ecclesiastical laws, as they formerly were in force, are found for the greater part in the *Corpus Iuris Canonici*, as it is called; as they now are in force, in the *Codex Iuris Canonici*.

1. The *Corpus Iuris Canonici* consists of five parts, which are: 1. the *Decretum Gratiani*; 2. the *Decretals of Gregory IX*; 3. the *Liber Sextus* of Boniface VIII; 4. the *Clementines*; 5. the *Extravagantes* of John XXII and the *Extravagantes Communes*.[1]
2. The *Codex Iuris Canonici*, arranged by order of Pius X, promulgated by the authority of Benedict XV in the year 1917, on May 27, and in force from May 19, 1918, consists of five books, of which the first treats general norms, the second persons, the third things, the fourth processes, and the fifth delicts and penalties.

[1] They are generally cited thus:

1. *Decretum Gratiani*. First part of the decree: c. 9 "Palam est" 11 = c. 9, D. 11 = c. 9, D. XI = canon 9 of distinction XI. Second part: c. 24, C. II, q. 7 = canon 24 of cause II, question 7. The treatise *De poenitentia* is cited in this way: c. 26, D. I de poenit. = canon 26 of the first distinction concerning penance. Third part: c. 15, D. III de consecr. = canon 15 of distinction III concerning consecration. Summaries written by Gratian are cited by the expression "dictum Gratiani" = dict. Gratiani. The cited dictum is determined by distinction or by cause and question.

2. The Decretals of Gregory IX are cited by the characteristic letter X = extra, for example c. 5 X de praebendis (III, 5) = c. 5 X 3.5 = the fifth chapter of the Decretals of Gregory IX concerning prebends and dignities, book III, title 5.

3. The *Liber Sextus* of Boniface VIII: c. "ut animarum" 2 de constit. in VIto (I, 2) = c. 2 de constit. in VIto (I, 2) = c. 2 in VIto (I, 2).

4. The *Clementines*: for example Clem. 1 de celebratione miss. (III, 14), or c. 1 III, 14 in Clem. = Clementina 1 de celebr. miss. = c. 1 III, 14 in Clementinis.

5. The *Extravagantes* of John XXII: c. un. de praebendis extrav. Ioann. XXII (tit. 3) = c. un. extr. Ioan. (3). The *Extravagantes Communes*: c. 1 de electione, extrav. com. (I, 3) = c. 1 Xvag. co. I, 3.

Scholion III. On Civil Law

95 **I.** Civil law is the complex of laws made by civil authority.

II. Civil law is distinguished:

1. By reason of time, into old and modern law.

a) Old law, by which Roman Law is understood, consists of four parts, which are: 1. the *Institutes*; 2. the *Digest* or *Pandects* (*pan* and *dechomai*, as if things which contain all); 3. the *Code*; 4. the *Novellae*, as if newly issued.[4]

b) Modern law is the law which each kingdom has established for itself, especially from the time of the upheaval of the republic in France, that is, at the end of the eighteenth century.

2. By reason of scope, civil law is distinguished into international and national law.

a) International law is that which is established by express pacts entered into among the rulers of nations. It is called public or private according as it moderates the relation of state to state, or of the citizen of one state to the citizen of another state.

b) National law is that which has been established for a determinate state, such as Dutch law.

[1] Cf. Marcellus a Puero Jesu, *Ethica moralis et socialis*, pp. 336-340.

[2] Cf. Lijdsman, *Introductio in Ius Canonicum*, n. 64 sq.

[3] Cf. Lijdsman, *Introductio in Ius Canonicum*, n. 52 sq.

[4] They are usually cited in this way: *Institutes*: § 1 Instit. de adoptionibus lib. I, tit. 11 = § 1, I. I, 11. *Digest*: the beginning of law, or fragment, 4, Digest, or Pandects, ff., de pactis, book II, title 14 = l. 4 pr. D. II, 14 (fr. 4 pr. ff. II, 14) = l. 4, § 1, D. II, 14. *Code*: law 7, § 1, Cod. de diversis rescriptis, book I, title 23 = l. 7, § 1, C. I, 23. *Novellae*: Nov. VII praef. = Nov. VII, cap. 1.

Article III. On the Power of Making Laws

The power of making laws belongs to the power of jurisdiction, as it is called. Hence, for the sake of completeness and clarity, we shall speak first of the power of jurisdiction in general, then of the power of jurisdiction insofar as it carries legislative power with it.

Section I. On the Power of Jurisdiction in General

96 **I. Notion of jurisdiction.**

1. Jurisdiction taken in the full sense is the public power of ruling others (St. Alphonsus, VI, 557). It is said:

a) **Public,** because it directly regards the community and the common good. Namely, the power of jurisdiction rests on the dependence of persons equal in themselves, a dependence arisen from the obligation of pursuing the common good. This power, therefore, is as great, and no wider, than the procuring of the common good to be shared by all requires.

b) **Of ruling.** By this word, with respect to the Church, there is comprehended the threefold power of teaching, ministry, and governance; with respect to the civil state, only the power of governance, which nevertheless, just as the power of governance in the Church, is legislative, judicial, and executive. These matters, however, with respect to the Church, are treated more fully by dogmatic theologians and canonists; with respect to the civil state, by teachers of moral philosophy.

Corollary. The power of jurisdiction differs from dominative power, which rests on the dependence by which persons are under the dominion of another either naturally, as a father and children, or by handing over themselves, namely in the religious state. This power directly regards the private good of the subject. Hence legislative power does not belong to it, but only prescriptive power. By this, indeed, it can command more things, for example in domestic society and in a religious community, than legislative power can, which cares only for more general things; yet not so great things, since the reason or foundation of directly pursuing the common good is lacking. Thus, for example, the faculty of imposing grave penalties does not pertain to prescriptive power.

2. The power of jurisdiction accepted in the full sense, which, as follows from what has been said, comprises several things, can be communicated to others according to more or fewer things; and thus, once communicated, it also is usually called the power of jurisdiction. From this it follows that the power of jurisdiction is taken both in the full sense and in a less full sense; we must have regard to this usage in what follows.

97 **II. Division of jurisdiction.** Jurisdiction is first divided into ecclesiastical and civil, according as it is the power of ordering subjects to a spiritual good, that is, to eternal salvation, or to a temporal good. Ecclesiastical jurisdiction is divided:

1. Into ordinary and delegated jurisdiction. Ordinary jurisdiction is that which is attached to an office by the law itself (can. 197, § 1). It can be either proper or vicarious (can. 197, § 2). The former is that which is exercised in one's own name; the latter is that which is indeed attached by law to an office, but must be exercised in the place or name of another. Of this sort, for example, is the power of a vicar general. Delegated jurisdiction is said to be that which has been committed to a person (can. 197, § 1). It is called delegated for a universality of affairs when all causes of some kind, for example matrimonial causes, are committed to someone.

It is doubtful what sort of power the power of a vicar general is with respect to those things for which a special mandate is required, whether ordinary or delegated. But it seems to be delegated, because, having considered can. 368, only that power is attached by law to the office which does not require a special mandate.

2. Into jurisdiction of the external forum and of the internal forum, according as it is directly ordered to the common good or to private good. Hence jurisdiction of the external forum, or political, public forum, is exercised around that kind of matters which proximately regards the public utility

of the faithful and the external order of the Church. Jurisdiction of the internal forum, or of conscience, of the forum of heaven, regards those things which proximately pertain to the private utility of the faithful. Jurisdiction of the internal forum is twofold, sacramental and extra-sacramental, according as it is exercised in or outside the sacrament of Penance (can. 196).

3. Into non-judicial or voluntary jurisdiction, and judicial or necessary jurisdiction. The former is exercised without the form of a trial and therefore over willing persons, as if someone dispenses someone from a law. The latter is exercised in judicial form and therefore over unwilling persons.

98 **III. Acquisition of jurisdiction.** Ordinary jurisdiction is acquired by obtaining the office to which it is annexed (cf. can. 147, § 2). Delegated jurisdiction can be granted and acquired in this way:

1. "One who has ordinary jurisdiction can delegate it to another in whole or in part, unless something else is expressly provided by law" (can. 199, § 1).

2. One who has delegated jurisdiction can subdelegate it as follows:

a) One who has jurisdiction delegated by the Holy See can subdelegate it either for an act or even habitually, unless the industry of the person has been chosen or subdelegation has been prohibited (can. 199, § 2).

b) One who has power delegated by one who, below the Roman Pontiff, has ordinary power, can subdelegate in individual cases if the power has been delegated for a universality of affairs (can. 199, § 3). In other cases he cannot subdelegate unless by an expressly made concession; but a delegated judge, even without an express concession, can subdelegate some non-jurisdictional article (can. 199, § 4), for example inquiry concerning the causes of a dispensation, concerning the worthiness of the petitioner, etc.

c) One who has subdelegated jurisdiction cannot subdelegate another, unless this has been expressly conceded (can. 199, § 5).

Note. The burden of proving delegation rests on him who asserts that he has been delegated (can. 200, § 2).

99 **IV. Interpretation of jurisdiction.** The following are to be interpreted broadly: 1. ordinary power of jurisdiction; 2. power delegated for a universality of affairs. Any other power is to be interpreted strictly (can. 200, § 1). Nevertheless, habitual concessions, which are granted either in perpetuity or for a predefined time or a certain number of cases, are to be interpreted broadly (cf. can. 66, § 1). Therefore the faculty of dispensing granted for a certain case is to be interpreted strictly (can. 85). But the reason on account of which power delegated for a universality of affairs and the aforesaid habitual concessions are also to be interpreted broadly is that they involve a grace made to the delegate.

Note. To him to whom power has been delegated, those things also are understood to have been conceded without which the same power could not be exercised (can. 200, § 1). Therefore in the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only to the effect of obtaining the dispensation (can. 66, § 3). Hence an excommunicated person, dispensed for marriage, is released from censure only with respect to the marriage.

100 **V. Extension of jurisdiction.** Jurisdiction extends itself:

1. **With respect to persons:**

a) The power of jurisdiction can be exercised directly only over subjects (can. 201, § 1).

b) One who has voluntary power of jurisdiction can also exercise it for his own advantage, or while existing outside the territory, or over a subject absent from the territory, unless something else is established from the nature of things or from law (can. 201, § 3).

c) One who has judicial power, whether ordinary or delegated, cannot exercise it for his own advantage or outside the territory, with certain exceptions preserved (can. 201, § 3). By force of these exceptions, one who has ordinary jurisdiction of absolving from sins and from censures can absolve subjects everywhere in the world (can. 401, § 1; 881, § 2), and a judge expelled by force from his territory, or impeded from exercising jurisdiction there, can exercise his jurisdiction and render sentence outside the territory, though the local Ordinary must be informed of this matter (can. 1637).

2. **With respect to forum:**

a) If the forum for which power has been given has not been expressed, the power is understood to have been conceded for both forums, unless something else is established from the nature of the matter itself (can. 202, § 3).

b) An act of the power of jurisdiction, whether ordinary or delegated, conferred for the external forum is valid also for the internal forum, but not conversely (can. 202, § 1). Nevertheless, compare can. 1047.

c) Power conferred for the internal forum can also be exercised in the extra-sacramental internal forum, unless the sacramental forum is required (can. 202, § 2).

Note 1. A delegate who exceeds the limits of his mandate, whether concerning things or concerning persons, does nothing. Nevertheless, the delegate is not understood to have exceeded these limits if he accomplishes the things for which he was delegated in a way other than pleased the delegating one, unless the mode itself was prescribed by the delegating one as a condition (can. 203).

Note 2. Voluntary power of an inferior is not suspended because someone, passing over the inferior, approaches a Superior.[1] Nevertheless, the inferior should not involve himself in a matter brought to the Superior, unless from a grave and urgent cause; and in this case he should at once warn the Superior about the matter (can. 204).

[1] Nevertheless note the doctrine of can. 44, § 2: "A grace denied by the Vicar General and afterward obtained from the Bishop, with no mention made of this denial, is invalid; but a grace denied by the Bishop cannot validly be obtained from the Vicar General, even if mention of the denial has been made, without the consent of the Bishop."

101 **VI. Cessation of jurisdiction.**

1. Ordinary power ceases when the office has been lost; it does not cease when the right of the one granting it has been dissolved, unless the law establishes otherwise, or unless in the concession there is contained the clause "at our good pleasure" or another equivalent clause (can. 208; 183, § 2). Jurisdiction is silent, that is, its force is suspended, if an appeal is interposed which is conceded in the suspensive effect; if it is conceded in the devolutive effect, meanwhile the subject must submit himself (can. 208).
2. Delegated power ceases: 1. when the mandate has been completed; 2. when the time has elapsed or the number of cases for which it was conceded has been exhausted; 3. when the final cause of the

delegation ceases; 4. by revocation of the delegating one directly intimated to the delegate, or by renunciation of the delegate directly intimated to the delegating one and accepted by the same; 5. when several have been delegated collegially, if one is lacking, the delegation of the others also expires, unless something else is established from the tenor of the delegation. When the right of the delegating one has been dissolved, delegated power does not cease unless something else appears from added clauses, or unless the rescript confers the power of granting a grace to particular persons expressed in the rescript, and the matter is still entire[1] (can. 207, §§ 1 and 3; 1725, 3°). Finally, when power has been conceded for the internal forum,[2] an act placed through inadvertence after the time has elapsed or the number of cases has been exhausted is valid (can. 207, § 2).

[1] A matter is still entire if, in rescripts of grace, the executor has not yet placed any act by which he has preoccupied the matter; and in rescripts of justice, if the citation of the parties has not yet been made.

[2] For example, sacramental jurisdiction.

Scholion. On Supplied Jurisdiction

Jurisdiction can be conceded in an ordinary way, for example by conferring an office to which jurisdiction is annexed, or by express delegation, and in an extraordinary way, namely by supplying deficient jurisdiction, as it is called. Concerning this supplied jurisdiction, the following things are to be noted.

102 **I. Notion.** The Church is said to supply jurisdiction when, in the very exercise of the act, it confers jurisdiction in a transitory way. This can indeed be done absolutely or hypothetically, according as jurisdiction is certainly or only probably lacking.

103 **II. When is jurisdiction supplied?** Canon 209 establishes: In common error or in positive and probable doubt, whether of law or of fact, the Church supplies jurisdiction for both the external and internal forum. Therefore jurisdiction is supplied:

1. In common error, namely when a sufficiently large part of the community thinks that the required power belongs to someone, although in fact it does not belong to him. It is said:

a) **A sufficiently large part.** Moreover, it suffices that morally all members of the community err. Likewise, it is enough that the greater part be in error, both because then the error can in some way be called common, and because the common good, which the Church intends to provide for, seems entirely to require this. It probably suffices that many err, many, I say, whether absolutely, as 200, or relatively to the community; likewise it is probably enough that the foundation of common error has been posited, as if the name of a priest lacking jurisdiction has been affixed to a confessional. The reason is sought from this: otherwise it would often be difficult to determine whether or not common error was present. I have said "probably suffices," because with respect to the later cases there are reasons for doubting,[1] both because formerly the notion of common error was not applied sufficiently commonly to the said cases, and because such error is in reality not yet common.

b) **Of the community,** namely "of a people, neighborhood, parish, college, community, etc., provided that in such a community there are not fewer than ten people.... The reason is that ten constitute a people."[2]

c) **They think.** Doubt properly so called does not suffice, but at least that state of mind is required which is called opinion.[3]

When common error stands, supplied jurisdiction extends itself also to those members of the community who are not occupied by the error.

2. In positive and probable doubt, whether of law or of fact. It is said:

a) **In positive and probable doubt,** that is, as these words seem to be taken here, when for the existence of jurisdiction there are relatively grave reasons, or a relatively grave reason.

b) **Whether of law or of fact.** Doubt of law is had if, after considering law or custom, it is positively probable that jurisdiction is present. Doubt of fact is had if it is positively probable either that the private fact of concession of jurisdiction has taken place, or that jurisdiction privately conceded has not yet expired.

Corollary. In the case in which the required common error is only probably present, the Church also supplies only probably.[4] Nor should you say that in the case jurisdiction is probable, and therefore by force of can. 209 is certainly supplied. For the words "the Church supplies jurisdiction in positive and probable doubt whether of law or of fact" signify, in their obvious sense, that the Church supplies jurisdiction if it probably exists independently of the Church supplying; but they do not involve this: that the Church supplies jurisdiction in positive and probable doubt concerning jurisdiction supplied by it, that is, by the Church.

[1] Others do not doubt: Vermeersch, *Theologia Moralis Principia*, III, 459; Jombart and Guns in *Nouvelle Revue Theologique*, 1923, pp. 173, 539 sq.; Aertnys-Damen, II, 359; Schaepman, *Nederlandsche Katholieke Stemmen*, 1928, p. 44.

[2] Reiffenstuel, *Ius Canonicum Universum*, V, I, 249.

[3] Doubt properly so called is the state of a mind fluctuating between two parts of a contradiction. It is distinguished into positive and negative, according as someone doubts on account of equal or nearly equal motives, or on account of no motives or slight motives on each side. Where one side is held as more probable than the other, there is not doubt properly so called, but opinion, which is the state of a mind adhering to something knowable with prudent fear of erring.

[4] Otherwise Jombart, *Nouvelle Revue Theologique*, 1923, p. 176.

104 **III. Use of supplied jurisdiction.** Having considered the greater kindness of the Church with respect to this matter,[1] it must be said as follows:

1. In the case of common error, a grave cause is required in order that it be permitted to use supplied jurisdiction. The reason is that the Church, in the case in which jurisdiction is certainly lacking, is of itself greatly opposed to conceding it in a way abnormal in itself; hence one should not have recourse to it without a grave cause. With these things considered, the following sin gravely: 1. a priest about to hear confessions who omits the petition for jurisdiction, relying on jurisdiction to be supplied by the Church on account of common error; 2. one who, even if the occasion of petitioning jurisdiction in time is lacking, has recourse to the concession of supplied jurisdiction without a grave cause. Nevertheless, great utility of the people constitutes a grave cause.

One who proceeds without a legitimate cause, although he receives jurisdiction, does not incur the suspension of can. 2366 issued against one who, without necessary jurisdiction, has presumed to hear sacramental confessions.

2. In positive and probable doubt, the use of supplied jurisdiction seems lawful for any just cause. For in the case in which jurisdiction is already probably present, the Church is not so gravely opposed to conceding it in a way abnormal in itself; there is question only of a concession for caution, as it is called. Such a case would be if the petition of the concession were not without some difficulty, or would later have place more conveniently (cf. St. Alphonsus, VI, 573).

[1] Before the Code, the Church more probably did not supply in common error unless a colored title was present; likewise it was doubtful whether the Church supplied in doubt whether of law or of fact.

Section II. On Jurisdiction Insofar as It Imports Legislative Power

105 **I.** Legislative power exists among human beings. For, as was proved above, positive laws are necessary in human society (n. 88). But law cannot proceed except from one who has power over others.[1]

II. Legislative power belongs both to the Church and to the civil State. We shall speak of each.

[1] Cf. encyclical of Leo XIII, *Libertas*.

Point I. On the Legislative Power of the Church

106 **I. Existence of the power.** The Church enjoys legislative power. This proposition is of faith from the Vatican Council,[1] and is clear from these words of Sacred Scripture: "But if he will not hear the Church, let him be to you as a heathen and a publican. Amen I say to you: whatever things you shall bind upon earth, shall be bound also in heaven."[2] Besides, consult the dogmatic theologians.

[1] Session 4, c. 3, dogmatic constitution *Pastor aeternus*.

[2] Matt. 18:17-18.

107 **II. Subject of the power.**

1. Universal laws can be made by: 1. the Supreme Pontiff (can. 218, 219); 2. an Ecumenical Council (can. 228). In establishing laws, the Supreme Pontiff usually uses the work of the Sacred Roman Congregations, concerning which we shall speak especially in a scholion. When the Apostolic See is vacant, the Sacred College of Cardinals and the Roman Curia have no other power than that which is defined in the constitution of Pius X *Vacante Sede Apostolica*, December 25, 1904 (can. 241).

2. Particular laws can be established by:

a) A bishop for his diocese, both within and outside a synod, even without the Chapter having been heard (can. 329, § 1; 334; 335; 362).

b) Vicars and Prefects Apostolic enjoy in their territory the same rights and faculties which belong in their own dioceses to residential bishops, unless the Apostolic See has reserved something (can. 294, § 1).

c) An Apostolic Administrator constituted permanently enjoys the same rights and honors, and is held to the same obligations, as a residential bishop. If he has been given for a time, he has the same rights and duties as a Capitular Vicar (can. 315, §§ 1 and 2, 1°).

d) When the see is vacant, the governance of the diocese devolves to the Chapter of the cathedral church (can. 431, § 1); from the Chapter to the Capitular Vicar (can. 432, § 1).

Pastors lack legislative power (cf. can. 83).

e) Plenary councils for several ecclesiastical provinces, and provincial councils for an ecclesiastical province (can. 291, § 2). Nevertheless, it is required that the decrees of the aforesaid Councils be transmitted to the Sacred Congregation of the Council, or to the Sacred Congregation de Propaganda Fide if there is question of mission lands (can. 252, § 2), and be reviewed by it (can. 291, § 1). Once this review has been made, it is permitted that they be promulgated. Permission of this kind involves approval or confirmation called common. But special approval, or approval in specific form, is had if they are confirmed with the clause *motu proprio* and *ex certa scientia*. This approval causes the statutes of the Council to become pontifical.[1] In a diocesan synod the sole legislator is the bishop (can. 362).

f) General chapters of exempt clerical religious institutes (cf. can. 501, § 1). But legislative power of this sort does not belong to councils or general chapters of nuns, nor does it seem to have been conceded to general chapters of non-exempt religious congregations of men except by privilege; for apart from dominative power, their Superiors generally do not seem to have ecclesiastical jurisdiction.[2] Legislative power likewise generally is lacking to Superiors General of religious Orders;[3] a fortiori to provincial and local Superiors, and likewise to provincial Chapters.[4]

Question. Who can impose precepts?

[1] Benedict XIV, *De Synodo*, bk. 13, c. 5, n. 11.

[2] Wernz, *Ius Decretalium*, I, n. 94.

[3] Yet there seem to be exceptions.

[4] From these things it is clear that many governors of imperfect communities, although they enjoy the power of jurisdiction, nevertheless lack legislative power. This indeed has place because the Church so disposes; for of itself it is not repugnant that governors of this sort possess legislative power.

108 **Response.** Precepts can be imposed by: 1. those who in the Church enjoy legislative power, such as the Supreme Pontiff, the local Ordinary, etc.; 2. those who have power of jurisdiction for the external forum, such as the local Ordinary or the Superior of an exempt religious institute; 3. those who possess dominative power, such as a father, a religious Superior, etc.; 4. those who enjoy domestic power, such as a father, mother, master, or religious Superior.

One who enjoys dominative power, jurisdiction for the external forum, and domestic power, such as the Superior of an exempt religious institute, can impose precepts by force of dominative power, jurisdiction, and domestic power alike.

Finally, concerning the use of the power of making precepts, note these words of St. Thomas: "Prelates ought to abstain from a multitude of precepts" (II-II, q. 105, a. 1, ad 3); likewise these words of St. Alphonsus: "A multitude of decrees would be the ruin of the Congregation" (*Corr. gener.*, n. 75).

Scholion. On the Roman Curia

109 **I. Constitution of the Roman Curia.** The Roman Curia consists of Sacred Congregations, Tribunals, and Offices (can. 242), according as they proceed either by the doctrinal or disciplinary way, or by the judicial way, or by the administrative way. We shall speak especially of the Sacred Congregations.

1. The Sacred Congregations and their offices are:

a) **The Congregation of the Holy Office.**

alpha) The Congregation of the Holy Office, over which the Supreme Pontiff himself presides, protects doctrine concerning faith and morals (can. 247, § 1).

beta) It judges concerning those delicts which are reserved to itself according to its own proper law, with the power of hearing these criminal causes not only in the grade of appeal from the tribunal of the local Ordinary, but also in first instance, if they have been brought directly to it (can. 247, § 2).

gamma) It alone takes cognizance of those matters which, whether directly or indirectly, in law or in fact, concern the privilege, as they say, of Paul, and the matrimonial impediments of disparity of cult and mixed religion; and likewise the faculty of dispensing in these impediments belongs to it. Wherefore any question of this kind is to be referred to this Congregation, which nevertheless can, if it so judges and the case allows it, remit the question to another Congregation or to the Tribunal of the Sacred Roman Rota (can. 247, § 3).

delta) To the same Congregation it belongs not only diligently to examine books brought before it, to prohibit them if need be, and to grant dispensations, but also ex officio to inquire, by whatever more suitable way may be possible, into writings of any kind published among the people which ought to be condemned, and to recall to the memory of Ordinaries how religiously they are bound to take notice of harmful writings and to denounce them to the Holy See, according to the norm of can. 1397 (can. 247, § 4).

epsilon) It alone is competent concerning all those things which regard the Eucharistic fast for priests celebrating Mass (can. 247, § 5).

Note. The Congregation of the Index was suppressed by Benedict XV,[1] and its office was assigned to the Congregation of the Holy Office.

b) **The Consistorial Congregation.**

alpha) The Prefect of the Consistorial Congregation is the Roman Pontiff himself. Besides others, there belong to it ex officio the Cardinal Secretary of the Holy Office, the Prefect of the Congregation of Seminaries and Universities of Studies, and the Secretary of State. Among its Consultors there are always the Assessor of the Holy Office, the Secretary of the Congregation for Extraordinary Ecclesiastical Affairs, and the Secretary of the Congregation of Seminaries and Universities of Studies (can. 248, § 1).

beta) To this Congregation it belongs not only to prepare the matters to be handled in consistories, but besides, in places not subject to the Congregation de Propaganda Fide, to constitute new dioceses and provinces, and chapters both cathedral and collegiate; to divide dioceses already constituted; to propose bishops, Apostolic Administrators, Coadjutors, and Auxiliary Bishops to be constituted; to order canonical inquiries or processes concerning those to be promoted, and diligently to weigh the acts, and to test their doctrine, with due regard for the prescription of can. 255 (can. 248, § 2).

gamma) On this Congregation depend all those things which pertain to the constitution, preservation, and status of dioceses. Therefore it watches over whether the obligations by which Ordinaries are bound have been fulfilled or not; it takes cognizance of those things which have been reported in writing by bishops concerning the state of their dioceses; it orders apostolic visitations and examines those which have been completed, in either case transmitting to the several Congregations the matters to be deliberated which pertain peculiarly to them (can. 248, § 3).

c) **The Congregation on the Discipline of the Sacraments.**

alpha) To the Congregation on the Discipline of the Sacraments is entrusted all legislation concerning the discipline of the seven Sacraments, without prejudice to the right of the Congregation of the Holy Office concerning those matters which are established in can. 247, and of the Congregation of Sacred Rites concerning the rites and ceremonies which must be observed in confecting, administering, and receiving the Sacraments (can. 249, § 1).

beta) Therefore there belong to it all those things which are customarily decreed and conceded both in the discipline of marriage and in the discipline of the other Sacraments, and also in the celebration of the Eucharistic Sacrifice, excepting only those things which are reserved to other Congregations (can. 249, § 2).

gamma) It also, and exclusively, takes cognizance of the fact of non-consummation of marriage and of the existence of causes for granting a dispensation, as well as of all those things which are connected with these. Nevertheless, it can remit cognizance of all these matters to the Sacred Roman Rota, if it judges this expedient. Likewise questions concerning the validity of marriage can be referred to it; yet if these require a more accurate inquiry or investigation, it is to remit them to the competent tribunal. In the same way it belongs to it to consider the obligations attached to major orders, and to examine questions concerning the very validity of sacred ordination, or to remit them to the competent tribunal. And so forth concerning the other Sacraments (can. 249, § 3).

d) **The Congregation of the Council.**

alpha) To the Congregation of the Council is entrusted that part of affairs which refers to the universal discipline of the secular clergy and of the Christian people (can. 250, § 1).

beta) Wherefore it belongs to it to take care that the precepts of Christian life be observed, with the faculty of opportunely dispensing the faithful from them; to regulate those things which regard pastors and canons, or which touch pious sodalities, pious unions, even if they depend on religious or have been erected in their churches or houses, pious legacies, pious works, Mass stipends, benefices or offices, ecclesiastical goods, movable and immovable, diocesan taxes, taxes of episcopal Curias, and other things of this sort. To the same Congregation is reserved the faculty of exempting from conditions required for obtaining benefices, whenever their collation belongs to the Ordinaries; of admitting to composition those who have occupied ecclesiastical goods, even those belonging to religious; and of permitting the faithful to acquire ecclesiastical goods usurped by the civil power (can. 250, § 2).

gamma) It also considers all those things which pertain to ecclesiastical immunity, and likewise controversies concerning precedence, with due regard for the right of the Congregation on Religious and of the Congregation of Ceremonies (can. 250, § 3).

delta) To the same Congregation belong all those things which refer to the celebration and review of Councils and to meetings or conferences of bishops, outside places which are subject to the Congregation de Propaganda Fide (can. 250, § 4).

epsilon) This Congregation is competent in all controversies concerning the affairs entrusted to it which it judges should be handled in the disciplinary line; the rest are to be referred to the competent tribunal (can. 250, § 5).

e) **The Congregation Set Over the Affairs of Religious Sodalities.**

alpha) The Congregation set over the affairs of religious members claims to itself exclusively those things which regard the government, discipline, studies, goods, and privileges of religious members of either sex, bound by solemn or simple vows, and of those who, although without vows, nevertheless live a common life after the manner of religious, and likewise of secular Third Orders, without prejudice to the right of the Congregation de Propaganda Fide (can. 251, § 1).

beta) Therefore, questions to be treated in judicial order having been remitted to the competent tribunal, and the right of the Congregation of the Holy Office and of the Congregation of the Council concerning affairs pertaining to them always remaining intact, this Congregation decides all questions within its competence in the disciplinary line. But if a question turns between a religious member and a non-religious person, it also can, especially at the request of a party, remit the same question to another Congregation or tribunal, if it has judged this equitable (can. 251, § 2).

gamma) Finally, to this Congregation is reserved the concession of dispensations from common law for religious members, with the prescription of can. 247, § 5 remaining firm (can. 251, § 3).

f) **The Congregation de Propaganda Fide.**

alpha) The Congregation de Propaganda Fide presides over missions for preaching the Gospel and Catholic doctrine, appoints and changes necessary ministers, and has the faculty of treating, doing, and executing everything necessary and opportune in this matter (can. 252, § 1).

beta) It cares for all those things which pertain to the celebration and review of Councils in places subject to it (can. 252, § 2).

gamma) Its jurisdiction is circumscribed to those regions where, the sacred hierarchy not yet having been constituted, the state of mission perseveres. To this Congregation are also subject regions which, although the hierarchy has been constituted there, still bear something of an initial state. To the same are likewise subject societies of ecclesiastics and Seminaries which have been founded exclusively for the end that missionaries for foreign missions be instituted in them, especially as regards their rules, administration, and suitable concessions required for the sacred ordination of students (can. 252, § 3).

delta) This Congregation, however, is bound to refer to the competent Congregations affairs which touch faith, or matrimonial causes, or general norms concerning the discipline of sacred rites to be handed down or interpreted (can. 252, § 4).

epsilon) But as regards religious members, the same Congregation claims to itself whatever touches religious as missionaries, whether taken singly or together. But whatever touches religious as such, whether taken singly or together, it is to remit or leave to the Congregation set over the affairs of religious (can. 252, § 5).

g) **The Congregation of Sacred Rites.**

alpha) The Congregation of Sacred Rites has the right of considering and determining all those things which closely regard the sacred rites and ceremonies of the Latin Church, but not those things which pertain more broadly to sacred rites, of which sort are rights of precedence and other things of this kind, whether they are disputed with judicial order observed or in the disciplinary line (can. 253, § 1).

beta) It therefore belongs especially to this Congregation to watch that sacred rites and ceremonies be diligently observed in celebrating the Sacred Sacrifice, in administering the Sacraments, in performing the divine offices, and finally in all those things which regard the worship of the Latin Church; to grant suitable dispensations; to bestow insignia and privileges of honor, both personal and temporary, and local and perpetual, which pertain to sacred rites or ceremonies; and to take care lest abuses creep into these (can. 253, § 2).

gamma) Finally, it handles all those things which in any way refer to the beatification and canonization of Servants of God or to sacred relics (can. 253, § 3).

h) **The Congregation of Ceremonies.** To the Congregation of Ceremonies belongs the regulation of ceremonies to be observed in the Pontifical Chapel and Court, and of sacred functions which the Cardinal Fathers perform outside the pontifical chapel. Likewise the same Congregation takes cognizance of questions concerning the precedence both of the Cardinal Fathers and of Legates whom various Nations send to the Holy See (can. 254).

i) **The Congregation for Extraordinary Ecclesiastical Affairs.** To the Congregation for Extraordinary Ecclesiastical Affairs it belongs to constitute or divide dioceses and to promote suitable men to vacant dioceses, whenever civil Governments must be dealt with concerning these matters. Moreover, the Congregation devotes itself to those affairs which are submitted to its examination by the Supreme Pontiff through the Cardinal Secretary of State, especially those which have some connection with civil laws and refer to conventions entered into with various Nations (can. 255).

j) **The Congregation of Seminaries and Universities of Studies.**

alpha) The Congregation of Seminaries and Universities of Studies watches over all things which pertain to the government, discipline, temporal administration, and studies of Seminaries, without prejudice to the right of the Congregation de Propaganda Fide. To the same is likewise entrusted the regulation of the government and of studies in which academies, or what they call Universities or Faculties, which depend on ecclesiastical authority, must be engaged, including those which are directed by members of some religious family. It considers and approves new institutions; it grants the faculty of conferring academic degrees and hands down the norms by which they must be conferred; and, where there is question of a man commended by singular doctrine, it can itself confer them (can. 256, § 1).

beta) In this Sacred Congregation there are numbered, among others, the Cardinal Secretary of the Consistorial Congregation; and among the Consultors, the Assessor of the same Congregation (can. 256, § 2).

k) **The Congregation for the Eastern Church.**

alpha) Over the Congregation for the Eastern Church the Roman Pontiff himself presides. To this Congregation are reserved all affairs of every kind which refer either to the persons, or to the discipline, or to the rites of the Eastern Churches, even if they are mixed, namely, such as also touch Latins either by reason of the matter or by reason of the persons (can. 257, § 1).

beta) Wherefore for Churches of the Eastern rite this Congregation possesses all faculties which the other Congregations obtain for Churches of the Latin rite, without prejudice, however, to the right of the Congregation of the Holy Office according to the norm of can. 247 (can. 257, § 2).

gamma) This Congregation settles controversies by the disciplinary way. But those which it has judged must be settled in judicial order it will remit to the tribunal which the Congregation itself shall have designated (can. 257, § 3).

2. The Tribunals and their offices are:

a) **The Sacred Penitentiary.**

alpha) A Cardinal Major Penitentiary is placed over the Sacred Penitentiary. The jurisdiction of this tribunal is restricted to those things which regard the internal forum, even the non-sacramental forum. Therefore this tribunal grants favors for the internal forum alone: absolutions, dispensations, commutations, sanations, condonations; it moreover examines questions of conscience and decides them (can. 258, § 1).

beta) To the same tribunal, moreover, it belongs to judge concerning all those things which regard the use and concession of indulgences, without prejudice to the right of the Holy Office to consider those things which regard dogmatic doctrine concerning these indulgences or concerning prayers and devotions (can. 258, § 2).

b) **The Sacred Roman Rota and c) The Supreme Tribunal of the Apostolic Signatura.** Causes requiring judicial order are conducted before the Sacred Roman Rota and before the Supreme Tribunal of the Apostolic Signatura, within the limits and according to the norms handed down in can. 1598-1605, without prejudice to the right of the Congregation of the Holy Office and of the Congregation of Sacred Rites in causes proper to themselves (can. 259).

3. The Offices of the Roman Curia: concerning these, consult can. 260-264.

[1] *A.A.S.* 1917, pp. 167 and 162.

110 **II. Juridical competence of the Roman Curia.** The proper juridical competence of at least most dicasteries, especially of the Sacred Congregations, is situated in this: that they can urge and commit to execution laws already constituted, declare their meaning, regulate their observance, or concede dispensation from them.[1] "Nevertheless, they can also, at least the Sacred Congregations, each according to its own competence, issue new decrees, even general ones, if indeed grave necessity of the universal Church counsels this; yet the Supreme Pontiff must have been informed beforehand if they differ from the prescriptions of the Code. This is clear among other things from the Motu proprio of Benedict XV, *Cum iuris canonici*, September 15, 1917, by which a special Council or Commission is instituted for authentically interpreting the canons of the Code, and where also the relation of this Commission to the Sacred Roman Congregations is described, which must refer to that Commission their new general decrees, approved by the Roman Pontiff."[2]

[1] Lijdsman, *Introductio in Ius Can.*, I, n. 47.

[2] Lijdsman, loc. cit.

111 **III. Acts of the Roman Curia.**

1. They are chiefly distinguished into doctrinal and disciplinary acts. Doctrinal acts protect the faith and are issued especially by the Holy Office and the Pontifical Biblical Commission. Disciplinary acts look to the protection of discipline. Furthermore, disciplinary decrees are divided into decrees strictly so called, interpretations, and judicial sentences. Decrees strictly so called are new laws;

interpretations or declarations explain an established law; judicial sentences are issued in the form of a judgment for deciding a controversy. Nevertheless, the word decree occurs in diverse senses.

2. As regards the authenticity of acts, these "are genuine or authentic if they have been signed in legitimate form by competent officials of the Curia. Thus, for example, among the Sacred Roman Congregations, for this there is required the signature of the Cardinal Prefect and of the Secretary of the Congregation or his Substitute, or at least of one of these Prelates together with the application of the seal of the proper Dicastery... For the Sacred Congregation of the Holy Office, the signature of the Notary alone suffices. Nevertheless, acts which do not bear an authentic signature are not to be rejected, but are brought forward by writers or by witnesses worthy of faith; for although they are not authentic, nevertheless they are not destitute of value, especially doctrinal value. This is clear from the practice of most illustrious writers, for example Benedict XIV and the Sacred Congregation of the Council itself, where at times they refer to declarations alleged among trustworthy authors, concerning which, however, authentic testimony is not brought forward."[1]

3. If acts do not report pontifical approval, likewise if they are confirmed by him only in common form, they are the proper acts of the Dicastery; if they are confirmed in specific form, they become truly papal acts.[2]

Note. What has been said about the Roman Curia and its acts, with due proportion observed, is also to be applied to the two Commissions of Cardinals existing in Rome, which are: the Pontifical Biblical Commission, and the Commission for authentically interpreting the canons of the Code (n. 139).

[1] Lijdsman, op. cit., n. 45.

[2] Lijdsman, op. cit., n. 46.

112 **IV. Meaning of the principal clauses which often occur in responses of the Sacred Congregations:**

a) **Dilata**; that is, the response is deferred, so that the matter may be subjected to more mature examination, as being of difficult solution.

b) **Affirmative et amplius - Negative et amplius**; that is, when the matter has been sufficiently and more than sufficiently discussed in the Sacred Congregation and decided with full votes as it stands, such a question is no longer admitted.

c) **Nihil**: that is, the petition is not admitted, as being unsuitable.

d) **Relatum vel lectum**; that is, when it had been reported or read, the petition was not admitted in the Sacred Congregation.

e) **Reponatur**; that is, no response is given, but the petition is placed in the Archives of the Sacred Congregation.

f) **Detur Decretum generale**; this obtains when there is question of a grave matter which is being neglected by many.

g) **Spectare ad Episcopum**, or **Orator adeat Episcopum**, namely, that he himself provide according to canonical ordinances, but not according to his own pleasure.

h) **Non congruere - Non expedire**; that is, the Congregation does not think it fitting that what is asked be granted; therefore it does not wish to bestow the favor, nor does it bestow it.

i) **Orator rem deferat ad Ordinarium et eius iudicio se dirigat**; that is, the thing requested is not conceded by the Sacred Penitentiary, but is remitted to the Ordinary, so that, if he has the faculty, he may provide for the matter according to his prudence; otherwise, either he may obtain the faculty, or, if he shall have judged that this is not expedient, he may impose what must be imposed.

j) **In decretis - In decisis**; that is, petitions not heard and repeated by the petitioner are not to be heard.

k) **Ad mentem**; that is, besides the solution of the doubt, something else is noted or declared by the Sacred Congregation, which, if it is secret, is manifested only to those to whom the response is directed; otherwise, when the writings are publicly drawn up, it is added in these words: the mind is, etc.

l) **Facto verbo cum Sanctissimo**, or **Ad Dominum Secretarium cum Sanctissimo**; that is, the Congregation does not have the faculty of granting the favor, and therefore the Secretary is instructed to report the Rescript of the Sacred Congregation to the Supreme Pontiff, who is accustomed to approve the judgment of the Congregation and to grant the favor.

m) **Providebitur in casibus particularibus**; that is, the case which was proposed generically and indeterminately must be proposed determinately.

n) **Gaudeat impetratis**; that is, the petitioner ought to be content with the favor obtained, and an extension of the same, or another favor which was newly being asked, is not conceded.

o) **Sanctissimus annuit pro gratia, arbitrio et conscientia Episcopi**; that is, the favor has been granted and nothing is lacking for it to have its full effect except execution, which the delegate cannot deny, unless perhaps there is a canonical cause, not set forth to the Holy See, which by law would impede it.[1]

It is useful to add what the cited author notes in the appendix.[2]

"A cause is said to be conducted with the order of law observed when the parties appoint procurators and the cause is debated through chosen advocates. Otherwise it is said to be treated *oeconomice*.

Per summaria precum indicates that there is no question of some doubt from the graver ones or of a contentious cause, for if there is question of these, the formula is used: **ponatur in folio**; but only of petitions presented to the Holy See, or of the manner in which the petitions deserve to be heard.

Consulat probatos auctores. There are not lacking those who always want, in their doubts, an authentic response from authority, as if indeed the laws of moral prudence were lacking, or as if these did not suffice for acting rightly. To such persons a response of this kind is usually given."

[1] Konings, *Theol. Mor.*, 3rd ed., I, n. 174.

[2] Ibid., I, p. 479.

Point II. On the Legislative Power of the Civil State

113 **I. The existence of legislative power in the civil state** is proved:

1. From Sacred Scripture, which recognizes power of this sort in civil governors, and in subjects the obligation of subjecting themselves. "By Me kings reign, and lawgivers decree just things; by Me princes rule, and the mighty decree justice."[1] "Give ear, you who contain multitudes and please

yourselves in the crowds of nations, because power has been given to you by the Lord, and strength by the Most High."[2] "Let every soul be subject to higher powers; for there is no power except from God; and those that are, are ordained by God. Therefore he who resists the power resists the ordinance of God. And those who resist acquire damnation for themselves; for princes are not a terror to the good work, but to the evil. But do you wish not to fear the power? Do good, and you shall have praise from it, for it is God's minister to you for good. But if you do evil, fear; for it does not bear the sword without cause. For it is God's minister, an avenger unto wrath against him who does evil. Therefore be subject of necessity, not only because of wrath, but also because of conscience. For therefore you also pay tribute; for they are ministers of God, serving unto this very thing."[3] "Be subject, therefore, to every human creature for God's sake: whether to the king as preeminent; or to governors as sent by him for the punishment of evildoers and for the praise of the good; because so is the will of God, that by doing good you may silence the ignorance of foolish men: as free, and not as having liberty as a cloak for malice, but as servants of God. Honor all: love the brotherhood: fear God: honor the king."[4]

2. It is clear from the nature of civil society. For it commonly happens that many things which are necessary or very desirable for the civil good, or the full sufficiency of human nature, distinguished through families and stocks and through changes of times and places, are not evident to all, or are not spontaneously procured by all according to their powers. Therefore it is necessary that in civil societies there be an authority by which those things which are opportune for the civil good can be imposed, and by coercion, with penalties imposed, exacted from the unwilling.[5]

[1] Prov. 8:15-16.

[2] Wis. 6:3-4.

[3] Rom. 13:1-7.

[4] 1 Pet. 2:13-18.

[5] Cf. encyclical of Leo XIII, *Diuturnum*, June 29, 1881.

114 **II. The derivation of civil legislative power from God** is clear:

1. From Sacred Scripture, which, as follows from the testimonies brought forward, not only establishes legislative power, but also manifestly signifies that it is derived from God: "By Me kings reign," etc.

2. There is added the fact that legislative power, or rather authority which also involves legislative power, is derived either from God or from a social pact, explicit or implicit, by force of which the rights proper to authority, such as the right of making laws, the right of life and death, the right of war, etc., belong to some physical or moral person.[1] But, to use the words of Leo XIII, "the pact, as they proclaim it, is openly imaginary and fictitious, and is not capable of imparting to political power such measure of strength, dignity, and firmness as the protection of the commonwealth and the common advantages of citizens require."[2]

Nevertheless, there is dispute concerning the manner by which authority is derived by God into a determined subject, whether physical or moral. According to some, the Author of nature immediately confers authority upon the physical or moral person who, for example, by singular aptitude, or by dominion of territory, or by patriarchal power, or by victory, or by election of the people, is designated as the one to be endowed with authority. According to others, God immediately gives authority to the

whole people, that is, to the multitude of citizens, not formless, but formed by the relation of rights and duties in order to the perfect good; and the people, as is customary, transfers it to another subject, whether physical, as to a king, or moral, as to a college of aristocrats.[3]

[1] J. J. Rousseau (d. 1778) establishes a pact of this sort; he further teaches that human beings freely constituted society by such a pact. "But it is a great error not to see what is manifest: that human beings, since the race is not solitary and wandering, are born into a natural community apart from their own free will" (encyclical *Diuturnum*).

[2] Encyclical *Diuturnum*, June 29, 1881.

[3] Cf. Marcellus a Puero Iesu, *Ethica moralis et socialis*, pp. 117-128; Billot, *De Ecclesia Christi*, 4th ed., pp. 491-504.

115 **III. The subject of civil legislative power** is the supreme governor of society. But the supreme governor can be either a physical person, as in monarchy, or a moral person, which can be constituted either by the nobler part of the people, as in aristocracy, or by a few in number, as in oligarchy, or by the whole people, as in democracy; or even a physical and moral person taken together, as in constitutional monarchy.[1] Hence in Catholic doctrine, as Leo XIII says, "there is no question about the forms of commonwealths; for there is no reason why the Church should not approve the rule of either one or several, provided only that it be just and directed toward the common advantage. Wherefore, justice being preserved, peoples are not forbidden to procure for themselves that kind of commonwealth which more aptly suits either their own character or the institutions and customs of their ancestors."[2]

[1] In the Netherlands it resides with the King and the General Estates of deputies of both orders. "The legislative power is exercised jointly by the King and the States General" (Fundamental Law, art. 109). "All proposals of law accepted by the States General and approved by the King acquire the force of law and are promulgated by the King" (Fundamental Law, art. 121). From these things it is clear that among us the form of government is composed of a monarchical and a democratic element: "monarchical," indeed, as is clear; "democratic," because the deputies represent the people. A form of government of this kind is called constitutional representative government of the people.

[2] Encyclical *Diuturnum*, June 29, 1881.

116 **IV. The relation between ecclesiastical and civil power.**

1. Each power, ecclesiastical and civil, is perfect and independent in its own sphere. "God has divided the care of the human race between two powers, namely, ecclesiastical and civil: the one set over divine things, the other over human things. Each is supreme in its own kind; each has certain limits within which it is contained, defined by the nature and proximate cause of each; whence, as it were, a certain sphere is circumscribed, in which the action of each may be exercised by its own right."[1] Hence proposition 19 of the *Syllabus* was rightly condemned: "The Church is not a true and perfect society, plainly free, nor does she possess her own proper and constant rights conferred on her by her divine Founder; but it belongs to the civil power to define what the rights of the Church are, and the limits within which she can exercise those rights";[2] and the 39th: "The State, as the origin and source of all rights, possesses a certain right circumscribed by no limits";[3] and the 44th: "The civil authority can involve itself in matters which pertain to religion, morals, and spiritual governance."[4] And St. Thomas rightly concludes: "In those things which pertain to the salvation of the soul, the spiritual power is to be obeyed more than the secular, according to that saying in Matt. 22: 'Render the things that are Caesar's to Caesar, and the things that are God's to God'" (II Sent., dist. 44, q. 2, a. 4, ad 4).

2. In a conflict, the ecclesiastical power prevails, since it is the higher power. Hence proposition 42 of the *Syllabus* was condemned: "In a conflict of laws of either power, the civil law prevails."[5]

[1] Encyclical of Leo XIII, *Immortale Dei*, November 1, 1885.

[2] Denzinger-Bannwart, n. 1719.

[3] Denzinger-Bannwart, n. 1737.

[4] Denzinger-Bannwart, n. 1744.

[5] Denzinger-Bannwart, n. 1742.

Article IV. On the Object (Matter) of Law

Concerning the object of the natural law and of divine positive law, consult what was said in nn. 83 and 89. It remains for us to speak of the object of human law. Let the proposition therefore be:

117 **Proposition.** Human law can command external acts and, in the manner soon to be explained, internal acts, which are not opposed to a higher law, which pertain to the competence of the legislator, which are morally possible, and which are necessary or very useful for the common good. I said:

I. External acts. That these can be imposed follows from the fact that human legislative power is ordered at least to the external or public prosperity, peace, and uprightness of the community. Nor are hidden external acts excluded from legislative power, since these also can conduce to the end described; that the superior cannot judge concerning them is accidental (St. Alphonsus, I, 100).

II. Internal acts, of which sort are, for example, acts of faith, meditation, etc. Human power can command these as follows:

1. Human power can command internal acts indirectly, that is, in order to an external act, either because they are required for the moral substance of the external act, or because acts of this sort are or become the complement of it. Furthermore, among acts required for the moral substance of an external act, some are necessarily required for the moral substance of every external act, such as the will of placing it; others are necessary for the moral substance of a particular external act. Considering this, for example, in contracts consent and the will to bind oneself are commanded indirectly; in oaths, the will of swearing; in the administration of the Sacraments, the intention of administering them; in the reception of the Sacraments, the intention of receiving them and a worthy reception; in prayer, the intention of worshiping God, etc. (St. Alphonsus, I, 100, q. 2). The application of a Mass can be considered, for example, as the complement of an external act.
2. As regards the power of directly imposing internal acts, it is certain that this does not belong to the civil state; for the civil state can obtain its end, which is prosperity and public uprightness, without power of this sort.

It is disputed whether the Church can directly command internal acts.[1] Many, especially more recent authors, affirm this; but with St. Thomas (I-II, q. 91, a. 4; II-II, q. 104, a. 5) and St. Alphonsus (I, 100), it seems it must be denied.

For, first, ecclesiastical authority enjoys legislative power because the Church is a society. But power resting on this title does not extend itself to acts which by their nature escape social or external life, of which sort internal acts are. Hence the words of Christ, "Whatever you shall bind upon earth shall be bound also in heaven,"[2] so far as concerns the legislative power proper to the Church, ought not be

extended to acts of this sort. Next, "man can make a law about those things about which he can judge; but the judgment of man cannot be about interior acts which lie hidden" (St. Thomas, loc. cit.). Hence Innocent III says: "It has been given to us to judge only concerning manifest things."[3] Finally, the Church, as it seems, has never used power of this sort. Some more recent authors indeed think that the Church sometimes directly prescribes internal acts, for example, the application of a Mass, the meditation on the Most Holy One to be made by the celebrant after receiving the Body,[4] etc. But it can be answered that the aforesaid acts are not imposed directly but indirectly, namely, in order to an external act, in this case to the Sacrifice, the regulation of which has been entrusted to the Church. Besides St. Thomas and St. Alphonsus, Suarez,[5] De Lugo,[6] Billuart,[7] Benedict XIV,[8] and many more recent authors adhere to this opinion.

Objection 1. The Church can by law impose whatever conduces to her end, that is, to the salvation of souls. But internal acts also conduce to the salvation of souls.

Response. I deny the major: for, as has been said, the Church can make laws only because she is a society. But power resting on this title does not extend itself to those things which by their nature escape social life, even though of themselves they conduce to the salvation of souls.

Others briefly state the proposed doctrine thus: human power can prescribe external acts; likewise mixed acts, but not merely internal acts.

Note. The controversy concerning internal acts regards the Church's proper jurisdiction, but not her vicarious jurisdiction, that is, the jurisdiction which she exercises in the name of Christ. By force of this jurisdiction she can impose even internal acts, for example, assent to definitions. For the same reason, a confessor can enjoin an internal act upon a penitent as satisfaction. Moreover, it is clear that the Church can constitute an internal act as a condition without which, for example, an indulgence or some other favor will not be obtained. Finally, regular prelates, by force of dominative power arising from the vow of obedience, can command even merely internal acts to a subject, provided, however, that the vow emitted in the Order is so understood.

III. Not opposed to a higher law, namely, neither to divine law nor, for example if there is question of civil law, to ecclesiastical law. To this pertains proposition 56 of the *Syllabus*: "The laws of morals by no means need divine sanction, and it is by no means necessary that human laws be conformed to the right of nature or receive binding force from God";[9] and the 57th: "Civil laws can and ought to depart from divine and ecclesiastical authority."[10] Hence laws are invalid, for example, which dissolve marriage, or impede the preaching of the Gospel, or enroll clerics in military service.

IV. Pertain to the competence of the legislator; concerning this, observe:

1. To the competence of the Church belong:

a) Things spiritual by their nature, of which sort are, for example, evangelical preaching and the administration of the Sacraments. Likewise things which are indeed partly temporal, but in such a way that the temporal cannot be separated from the spiritual, such as ecclesiastical benefices. That the aforesaid things pertain to the Church is clear from the doctrine of the Church herself.[11]

b) Ecclesiastical goods. Nevertheless, if the safety of the commonwealth manifestly demanded it, which could have place in time of war, and there were danger in delay, nor did a relatively grave spiritual harm stand in the way, the State could dispose of them by presumed permission. But if

circumstances are not urgent, the matter should be settled amicably with ecclesiastical authority. Apply the same to the revenues of benefices.

c) Mixed things[12] as regards the spiritual element. Thus, for example, marriage as regards validity, impediments, and inseparable effects pertains to the Church;[13] likewise education as regards religious and moral instruction.[14]

d) Mixed things as regards the temporal element, and temporal things,[15] when they, that is, the temporal element and temporal things, are required for the spiritual end. The reason is that the end of temporal things, which is also temporal, must in a conflict yield to the higher spiritual end, to which the Church has the right of directing human beings. Moreover, note proposition 24 condemned in the *Syllabus*: "The Church does not have the power of inflicting force, nor any temporal power, direct or indirect."[16] Therefore the contradictory proposition is true, that is: the Church has the power of inflicting force, and some temporal power.[17] The practice of the Church, which proves the same thing, is added.[18]

The aforesaid power is called indirect, insofar as it does not arise from the Church's power over the natural end of temporal things, but from her power of leading human beings to the supernatural end. Nevertheless, it can scarcely be accurately defined how far that power is to be pressed, or how far it extends itself.

The Church lacks direct power over temporal things, as Pius IX,[19] Leo XIII,[20] and Pius X[21] teach, among others.

Concerning the doctrine of St. Thomas on the power of the Church over temporal things, cf. II Sent., dist. 44, q. 2, a. 3; IV Sent., dist. 37, q. 2, a. 2; II-II, q. 10, a. 10; II-II, q. 12, a. 2; II-II, q. 40, a. 2, ad 3; II-II, q. 60, a. 6, ad 3.

Corollary. Ecclesiastical superiors, if they use indirect power, are to be obeyed, even in doubt whether they exceed the scope of indirect power.

2. To the competence of the civil power belong:

a) Mixed things as regards the temporal element, except the case in which the temporal element is required for the spiritual end.

b) Temporal things, with the case assigned under a) again excepted. Public uprightness also is reduced to temporal things, insofar as it is a good of the natural order; and the civil power ought to protect and promote public uprightness, because this imports a certain common good which individual families cannot attain.

V. Morally possible. Otherwise the law would be observed only by a few, and therefore would tend toward evil rather than toward the common good.[22] Nevertheless, even human power can impose very difficult or even heroic acts by law or precept: 1. when necessity of the common good urges. Hence soldiers are rightly ordered to fight with danger to life; hence a bishop can command priests, even non-pastors, and a magistrate can command physicians, not to depart during a time of contagious disease. Nevertheless, when the case occurs, generally the natural law itself will impose the heroic act; for that law prescribes that private good be set after the common good. 2. Very difficult or even heroic acts can be imposed when the hypothesis is supposed of a state freely assumed. Thus the Church binds those

initiated into Sacred Orders to celibacy, and religious Superiors can command subjects those things which pertain to the observance of their state or rule.

VI. Necessary or at least very useful for the common good. It is required that a law yield to the common good, because legislative power has been granted for the good of the community. It is required that it be necessary or very useful for the common good, because otherwise a proportionate cause for restricting the liberty and rights of subjects is lacking, and all the more because Authority of itself is bound to protect rather than restrict the rights of subjects.

Note. A law does not affect past acts, neither as regards fault, as is clear, nor as regards invalidation and penalty,[23] unless this is expressly signified (can. 10). Hence the saying: the law does not look backward. Moreover, as regards penalty, it is required that it be ordinary; for an extraordinary penalty has no proportion with an act which was placed at a time when the penalty could not have been foreseen. A comprehensive declaration declares that past acts were affected by an earlier law, but it does not itself affect them.

[1] Thus, for example, Sylvius, *Comm. in S. Theol.*, I-II, q. 91, a. 4; Ballerini-Palmieri, *Op. Theol.*, I, *De legibus*, n. 332; Noldin, *Theol. mor. de legibus*, n. 314; Bouquillon, *Theol. mor. fund.*, n. 114; Forstmann, *Theol. Mor. Gen.*, n. 81, and others.

[2] Matt. 16:19.

[3] Cap. 34 X, *De simonia*, V, 3.

[4] *Ritus celebrandi Missam*, X, 4.

[5] *De legibus*, bk. IV, cc. 12-13.

[6] *De virtute fidei divinae*, disp. 23, sect. 1, nn. 6, 10.

[7] *De legibus*, diss. 4, a. 1.

[8] *De Synodo Dioecesana*, bk. 9, c. 4, n. 4.

[9] Denzinger-Bannwart, n. 1756.

[10] Denzinger-Bannwart, n. 1757.

[11] Alexander VIII, *Inter multiplices*, August 4, 1690; Clement XI, *Nova semper*, November 29, 1714; *Accepimus nuper*, January 11, 1715; *Alias ad apostolatus*, October 23, 1711; Pius VI, *Auctorem fidei*, August 20, 1794; Leo XIII, *Sapientiae christianae*, January 10, 1890; *Immortale Dei*, November 1, 1885; *Libertas*, June 20, 1888; Pius XI, *Quadragesimo anno*, May 15, 1931.

[12] Those things are called mixed which tend directly both to a spiritual end and to a temporal end, so that in them there are two elements which are so joined that they have a different juridical status.

[13] Council of Trent, sess. 24, *De reformatione matrimonii*, canon 12; Pius VI, *Auctorem fidei*, August 28, 1794; Leo XIII, *Arcanum*, February 10, 1880.

[14] Council of Trent, sess. 12, c. 8†; sess. 23, c. 4, canon 7; Pius IX, *Tuas libenter* to the Archbishop of Munich, December 21, 1863.

[15] Those things are called temporal which tend directly to the temporal end alone, such as agriculture, commerce, etc.

[16] Denzinger-Bannwart, n. 1724.

[17] May 15, 1931.

[18] Cf. Bouix, *De Papa*, t. III, p. 4, sect. 3.

[19] Encyclical *Quartus supra*, January 6, 1873.

[20] Encyclicals *Immortale Dei*, November 1, 1885; *Diuturnum illud*, June 29, 1881; *Sapientiae christianae*, January 10, 1889; *Libertas*, June 20, 1880.

[21] *Acta Pii X*, t. III, p. 213.

[22] "In this there is a great difference between God and man, that God can command some things impossible to nature, because He can make them possible through grace, which He does not deny, as far as concerns Himself, insofar as it is necessary for the observation of precepts; and therefore the precept of God is always about a possible thing" (Suarez, bk. 1, c. 9, n. 16).

[23] Civil laws agree.

Article V. On the Subject (Subject-Person) of Law

118 Subjection to law is distinguished as twofold, namely, subjection in first act and subjection in second act, according as the one subject to the law is ignorant of the law or knows it. One who, while ignorant or inattentive, transgresses a law to which he is subject sins materially; one who violates a known and actually obliging law sins formally. Our discussion is about subjection in first act. And first we shall set forth some notions necessary to know; then we shall speak of the subjects of law generally, then of some subjects specifically; finally, we shall investigate how far it is licit to withdraw oneself from the dominion of law, or to place causes exempting from it.

§ I. On Preliminary Notions

The preliminary notions to be presented here are contained chiefly in book 2 of the Code, which is entitled *On Persons*.

119 **I. Christian.** By Baptism a human being is constituted a person in the Church of Christ with all the rights and duties of Christians, unless, as regards rights, there stands in the way an obstacle impeding the bond of ecclesiastical communion, or a censure imposed by the Church (can. 87).

120 **II. Major, minor, infant.**

1. A person who has completed the twenty-first year of age is a major (can. 88, § 1).
2. One who has not yet completed the twenty-first year of age is a minor (can. cit.). A minor, if male, is considered pubescent from the completed fourteenth year; if female, from the completed twelfth year (can. 88, § 2).
3. One who is impubescent, before the full seventh year, is called an infant, or child, or little one, and is considered not master of himself; but when the seventh year has been completed, he is presumed to have the use of reason. All who are habitually destitute of the use of reason are assimilated to an infant (can. 88, § 3).

121 **III. Inhabitant, temporary resident, traveler.** A person is called an inhabitant in the place where he has domicile; a temporary resident, in the place where he has quasi-domicile; a traveler, if he is staying outside the domicile and quasi-domicile which he still retains; a vagus, if he nowhere has domicile or quasi-domicile (can. 91).

122 **IV. Place of origin.** The place of origin of a child, even a neophyte, is that in which, when the child was born, the father had domicile, or, in the absence of domicile, quasi-domicile; or, if the child is illegitimate or posthumous, the mother had it (can. 90, § 1). If there is question of a child of vagi, the place of origin is the very place of birth; if of an exposed child, it is the place in which he was found (can. 90, § 2).

123 **V. Domicile, quasi-domicile.** These imply a certain stable residence in some territory, and are distinguished: 1. into proper or voluntary, and legal or necessary, according as it is constituted by personal residence or by the residence of another; 2. into parochial and diocesan, according as it is had in a parish or quasi-parish, or in a diocese, vicariate, or prefecture, but not in a parish or quasi-parish (can. 93, § 1). These things noted, let there be:

1. **Acquisition of domicile and quasi-domicile:**

a) Proper domicile is acquired by residence in some parish or quasi-parish, or at least in a diocese, apostolic vicariate, or apostolic prefecture; and this residence is either joined with the intention of remaining there perpetually, if nothing calls one away from it, or has been prolonged to a completed ten years (can. 92, § 1). Therefore proper domicile is acquired: 1. when both the fact of residence and the intention described are simultaneously present; 2. by the very fact that someone has resided somewhere for ten completed years. The intention of remaining perpetually can be evident both from the declaration of the inhabitant and from facts disclosing the intention, for example, from the transfer of family, the transfer of the greater part of goods, etc.

b) Proper quasi-domicile is acquired by residence as above, which is either joined with the intention of remaining there at least for the greater part of the year, if nothing calls one away from it, or has actually been prolonged to the greater part of the year (can. 92, § 2), that is, as the Instruction of the Holy Office[1] signified, for at least six months. Therefore quasi-domicile is acquired: 1. as soon as both things concur simultaneously, namely, both the fact of residence and the described intention; 2. by the very fact that someone has resided somewhere for the greater part of the year.

c) As regards legal domicile, these things hold: "A wife not legitimately separated from her husband necessarily retains the domicile of her husband; an insane person, the domicile of the curator; a minor, the domicile of the one to whose power he is subject" (can. 93, § 1). A professed religious acquires domicile in the place of the religious house to which he is ascribed.

Note. A minor who has passed beyond infancy can obtain proper quasi-domicile; likewise a wife not legitimately separated from her husband can obtain it, and one legitimately separated can obtain even domicile (can. 93, § 2). A wife maliciously deserted by her husband cannot obtain a proper and distinct domicile unless she has obtained perpetual separation, or separation for an indefinite time, from an ecclesiastical judge.[2]

2. **Effects of domicile and quasi-domicile:**

a) By either domicile or quasi-domicile each person obtains his own pastor and Ordinary (can. 94, § 1).

b) The proper pastor or Ordinary of a vagus is the pastor or Ordinary of the place in which the vagus is actually residing (can. 94, § 2).

c) Of those also who have only diocesan domicile or quasi-domicile, the proper pastor is the pastor of the place in which they are actually residing (can. 94, § 3).

3. **Loss of domicile and quasi-domicile:** domicile and quasi-domicile are lost by departure from the place with the intention of not returning (can. 95).

These things suffice here; more in the treatise on marriage.

[1] June 7, 1867.

[2] Commission for the Interpretation of the Code, July 14, 1922 (*A.A.S.* 1922, p. 526).

§ II. On the Subjects of Law Generally

124 **I. All human beings are subject to the natural law,** even infants and the perpetually insane. The reason is that the natural law is founded in human nature itself (n. 81). Hence neither infants nor the perpetually insane may be induced to violate the natural law[1] (St. Alphonsus, I, 153).

[1] There are, nevertheless, acts which, when placed by infants or by the perpetually insane, or by those who lack reason only actually, for example by the drunk, lose their objective disorder, such as insulting words (St. Alphonsus, V, 78). Nevertheless, it is difficult to determine precisely which acts ought to be referred to this class.

125 **II. To the law of nations,** insofar as it is said to pertain to the law of nature (n. 92), the same persons are subject who are subject to the law of nature. Insofar as it is said to differ from the law of nature (n. 92), all are subject to it to whom the matter of that law, that is, of the law of nations, pertains, not only inferiors but also governors. The reason is that this law, as introduced by the consent of all nations, is superior to the governors of individual kingdoms.

126 **III. In order that someone be subject to positive law,** it is required that he be the subject of the respective legislator, and, if there is question of human law, that he habitually enjoy the use of reason. I said:

1. That he be the subject of the respective legislator, that is, that he be subject to his jurisdiction in such matter.
2. That, if there is question of human law, he habitually enjoy the use of reason. Namely:

a) The divine legislator can bind all, at least in first act, and, as authors commonly seem to teach, He has in fact bound all.

b) A legislator lower than God is not considered to have received the power of binding, not even in first act, those human beings who cannot know the law and be directed by it. Therefore infants and the perpetually insane are excluded; but not the half-witted or those who have lucid intervals, nor those who lack the use of reason only actually, such as the drunk or sleeping. One who induces these latter, for example a drunk man, to violate positive law does not of itself commit the sin of scandal, because the drunk man lacks formal fault, but he sins against the law to whose material transgression he incites him. Moreover, observe that a perpetually insane person, although he is not subject to the directive obligation of law, nevertheless participates in the rights and other effects of laws. Thus, for example, their acts, that is, acts placed in their name by a guardian, can be invalidated, etc.

Corollary I. All human beings are subject to universal divine positive law. Hence Christ declares: "Going, teach all nations... teaching them to observe all things whatsoever I have commanded you."[1]

Corollary II. All baptized persons habitually enjoying the use of reason are subject to universal ecclesiastical law (cf. can. 12). So, at least generally.

Therefore unbelievers are excluded, as those who are not subject to the jurisdiction of the Church. Hence the Apostle says: "What is it to me to judge those who are outside?"[2] Therefore it is licit, for example, to set meat before the aforesaid persons on days of abstinence.

I said: so, at least generally; for 1. concerning some, certain special things must be noted, which we shall do in § III; 2. concerning subjects of the Eastern Church, can. 1 is to be observed: although in the

Code of Canon Law the discipline of the Eastern Church also is often referred to, nevertheless the Code regards only the Latin Church and does not oblige the Eastern Church, unless there is question of those things which from the very nature of the matter affect the Eastern Church also.

Corollary III. To a particular law, whether ecclesiastical or civil, there are subject those who habitually enjoy the use of reason and, if there is question of a law established for a territorial community,[3] are both of the territory and in the territory, with the prescription of can. 14 remaining firm. I said:

1. They are of the territory; in other words, it is required that they have domicile or quasi-domicile in the territory of the community. This condition, if there is question of an inferior legislator, for example of a bishop, is necessary, because only through domicile or quasi-domicile is someone constituted a subject of an inferior legislator placed over a territorial community (can. 94). But if the Supreme Pontiff imposes a law on a community of this sort, he is presumed to bind only those who are subjects of the governor of that community, and therefore have domicile or quasi-domicile in his territory.
2. They are in the territory; in other words, it is required that they actually dwell in the territory of the community, namely, a territorial law does not affect subjects except by means of the territory. And this holds also as regards those who have gone out of the territory in fraud of the law, as it is said, that is, for the purpose of being exempted from the law.
3. With the prescription of can. 14 remaining firm, which canon concerns travelers and vagi; considering that canon, some are at times held by territorial law, although they are not in the territory or lack domicile or quasi-domicile in it (n. 131).

[1] Matt. 28:19-20.

[2] 1 Cor. 5:12.

[3] For example, for a diocese.

§ III. On Some Subjects of Law Specifically

127 **I. Those not yet seven years old,** although they have obtained the use of reason, are not held to ecclesiastical laws, unless something else is expressly provided by law (can. 12). That is, the legislator attends to those things which happen commonly. Moreover, children for the most part lack sufficient use of reason before the completed seventh year (St. Alphonsus, III, 270). I said: unless something else is expressly provided by law; moreover, something else is provided as regards the law of annual confession and communion (can. 859, § 1, and 906).

In doubt whether an impubescent person enjoys sufficient use of reason, before the completed seventh year he is presumed not to enjoy it; after the completed seventh year he is presumed to enjoy it (can. 88, § 3; St. Alphonsus, III, 270). Nevertheless, children who act against the law often seem not to sin mortally because of a defect of sufficient deliberation.

128 **II. The legislator is held by his own law in this way:**

1. If he is a member of a legislative college, he is held by the laws of the college equally with the other subjects. The reason is that he is subject to the legislative college. The case obtains in the aristocratic, oligarchic, democratic, and constitutional-monarchical form of government. The same holds as regards bishops with respect to laws which have been passed by a general or provincial Council.

2. If he is an absolutely monarchical legislator,[1] according to all he is held by laws which befit him; but it is disputed whether he is held immediately by his own law, or only by uprightness, by which he ought equally with others to conduce to the common good and to conform himself to others. Some deny that he is immediately held by his own law, because legislative power carries with it coercive power; but the legislator cannot be coerced, for no one is properly coerced by himself. Others affirm it, because the legislator, as a member of society, is subject to himself as superior of society; hence the law affects him equally with others, insofar as it can affect him, that is, as regards directive force (cf. St. Thomas, I-II, q. 96, a. 5, ad 3; St. Alphonsus, I, 154).

Corollary. If the legislator is immediately held by his own law, his obligation is as great as that of the other subjects; if he is held from uprightness alone, of itself he sins only lightly. Nevertheless, by accident he can sin gravely, for example, by reason of grave scandal (cf. St. Alphonsus, loc. cit.).

[1] Such is the Supreme Pontiff, a bishop in his own diocese, and an autocratic monarch in the civil state.

129 **III. Heretics** who have passed from the Catholic faith to heresy are held by ecclesiastical laws equally with Catholics. Other heretics, by the consent of all, are held, unless they are expressly exempted,[1] to laws which regard public order, of which sort are, for example, laws which establish impediments of marriage; likewise, according to some, the law of abstaining from servile work on Sundays and feast days. But there is dispute concerning laws which are proximately ordered to the sanctification of souls, such as the law of fasting, abstinence, etc. Yet it seems it must be said that heretics are bound also by the aforesaid laws. For: 1. the Supreme Pontiffs have on repeated occasions declared that "heretics are held by laws," no exception having been added. Thus, for example, Benedict XIV[2] and Pius VII;[3] 2. the responses of the Sacred Congregation de Propaganda Fide[4] manifestly favor this doctrine; 3. the sources of law, whether ancient or new, furnish no foundation for this exception. Indeed, the new Code does not even indicate that exception in can. 12, by which the persons not bound by ecclesiastical laws are enumerated; moreover, canons 87 and 1254 favor our opinion according to their obvious sense. 4. Finally, the reason of the adversaries, namely that those laws are not observed by heretics, also holds for laws which regard public order, at least for many of them. Indeed, there is a graver reason for exempting heretics from the latter laws, since these multiply not only material sins but also acts, especially invalid marriages.

Note. A reason for cooperating in the transgression of an ecclesiastical law is more easily present if there is question of heretics than if there is question of Catholics, because the former for the most part sin only materially.

[1] When this happens will be explained in its own place; cf. the treatise on Matrimony.

[2] Brief *Singulari nobis*, February 9, 1749.

[3] Brief *Tridentina Synodus*, October 8, 1803.

[4] June 26, 1820 (*Collectanea*, nn. 747 and 748).

130 **IV. Whether and how far the doubtfully baptized are held by the laws of the Church** is sharply disputed.[1] Furthermore:

1. If the fact of Baptism is certain, but its validity is doubtful, they seem to be held by ecclesiastical laws. For order requires that every human being, even in some way in religious matters, for example as regards impediments of marriage, be able to be ruled unto some worship of God by some society, and this by native or devolutive right, as it is called. But it seems especially normal

that he can be ruled by the society to which he was ascribed by an external rite, until that rite is proved invalid, indeed publicly proved.[2]

2. If the very fact of Baptism is doubtful, it is difficult to determine by whom the doubtfully baptized person can be ruled in religious matters: whether, at least in some way, by civil society, because the fact is not presumed but must be proved; or by the Church, whose right perhaps prevails in every doubt.

[1] Cf. Lehmkuhl, II, n. 426; Aertnys-Damen, I, n. 148; Genicot, II, n. 448, note; Straub, *De Ecclesia Christi*, II, n. 1307, note.

[2] Cf. Holy Office, February 4, 1891.

131 **V. Travelers and vagi.** Considering can. 14:

1. **Travelers:**

a) They are held by the general laws of the Church, even by those which do not have force in their own territory by reason of abrogation or dispensation. Likewise they are held by laws established by a provincial or national Council, provided that they are staying in the territory of the province or nation.

b) Generally, they are not held by the particular laws of their own territory, from which they are absent; and this holds even if they departed with the intention of being exempted from the law. The reason is that they are not in the territory of the law (n. 125, VI; St. Alphonsus, I, 157). I said generally, because they are held by laws whose transgression does harm in their own territory. Thus, for example, a pastor who is illegitimately absent and omits those things which he ought to perform by office in his own territory becomes a transgressor of the law.

c) Generally, they are not held by the particular laws of the territory in which they are staying. The reason is that they are not of the territory of the law (n. 126, VI; St. Alphonsus, I, 156). The doctrine handed down holds also in the case in which the particular law has force both in the territory in which the traveler is staying and in his own territory. The reason is that in the supposed hypothesis the traveler is not held to observe the law of the place in which he is staying: neither by force of the law having force in his own territory, since he is outside that territory; nor by force of the law having force in the foreign territory, since he is not of the foreign territory. I said generally, because they are held by laws "which provide for public order or determine the solemnities of acts" (can. 14, § 1, 2°). Considering these words of the cited canon, and the particular dispositions of the Code or other dispositions, travelers are held by laws:

alpha) Which determine the solemnities of acts, for example, contracts, including transactions and testaments (cf. can. 1529, 1301, 1926).

beta) Which regulate external order, for example, as regards places in churches and processions.

gamma) Which have been made for travelers as such.

delta) Which regard the reservation of sins (can. 893, compared with the response of the Commission for the Interpretation of the Code),[1] or approved customs as regards the quantity and quality of foods on days of fasting and abstinence (can. 1251, § 1, compared with the Sacred Congregation of the Council), or a local interdict (can. 2269, § 2), or the license of celebrating, or celebret as it is called (can. 804, § 3), or certain rubrics in force in the territory, for example, the calendar to be followed, the prayer commanded.

Note. Nevertheless, as regards liturgical laws, can. 2 is to be noted: "The Code, for the most part, decrees nothing concerning the rites and ceremonies which the liturgical books, approved by the Latin Church, prescribe to be observed in the celebration of the Sacraments and sacramentals and in the performance of other sacred things. Wherefore all liturgical laws retain their force, unless some one of them is expressly corrected in the Code." Hence, for example, a law or precept by which the bishop of the place has prescribed a collect must be observed by all celebrating there, both regulars and seculars (S.R.C., April 3, 1821, n. 2613; March 5, 1898, n. 3985). Note also that in the Canon of the Mass the name of the bishop of the place must be named.

epsilon) Finally, they are held by accident to observe laws if the avoidance of scandal requires this. Indeed, the Sacred Congregation of the Council, in circular letters[2] concerning priests staying in the countryside outside the diocese, established: "The Ordinaries of places to which priests are accustomed to betake themselves for reasons of health... should establish suitable penalties by which they will be affected if they give scandal... They can also threaten suspension to be incurred by the very fact, if they go to public theaters, cinemas..." (n. 6).

d) They are held to either one if a universal law has been modified in the territory in which they are staying, that is, they are held either to the universal law as it has force of itself, or to the modified law. This is deduced from a response of the Holy Office to the question: "Whether and on what day, in the time of Lent, travelers are held to observe the Saturday abstinence in places where, by a special disposition of the Holy See, the same abstinence must be observed on Wednesday"; the response was: "They are held on either day at will, scandal however being removed."[3]

e) They can use the privileges and dispensations, for example from the law of fasting, of the place in which they are staying; but they cannot use privileges or dispensations which perhaps have force in their own territory.

2. **Vagi** are obliged by both general and particular laws which have force in the place in which they are staying (can. 14, § 2).
3. **Travelers and vagi** are everywhere held by personal precepts which have been imposed upon them, unless the superior does not wish, or even, which has place in some orders in some cases, cannot oblige outside the convent or convents.

Corollary I. One who, in the case in which a universal law has been affixed in different places to different days, twice stays in a place where the law is observed, scandal excluded, satisfies by fulfilling the law once; for this must be considered the mind of the Church. Hence one who, for example, fasted on the vigil of the feast of Saints Peter and Paul is not held to fast again in a territory where the obligation of fasting has been transferred to the following Saturday.[4]

Corollary II. One who, in the hypothesis just supposed, never stays in a place where the law is observed, scandal excluded, seems immune from the observation of the law, since it does not urge in the place where he is actually staying.[5] There is added the fact that, if this solution were rejected, he would have to observe the law on the day on which the inhabitants of the place in which he is staying would not be held to it; this is not considered to be required by the Church. Nor does it seem that one who acted thus deliberately is to be excepted.

Corollary III. One who is in the place of domicile where a particular feast is celebrated is not held before departure to assist at Mass, provided that he has arrived at a place where the law does not have

force before the only Mass, or, if several Masses are celebrated, the last Mass, has begun in the place of domicile. Nor object: if several Masses occur and one of them is celebrated before departure, he ought to assist at this one, because one who foresees an impediment to fulfilling an obligation is bound to anticipate it. For that is true only when someone foresees that he will be impeded while he remains subject to the law; this does not obtain in our case (St. Alphonsus, I, 157, 157, 6°).

[1] November 20, 1920 (*A.A.S.* 1920, p. 575).

[2] November 15, 1924.

[3] Holy Office, February 9, 1924 (*A.A.S.* 1924, p. 94).

[4] Cf. Beyersbergen in *N. K. St.*, 1931, p. 80.

[5] July 1, 1926 (*A.A.S.* 1926, p. 312).

132 **VI. Religious,** insofar as they are subject to the laws of the local Ordinary, see in the treatise on the duties of religious (cf. can. 615 and 618, § 1).

Scholion. On the Subjects of Civil Law

133 **I. A citizen present in the territory of his own kingdom,** and this also holds for a naturalized citizen, as it is called, is held by the just laws of his own kingdom which regard him; likewise by the laws of a foreign kingdom which regard goods possessed there.

II. A citizen staying in foreign territory: 1. is held only by those laws of his own kingdom which regard his duties, burdens, and goods in his own territory; 2. is bound by those laws of the foreign kingdom which regard public order, the punishment of delicts, and goods possessed there. Princes, however, and their legates staying in foreign territory are immune from the laws of that territory by international law; nevertheless, equally with private persons, they are subject to the very decrees of the law of nations or international law, unless they are expressly exempted.[1]

[1] Sweens, *Theol. mor. fund.*, 3rd ed., n. 409; Aertnys-Damen, *Theol. mor.*, 11th ed., I, n. 153.

134 **III. Clerics** are not subject to laws which are opposed to their privileges. Furthermore: 1. all clerics are immune from military service, and from public civil duties and offices foreign to the clerical state (can. 121); 2. for clerics who are compelled to satisfy creditors, those things which, according to the judgment of a prudent ecclesiastical judge, are necessary for their support are to be preserved, while nevertheless their obligation of satisfying creditors as soon as possible remains firm (can. 122); 3. how far they can be summoned before a lay judge is established by can. 120, and will be explained in the treatise on the duties of judges. But as regards immunity from tax laws, which clerics once enjoyed, the Church seems to have tacitly renounced this as regards common taxes, that is, as regards burdens either personal or imposed on the private goods of clerics, even those which come to them from a benefice or office. Indeed, the same today, at least in most states, holds for burdens imposed on ecclesiastical goods, that is, on goods which pertain not to the private dominion of clerics but to the dominion of the Church.

What has been said about clerics holds also concerning religious, even lay religious and novices (can. 614), and likewise concerning societies, whether of men or women, living in common without vows according to the norm of can. 673 (can. 680).

135 **IV. The Pontiff** is plainly immune from civil jurisdiction. For to the head of a supreme perfect society there belongs the immunity which is necessary for the exercise of his office. But such is

immunity from civil jurisdiction. For, if civil jurisdiction over him were admitted, he could also unwillingly be judged and punished by civil authority, and this for the same reason as other subjects. But the right of punishing the Supreme Pontiff for the same reason as other subjects, for example by imprisoning him, driving him into exile, etc., cannot be reconciled with the exercise of his office. There is added the fact that the Supreme Pontiff declares himself immune from civil jurisdiction, and exempts others from subjection to civil authority;[1] one who is antecedently subject cannot do this. The Pope cannot truly renounce this immunity, although its exercise can be moderated according to circumstances.

[1] Cf. Wernz, *Ius Decret.*, t. III, n. 146; Dirckx in *N. Kath. Stemmen*, 1903, p. 100 sq.; Laurentius, *Instit. Iur. eccl.*, n. 1099.

§ IV. On Placing a Cause Exempting from Subjection

136 A cause exempting is said to be one which withdraws someone from the domain of the law, as if someone goes out from the territory of the law, or renounces the community for which the law was made. Now it is licit to place, or not to remove, a cause exempting from the law, and this even directly, that is, with the intention that the obligation be escaped. For a law generally does not command that someone remain a subject, but only that, as long as he is a subject, he fulfill the law (St. Alphonsus, I, 152, 157).[1] I said generally,[2] because civil law forbids soldiers, and indeed deservedly by right, to desert the standards.

[1] c. 49, 53, X, V, 39.

[2] As we shall note in its own place, the ecclesiastical discipline has now been changed which formerly, in some matters, forbade one to betake himself into another region so that the obligation of the law might be escaped.

Article VI. On the Interpretation of Law

Interpretation is distinguished as twofold: properly so called, and improperly so called, or epikeia. Hence:

§ I. On Interpretation Properly So Called

137 **I. Notion.** Interpretation properly so called is the explanation of the words of a law with respect to the sense which they have according to the intention of the legislator. But the word "interpretation" is commonly taken in a broader sense, so that it also includes those declarations which extend or restrict the law, rather than interpret it; this will be clearer from what is to be said.

138 **II. Division.** Interpretation properly so called is divided:

1. **By reason of the author,** into authentic, usual, and doctrinal. Authentic is that which proceeds from the legislator himself (or his superior or successor), or from him to whom the faculty of interpreting the law has been delegated (can. 17, § 1). Usual is that which is made through the usage or custom of the people. Doctrinal is that which is handed down by learned men or experts in law (St. Alphonsus, I, 200).

Authentic interpretation can be made by way of law and by way of judicial sentence or rescript in a particular matter (can. 17, §§ 2 and 3), according as it formally explains the law and therefore regards the whole community, or applies it to a particular case or person. The latter, however, as is clear, are not interpretations properly so called, but applications of the law, although applications of this sort are apt to induce an interpretation of the law, as we shall say immediately.

2. **By reason of scope,** into comprehensive, extensive, and restrictive. Comprehensive is that which does not depart from the proper or usual signification of the words. Extensive is that which extends the law to more cases or persons than the proper signification of the words permits. Restrictive is that which restricts the law to fewer cases or persons than is permitted by the proper signification of the words. Comprehensive interpretation is distinguished into declarative and explicative, according as it merely declares words of the law which are certain in themselves, or explains a doubtful law (cf. can. 17, § 2).

139 **III. Author of authentic interpretation.** Laws are authentically interpreted by the legislator or his successor, and by him to whom the power of interpreting has been committed by the same (can. 17, § 1). Therefore:

1. The Supreme Pontiff can authentically interpret by way of law: first, his own laws; second, all other laws, whether passed by an Ecumenical Council, by a particular Council, by a Bishop, or by chapters of regulars. Moreover, he can interpret also divine law itself, both natural and positive.

2. A Bishop can authentically interpret by way of law the laws made by himself or by his predecessor, whether within or outside a Synod; but not, of himself, the laws of a national or provincial Council, since a Council is superior to a Bishop. I said "of himself," because Councils sometimes grant the faculty of interpreting to the Metropolitan, either alone or with the consent of the suffragans, with the authority of the Apostolic See always preserved.

3. Sacred Congregations, just as they lack the power of making laws (n. 109), so also are without the power of interpreting them authentically by way of law, without pontifical approval (can. 244, § 2).

4. **The Commission for Authentically Interpreting the Canons of the Code.** This commission was established by Benedict XV by the Motu proprio of September 15, 1917,[1] and to it "alone will belong the right of authentically interpreting the canons of the Code, after hearing, however, in matters of greater importance, that Sacred Congregation whose proper matter is the subject proposed for discussion by the Council."

Furthermore note that doubts which are of lesser importance or do not have much difficulty can be resolved by the Most Eminent President of the Commission.[2]

5. In religious orders, generally only general chapters possess the faculty of authentically interpreting rules by way of law, provided those rules have the force of law independently of pontifical approval.

6. The faculty of authentically interpreting laws by way of judicial sentence or rescript in a particular matter belongs both to Sacred Congregations and to Tribunals, and to other ecclesiastical judges (cf. can. 244, § 2). Sometimes, however, even in these cases, by reason of the importance of the matter in question, pontifical approval is sought. In addition, akin to the faculty of authentically interpreting law by way of judicial sentence is the faculty belonging to every Superior who must apply the law and bind the parties.

[1] *A.A.S.* 1917, p. 483.

[2] Commission for the Interpretation of the Code, December 9, 1917 (*A.A.S.* 1918, p. 77).

140 **IV. Force of interpretations.** 1. Authentic interpretation set forth by way of law (n. 139) has the same force as the law itself; and if it merely declares words of the law which are certain in themselves,

it does not need promulgation and has retroactive force; if it narrows or extends the law, or explains a doubtful law, it is not retroactive and must be promulgated (can. 17, § 2). It is said:

a) **If it merely declares words of the law which are certain in themselves, it does not need promulgation.** For in this case the law is objectively clear enough, so that the interpretation at most removes a subjective doubt.

b) **And it has retroactive force;** that is, the law was in force from the beginning in that sense which the interpretation sets forth.

c) **If it narrows or extends the law, or explains a doubtful law, it is not retroactive and must be promulgated.** It is not retroactive, that is, the law is in force, not from the beginning, but only from the time at which the interpretation was made, in the sense set forth by the interpretation. And it must be promulgated. That promulgation is necessary, if there is question of a narrowing or extending interpretation, follows from the fact that the former abrogates something of an existing right, while the latter adds some new right. It used to be disputed whether the same could be said of a comprehensive interpretation which explains a truly doubtful law, understand: objectively or publicly doubtful, or such that it is deservedly called into doubt as regards that sense. That controversy now is no longer practical, since for the future promulgation is necessary at least by the disposition of the legislator.

2. Authentic interpretation given by way of judicial sentence or rescript in a particular matter does not have the force of law and binds only the persons and affects only the matters for which it was given (can. 17, § 3). This, however, does not prevent forensic usage and the style of the Curia from being able to arise from repeated judicial decisions of tribunals, which, with the consent of the legislator acceding, receive the force of law.

3. Usual interpretation is equivalent to authentic interpretation set forth by way of law, if the usage or custom has been legitimately prescribed. A custom not yet prescribed should rather be referred to doctrinal interpretation, and is to be greatly valued, according to that saying: "Custom is the best interpreter of laws" (can. 29; St. Alphonsus, I, 108).

4. Doctrinal interpretation has only as much value as the reasons brought forward by learned men and their authority. But if the doctors agree, moral certainty concerning the sense of the law will generally be had.

141 **V. Rules of interpretation.** For authentic interpretation, which proceeds from legislative power, no rules are assigned. In usual interpretation, the doctrine on custom should be kept before one's eyes (n. 19). For doctrinal interpretation the following rules are handed down.

1. Ecclesiastical laws are to be understood according to the proper signification of the words considered in the text and context; if this has remained doubtful and obscure, recourse must be had to parallel places of the Code, if there are any, to the end and circumstances of the law, and to the mind of the legislator (can. 18). It is said: the proper signification of the words; understand either the natural signification, or the legal signification, that is, that established by law, which legal signification is sometimes different from the natural one.

2. Laws which establish a penalty, or restrict the free exercise of rights, or contain an exception from the law, are subject to strict interpretation (can. 19).

3. If there is lacking an express prescription of law, whether general or particular, concerning a certain matter, the norm is to be taken, unless there is question of applying penalties, from laws passed in similar matters; from general principles of law observed with canonical equity; from the style and practice of the Roman Curia; and from the common and constant opinion of doctors (can. 20).

§ II. On Interpretation Improperly So Called, or Epikeia

142 **I. Notion of epikeia.** Epikeia (Greek *epieikeia*, equity) is a benign interpretation of the mind of the legislator, by which it is presumed that a general law does not include some particular case, although, strictly speaking, it could have included it in the law (St. Alphonsus, I, 201). I said: although it could have included it in the law. Therefore there is no place for epikeia properly so called if the observance of the law, because of special circumstances, becomes evil or morally impossible. Nevertheless the word "epikeia" is often taken more broadly, so that not rarely the latter cases too are referred to it (cf. St. Thomas, II-II, q. 120, a. 1; St. Alphonsus, loc. cit.); this will be clearer from what is to be said under III.

Epikeia differs from interpretation properly so called; for the latter follows the sense of the words, while epikeia follows the mind of the legislator.

143 **II. Laws which admit epikeia.** 1. Natural law does not admit epikeia properly so called. Those things which are sometimes declared from epikeia, for example, the killing of an unjust aggressor, etc., should rather be called applications of the natural law rightly understood (n. 86).

2. Whether divine positive law admits epikeia properly so called is disputed. Many deny it, because epikeia regards cases not foreseen. But the divine legislator foresaw all cases. Yet epikeia can also regard cases foreseen, although they have not been expressed in order to avoid prolixity.

3. Human law, by the consent of all, admits epikeia properly so called. The reason is that such rigor cannot be presumed in the legislator that the law must be considered to extend to absolutely all cases to which, strictly speaking, he could have extended it. Nor is it clear, which is what many think, why this ought to be denied concerning an invalidating law. Nevertheless the common good entirely requires that, in such a law, epikeia not be admitted except in a wholly extraordinary case; this we shall explain more fully in its own place.

144 **III. Use of epikeia.** 1. Taking the word "epikeia" in the broader sense, it is licit to use it: first, if the law cannot be observed without sin; hence a deposited sword must be retained if its owner is going to abuse it; second, if the observance of the law becomes morally impossible. Hence one is excused from hearing Mass who fears a notable loss of goods (St. Alphonsus, I, 201; St. Thomas, II-II, q. 120, a. 1); third, if the observance of the law is neither sinful nor morally impossible, so that the law indeed could have been extended to such a case, but it is prudently presumed that this is alien to the benign mind of the legislator. Hence, for example, "one is excused from the observance of a feast who otherwise is compelled to lose a great profit" (St. Alphonsus, loc. cit.). Moreover, only in the last case is there epikeia properly so called.

2. In order that someone licitly use epikeia properly so called, the Superior, if this can conveniently be done, must be approached. The reason is that he could have included the case in the law, although it is presumed that he did not include it; hence, if possible, the truth should be inquired into (cf. St. Thomas, I-II, q. 96, a. 6, ad 2).

Question. What is the presumed license of acting against the law, and when is it licit to use a license of this sort?

Response I. The license about which the question is asked consists in this: that someone presumes that the legislator, in some case, does not urge the observance of the law, although, strictly speaking, he could urge it. Therefore it differs from epikeia, which presumes that such a case is not included in the law, while the license described presumes that the observance of the law is not urged, although the case is included in the law and there is no cause excusing from observance of itself.

Response II. In order that it be licit to use the aforesaid license, there is required: first, that there not be question of an act whose validity depends upon actual license, of which sort is, for example, the hearing of confessions; second, that the superior be prudently presumed to be going to grant the license if he were asked; third, that the license cannot conveniently be sought. The second and third conditions are required lest dependence upon superiors and observance of laws suffer detriment (St. Alphonsus, IV, 18).

Article VII. On the Effect, or on the Obligation, of Law

We shall speak first of the obligation of law generally, then of the obligation of certain laws specifically, then of the fulfillment of obligation, and finally of the causes excusing from obligation.

§ I. On the Obligation of Law Generally

145 **I. Notion of obligation.** Obligation is a moral necessity of doing, omitting, or undergoing something. A twofold obligation is distinguished: obligation in first act and obligation in second act, according as the obligation is unknown or known.

146 **II. Existence of obligation.** That ecclesiastical laws oblige is of faith.[1] Moreover, this is clear from Sacred Scripture with respect both to ecclesiastical laws[2] and to civil laws;[3] see the testimonies cited in nn. 105 and 112. Besides, if the obligation of law is denied, the very notion of law is destroyed (St. Thomas, I-II, q. 96, a. 4; St. Alphonsus, I, 140). Furthermore every law obliges either immediately, that is, to placing or omitting an act, or at least mediately, that is, to the penalty, if the prohibited act is placed.

But in order that a law oblige, it is not required that the legislator expressly intend obligation, nor that he recognize obligation in conscience; it is enough that he wish to command, or to use his power (n. 162).

Question 1. Whether a law obliges in doubt whether the superior is legitimate.

Response. It must be affirmed, both because peaceful possession seems to bring it about that the doubtful right of the superior prevails over the doubtful liberty of the subject, and because order, that is, peace and tranquillity, requires that in the case the superior be obeyed (St. Alphonsus, I, 98; IV, 47, dub. 2).

Question 2. Whether a law obliges in doubt whether the superior commands something which is illicit or exceeds his power.

Response. It must be affirmed, both because in doubt presumption stands for the superior, and again because order, that is, peace and tranquillity, requires that in the case the superior be obeyed. Except "if the thing commanded is harmful to the subject or to a third party, or very difficult or burdensome"

(St. Alphonsus, I, 98); in which case the reasons on account of which obedience is of itself owed are sufficiently weakened.

[1] Council of Constance (sessions 8 and 15); Council of Trent (session 7, canon 8, on Baptism); bull of Leo X against Luther.

[2] Matt. 18:17; Luke 10:16; Heb. 13:17.

[3] Rom. 13:2, 5; 1 Pet. 2:13.

147 **III. Beginning of obligation.** A law, as soon as it has been promulgated, obliges at least in first act, unless the legislator assigns another time generally or with respect to some special law. Sometimes also the legislator is considered not to urge his law at all. It is said:

1. **As soon as it has been promulgated.** Therefore it is not required that the law be accepted by the subjects; rather, as follows from the very notion of law, it receives the force of obliging from the legislator himself. Hence proposition 28 was rightly condemned by Alexander VII: "The people does not sin, even if without any cause it does not receive a law promulgated by the prince"[1] (St. Alphonsus, I, 138).
2. **At least in first act;** for in order that a law oblige in second act, or subjectively, knowledge of it is required (n. 118). Meanwhile, where the law has been promulgated and the time of obliging established by the legislator has arrived, knowledge is presumed for the external forum.
3. **Unless the legislator assigns another time generally or with respect to some special law.**[2] Furthermore:

a) Laws passed by the Apostolic See, understand preceptive laws, not invalidating laws, exert their force only after three months have been completed from the day which is assigned to the number of the *Acta*, unless by the nature of the matter they bind immediately or, in the law itself, a shorter or longer *vacatio* has been specially and expressly established (can. 9). Now: first, months must be taken as they are in the calendar, for example, from January 10 to February 10 (can. 34, § 3, 1°). Second, the day assigned to the number of the *Acta* must be counted, so that, for example, a law promulgated in the number dated January 10 begins to exert force on April 10, not on April 11 (can. 34, § 3, 2°). Third, if the month in which the law begins to exert force lacks a day of the same number as the month of promulgation contains, the law obtains its effect at the beginning of the last day of the month (can. 34, § 3, 4°). Hence, for example, a law published on March 31 begins to exert force at the beginning of June 30.

I said: understand preceptive laws, not invalidating laws; for the latter obtain their effect by the very fact that they are promulgated, unless a *vacatio* is indicated; generally they urge at once.[3]

b) Episcopal laws begin to oblige immediately from promulgation, unless something else is provided in them; the manner of promulgation, however, is determined by the Bishop himself (can. 355, § 2).

c) Civil laws generally do not oblige except from some time after they have been inserted into the authentic collection.[4]

4. **Sometimes also the legislator is considered not to urge his law,** namely:

a) If the law is opposed to an existing custom unknown to the legislator. Namely, in the case it is licit to have recourse to the legislator and not to observe the law until the will of the legislator has been

manifested. As regards customs which, by the very disposition of law, the legislator does not intend to revoke, compare what is to be said about custom, n. 191, and can. 30.

beta) If the law is not accepted by the greater part of the community. "For although the first non-acceptors sin, if desuetude has not yet prescribed, nevertheless the others are not held to the law; for the prince is presumed not to wish to oblige these to observe what has not been received by the greater part" (St. Alphonsus, I, 139). In doubt whether the law has been received by use, the law obliges, because the fact of non-reception is later than the promulgated law, and therefore the condition of the law is better (St. Alphonsus, I, 97). In practice, however, the doubt does not easily persist.

To what extent a law is abrogated by desuetude is explained in n. 194.

gamma) Finally, nothing prevents a Bishop, who has judged some disciplinary law inopportune for his diocese, from setting forth his reasons to the Supreme Pontiff with due reverence, and meanwhile considering the obligation of the law as suspended from the presumed consent of the legislator. In addition, if the introduction of some new law would move the people to wonder, it seems that an inferior can wait until the Bishop has inculcated its observance.

[1] Denzinger-Bannwart, n. 1128.

[2] The time which runs from promulgation until the beginning of obligation is called *vacatio*.

[3] Sacred Congregation of Religious, July 31, 1909 (*A.A.S.* t. I, p. 699).

[4] In Holland from the twentieth day after the insertion has been made.

148 **IV. Quality, or species, of obligation.** The obligation of a law or precept is the obligation of that virtue from whose motive or formal object the law or precept was passed. The reason is that the species of obligation must be drawn from the species of moral goodness which is intended and imposed by the legislator or preceptor. But the species of moral goodness intended and imposed by the legislator is the same as the motive from which laws or precepts are passed. Hence, for example, the law of the Lenten fast induces an obligation of the virtue of abstinence; the law of the natural fast before Holy Communion induces an obligation of the virtue of religion. Consequently, he who transgresses the former sins against abstinence; he who transgresses the latter sins against religion (St. Alphonsus, V, 33). These things will be clearer once the motives from which diverse laws and precepts are passed have been set forth. Now:

1. Natural laws and positive-divine laws are passed from the motive of that virtue whose moral goodness the act has by its nature; for God is considered to intend this moral goodness. Hence, for example, the act of rendering to someone his strict right obliges from commutative justice.

2. Human laws are considered to have been passed in this way:

a) If the act imposed by its nature has the moral goodness of some virtue, the law is considered to have been passed from the motive of that virtue; for the legislator is deservedly presumed to intend that moral goodness. Nevertheless it can happen that the legislator "draws the act to some other special virtue, or to opposition with some other special virtue" (St. Alphonsus, V, 33); suppose the case in which the Church prohibits, also from the motive of religion, an act unjust by its nature, of which sort is, for example, the sale of a sacred thing for a price greater than the value of the material. Then the seller sins both against justice and against religion (St. Alphonsus, loc. cit.). It can also happen that the

legislator is induced extrinsically or remotely by a motive other than the moral goodness which is in the act to pass the law. Thus, for example, the Church is also led by the motive of religion when she prescribes that a fast be observed before certain feasts. But this does not prevent the legislator, in the precept itself, from regarding only the moral goodness which is in the act; hence one who does not observe a fast of this sort sins against abstinence alone, and not against religion.

b) If the act imposed is indifferent by its nature, it should be gathered from the declaration of the legislator, from the words of the law, or from the circumstances, from the motive of which virtue the law was passed.

Corollary. He who transgresses a law does not sin against obedience, because in fact laws are not passed from the motive of that virtue.

3. By what reason precepts, strictly so called, are passed is difficult to determine. We think it must be said as follows:

a) Parents and masters, considered according to common estimation, are presumed to command from the motive of obedience; and this cannot be denied if there is question of an act which by its nature does not have moral goodness. Hence the transgressor of the precept commits a sin of disobedience; this does not prevent the prohibited matter from also being able to contain an injury of another virtue, for example, chastity.

b) Superiors of religious,[1] considered according to common estimation, are presumed to command from the motive of obedience if they command without addition, and this can scarcely be denied if there is question of an indifferent act; from the motive of religion, if they add: in virtue of obedience, or: in virtue, or by force, of the vow. Nevertheless, as was said about parents, the prohibited matter can also involve an injury of another virtue.

c) A vow obliges from religion alone, unless the thing promised to God is already owed from elsewhere.

Corollary. Although any sin, as we shall note in its own place, involves manifold foulness, such as disobedience, ingratitude, irreverence toward God, etc., nevertheless those foulnesses or malices are not found in the sin according to formal species, because they are not prohibited from the formal motive of obedience, gratitude, reverence, etc. Hence also, which it helps to note specifically because of the singular difficulty, a sin of injustice, for example theft, does not contain the species of sin against charity, because an act of injustice, for example theft, is not prohibited from the motive of charity, but from the motive of justice; for the act of leaving or restoring to each one his own right by its nature involves the moral goodness of justice, not of charity. Likewise a sin against charity, for example scandal, is not opposed to justice, because the act by which someone is for another an occasion of spiritual ruin does not involve the moral evil of injustice.

[1] Cf. Raus, *Obedientia religiosa ut est virtus et votum*.

149 **VI. Quantity of obligation.** 1. The obligation of law is for the most part grave, if there is question of grave matter; it is always light if the matter is light. The reason is that the legislator for the most part intends an obligation corresponding to the matter; indeed, if there is question of light matter, he cannot even impose a grave obligation. For such a power, if it were exercised, would tend to the ruin of subjects, and therefore is not considered to have been granted.

Theoretically, it must be said this way: in order that an obligation be grave, it is required both that the matter be grave and that the legislator intend to oblige under grave sin. Otherwise it is light. It is said first: that the matter be grave; this is so true that the legislator cannot even oblige under grave sin if there is question of matter light in every respect. It is said second: that the legislator intend to oblige under grave sin. The reason is that he can impose grave matter under light sin; for just as it depends on the will of the legislator that an obligation arises, so also it must depend on his will whether a grave or a light one arises. Then it is established that there are Constitutions of Orders which impose grave matter, for example, monastic fasting, only under light sin (St. Alphonsus, I, 143).

2. Grave obligation is recognized:

a) From Sacred Scripture, as if it declares that some sin is hateful to God, or excludes from heaven; if it attaches a woe, etc.

b) From definitions of the Church; yet observe: first, that there are few definitive declarations in this matter; second, that many condemnations easily leave a refuge, insofar as only the contradictory is certainly true.

c) From the consensus of the holy Fathers, since they are authorized interpreters of Tradition.

d) From the consensus of theologians.

e) From the gravity of the terms, that is, from the fact that the legislator uses more severe words, for instance if he says: "We strictly prohibit"; if he commands in virtue of holy obedience, under the protestation of divine judgment, under the indignation of the holy Apostles Peter and Paul. Nevertheless the civil legislator repeatedly uses graver words, for instance: it is most severely prohibited, etc., although the law does not oblige under grave sin, indeed is considered merely penal.

f) From the gravity of the matter; namely, if the matter is grave either by reason of itself or by reason of the end, the superior, unless he declares the contrary, is considered to oblige under grave sin.

g) From the gravity of the penalty, for example, excommunication, irregularity; likewise suspension and interdict, at least if these are total and for a long time. The civil legislator, however, not rarely establishes a grave penalty, although there is question of a law obliging less gravely, or even merely penal (St. Alphonsus, I, 144-146).

Note. Natural law and divine-positive law always oblige under grave sin or under light sin according as the matter is grave or light.

§ II. On the Obligation of Some Laws in Particular

Point I. On Affirmative and Negative Law

150 An affirmative law is one which imposes an act; a negative law, one which prohibits an act. Furthermore a negative law obliges always, insofar as it is never licit to do what is absolutely prohibited. An affirmative law does not always oblige, but only at the time at which the act must be placed according to the law. Hence the saying: an affirmative law obliges always, but not to always; a negative law obliges always and to always.

Point II. On Law Founded on Common Danger

151 **I. Notion.** A law is said to be founded on common danger if it is passed to prevent a general danger. Moreover, it can be founded on the general or common danger either of sin or of fraud. On the danger of sin: as a law which prohibits the reading of evil books; on the danger of fraud: as a law which invalidates clandestine marriages. Laws of this sort are less correctly said by many to be founded on the presumption of the common danger of sin or fraud, because the common danger is not presumed, but certain.

152 **II. Obligation of a law founded on common danger.** Laws founded on common danger, or, as the Code has it, passed to prevent a general danger, urge even if in the particular case the danger is absent (can. 21). The reason is that that on which the law is founded, namely common danger, exists. Moreover the legislator very prudently obliges all, even those for whom the danger does not subsist: both because it is expedient that all be obligated uniformly, for example, to avoid scandals necessarily going to arise from the fact that some do not observe the law; and because many would persuade themselves that the danger is absent from them.

Corollary. A law which invalidates clandestine marriages or formless testaments, or prohibits the reading of evil books, urges even if in the particular case the danger of sin or fraud is absent.

Point III. On Law Founded on Presumption

153 **I. Notion.** A law is said to be founded on presumption when the legislator passed it because he presumes something. Furthermore, presumption is a probable conjecture about an uncertain matter; one kind is presumption of law, which is established by the law itself; another is presumption of man, which is conjectured by a judge (can. 1825, § 1). Presumption of law is either presumption of law simply, or presumption of law and by law (can. 1825, § 2). Against presumption of law simply, both direct and indirect proof is admitted; against presumption of law and by law, only indirect proof is admitted, that is, against the fact which is the foundation of the presumption (can. 1826).

154 **II. Obligation of a law founded on presumption.** A law founded on presumption obliges or does not oblige according as that which is presumed exists or does not exist, in other words, according as the presumption is true or false. The reason is that the foundation of the law stands or falls with the truth of the thing presumed. The same must be said about a sentence of a judge founded on presumption; a sentence of this sort, if that which is presumed is false, of itself does not oblige; but by accident, namely by reason of avoiding scandal or preserving order, it can oblige (St. Alphonsus, I, 100, at the end; *Homo Apostolicus*, tr. 2, n. 26).

Corollary. "If in judgment it has falsely been proved that your animal caused damage, then you are not held to pay the penalty; and once a sentence has been passed that you pay, although externally, so that scandal may be avoided, you are held to pay, nevertheless you can secretly make compensation for yourself" (St. Alphonsus, *Homo Apostolicus*, loc. cit.).

Point IV. On Invalidating Law

155 **I. Notion.** An invalidating law is one which establishes that some act is invalid or to be invalidated by a judge. Moreover, a law can invalidate an act either by rendering persons incapable of an act of this sort, or by establishing conditions or forms without which the act will be invalid.

An invalidating law differs from a law which, as it is said, merely does not assist an act, that is, which neither confirms an act, for example a contract, nor deprives it of force, but leaves it such as it is according to the natural law.

156 **II. Division.** An invalidating law is distinguished:

1. Into a law which invalidates an act *ipso facto*,[1] and one which decrees that the act is to be invalidated by a judge.
2. Into directive or legal, penal, and directive-penal. Directive is one which invalidates an act in favor of the common good or of certain persons; of this sort is, for example, a law which invalidates clandestine marriages, or a profession emitted before the sixteenth year of age. Penal is one which invalidates an act in vindication of fault, suppose the conferral of a benefice carried out simoniacally. Directive-penal is one which invalidates an act both in favor of the common good or of private persons, and in vindication of fault.

[1] In the case, however, the law can be passed in such a way that the act is not invalidated except after a declaratory sentence, that is, one which declares that the crime has been committed.

157 **III. The power of passing invalidating laws** is clear from the fact that simple prohibition does not suffice to prevent some acts; likewise from the fact that invalidation of acts is often necessary to avert deceptions and other inconveniences.

158 **IV. Obligation of an invalidating law.** 1. An invalidating law does not necessarily at the same time prohibit the act. Nevertheless the act can also be prohibited, either explicitly or implicitly; it is implicitly prohibited when the act is of such a nature that, once its invalidation has been posited, it is shameful to place it. Of this sort is, for example, an invalid matrimonial contract.

2. Even in the case in which the act is not prohibited, there is an obligation of undergoing those things which intrinsically arise from the invalidation; hence from an invalidated act there does not arise a right to the effects and fruits attached to a valid act.

159 **V. Causes excusing from invalidation.** "No ignorance of invalidating or incapacitating laws excuses from them, unless something else is expressly said" (can. 16, § 1). Likewise grave damage to be avoided does not prevent invalidation. The reason is that the common good requires that invalidating laws made in favor of the common good retain their force, even if the invalidation is unknown, or the act cannot be avoided without grave damage (St. Alphonsus, VI, 1079). Except the case in which the damage would be of such a sort that there would be place for epikeia (n. 143).

If, however, the invalidating law is purely penal, ignorance which excuses from fault brings it about that invalidation does not have place. In the case the condition is lacking, namely fault, which a purely penal invalidating law supposes. Hence one who inculpably did not recite the canonical hours makes the fruits his own (cf. can. 1475).

Point V. On Penal Law

160 **I. Notion.** A penal law is a law which establishes a penalty. A twofold kind is distinguished: mixed and purely penal. Mixed is one which imposes an act (or omission), and establishes a penalty to be undergone by transgressors of the law. Purely penal is one which decrees a penalty against those who perform or omit something, without prohibiting or commanding that thing (St. Alphonsus, I, 145).

161 **II. The power of passing purely penal laws** is deduced both from common doctrine, and from the fact, about which immediately below, and from the fact that nothing prevents the legislator from restricting the use of his power to imposing a penalty alone.

Objection. A penalty cannot be imposed except on account of theological fault; hence the legislator cannot decree a penalty without at the same time commanding or prohibiting the act.

Response. I deny the antecedent; in other words, there is given a power of decreeing a penalty without theological fault having preceded, or even if only juridical fault is had. This is clear: first, from the fact that the common good, that is, tranquillity and security, altogether requires it. For since theological fault very often is difficult to prove, men would not be sufficiently vigilant if they could not be punished on account of juridical fault alone. Second, from the fact that otherwise innumerable sentences of judges, which rest upon juridical fault alone, would have to be held unjust. Nevertheless it can be said that a penalty inflicted on account of juridical fault alone is only a penalty broadly so called.

162 **III. Existence of purely penal laws.** Purely penal ecclesiastical laws are not had, except the Constitutions of many Orders and religious Congregations, and very few others, as some think.[1] But among civil laws many are purely penal, as we shall see in its own place. St. Thomas speaks thus: "It must be said that not all things which are contained in law are handed down by way of precept; but some things are proposed by way of a certain ordering, or of a statute obliging to a certain penalty" (II-II, q. 186, a. 9, ad 2).

Question. Whether perhaps today all civil laws can be called purely penal.

Response. It seems this must be denied. For, first, Sacred Scripture generally declares that civil laws are to be obeyed, or, considering at least the obvious sense, that the acts which they regard are to be placed. "Render therefore the things that are Caesar's to Caesar, and the things that are God's to God."[2] "Let every soul be subject to higher powers: for there is no power but from God; and those that are, are ordained by God. Therefore he who resists the power resists the ordinance of God. And those who resist purchase damnation for themselves.... Therefore be subject of necessity, not only because of wrath, but also because of conscience. For for this reason you also pay tributes: for they are ministers of God, serving unto this very thing. Render therefore to all their dues: to whom tribute, tribute; to whom custom, custom."[3] "Be subject therefore to every human creature for God's sake: whether to the king, as excelling; or to governors, as sent by him for the punishment of evildoers and the praise of the good. For so is the will of God, that by doing well you may make silent the ignorance of foolish men. As free, and not as having liberty as a cloak for malice, but as servants of God."[4] But the presumption is that those things still have force, unless and insofar as the contrary is proved; and this is not proved with respect to many laws, as we shall see in its own place. Then, the legislator is considered to pass laws in that way which is very fitting to the matter of the laws. But for the matter of many civil laws it is very fitting that the act itself be prescribed, as will be explained more in its own place.

Objection. Many modern legislators do not intend to oblige, and therefore they do not oblige; since they neither acknowledge nor care for obligation, nor the power of obliging, nor any morality.

Response. In order that a legislator oblige, it is enough that he intend to use the power which he enjoys, even if he errs concerning the nature of that power and rejects the effect necessarily attached to its use, that is, obligation. This is confirmed from the fact that, if these things were denied: first, the

civil legislator would not oblige even to the penalty, so that true civil laws would no longer exist; second, neither would an atheist father impose true precepts upon his children.

[1] Wernz, *Ius Decr.*, I, n. 112.

[2] Matt. 22:21.

[3] Rom. 13:1, 2, 5-7.

[4] 1 Pet. 2:13-16.

163 **IV. Criterion for recognizing mixed and purely penal laws.** 1. As regards the rules of religious, since other purely penal ecclesiastical laws are scarcely had, the question must be resolved from the tenor of the law or from common estimation.

2. Civil laws are to be judged in this way:

a) Of themselves they are considered mixed: first, if the matter is moral, that is, if it regards good morals or public peace; second, if the penalty is grave and proportionate to the transgression, because of itself a grave penalty is not inflicted unless grave fault underlies it.

b) They are considered purely penal: first, if the law uses a form which suggests that the act can be chosen, or some damage to be undergone; of this sort are, for example: "He who does this shall pay such a fine"; "Do this or pay that" (St. Alphonsus, I, 145). Second, if common estimation and usage, even of the God-fearing, holds the law as purely penal. Indeed custom can even bring it about that a law originally mixed becomes purely penal. More about these matters will be said in several following treatises. Others add: third, with sufficient probability, if an exorbitant penalty is established against transgressors; because to them it seems less fitting to oblige both under fault and under threat of an exorbitant penalty. Nevertheless I do not perceive the stated unfittingness, if there is a special reason for adding an exorbitant penalty to the obligation to the act, in other words, if, without the addition of a penalty of this sort, the law would be exposed to too many transgressions. Others hold an exorbitant penalty as a sign of a purely penal law, because in the case the legislator sufficiently manifests the intention of attaining order through penalties alone. But because the legislator with the best right both commands the act and, lest the commanded act be exposed to too many transgressions, adds an exorbitant penalty, that intention cannot be called manifest. Hence, with St. Alphonsus, who says about a determined case, I conclude: whether this opinion is sufficiently probable, I leave to wiser men to judge (III, 606).[1]

c) The matter is doubtful, and therefore the law can practically be held as purely penal, if the matter is merely political.

Corollary. In doubt whether a law is mixed or purely penal, it can be held as purely penal. Indeed I would readily grant that in doubt a law today can more easily be held as purely penal than formerly, because citizens now care less for law; this being posited, a mixed law more easily is to the detriment of those who are religious.

[1] In *Homo Apostolicus*, tr. 10, n. 8, the Holy Doctor recommends the stricter opinion.

164 **V. Obligation of penal law,** although it can be drawn from what has been said, is nevertheless usefully determined in these points:

1. A mixed penal law obliges both to placing or omitting the act and, once the things to be posited have been posited, to undergoing the penalty imposed because of the transgression (St. Alphonsus,

I, 145, 147).

2. A purely penal law of itself does not oblige to the act; but it does oblige to a justly inflicted penalty. I said:

a) **Of itself does not oblige to the act;** since by accident a transgression of the law can involve, and, especially if there is question of the rules of religious, generally does involve, sin by reason either of scandal, or disturbance of order, or the inordinate affection from which the transgression proceeds (St. Thomas, II-II, q. 186, a. 9, ad 1; St. Alphonsus, IV, 1042). Indeed he would even sin gravely who transgressed the law from contempt; this happens "when his will refuses to be subject to the ordinance of the law or rule, and from this proceeds to act against the law or rule" (St. Thomas, loc. cit., ad 3; St. Alphonsus, I, 142; IV, 10). Likewise a religious sins gravely who, by his manner of acting, gives occasion to relaxation of regular observance (St. Alphonsus, IV, 10).

b) **But it does oblige to a justly inflicted penalty.** For, if this obligation were removed, a purely penal law would cease to be a law, since it necessarily imports some obligation (St. Thomas, II-II, q. 186, a. 9, ad 1; St. Alphonsus, IV, 42). Moreover, the obligation of undergoing a penalty established by civil law is not contracted except after the sentence of a judge. When and to what extent it is sometimes lawful to withdraw oneself from a penalty imposed by a judge is explained in the treatise on the duties of states of life.

Question. Whether an ecclesiastical penalty must be sustained before, or only after, the sentence of a judge.

Preliminary Note I. A penalty, considered with respect to our question, is distinguished into a penalty *ferendae sententiae* and a penalty *latae sententiae*. The former is one which is decreed by law to be inflicted by a judge. The latter is one which is inflicted immediately by law.

Preliminary Note II. The sentence of a judge is likewise twofold, declaratory and condemnatory. The former declares that the crime to which a penalty has been attached by law was committed. The latter is that by which the judge, according to the statute of the law, inflicts a penalty on the guilty party. With these things noted:

Response I. A penalty *ferendae sententiae* is not to be undergone before the sentence of a judge, and that a condemnatory sentence.

Response II. A penalty *latae sententiae*, whether medicinal or vindicative, holds the delinquent who is conscious to himself of the delict by the very fact in both forums (can. 2232). Hence of itself the sentence of a judge is not required. Nevertheless, if the delinquent cannot undergo the penalty without infamy, he is excused from the penalty unless a declaratory sentence accedes; as long as this has not acceded, no one in the external forum can exact observance of the penalty from the delinquent, unless the delict is notorious. If it does accede, it draws the penalty back to the moment of the committed delict (can. 2232).

Point VI. On Dishonest Law

165 **I.** If a law commands something which is opposed to the natural law or to positive-divine law, it is illicit to observe it, according to that saying: "We ought to obey God rather than men."[1]

[1] Acts 5:29.

166 **II.** If a law establishes something which indeed is not opposed to the natural law or to positive-divine law, but nevertheless exceeds the competence of the legislator, of itself there is no obligation of observing it. Yet by accident there will generally be an obligation, suppose by reason of scandal, of a disturbance to be avoided, or of damage, for example, to be averted from children.

§ III. On Fulfilling the Obligation of Law

167 We inquire what things are required in order that the obligation of law be fulfilled, not what things are necessary in order that the act by which the obligation is fulfilled be good and meritorious in every respect.

Furthermore, in order that satisfaction be made to the obligation of law, this one thing is required: that what is commanded by the law be placed, or that what is prohibited by it be omitted. Hence:

I. To fulfill a negative law, even the involuntary omission of the prohibited work suffices. Hence, for example, one who is sleeping fulfills the precept of not stealing. Nevertheless one who abstained from the prohibited work only from inability, fear, or coercion would sin because of a wicked affection.

II. To fulfill an affirmative law which prescribes a real debt, even the involuntary payment of the debt suffices. The reason is that the law commands only the placing of the effect. Hence he is immune from the obligation of restitution who makes restitution while drunk.

III. To fulfill an affirmative law which prescribes a personal act, the voluntary placing of the prescribed work is required and suffices. It is said:

1. **The voluntary placing of the prescribed work is required.** That the placing of the work is required is clear; that a voluntary or free placing is required follows from the fact that in the case the legislator intends and imposes an act placed in a human manner, that is, voluntarily or freely. Therefore in this sense the intention or will of doing what the law prescribes is required. Hence one who, being wholly drunk, assists at Mass does not fulfill the precept. Otherwise it must be said about one who, compelled by fear, hears Mass, because fear does not remove liberty (St. Alphonsus, I, 165).
2. **The voluntary placing of the prescribed work suffices.** The reason is that the legislator commands only these things. Therefore it is not required:

a) That the prescribed act be placed from the motive of charity, in the state of grace, unless these pertain to the substance of the prescribed work, as in a law which commands an act of the virtue of charity or Paschal communion (St. Alphonsus, I, 162). Hence proposition 16 among the Baian propositions was condemned: "There is no true obedience to the law which is done without charity."

b) That the act be placed without concomitant sin. Except if the sin destroys the substance of the prescribed work. Hence he fulfills the precept who, for example, fasts from avarice or assists at Mass from vanity; but not he who confesses or communicates sacrilegiously. Therefore proposition 14 was rightly condemned by Alexander VII: "He who makes a confession voluntarily null satisfies the precept of the Church" (St. Alphonsus, loc. cit.).

c) That the act be placed with the intention of satisfying the law. For this intention is not commanded. Indeed even the very intention of not satisfying the law does not prevent satisfaction from being made to the law, since the subject cannot bring it about that the obligation of law, that is, an obligation which depends on the will of the legislator alone, persists after satisfaction has been made to the will

of the legislator. Otherwise it must be said if there is question of the obligation of a vow or promise; this obligation, just as from the beginning it depends on the will, so also, if the will thus wishes, continues to persist (St. Alphonsus, I, 163, 164; IV, 176).

d) That the end of the law be intended, or that the act be referred to the end of the legislator. This intention or relation is not commanded, according to that saying: the end does not fall under the precept. Hence satisfaction is made to the law of fasting, even if the mortification of the flesh and its subjection to the spirit are not intended. Observe, however: that the end of the law does not fall under the precept does not prevent one who acts against the end of the law from sinning venially, "because to act contrary to the end of the law is a certain disorder, which does not seem to be excused from every fault" (St. Alphonsus, III, 1030, qu. 1); suppose if someone, after breaking the fast, ate two or three times (St. Alphonsus, loc. cit.).

Corollary I. Someone can satisfy diverse precepts at the same time, provided the diverse prescribed acts do not impede one another and the intention of the one commanding does not stand in the way. Hence one can at the same time satisfy the precepts of hearing Mass and reciting the Breviary, or of fulfilling sacramental satisfaction. But a penitent to whom the confessor imposed two Masses to be heard would not satisfy by assisting at two Masses at the same time. For the intention of the confessor would stand in the way (St. Alphonsus, III, 309; *Homo Apostolicus*, tr. 2, n. 30, and tr. 16, n. 57).

Corollary II. Someone can fulfill several precepts by one single act, unless the one commanding, or those commanding, intended distinct acts. Hence, by one single act of restoring, he satisfies who is held to restitution both from justice and from a vow. He does not satisfy by hearing one Mass who is held to assist at Mass both from the precept of the Church and from the precept of the confessor, unless the latter signifies that he does not intend a distinct Mass. Nevertheless, a penitent to whom the confessor imposed hearing Mass on each day through the week is not held to assist at Mass twice on Sunday; for the confessor is not presumed to intend that (St. Alphonsus, I, 166; *Homo Apostolicus*, tr. 2, n. 31 sq.).

IV. As regards the time of fulfilling an obligation, take these points: If the legislator has determined the time, this must be observed. If the time was not determined, the obligation must be fulfilled as soon as can morally be done. In the case, delay is grave: first, if there accedes a grave danger of not fulfilling a grave law; second, if the matter from the delay becomes notably worse, as if someone vowed religion and, without just cause, long delayed entrance; these things, however, must be explained and completed more in their own place. Besides, observe:

1. In the private celebration of Mass, in the private recitation of the canonical hours, in receiving Holy Communion, and in observing the law of fasting or abstinence, although there may be another usual reckoning of the place, one can follow the time of the place, whether local, either true or mean, or legal, whether regional or some other extraordinary time (can. 33, § 1). Therefore, in observing the stated laws, it is licit to follow: first, usual time;[1] second, local time,[2] both true and mean; third, legal time,[3] both regional and some other extraordinary time.

2. No one is held to anticipate, that is, to fulfill a law before the useful time of the obligation has begun, even if he foresees that afterward he will be impeded from fulfilling the law; indeed, by anticipating he does not even fulfill the law. But one who, once the useful time of the obligation has begun, foresees that afterward he will not be able to satisfy the law, is held to fulfill it in due time (St. Alphonsus, I, 157; IV, 155; VI, 294, 297, 298).

3. One who did not satisfy the obligation at the time determined by law is not held afterward to supply, if the time was assigned for ending the obligation. Otherwise it must be said if it was assigned for urging the fulfillment of the obligation. Furthermore, the time is considered assigned for ending the obligation if the obligation is affixed to a certain day, as obtains in the laws of fasting, abstinence, hearing Mass, and reciting the Breviary. It is considered assigned for urging the fulfillment of the obligation if something is imposed to be performed within three days, within a year (St. Alphonsus, III, 220). If the time has been determined in some other way, it should be gathered from the nature and end of the law, or from custom, whether the time has been determined for ending or for urging the obligation.[4]

[1] That is, the time which the public and customary clocks of the place in which one is staying are accustomed to use. Commonly, but not always, it coincides with legal time.

[2] Local time is the time which is measured by the putative daily motion of the sun around the point of earth in which one is staying. It is distinguished into true and mean. True local time is the time which indicates the aforesaid motion of the sun exactly; it is indicated by a sundial. Mean local time is that which indicates the stated motion of the sun according to the mean duration of the day computed through the year.

[3] Legal or public time is the time which has been prescribed by law or adopted by common civil usage. Generally the mean local time of some principal city is established as legal time for the whole kingdom. Legal time is called regional when it has been stably established for a whole region; it is called extraordinary when, for a passing cause, it is established in an extraordinary way, as summer time.

[4] As regards annual communion, the law itself adds the clause: the precept of Paschal communion still urges if someone, for any cause, has not fulfilled it at the prescribed time (can. 859, § 4).

§ IV. On Causes Excusing from Obligation

168 A cause excusing is one which brings it about that one who is subject to the law is not held to observe it. It differs from a cause exempting, which brings it about that someone ceases to be subject to the law (St. Alphonsus, I, 152).

The excusing causes are ignorance and inability. Ignorance brings it about that one who transgresses the law does not sin formally, but not that material sin is absent. Inability averts not only formal sin, but also material sin. Ignorance was discussed where there was speech about impediments of liberty (nn. 30-32), so that only inability must be treated.

169 **I. Notion and division of inability.** Inability is twofold, physical and moral. The former is had when someone absolutely cannot observe the law; the latter, when he cannot observe it without a grave extrinsic inconvenience, or without grave danger of such an inconvenience. I said "without a grave extrinsic inconvenience," because there is not question of the inconvenience which the law itself, or the work imposed by the law, contains in itself. It is clear that an inconvenience of this sort does not excuse. Hence, for example, shame does not excuse one who has sinned gravely from premising confession to communion; nor does it excuse someone from the precept of confessing integrally.

170 **II. Inability which excuses.** That physical inability excuses is manifest. Moral inability:

1. Does not excuse from the obligation of the natural law, since it is immutable, so that that which is opposed to it, notwithstanding moral inability, remains illicit. The examples which are brought forward against this doctrine are explained by a change of circumstances; this change brings it about that the case is no longer included in the law (cf. n. 86).

2. Generally excuses from positive law, both divine and human. For the legislator, on account of equity, is not considered to require that the subject undergo both the burden of the law itself and another grave burden, so that, if one of these, namely the burden of the law, cannot be undergone without the other burden, he is held to nothing. Moreover, the legislator is considered all the more not to require this both because the common good does not require that the law be urged in difficult cases of this sort, and because a law which were urged in this way would tend to the damage of many, considering, namely, the frailty of men. Hence rule 4 of the law in the Sixth: what is not licit in the law, necessity makes licit (cf. can. 2205, § 2). I said generally, because positive law obliges even with the gravest inconvenience: first, when common necessity or the extreme spiritual necessity of an individual requires it; second, when violation of the law would tend to contempt of God or of religion (St. Thomas, I-II, q. 96, a. 6, ad 1; St. Alphonsus, I, 175, 176; cf. can. 2205, § 3). Besides, as regards the moral inability required, note:

a) In order that someone be excused from the obligation of law, a relatively grave extrinsic inconvenience is required; in other words, the inconvenience must be graver according as the matter of the law and the end of the legislator are graver; likewise according as the legislator is more worthy and the obligation recurs less frequently. Thus, for example, of itself you are more easily excused from the observance of human law than of divine law; more easily from the law of fasting than from the law of annual communion. In addition, it suffices that relatively grave damage is probably going to follow from observance of the law; in other words, that it is prudently feared. Hence, for example, he is excused from the law of fasting who prudently fears that fasting is going to bring grave damage upon him (St. Alphonsus, IV, 154).

b) In doubt whether the cause suffices for excusing, you seem to be held to the law, because an interpretation of the legislator's mind of this sort would give occasion to illusions and undue transgressions (St. Alphonsus, I, 97). Nevertheless, one is excused even from partial observance of the law who is certainly excused from entire observance, but doubts whether the inconvenience attached to some part is sufficiently grave. The opposite opinion would open the way to anxieties (St. Alphonsus, IV, 154, 4°). Hence "if someone, because of his weakness, is certain that he cannot recite the whole office, and doubts whether he can recite a part, he is probably held to nothing" (St. Alphonsus, IV, loc. cit.).

c) One who cannot observe the whole law, but can fulfill a part, is held to this part as follows:

alpha) He is held to the possible part if the matter is morally divisible and the possible part is notable. I said "if the matter is morally divisible," that is, if it can be divided into parts in which, taken separately, the reason or end of the law is preserved. Hence proposition 54 was condemned by Innocent XI: "He who cannot recite Matins and Lauds, but can recite the remaining Hours, is held to nothing." Therefore one excused from fasting is not of himself excused from the law of abstinence; one who lacks a breviary is held to recite a notable coherent part, if he retains any in memory, suppose a little hour, Vespers, or Compline.

beta) He is not held to the possible part if the matter is morally indivisible, or the possible part is not notable. Thus one who vowed a pilgrimage to a sacred place and cannot arrive there is not held to a part of the journey, because the reason or end of the law is not preserved; one who lacks a breviary and retains only a few things in memory, or only non-coherent things, suppose separate Psalms, is obligated to nothing[1] (St. Alphonsus, I, 176, 177).

[1] Cf. *Theol. Mechl.*, p. 149.

§ V. On Placing a Cause Excusing from Obligation

171 Excusing causes are distinguished into causes proximately and causes remotely impeding the observation of the law, according as the time for fulfilling the law is at hand or still remote. Furthermore:

I. It is licit to place or not to remove causes remotely impeding. The reason is that the legislator is not considered to bind subjects to such a burden that each one would have to avoid already, while the time of obligation is still remote, all things which will stand in the way of observing the law. Indeed the aforesaid inconvenience will easily be so great that a human legislator of himself cannot even bind to such a burden. Hence he is excused who, for example, on Thursday, even without a special reason, undertakes a journey, even if he foresees that on Sunday he cannot assist at Mass (St. Alphonsus, III, 301). Indeed, considering today's customs of traveling, he does not seem to sin who, with a just cause, even if not grave, begins a journey on Friday or even Saturday.

II. It is not licit to place causes proximately impeding, unless a proportionate cause for acting thus is present. The reason is that the legislator is considered to bind to that burden lest laws be able to be eluded more easily than is right. As regards a proportionate cause, it can generally be said that a graver one is required according as the matter of the law and the end of the legislator are graver, according as the time for fulfilling the law is more urgent, and according as the obligation recurs less frequently. Of itself, a graver cause is also required if there is question of divine law than if of human law. Therefore he sins who without just cause undertakes a journey on Saturday, foreseeing that on the following day he cannot hear Mass (St. Alphonsus, III, 301).

Nevertheless, one who illicitly placed an impeding cause is excused here and now, although by acting in this way he sinned (St. Alphonsus, III, 1045).

Finally, if there is present a sufficient cause for placing the impeding cause, it does not appear why it would be illicit to place it directly, as they say, that is, also with this intention, that you be excused from the law; nevertheless most authors are opposed to this opinion.

Article VIII. On the Cessation of Law

172 A law can cease intrinsically and extrinsically. It is said to cease intrinsically if its end ceases; it ceases extrinsically when it is removed by the legislator. In addition, it can cease universally, that is, with respect to all, and particularly, that is, with respect to a particular person or a certain class of persons.

The modes by which a law can cease, besides cessation intrinsically, are assigned as abrogation, annulment, and dispensation. Custom and privilege can be added, but these will be treated under every respect. There will be no discussion of commutation of law, because the power of commuting a law is not usually given explicitly, nor is it annexed to the power of dispensing; nevertheless sometimes a privilege has been granted of commuting a law, for example, of the divine office.

§ I. On the Cessation of the End of Law

173 The end of a law is said to cease negatively if the law ceases to be useful; contrariwise, if it becomes harmful. In addition, the end of a law can cease for the whole community, or only in a case or

for a particular person, while the general utility remains.

I. If the end of a law ceases both totally and for the whole community, the law itself ceases, as being a harmful or useless ordering, at least with respect to the end intended by the legislator (St. Thomas, I-II, q. 103, a. 4, ad 3; St. Alphonsus, I, 199). I said "if the end of the law ceases totally," because, if the legislator has fixed several ends for himself, if one persists, the law persists (St. Alphonsus, loc. cit.).

II. If the end of a law ceases only in a case or for a particular person, the law itself does not cease; nevertheless:

1. If the end ceases contrariwise, that is, if the law becomes harmful, here and now it does not oblige (n. 170). Hence, for example, a wife is not held, indeed she cannot fast, if harm threatens the fetus from fasting.
2. If the end ceases negatively, that is, if the law becomes useless in a particular case or for a particular person, here and now it nevertheless obliges. This follows from what was said in n. 152 (cf. St. Thomas, II-II, q. 154, a. 2; St. Alphonsus, I, 199).

§ II. On Abrogation, Derogation, and Annulment of Law

174 **I. Notions of abrogation and derogation.** Abrogation is the abolition of the whole law; derogation is the abolition of only part of the law.

175 **II. Persons competent to abrogate a law or derogate from it.** The legislator, his successor, and his superior can abrogate a law or derogate from it. Abrogation or derogation is done validly even if a just cause is lacking, but not licitly. Therefore:

1. The Supreme Pontiff can abrogate all ecclesiastical laws, both general and particular, even laws of an Ecumenical Council and apostolic laws. A Bishop can abolish statutes of a diocesan synod; but an Archbishop cannot abolish statutes of suffragan Bishops.
2. Bishops cannot abrogate laws of a Provincial Council; that Provincial Council itself can do this, unless they have been confirmed in specific form, in which case they have become pontifical laws.[1]

[1] In Holland a civil law cannot be abolished totally or partially except through a new law, not through a royal edict (*Alg. bep.*, art. 5).

176 **III. Modes of abrogating a law or derogating from it.** Abrogation and derogation, considering can. 22, can be made:

1. Through express revocation of the prior law.
2. Through a new law which is directly contrary to the prior one. Nevertheless a general law in no way derogates from statutes of special places and special persons unless something else is expressly provided in it; thus can. 6, 1°, abrogated particular laws opposed to the prescriptions of the Code.
3. Through a new law which orders anew the whole matter of the prior law.
4. Through custom, about which we shall speak afterward.

Note 1. In doubt, revocation of a preexisting law is not presumed, but later laws are to be drawn to earlier ones and, as far as can be done, reconciled with them (can. 23).

Note 2. Revocation of a law which is made through a new law must, of course, be promulgated. But simple revocation of an earlier law does not need promulgation; the externally manifested will of the

legislator suffices, because a law does not endure beyond the will of the legislator. But a merely internal revocation does not seem to suffice.

177 **IV. Annulment** is the nullification of a law made by him to whom it belongs to confirm it. It differs from abrogation, which regards a law fully in force, while annulment nullifies a law which has not yet been in force. The Supreme Pontiff can annul all laws of inferior legislators, suppose of a National Council, a Provincial Council, and Bishops. An inferior cannot annul the law of a superior.[1]

[1] In Holland the king can annul the Statutes of the Provincial and Municipal Administration (*Grondw.*, art. 134, § 3, art. 145; Provincial Law, July 6, 1850; Municipal Law, June 29, 1851).

§ III. On Dispensation

We shall speak first of dispensation considered in itself, then of the power of dispensing, then of the granting of dispensation, and finally of the cessation of dispensation.

Point I. On Dispensation Considered in Itself

178 **I. Notion.** Dispensation is an act, or quasi-act, by which a law is relaxed in a special case (cf. can. 80). It is said:

1. **Act,** namely of the power of jurisdiction. For it belongs to the same power to relax a law as to make a law. But to make a law pertains to the power of jurisdiction.
2. **Or quasi-act,** because dispensation can also be granted tacitly or implicitly, suppose through legitimate custom or through an act which implicitly contains a dispensation.
3. **In a special case,** that is, with respect to a particular person or persons, or with respect to a community, but only for an act or at least for a time.

Dispensation differs: first, from epikeia, which is not a relaxation of law, but regards a case which, considering the benign mind of the legislator, is considered not to be included in the law; second, from excuse, which likewise is not a relaxation of law, or does not suppose an act of a superior, but regards a case in which someone, on account of extrinsic inconvenience, is not held to the observance of the law; third, from license, which also does not relax the law, but places a condition, and once it is placed, the law itself permits the act. If, for example, a law declares: "No one is to go out without license," once license is posited, going out is not opposed to the law; fourth, from abrogation or derogation of law, by which a law is removed totally or partially for the whole community and in perpetuity; fifth, from privilege, which of itself is perpetual and is not necessarily opposed to the law, whereas dispensation of itself is only for a time and is always contrary to the law.

179 **II. Laws capable of dispensation.** It is disputed whether the law of nature admits dispensation properly so called (n. 86); but in every positive law dispensation can have place.

180 **III. Utility and necessity of dispensation.** Dispensation is sometimes useful, indeed in some way necessary. This is clear both from the Council of Trent (sess. 25, ch. 18, *De reformatione*) and from the bull *Auctorem fidei* of Pius VI; likewise from the practice of the Church and from reason: namely, "since human law cannot provide for all cases, it is expedient that rulers provide in particulars; otherwise sufficient provision would not be made for the common good" (St. Alphonsus, I, 194).

Point II. On the Power of Dispensing

181 **I. Notion.** The power of dispensing is the faculty of relaxing a law in a special case. It differs first from the power of annulling vows; for this pertains to dominative power, but the power of dispensing pertains to the power of jurisdiction; second, from the power of declaring that there is present a cause excusing from obligation.

182 **II. Division.** The power of dispensing, like the power of jurisdiction in general (n. 96), is divided especially into ordinary and delegated, according as it is annexed to an office by the law itself or has been committed to a person.

Note. As regards the acquisition, interpretation, extension, and cessation of the power of dispensing, what was said about the acquisition, interpretation, and cessation of jurisdiction in general has force (nn. 97-100).

183 **III. Active subject.** Dispensation can be granted by the founder of the law, by his successor or Superior, and also by him to whom the same have granted the faculty of dispensing (can. 80). Specifically:

1. The Supreme Pontiff, by ordinary power, can dispense in all ecclesiastical laws, even in those which have been passed by an Ecumenical Council or by the Apostles by their own authority.

Question. Whether the Supreme Pontiff can dispense in divine law.

Response I. He cannot dispense in divine law, neither natural nor positive. Not in divine-natural law, since it does not admit dispensation (n. 86). Not in divine positive law, as is sufficiently gathered from the fact that the Church never dispenses in it, for instance in the laws of Christ. Hence the stated power is not considered to be contained even in these words of Christ: "Whatever you shall loose upon earth shall be loosed also in heaven"[1] (St. Thomas, I-II, q. 97, a. 4, ad 3; St. Alphonsus, VI, n. 19).

Response II. The Supreme Pontiff, as practice confirms, can by vicarious power dissolve, or quasi-dissolve, bonds of divine law which are founded in a human act, such as vows, oaths, and ratified marriages. But it is disputed of what character the act of dissolving or quasi-dissolving placed by the Supreme Pontiff is. According to some, he can merely interpret divine law, that is, declare that it is not urged by God in this or that case. But he truly can dispense improperly, insofar as, namely, by vicarious power he is able truly to remit a right which is founded in a human act, suppose in a vow, etc.; and once the right has been remitted, the obligation ceases.[2] These things will be explained in the treatise on Matrimony.

2. Ordinaries[3] of places[4] can dispense: first, in diocesan laws; second, in laws of a provincial and plenary Council, but only in particular cases and for a just cause; third, in laws which the Roman Pontiff has specifically passed for that particular territory, but only to the extent that, according to what will be said in the note, all Ordinaries can dispense in general laws of the Church (can. 82).

Note. Ordinaries, both of places and others, cannot dispense, not even in a particular case, either from general laws of the Church or in laws which the Roman Pontiff has specifically passed for that particular territory, unless either this power has been explicitly or implicitly granted to them, or recourse to the Holy See is difficult, and there is danger of grave harm in delay, and there is question of a dispensation which the Apostolic See is accustomed to grant (can. 81, 82). Furthermore, what all Ordinaries can do, first, in doubt of fact, second, as regards laws about feast days, days of fast and

abstinence, and irregularities; what Ordinaries of places can do as regards laws about interstices and publications before the reception of Orders or Matrimony, and also about impediments of Matrimony, will be explained in its own place.

3. Pastors cannot dispense from either a general law or a particular law unless this power has expressly been granted to them (can. 83). Now from can. 1275, § 1 pastors have power, in individual cases and for a just cause, to dispense individual faithful and individual families subject to them in laws concerning the observance of feasts, fast, and abstinence. What pastors, confessors, or all priests can do concerning impediments of Matrimony is explained by can. 1044; this will be treated in the treatise on Matrimony.
4. Superiors (Guardians, Rectors, etc.) in an exempt clerical religion have the same power as pastors of dispensing from laws concerning the observance of feasts, fast, and abstinence, as regards professed members, novices, and others living day and night in a religious house for the sake of service, education, hospitality, or infirm health (can. 1245, § 3). With sufficient probability, habitual dwelling in the religious house is not required; it suffices that they have remained for one whole day, or have the intention of remaining there for one whole day.[5]

[1] Matt. 16:19.

[2] Cf. Suarez, *De leg.*, bk. 2, c. 14, n. 11; Wernz, *Ius Decr.*, I, n. 122; Prummer, *Theol. Mor.*, I, nn. 164, 241.

[3] In law, by the name Ordinary are understood, unless someone is expressly excepted, besides the Roman Pontiff, each for his own territory: the residential Bishop, an Abbot or Prelate nullius and their Vicar General, Administrator, Vicar and Prefect Apostolic; likewise those who, when the aforesaid are lacking, succeed meanwhile in governance by prescription of law or from approved constitutions; and, for their own subjects, major Superiors in exempt clerical religions (can. 198, § 1).

[4] By the name Ordinary of the place or of places, however, come all those listed, except religious Superiors (can. 198, § 2).

[5] Vermeersch-Creusen, *Epitome Iur. Can.*, I, n. 582.

184 **IV. Passive subject.** The power of dispensing can be exercised directly only over subjects (can. 201, § 4). With this principle posited, the competent person can dispense:

1. Subjects by reason of domicile or quasi-domicile who are staying in the territory of the dispenser.
2. Vagi actually staying in the territory of the dispenser, because they are truly subjects (can. 94, § 2).
3. Himself, and subjects absent from the territory, unless something else is established from the nature of things or from law (can. 201, § 3).
4. Travelers staying in the territory of the dispenser, as regards laws concerning the observance of feasts, fast, and abstinence (can. 1245); likewise as regards non-reserved vows (can. 1313); likewise as regards impediments of Matrimony, but with a restriction, as will be noted in its own place; meanwhile cf. can. 1043 sq.

Which persons religious Superiors can dispense was said under III, 4.

Point III. On the Causes of Dispensing

185 **I. Distinction of causes.** The final or motive cause and the impulsive cause are distinguished. The final cause is generally said to be one which suffices by itself alone; the impulsive cause is one which alone does not suffice, but nevertheless helps toward obtaining the dispensation. Several impulsive

causes sometimes constitute a sufficient cause. Special points concerning these, however, belong in the treatise on Matrimony.

186 **II. Necessity of a just cause.** 1. The legislator, his successor, and his superior dispense validly but illicitly without a just cause (can. 84, § 1). The reason for the former is that, just as law in coming to be depends on the will of the legislator, so also it depends on it in persisting. The reason for the latter is that a legislator dispensing without a just cause would present himself as an acceptor of persons and would give occasion to complaints, by exempting one without cause from a law while others were bound by it (St. Alphonsus, I, 178).

2. An inferior dispenses illicitly and invalidly without a just cause in the law of a superior (can. 84, § 1). The reason is that the legislator is not considered to have granted the faculty of dispensing unjustly.

Corollary I. A legislator who dispenses without a just cause of himself sins only venially, but an inferior sins gravely, unless smallness of matter excuses. This follows from the fact that disordered use of a power which someone possesses is of itself only lightly evil, but usurpation of a power which someone lacks, setting aside smallness of matter, is gravely illicit (St. Alphonsus, loc. cit.).

Corollary II. If a superior errs concerning the cause, the dispensation is valid if the cause in fact exists. If it certainly does not exist, of itself it is invalid, because one dispensing who can dispense without a just cause is not presumed to have wished this; but an inferior cannot even do that (St. Alphonsus, I, 180, 181; III, 25). I said of itself, because the legislator can establish that some dispensations are always valid, as he has established concerning dispensations from lesser impediments of Matrimony (can. 1054); namely, besides the fact that in lesser impediments of this sort some cause is easily had, such a disposition conduces to order and to tranquillity of souls. Therefore in these dispensations too at least the reason of the common good is found. Finally, if it is doubted whether the cause existed, one must stand for the validity of the act (St. Alphonsus, I, 182).

187 **III. Diverse just causes.** There are customarily numbered: piety, necessity, and utility. Indeed the dignity of the petitioner, or the kindness of the superior to be shown, can also be a sufficient cause (St. Alphonsus, I, 198). Of itself a graver cause is required according as the law is graver (can. 84, § 1), and according as the damage arising to the common good from the dispensation is graver. Of course, a cause which of itself excuses from the law is not required. Besides, observe:

1. In doubt about the sufficiency of the cause, a dispensation is granted validly and licitly (can. 84, § 2), and this even by an inferior. Likewise a dispensation is licitly sought in doubt about the sufficiency of the cause (can. 84, § 2; St. Alphonsus, I, 178).

2. When a just cause is present, the superior is held to dispense as follows:

a) "If the cause is only sufficient so that the dispensation is permitted, but not owed, the superior can licitly grant it and deny it, or grant it to one and deny it to another; because although a dispensation is expedient for the good of the subject, the observance of law is expedient for the common good."

b) "But if the cause is such that it makes the dispensation owed, namely for avoiding common damage or private damage of great moment, or for common utility, or great particular utility... then the superior is held to dispense; otherwise he would sin gravely or lightly according to the matter. Yet if the dispensation is denied, even unjustly, the subject cannot act against the law, unless such a cause urges that it withdraws him from the law, that is, excuses him from it. Wherefore, if a bishop unjustly denies

a dispensation from the publications before Matrimony, the Matrimony can, when a grave cause urges, be contracted without them" (St. Alphonsus, I, 179).

What if the faculty of dispensing someone is conferred upon a person, and the motive cause has ceased before the dispensation has been granted or obtained?

Response. In the case, the dispensation granted would be invalid, because the superior of himself is not considered to confer the faculty of dispensing in the case in which the motive cause has ceased. I said of himself, because the Superior can proceed otherwise, and sometimes does proceed otherwise, as will be explained in the treatise on Matrimony (St. Alphonsus, VI, 132; cf. can. 41).

Point IV. On the Granting of Dispensation

For dispensation there is required an act truly placed and manifested. It is said:

188 **I. An act truly placed.** This is clear from the nature of dispensation, which is a relaxation of law. But a relaxation of law cannot have place without an act of the Superior truly placed. Therefore a merely presumed act does not suffice; in other words, in order to act licitly, it is not enough that someone persuade himself: "If the superior knew, he would dispense," or: "If I sought a dispensation, I would obtain it." But sometimes it is licit to act from presumed license, as was explained in n. 144 (St. Alphonsus, I, 187).

A dispensation extorted by fear is valid, provided a just cause of dispensing exists and "it is not established that the superior dispensed without the mind of dispensing; for fear does not remove the voluntary, as force does. Moreover, the obtaining of such a dispensation is even licit if fear is justly struck into the prelate: namely, if the subject threatens that he will complain before the supreme superior, or that he will bring a just accusation concerning some crime of his" (St. Alphonsus, I, 184). These things, however, you should not extend to absolution from censures (can. 2238).

II. An act manifested, whether orally, or in writing or by rescript, or even by silence. This latter has place: first, when the Superior sees that the law is not being observed by the subject and is silent, although he can conveniently contradict; second, when he imposes or permits something which cannot licitly be done without dispensation. Concerning rescripts, by which dispensation is more often granted, we shall speak specifically in the appendix.

Point V. On the Interpretation and Cessation of Dispensation

189 **I.** Dispensations which refer to lawsuits, or harm rights acquired by others, or are opposed to a law for the advantage of private persons, or finally were obtained for the acquisition of an ecclesiastical benefice, are to be interpreted strictly; likewise those which were granted for a particular case. All the rest are to be interpreted broadly (can. 85, 5°).

II. A dispensation ceases, considering can. 86:[1]

[1] The cited chapter speaks only of a dispensation which has successive duration; but from the nature of the matter nearly the same things must be applied to every dispensation.

190 **I. Through revocation** of the superior made known to the dispensed person (cf. can. 71 and 60); namely:

1. The legislator and his superior can validly revoke a dispensation without cause; a delegate cannot do this without a just cause. The reason for the former is that, just as the legislator can relax a law

without cause, so also he is able without cause to impose it again on the dispensed person. The reason for the latter is that the one delegating is not considered to have granted that faculty to the delegate. Nevertheless, even a delegate can revoke a dispensation with a just cause, because the one delegating is presumed to have conferred this power on him (St. Alphonsus, I, 197). You should except the case in which someone has been delegated to confer an individual dispensation; for once this has been conferred, his whole power is exhausted.

2. No one licitly revokes a dispensation without cause. Nevertheless, the legislator of himself sins only lightly; by accident he can sin gravely, suppose by reason of scandal, injury to charity, etc. A delegate sins gravely, unless smallness of matter excuses.

3. One who can revoke a dispensation sometimes cannot sustain it, namely "when the motive cause has totally ceased" (St. Alphonsus, I, 197).

Note. No one can validly revoke a dispensation given in a vow or oath, because an obligation of this sort can flow again only from the proper will of the dispensed person.

II. Through renunciation by the dispensed person accepted by the competent superior (cf. can. 72). Moreover, it is required:

1. That the dispensed person can renounce the dispensation. Furthermore, each person can renounce a dispensation granted only in his own favor; but not one which was conferred on the community (cf. can. 72; St. Alphonsus, I, 198).

2. That the dispensed person has truly renounced the dispensation, whether expressly or tacitly. Nevertheless, tacit renunciation will not easily be established. Thus, for example, non-use of a dispensation does not necessarily involve renunciation (St. Alphonsus, loc. cit.).

3. That the superior has accepted the renunciation, and thus binds the subject again, since a relaxation of law proceeding from a superior cannot cease except through the superior himself.

If there is question of dispensation in a vow or oath, acceptance by the superior is not required, since each person can impose anew upon himself the obligation of a vow or oath.

III. Through death or cessation in law of the superior, a dispensation ceases only when it was given with the clause "at our good pleasure" or another equivalent clause (cf. can. 73). Hence it does not cease if it was given "at the good pleasure of the Holy See" or "of the Bishop."

IV. Through cessation of the cause. 1. A dispensation which has successive duration, that is, whose effect can conveniently be divided, as obtains in a dispensation from the law of fasting, abstinence, etc., ceases by the certain and total cessation of the motive cause; but not by its doubtful or partial cessation, nor by the cessation of the impulsive cause (can. 86). Hence, for example, a sick person dispensed in the law of fasting is held to fast again after he has certainly recovered sufficiently.

2. An obtained dispensation which does not have successive duration, that is, whose effect cannot at all, or cannot conveniently, be divided, does not cease even if the cause on account of which it was granted has ceased. Hence one dispensed from the impediment of consanguinity can enter Matrimony with the blood relative, even if the cause has ceased before Matrimony. The reason is taken both from the nature of the matter and from the intention of the legislator, who in cases of this sort is presumed to have dispensed absolutely (cf. can. 86; St. Alphonsus, I, 196; VI, 1132). Nevertheless, it is disputed whether the same can be said if someone has been dispensed from a

vow or oath in order to enter Matrimony: for example, someone is dispensed from a vow of chastity solely to legitimate offspring; but the offspring dies before Matrimony is entered. Does the dispensation subsist? It seems it must be denied, since Christ is not considered to have conferred on the Church the power of dispensing in a natural obligation except continuously dependently on its cause.

Finally note these words of St. Alphonsus: "When... a dispensation has been granted absolutely, it does not cease through one act; for example, you obtained a dispensation in a vow of chastity in order to contract Matrimony; when the spouse has died, the dispensation endures: unless it was granted for a special case, namely, to marry a virgin deflowered by you. And so concerning similar things" (St. Alphonsus, I, 196).

Article IX. On Those Things which Complete the Doctrine of Laws

In this appendix we shall speak first of custom, which can constitute, abrogate, or derogate from a law; then of privilege, which often is customarily called a law, although of its own kind; finally, of rescripts, by which, as we have already noted, jurisdiction, dispensations from law, privileges, etc. are rather often granted.

§ I. On Custom

191 **I. Notion.** Custom, named from *consuesco* or *consuefacio*, can be taken both for fact and for right. Custom of fact is the frequency of similar acts in some community. Custom of right is a right arisen from custom of fact, and is customarily defined: a right of the people, established by morals, with the consent of the legislator acceding. We are treating custom accepted in this way.[1] It is said:

1. **Right,** that is, a law commanding, prohibiting, or permitting something.
2. **Introduced by the morals of the people;** namely, insofar as the aforesaid morals gave occasion to the consent of the legislator, by whom finally the right must be established (St. Thomas, I-II, q. 97, a. 3, ad 3; St. Alphonsus, I, 107).
3. **With the consent of the legislator acceding;** for custom in the Church obtains the force of law solely from the consent of the competent ecclesiastical Superior (can. 25).

The consent of the legislator, if there is question of the supreme legislator, that is, of the Supreme Pontiff, is distinguished as twofold: personal and legal.

Personal consent is that which the legislator gives specifically for this or that determined custom. This is twofold, express and tacit, according as the legislator approves the custom explicitly, or by conniving, or not contradicting, when he could conveniently contradict.

Legal consent (general, juridical) is that which is given through law, or through the law itself, insofar as, namely, the legislator generally and antecedently consents to all customs furnished with certain conditions. Personal consent supposes that the custom is known by the legislator; but for legal consent, knowledge of the custom in the legislator is not required (St. Alphonsus, I, 107, 5°).

[1] Cf. Bauduin, *De consuetudine in iure canonico*; Kreutzwald, *De canonica iuris consuetudinarii praesumptione*; Wernz, *Ius Decr.*, t. I, nn. 184-194; Vlaming, *Instit. iuris eccles.*, nn. 32-40; Vermeersch, *Epitome Iuris Canonici*, 4th ed., I, n. 108 sq. Therefore we abstract from the right which a private or singular person can sometimes acquire through frequency of acts.

192 **II. Division.** Custom is chiefly distinguished:

1. Into custom according to law, beyond law, and against law. The first is that which confirms by use a law already established. The second is that which establishes a new law. The last is that which is opposed to a law and brings it about that the established law is abrogated or derogated from.
2. Into universal and particular. The first is that which has force in the whole kingdom, in the whole Church, or in the whole Order or Congregation; the second is that which has force only in some part, for example, in a province, diocese, parish, or convent.
3. Into ordinary and extraordinary. Ordinary is a custom of forty years. Extraordinary is centenary or immemorial, that is, one whose beginning does not exist in memory (can. 27).
4. Into custom by way of connivance and by way of prescription, according as it obtains the force of law through personal or legal consent. Many, however, call customary right introduced by way of connivance customary right improperly so called.

193 **III. Efficacy.** Legitimate custom has the force of law, that is, it either abrogates or derogates from a prior ecclesiastical law, or constitutes a new law. Moreover, it can regard a commanding law as well as a penal and invalidating law (St. Alphonsus, I, 107, IV, 108). I said ecclesiastical law; for, as is plain, custom cannot abrogate divine law, whether natural or positive (can. 27, § 1). But that an ecclesiastical law can be abrogated, and likewise that a new law can be constituted through custom by way of connivance, that is, through the personal consent of the legislator, is clear from the nature of the matter. That the same can generally be done by way of prescription is deduced from can. 27, § 1, and 28.[1] I said generally; for:

1. Custom cannot, by way of prescription, derogate from rubrics contained in liturgical books. For the Supreme Pontiffs and the Sacred Congregation of Rites have repeatedly signified that customs against the rubrics are abuses and corruptions;[2] considering this, legal consent cannot be presumed. This, however, does not prevent, first, the use against rubrics from being legitimated by way of connivance, or by force of the personal consent of the legislator, and thus, although it was an abuse before personal consent, when consent accedes it ceases to be an abuse. Nor do the things said above prevent, second, a use contrary to the rubrics from being tolerated until it can conveniently be removed by the Bishop.[3] What has been said about rubrics contained in liturgical books you should also apply to decrees of the Sacred Congregation of Rites.[4] That these things have not been changed by the new law follows from can. 2.
2. It is disputed whether a custom which is expressly reprobated by law can, by way of prescription, become legitimate. Some deny it, because a custom of this sort is said by can. 27, § 2, not to be reasonable. Others think that a custom of this sort, when circumstances have changed, can become reasonable and therefore, once the things to be posited have been posited, legitimate (St. Alphonsus, I, 108; cf. n. 194).

[1] In Holland, civil law cannot be abrogated by custom.

[2] Constitution of Innocent XIII *Apostolici Ministerii*, May 23, 1723, renewed by Benedict XIII through the constitution *In supremo*, September 23, 1724; S.R.C., January 10, 1852, n. 2993, ad 1, 2, and 4. Cf. other things in Victor ab Appeltern, *Manuale Liturgicum*, t. I, pp. 22 and 23.

[3] Cf. S.R.C., May 9, 1857, n. 3043, ad V; n. 3044, ad V.

[4] S.R.C., August 3, 1859, n. 2792, ad 2.

194 **IV. Requisites in order that a custom be efficacious,** that is, either abrogate a law or introduce a new law.

1. In order that custom abrogate a law by way of connivance, there is required and suffices, besides a certain frequency of acts of the community, for there is question of a law to be abrogated dependently upon the morals of the people, that the personal consent of the legislator (or of his successor or superior) accede, whether express or tacit (can. 25). The reason is that the continuance of a law, equally as its beginning, depends on the will of the legislator. Hence as soon as the legislator consents to a custom contrary to the law, the law ceases. There will generally be sufficient certainty about tacit consent if the legislator permits the law to be commonly infringed, although he could conveniently contradict. If he cannot conveniently contradict, from silence one generally cannot conclude to consent to the abrogation of the law; nevertheless it can happen that the legislator, although he does not abrogate the law, still suspends the obligation of the law until he can urge it more conveniently.

2. In order that custom introduce a law by way of connivance, besides a certain frequency of acts of the community, there is required: first, that it be reasonable, that is, such that it can be the object of law. What things can be the object of law was explained in n. 116. There is required, second, that the personal consent of the legislator accede, whether express or tacit. For no law can be constituted without the will of the legislator (can. 25). Tacit consent of the legislator can be established, for example, from the fact that he punishes transgressors of the custom.

3. In order that custom abrogate a prior law or introduce a new one by way of prescription, there is required: first, a legitimate subject; second, frequency of acts; third, an intention of abrogating or introducing law; fourth, a reasonable object; fifth, a definite time. It is said:

a) **A legitimate subject;** namely, a community which is capable at least of receiving an ecclesiastical law. Thus can. 26, which indeed speaks expressly only about a law to be introduced, but there is no reason why these things cannot be applied to a law to be abrogated. Which communities are capable of receiving an ecclesiastical law was said in n. 73.

b) **Frequency of acts;** namely: first, the custom must proceed at least from the greater part of the community, or from those in the community whom the law regards; second, the acts must be notorious at least with notoriety of fact and not occult, similar or uniform, and repeated several times according to the diversity of the matter, in accordance with the estimation of a prudent man (St. Alphonsus, I, 107, IV).

c) **An intention of abrogating or introducing law,** that is, an intention which inclines toward abolishing or establishing a law. For there is question of the abrogation or passing of law dependently upon the morals of the people. But such abrogation and such passing of law are not considered to have place unless the people incline toward abrogating or constituting a law. Besides, as regards a new law to be constituted, that there is required in the community an intention of obligating itself is clear from can. 28. Nevertheless, it suffices that the aforesaid intention be present interpretatively; this has place when the people does not actually incline toward abrogating a law because it is ignorant of it, but, if ignorance were lacking, would incline toward abrogating it; or when it is not actually inclined toward constituting a law because it erroneously thinks that it already exists, but, if error were lacking, would incline toward constituting it. These things suffice because they sufficiently argue the disposition of the people, to which the legislator is considered to acquiesce.

Corollary I. Where there is question of abrogating a law, it does not matter whether the people knows the law or is ignorant of it, in other words, whether it transgresses the law in good faith or in bad faith. For in either case there can be an intention alien from the law. But it does not suffice that the community act against the law from fear or from mere ignorance. Hence a custom would not abrogate a law if the people were so disposed that, if it knew the law, it would promptly observe it. In this hypothesis there is in no way an intention opposed to the law (St. Alphonsus, I, 107, 110; *Homo Apostolicus*, tr. 2, nn. 79 and 80; *Istruzione e Pratica*, c. 2, nn. 84 and 85). But since a law is generally not unknown by the community, a custom against law generally "has a threefold state. In the beginning, those introducing the custom against the law all sin. In progress, those using the custom already introduced by their elders do not sin, but can be punished by the prince. In the end, those using it after it has already prescribed neither sin nor can they be punished" (St. Alphonsus, I, 107, 2°).

Corollary II. In order that custom introduce a new law, it does not suffice that the people observe it from mere error, that is, only because it erroneously thinks that the law exists, or from mere devotion, gratitude, or civility. The reason is that in that hypothesis there is lacking an intention of obligating itself. Hence the custom, for example, of hearing three Masses on the Nativity of the Lord or of receiving the sacred Ashes on Ash Wednesday does not oblige (St. Alphonsus, I, 107, 4°).

d) **A reasonable object** (can. 27 and 28).[1] Furthermore, a custom against law is considered reasonable if the legislator, considering the circumstances, could validly and licitly abrogate the law. But a custom by which a new law is introduced is reasonable if it can be the object of law according to what was explained in n. 116.

A custom is unreasonable: first, if it is opposed to divine law, whether natural or positive; second, if it is the tinder or occasion of sins, so that it is, as it were, remotely opposed to the law of nature;[2] third, if it breaks the sinew of ecclesiastical discipline,[3] that is, if it tends not only to abolishing one or another law, but to subverting authority itself, as, for example, a custom of not subjecting oneself to a visitor; fourth, if it is opposed to the public good or, in view of the singular nature of some institute, to the common utility, and in general, if it is against ecclesiastical immunities (cf. St. Alphonsus, I, 107, at the end);[4] fifth, if it is expressly reprobated by law (can. 27, § 2). Furthermore in the latter case it certainly remains unreasonable if the circumstances are not changed. But it is disputed whether such a custom, when the circumstances have changed, can become reasonable; considering the nature of the matter, since many things depend on circumstances, this seems to be affirmed, although the case will not have place very easily (St. Alphonsus, I, 108; *Homo Apostolicus*, tr. 1, n. 81).

But if contrary future customs are only prohibited, not reprobated, such a prohibition is relative, that is, while the same circumstances remain. Wherefore, when the circumstances have changed, a contrary custom can become reasonable. Today, however, for such a contrary custom a longer time is required, and indeed, as we shall see, a centenary or immemorial custom.

Only the competent superior judges authentically concerning a reasonable object. In the absence of such a judgment, the testimony of even one outstanding doctor, even a modern one, suffices (St. Alphonsus, I, 107, 3°; III, 290, 1025); indeed, for the internal forum any prudent man, especially a confessor, can judge concerning a reasonable object.

e) **A definite time.** Furthermore, forty continuous and complete years are required. But against an ecclesiastical law which contains a clause prohibiting future customs, only a reasonable centenary or immemorial custom can prescribe (can. 27, § 1). I said that continuous years are required. For custom

must be begun anew if it is interrupted, suppose because competent authority contradicts it, or because the greater part again observes the law (St. Alphonsus, I, 107, 3°; *Homo Apostolicus*, tr. 2, n. 79). If the aforesaid conditions are present, the legal consent of the Supreme Pontiff is had, by which finally the abrogation or introduction of law, whether general or particular,[5] is accomplished.

Note. In strict doubt whether the requisites for a custom which abrogates a law are present, the law must be observed; otherwise, if the requisites are more probably present (St. Alphonsus, III, 290, 304; IV, 174). In doubt whether the things necessary for a custom which introduces a law are present, liberty persists (n. 226; St. Alphonsus, I, 107, 4°).

[1] Cap. *Cum tanto, De Consuetudine,* bk. 1, tit. 4.

[2] c. 10, *de consuet.*

[3] c. 5, cod. tit.

[4] Cf. cap. 49 (V, 39).

[5] Where there is question of abrogating or introducing a particular law, legal consent of the particular legislator, that is, of one inferior to the Supreme Pontiff, is not established.

195 **V. Cessation of custom,** that is, of the right or obligation introduced through custom. Custom can cease by the same modes by which written law can cease, since there is the same reason of unwritten and written right. Therefore it can cease through cessation intrinsically, through abrogation, etc. As regards abrogation, however, which is made through a new law, note:

1. A general law abrogates a contrary general custom (can. 30; cap. 1 [I, 2] in VI); but not an ordinary particular custom, unless an abrogating or derogating clause is added, for example, "notwithstanding any custom whatsoever"; nor a centenary or immemorial particular custom, unless special mention of it is made (can. cit.), for example, by saying: "notwithstanding any custom whatsoever, even centenary or immemorial," or: "notwithstanding any custom whatsoever, even one worthy of special mention."
2. A particular law abrogates a contrary particular custom. This follows from can. 30, which says only about a general law that particular customs are not revoked by it. St. Alphonsus rightly says: "Bishops, however, by their laws abrogate any particular custom whatsoever, because they are presumed to have full knowledge of the customs of their dioceses" (I, 109).

§ II. On Privileges

(St. Alphonsus, *Theologia Moralis,* bk. I, Appendix II.)[1]

[1] Cf. Suarez, *De legibus,* bk. 8; Wernz, *Ius Decret.,* t. I, nn. 157-163; Putzer, *Comment. in facultates apost.,* n. 1 sq.; Vermeersch, *Epitome Iur. Can.,* 4th ed., t. I, n. 149 sq.; Van Hove, *De la notion du privilege* (in *N. R. Th.* 1922, p. 5 sq., 74 sq., 126 sq.).

196 **I. Notion.** Privilege can be taken actively and passively. Taken actively it is customarily defined: a private law granting a special benefit beyond or against the common law. Taken passively it is the right itself arisen from the stated law. It is said:

1. **Law;** namely, insofar as it is a stable ordering which confers on someone the faculty of acting beyond or against the common law, and imposes on others the obligation not to impede the privileged person in the use of the faculty.

2. **Private law,** because it confers the faculty on a particular person or community, which itself is part of a superior community, for example, on a religious order, clergy, etc. (St. Alphonsus, I, 1).

3. **Granting a special benefit beyond or against the common law;** thus, for example, the faculty of absolving from reserved cases is granted beyond the common law, while the privilege of a private oratory is granted against the common law.

Corollary I. Privilege differs: first, from dispensation; for this is always opposed to law and is generally temporary, while privilege can also be beyond law and of itself is perpetual (St. Alphonsus, loc. cit.); second, from license, which is rather according to law, since it places the condition required by law and is generally granted transiently. Privilege can also be against law and, as we have said, is of itself permanent.

Corollary II. Favors contained in common law, for example in the new Code, are only improperly called privileges, because they do not grant something beyond or against the law, but rather are rights established in law.

Corollary III. Dispositions made in view of the common good more than private advantage are called particular laws rather than privileges. Of this sort seems to be, for example, the constitution *Provida* (January 18, 1908), by which mixed marriages in the German Empire were subjected to a special regime. Others, however, hold dispositions of this sort made by way of law as true privileges, but think that privileges granted in this way, as regards their abrogation, are subject to the norms established for the abrogation of laws.[1]

Corollary IV. It is disputed whether or not an indulgence is a true privilege.[2] Furthermore, among those who think that it is a privilege, or at least comes under the name of privilege, it is disputed whether indulgences also are included in the communication of privileges.[3]

[1] Thus Aertnys-Damen, *Theol. Mor.*, 11th ed., I, n. 217.

[2] Piat, *Praelect. Iur. Reg.*, II, p. 103.

[3] Piat, loc. cit.

197 **II. Division.** Privilege is distinguished:

1. Into privilege against and privilege beyond common law. The former derogates from right or common law, as the exemption of a family from the jurisdiction of the pastor. The latter grants a favor, but is not opposed to any law, as the privilege of dispensing in vows. To this class from can. 66, § 1 belong "habitual faculties, which are granted either in perpetuity or for a predefined time or a certain number of cases" (cf. n. 99).

2. Into favorable and odious. The former is that which neither redounds to the burden of a third party, nor has some burden attached for the privileged person himself; the latter is that which brings a burden to another, or has some burden attached for the privileged person himself, as papal enclosure with an attached excommunication, which is granted by way of privilege.

3. Into affirmative and negative, according as it grants the faculty of doing something, as the privilege of dispensing, or of omitting something, as the privilege of not observing the fast.

4. Into personal and real, according as it immediately affects a person or a thing, for example, a place, dignity, or office.

5. Into gracious, remuneratory, and onerous, according as it is granted either from mere liberality, or in compensation for merits, or by way of an onerous contract, namely under a certain burden and with a reciprocal obligation of commutative justice.

6. Into a privilege granted *motu proprio* or at the instance or prayers of someone; likewise into a privilege given by an oracle of the living voice or in writing.

198 **III. Author of privilege.** Only a competent superior can confer a privilege. This is clear if there is question of a privilege granted against law; but a privilege is not said to be granted if a private person confers a favor on someone.

199 **IV. Modes of acquiring privilege.** "Privileges can be acquired not only through direct concession of the competent authority and through communication, but also through legitimate custom or prescription" (can. 63, § 1).

1. **Direct concession.** To this is equivalent confirmation in specific form; "wherefore if it is referred to a privilege invalidly first granted or meanwhile extinguished, the invalid concession is healed, and the extinguished privilege is restored, unless, by clauses added in the confirmation, there is made an extension or restriction. This force does not belong to confirmation of a privilege in common form, much less to the mere authentic renewal of instruments in which privileges were consigned in writing."[1]

2. **Communication,** concerning which note:

a) Communication is a mode of acquiring privileges by which a privilege granted to one is extended to another by the ordering of an ecclesiastical Superior.

b) Communication is distinguished as twofold, namely, in equally principal form and in accessory form. Communication in equally principal form is communication by which a privilege granted to one is communicated with another so perfectly and independently as if it had first and directly been granted to him. The effect is chiefly had in this, that it begins to exist as though anew in the other privileged person, so that when the privilege is increased, diminished, or removed in the first privileged person, it is not increased, diminished, or removed in him to whom it was extended through equally principal communication. Communication in accessory form is communication by which a privilege granted to one is communicated to another in such a way that in all things it follows the vicissitudes of the prior privilege, as an accessory which follows the principal thing. Therefore, when the privilege is increased, diminished, or removed in the principal privileged person, it is likewise increased, diminished, or removed in him to whom it was extended only accessorily. Once these things have been explained, can. 65 is easily understood: "When privileges are acquired through communication in accessory form, they are increased, diminished, or lost by the very fact, if perchance they are increased, diminished, or cease in the principal privileged person; otherwise if they are acquired through communication in equally principal form."

c) "Through the communication of privileges... only those privileges are considered imparted which had been granted directly,[2] perpetually,[3] and without special relation to a certain place,[4] or thing,[5] or person,[6] to the first privileged person, regard also being had to the capacity of the subject to whom the communication is made"[7] (can. 64).

3. **Legitimate custom;** concerning this note that the same conditions are required which we explained above where there was speech about custom (n. 194).

4. **Legitimate prescription.** What is required for it, see explained in the treatise on Justice.

Note. "Centenary or immemorial possession induces the presumption of a granted privilege" (can. 63, § 2).

[1] Wernz, *Ius Decr.*, t. I, n. 160.

[2] Hence privileges which themselves have been acquired through communication are excluded.

[3] Thus are excluded privileges granted for a time, which, as we warned above, are called privileges only in a broader sense.

[4] For example, a privilege granted to a determined church.

[5] Suppose a privilege granted to some miraculous image of the Blessed Virgin Mary.

[6] For example, a privilege granted to some Superior General on account of personal merits is considered granted to the person, not to the dignity (cf. St. Alphonsus, n. 11).

[7] Thus, for example, if to some lay religious family there were given a communication of privileges with a clerical religion, many privileges would certainly be excluded by the very nature of the matter, of which the lay religion is not capable.

200 **V. Interpretation of privilege.** 1. A privilege must be estimated from its own tenor, "nor is it licit to extend or restrict it" (can. 67).

2. In doubt, privileges are to be interpreted according to the norm of can. 50; but that interpretation must always be used by which those enriched with the privilege seem to have obtained some grace from the indulgence of the one granting (can. 68). Can. 50 establishes thus: "In doubt, rescripts which refer to lawsuits, or harm rights acquired by others, or are opposed to a law for the advantage of private persons, or finally were obtained for the acquisition of an ecclesiastical benefice, receive strict interpretation; all the rest broad."

201 **VI. Use of privilege.** 1. If a privilege has been granted principally for the common good, there is an obligation of using it, once the things to be posited have been posited. Of this sort is the privilege of dispensing, likewise privileges granted in favor of a state, as the privileges of clerics and religious.

2. If it has been granted for the private good of the privileged person, as the privilege of satisfying the precept of hearing Mass in a private oratory, of itself there is no obligation of using it. Yet by accident there can be an obligation, suppose if the privilege has been granted to a community and the superior, or due conformity with others, commands its use (St. Alphonsus, n. 3; III, 319, dub. 3, and 324). Hence can. 69: "No one is compelled to use a privilege granted solely in his own favor, unless an obligation arises from another head."

It is disputed whether there is an obligation of using a privilege if it removes an impediment to the observance of a law; for example, whether a sick person who has the privilege of a private oratory, and can conveniently hear Mass there on a feast day, but not in church, is held to do this. Now with St. Alphonsus (loc. cit.), Lugo,[1] Wernz,[2] and others, it seems this must be affirmed. For the Church is considered to oblige all those whom she does not exempt from the law to fulfill it, if they conveniently can. Hence the privilege must be interpreted from the mind of the Church in such a way that it is not opposed to that universal principle. This is confirmed by can. 69 cited.

Objection. Privilege is given as a favor, not as a burden.

Response. That privilege by accident induces a burden does not prevent it from having been given as a favor and from retaining the character of a favor. Thus in the proposed case it grants the faculty of fulfilling the precept in a private oratory, and this faculty does not belong to others.

Note. If some privilege or indult has been granted to confessors, it is licit, unless the contrary is signified, to use it even outside confession, because the quality of confessor is regarded rather than the act of confession (St. Alphonsus, n. 4).

[1] *De Euch.*, disp. 22, nn. 14 and 17.

[2] *Ius Decr.*, I, n. 161.

202 **VII. Cessation of privilege.** "A privilege, unless something else is established, is to be considered perpetual" (can. 10). But a privilege ceases:

1. **Through revocation by the superior;** concerning this the Code establishes:

a) Privileges contained in the new Code are revoked through a contrary general law (can. 71). The reason is that the aforesaid privileges, by the very fact that they have been inserted into the Code, have become common law. Hence they are revoked through a contrary general law, even if special mention of them is not made.

b) As regards privileges not contained in the new Code, "the prescription of can. 60 is to be observed" (can. 71). Considering this canon, privileges not contained in the new Code:

alpha) Are revoked through a particular act of the Superior, and one signified to him who had obtained the privilege (can. 60, § 1).

beta) Are not revoked through a contrary law, unless either this is signified through a special clause added to the law, or the law contrary to the privilege has been passed by the superior of him who granted the privilege (can. 60, § 2).

As regards the revocation of privileges, observe:

First, a gratuitous privilege can always be validly revoked, but not licitly without a just cause; one granted by way of donation, however, cannot validly be revoked without a proportionate cause, which ordinarily must be public. Apply the same to a remuneratory privilege; here, however, a graver cause is required.

Second, an onerous privilege, especially a conventional one, cannot validly be revoked without a just cause; and in addition compensation must be given, at least where there is question of temporal goods (cf. St. Alphonsus, n. 15).

2. **Through renunciation by the privileged person;** concerning this can. 72 says:

a) Privileges cease through renunciation accepted by the competent Superior (can. cit., § 1).

b) Any private person can renounce a privilege constituted only in his own favor (can. cit., § 2).

c) Private persons are not permitted to renounce a privilege granted to some community, dignity, or place (can. cit., § 3).

d) Nor is it within the power of the community or group itself to renounce a privilege given to it by way of law, or if the renunciation would yield to the prejudice of the Church or of others (can. cit., § 4). Of this sort are the privileges of canon and forum, and others which regard ecclesiastical immunity.

3. **Through death or cessation in law of the superior;** concerning this can. 73 says: "When the right of the one granting is dissolved, privileges are not extinguished, unless they were given with the clause: at our good pleasure, or another equivalent clause." Hence if it is said "at the good pleasure of the Holy See," the privilege does not expire, because the Holy See does not die.
4. **Through the destruction of the subject in which it inheres;** concerning these, canons 74 and 75 say:

a) "A personal privilege follows the person and is extinguished with the person" (can. 74). Here, however, note that a privilege granted to a dignity is not a personal privilege, but a real one, and so is not extinguished with the person.

b) Real privileges cease through the absolute destruction of the thing or place; but local privileges revive if the place is restored within fifty years (can. 75).

5. **Through non-use or contrary use.** "Through non-use[1] or through contrary use[2] privileges not burdensome to others[3] do not cease; but those which yield to the burden of others[4] are lost if legitimate prescription or tacit renunciation accedes" (can. 76).
6. **Through cessation of the cause.** "A privilege also ceases if, in the progress of time, circumstances change so, in the judgment of the Superior, that it has become harmful, or its use becomes illicit" (can. 77). Therefore this title has force only when the privilege, by judgment of the Superior, ceases contrariwise, as it is said; not truly when it ceases only negatively, suppose when the reason on account of which the privilege was granted indeed no longer subsists, but nevertheless the use of the privilege has not become harmful or illicit. Yet a privilege ceases which was evidently given continuously dependently on a cause, if the cause no longer subsists (St. Alphonsus, n. 14).
7. **Through lapse of time.** "Likewise a privilege ceases when the time has elapsed or the number of cases for which the privilege was granted has been completed, with the prescription of can. 207, § 2 remaining firm"[5] (can. 77).
8. **Through abuse.** "He who abuses the power permitted to him by privilege deserves to be deprived of the privilege itself; and the Ordinary should not omit to warn the Holy See if someone gravely abuses a privilege granted by the same" (can. 78). Therefore it is required that the sentence of a competent judge intervene.

Note 1. "Although privileges orally obtained from the Holy See aid the petitioner himself in the forum of conscience, nevertheless no one can claim the use of any privilege whatsoever against anyone in the external forum unless he legitimately proves that the privilege itself was granted to him" (can. 79). Moreover, the ordinary mode here of showing or proving the existence of a privilege is that testimony be made through an authentic writing composed by a competent official, or by at least two trustworthy witnesses.

Those officials for a privilege granted by the Holy See are the Cardinal Prefects of the Sacred Congregations and Secretaries in the Roman Curia, when by reason of their office, by commission of the Pontiff, they grant a grace or declare it to be authentic. A similar document composed by a Superior General or by a Procurator does not suffice. Nevertheless all Cardinals enjoy the privilege "of making faith in the external forum when testifying concerning a pontifical oracle" (can. 239, § 1, n. 17).

The testimony of two witnesses suffices because such testimony is generally admitted in the external forum.

Note 2. As regards habitual faculties granted to Bishops and to others who, from can. 198, § 1, come under the name Ordinary, can. 66 establishes:

First, unless in their concession the industry of the person was chosen or something else was expressly provided, habitual faculties granted by the Apostolic See to a Bishop or to others about whom in can. 198, § 1, do not vanish when the right of the Ordinary to whom they were granted is dissolved, even if he himself had begun to execute them, but pass to the Ordinaries who succeed him in governance; likewise those granted to a Bishop also belong to the Vicar General (can. 66, § 2).

Second, a faculty granted carries with it also other powers which are necessary for its use; wherefore in the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation (can. 66, § 3).

Habitual faculties, moreover, are understood as those which are granted either in perpetuity or for a predefined time or a certain number of cases (cf. can. 66, § 1).

[1] For example, someone has the privilege of seeking a tax; non-use is had when he does not seek it.

[2] For example, someone has the privilege of not paying a tax; contrary use is had if he does pay it.

[3] As of the privilege of a private oratory or of not reciting the Breviary.

[4] As the privilege of seeking a tax.

[5] Can. 207, § 2 has these words: "But when power has been granted for the internal forum, an act placed through inadvertence, after the time has elapsed or the number of cases has been exhausted, is valid."

§ III. On Rescripts

203 **I. Notion.** A rescript is the response of an ecclesiastical Superior, given in writing, by which a right is granted at someone's supplication, relation, or consultation.[1]

[1] Cf. Vermeersch, *Epitome Iuris Canonici*, I, n. 122 sq.

204 **II. Division.** Rescripts are divided:

1. Into rescripts according to law, beyond law, and against law.
2. Into rescripts of grace and of justice, according as they grant a favor without any connection with judicial matter, or determine a right between contending parties.
3. Into rescripts in gracious form and in commissory form, according as they do not require, or do require, an executor.

205 **III. Obtaining of a rescript.** All who are not expressly prohibited can freely obtain rescripts from the Apostolic See and from other Ordinaries, both for themselves and for another (can. 36, § 1). Nevertheless no one should seek from another Ordinary a grace denied by his own Ordinary, without any mention being made of the denial; but once mention has been made, the Ordinary should not grant the grace unless the reasons of the denial have been had from the prior Ordinary (can. 44, § 1). But if the mention of which there is question is omitted, the concession of the grace is nonetheless of itself valid.

I said that a rescript can also be obtained for another; concerning this note that this can also be done without the other's assent. And although he himself can fail to use the grace granted through the rescript, nevertheless the rescript has force before his acceptance, unless something else appears from the clauses added (can. 37).[1]

[1] Cf. Sacred Congregation of Religious, August 1, 1922 (*A.A.S.* XIV, p. 501).

206 **IV. Requisites for validity.** There is required:

1. That the person receiving the rescript be capable of obtaining the grace of which there is question. Furthermore, first, excommunicated persons to be avoided; second, other excommunicated persons, interdicted persons, and suspended persons after a declaratory or condemnatory sentence, cannot validly obtain any pontifical grace unless mention of the censure is made in the pontifical rescript (can. 2265, § 2; 2275, 3°; 2283). Outside these cases, graces and dispensations of every kind granted by the Apostolic See are valid even for those bound by censure (can. 36, § 2).
2. That the matter be suitable for a rescript. Now rescripts, even those issued *motu proprio*, against the legitimate custom or particular statute of some place, or against a right already acquired by another, are not sustained unless an express derogatory clause is added to the rescript (can. 46).
3. That order be observed in the petition. Furthermore, first, a grace denied by one Sacred Congregation or Office of the Roman Curia is invalidly granted by another Sacred Congregation or Office, or by the local Ordinary even if he has the power, without the assent of the Sacred Congregation or Office with which, or with whom, action was begun, with the right of the Sacred Penitentiary for the internal forum preserved (can. 43). Second, a grace denied by the Vicar General and afterward obtained from the Bishop, with no mention made of this denial, is invalid; but a grace denied by the Bishop cannot validly be obtained from the Vicar General, even with mention of the denial made, unless the Bishop consents.
4. That certain conditions not be lacking, namely those which in rescripts are expressed by the particles "if," or "provided that," or another of the same signification (can. 39); and that the petitions rest upon truth (can. 40), and indeed, in rescripts of which there is no executor, at the time at which the rescript was given, but in the others at the time of execution[1] (can. 41). But that petitions must rest upon truth you should understand in this way:

a) Subreption, or reticence of the truth in the petitions, does not prevent the rescript from having force and being ratified, provided those things were expressed which, by the style of the Curia,[2] must be expressed for validity (can. 42, § 1). Indeed when the clause *Motu proprio* is added to rescripts obtained at someone's petitions, they do have force if in the petitions a truth otherwise necessarily to be expressed is kept silent, but not if a false final cause, and that the only one, is proposed (can. 45).

b) Nor does obreption, or presentation of what is false, stand in the way, provided either the only cause proposed, or at least one motive cause[3] out of several proposed, is true (can. 42, § 2). Indeed a dispensation granted from a lesser impediment of Matrimony[4] is invalidated by no defect either of obreption or of subreption, even if the only final cause set forth in the petitions was false (can. 1054).

c) Rescripts are not made invalid by error in the name of the person to whom or by whom they are granted, or of the place in which the person dwells, or of the matter about which there is question, provided, in the judgment of the Ordinary, there is no doubt about the person or the matter itself (can. 47).

Note. If it happens that two rescripts contrary to one another are obtained concerning one and the same matter, the particular prevails over the general in those things which are expressed particularly. If they are equally particular or general, the earlier in time prevails over the later, unless express mention of the earlier is made in the latter, or unless the earlier petitioner has not used his rescript through fraud or notable negligence. But if they were granted on the same day and it is not clear which petitioner obtained first, both are invalid, and, if the matter permits, recourse must again be had to him who gave the rescripts (can. 48).

[1] For example, someone seeks a dispensation from a greater matrimonial impediment so that offspring may be legitimated. A little after the dispensation has been granted, the offspring dies. In this case, when the rescript does not require an executor, the Matrimony nevertheless can be contracted, because the cause alleged was true at the time of concession. But when the rescript requires an executor, the Matrimony cannot be contracted because, as is supposed, at the time of execution the offspring was already dead, and so the cause alleged no longer rested upon truth at that time.

[2] The style of the Curia is, as it were, the norm of proceeding in seeking or granting graces, or in treating judicial matters; I mean a norm received by use or established by pontifical decrees. What things, in the various kinds of rescripts, must be expressed for validity cannot be designated by one single rule; but insofar as it seems necessary, it will be explained in its own place.

[3] The motive or final cause is that which, whether one simple cause or a complex of several causes, suffices of itself for granting the favor. The impulsive cause is that which indeed does not suffice, but nevertheless aids the motive cause, or impels the superior to grant the favor more quickly or more easily. Which cause is motive and which only impulsive is different in different matters, and must be estimated only from the law and the style of the Roman Curia.

[4] Can. 1042 sets forth the lesser impediments of Matrimony.

207 **V. Time at which rescripts have effect.** Rescripts by which a grace is granted without an interposed executor have effect from the moment at which the letters were given; the others from the time of execution (can. 38).

208 **VI. Interpretation of a rescript.** 1. Rescripts are to be understood according to the proper signification of the words and the common usage of speaking, nor should they be extended to cases other than those expressed (can. 49).

2. In doubt, rescripts which refer to lawsuits, or harm rights acquired by others, or are opposed to a law for the advantage of private persons,[1] or finally were obtained for the acquisition of an ecclesiastical benefice, receive strict interpretation; all the rest broad (can. 50).

[1] For example, prerogatives established by law for minors.

209 **VII. Execution of a rescript;** concerning this, certain things must first be noted beforehand:

1. **Things to be noted beforehand.** Among rescripts, as was said in n. 204, some do not require an executor, while others require one. Furthermore:

a) Rescripts which do not require an executor are said to be granted in gracious form, and for the most part are sent directly to the petitioner. Now a rescript of the Apostolic See in which no executor is given must be presented to the Ordinary of the petitioner only when either this is prescribed in the same letters, or there is question of public matters,[1] or certain conditions must be verified[2] (can. 51). In cases of this sort the Bishop only subscribes: "We have seen" or "We have recognized"; he does not write: "We approve."

b) Rescripts which require an executor are said to be granted in commissory form, and generally are sent not to the petitioner, but to the executor, who commonly is the Ordinary of the petitioner himself.

Moreover, the executor can be necessary or voluntary. If he is a necessary executor, only the bare ministry is committed to him, that is, only the execution of the grace, and of itself it is not licit for him to deny the execution. In the case, just as if there is question of a rescript granted in gracious form, the grace has already been made. If he is a voluntary executor, the faculty of granting the grace is committed to him, and the exercise of this faculty is left to his prudent judgment; consequently he could still deny the execution of the grace (cf. can. 61).

2. **Things to be observed.** a) "The executor of a rescript invalidly performs his office before he has received the letters and recognized their authenticity and integrity, unless prior notice of them has been transmitted to him by authority of the one rescripting" (can. 53).

b) If the mere ministry of execution is committed in the rescript, execution of the rescript cannot be denied unless either it is manifestly clear that the rescript is null by defect of subreption or obreption, or conditions are added in the rescript which the executor knows have not been fulfilled, or the one who obtained the rescript seems to the executor so unworthy that the concession of the grace will be an offense to others. If this last occurs, the executor, leaving the execution aside, should immediately make the one rescripting more certain about the matter (can. 54, § 1).

But if in the rescript the concession of the grace is committed to the executor, it belongs to him, according to his prudent judgment and conscience, to grant or deny the grace (can. 54, § 2).

c) Rescripts for the presentation of which no definite time exists can be exhibited to the executor at any time, provided fraud and deceit are absent (can. 52). Besides, the executor must proceed according to the norm of the mandate, and unless he has fulfilled the essential conditions added in the letters and has observed the substantial form of proceeding, the execution is invalid (can. 55). In addition, the execution of rescripts which regard the external forum must be made in writing (can. 56).

d) The executor of rescripts can substitute another for himself according to his prudent judgment, unless substitution has been prohibited, or the person of the substitute has been predefined. If, however, the industry of the person was chosen, it is not licit for the executor to commit anything to another except preparatory acts (can. 57). Finally, any rescripts can also be mandated to execution by the successor of the executor in dignity or office, unless the industry of the person was chosen (can. 58).

e) It is lawful for the executor, if he has erred in any way in the execution of rescripts, to mandate the same things to execution again (can. 59, § 1).

f) As regards taxes for the execution of rescripts, the prescription of can. 1507, § 1, is to be observed (can. 59, § 2). This canon establishes as regards rescripts: "To predefine taxes... for the execution of rescripts of the Apostolic See..., to be paid in the whole ecclesiastical province, belongs to the provincial Council or the meeting of Bishops of the province; but a predetermination of this sort has no force unless first approved by the Apostolic See." Furthermore, in matrimonial dispensations for non-poor persons, only some modest payment by title of chancery expenses can be demanded by the Ordinaries of places or their officials, with any contrary custom reprobated. If they have demanded some emolument, they are held to restitution. Except if the faculty of demanding another emolument has expressly been given to them by the Holy See; and if they have demanded it, they are held to restitution (can. 1056).

[1] For example, concerning an indulgence or sacred relics to be exposed for public veneration.

[2] As if the Ordinary must examine the suitability of the place for a private oratory.

210 **VIII. Revocation of a rescript.** A rescript is revoked only through a particular act of the Superior, but not through a contrary law, unless something else is provided in the law itself, or the law was passed by a Superior of the one rescripting (can. 60, § 2). Yet a rescript revoked through a particular act of the Superior endures until the revocation is signified to him who obtained it (can. 60, § 1).

Note 1. Through the vacancy of the Apostolic See or of the diocese, no rescript of the same Apostolic See or Ordinary is destroyed, unless something else appears from the clauses added, or the rescript contains a power granted to someone of granting a grace to particular persons expressed in the same rescript, and the matter is still intact (can. 61). From these things it follows that a rescript does not cease during vacancy of the See: first, when the grace has already been made, which obtains, as we said, when the rescript is granted in gracious form or indeed in commissory form, but with a necessary executor; second, when the grace is to be made and the matter is no longer intact.

Note 2. If the rescript contains not a simple grace, but a privilege or dispensation, the prescriptions of the canons which follow are besides to be observed (can. 62), that is, those which treat privileges and dispensations (n. 196 sq.; n. 178 sq.).

§ IV. On Counsels

211 (St. Thomas, I-II, q. 108, a. 4.)

I. Notion. Counsel is here understood as an ordering by which something, according to itself, is advised before another, but is not commanded. The object is that which, according to itself, is better than another; of this sort is, for example, virginity.

212 **II. Existence of counsels** is clear first from Sacred Scripture: "Now concerning virgins," says St. Paul, "I have no commandment of the Lord, but I give counsel, as having obtained mercy of the Lord, that I may be faithful.... Therefore both he who joins his virgin in marriage does well, and he who does not join her does better."[1] Then it is clear to reason that there are acts which, according to themselves, are more perfect than others, and therefore, according to themselves, are advised before others, but are not commanded. Thus, for example, according to itself it is more perfect to give a richer alms than a less rich one.

[1] 1 Cor. 7:25-40; cf. Matt. 19:17 sq.

213 **III. Obligation of following counsel.** 1. There is not, as is clear, an obligation of doing what according to itself is more perfect, but here and now is less perfect. Thus, for example, often here and now it is better to study, although prayer according to itself is more perfect.

2. Another question is whether there is an obligation of preferring what here and now is more perfect (understand: what is held by the one about to act here and now as more perfect) to an action or omission which here and now is less perfect. This question today is sharply disputed. Now some[1] affirm the obligation of doing what here and now is held by the agent as more perfect. Others[2] deny it, and it seems one must agree with them. For first, the more perfect does not oblige from the object, since it is not prescribed; nor from the fact that its omission could not be made for an honorable end, for it can be omitted on account of the honorable end of a less good work. Then, if the obligation of doing what is more perfect were admitted, by the same reason there would have

to be admitted an obligation of doing it in a more perfect manner, and therefore from actual charity. But no one will have affirmed an obligation of this sort.

Objection 1. Since man is wholly ordered to the end, the order of reason requires that he attain the end as much as he can attain it. But one who prefers the less perfect to the more perfect does not satisfy this obligation.

Response. From the fact that man is wholly ordered to the end, it does not follow that he must attain the end as much as he can attain it. For if this were admitted, man would not only have to choose always what is more perfect, but also to perform it in the more perfect manner, that is, from actual charity. But at least the latter, as we noted above, no one will have admitted. It suffices that man always and in all things behave rightly toward the end; it is not required that always and in all things he behave toward the end in the more perfect manner.

Objection 2. No honorable end can be assigned on account of which the less perfect is preferred to the more perfect. An end of this sort does not consist in the fact that the more perfect is omitted precisely and only because it is pleasing to omit it, since such a volition would be idle, lacking pious utility or just necessity (cf. St. Thomas, II-II, q. 54, a. 3). Nor does it consist in the end on account of which the less perfect is placed; for that end indeed suffices for placing the less perfect considered separately, but not for placing it when the more perfect occurs. In a word: no honorable reason is given for choosing the less perfect before the more perfect.

Response. Someone cannot honorably prefer the lesser good to the greater good by judgment; but he can honorably prefer it in desiring and choosing, because on the one hand the more perfect does not oblige by reason of itself or from the object, and on the other hand the less perfect, by reason of its own moral goodness, can be desired and chosen (cf. St. Thomas, *De veritate*, q. 23, a. 8, ad 9).

Objection 3. In Matthew it is declared: "You shall love the Lord your God with your whole heart, and with your whole soul, and with your whole mind";[3] these words are difficult to explain in the opinion of the adversaries.

Response. These words are sufficiently explained concerning charity above all things, which is to be shown to God, the Supreme Good.

St. Thomas does not treat the question in a special article, but many texts are found which state our proposition clearly enough; wherefore it is pleasing to cite some of them. First he has these words: "The observance of each of them in some special case pertains to counsel in a qualified sense, namely, in that case; for instance, when a man gives some alms when he is not held to give, he follows the counsel of poverty as regards that deed; likewise when someone does not follow his own will in some deed which he could licitly do, he follows the counsel of obedience in that case" (I-II, q. 108, a. 4). From these things it is clear that St. Thomas supposes that also in particular, or in the concrete, there truly are better works to which a man is not held and which he can licitly omit. Then in the disputed question *De veritate*, q. 23, a. 8, ad 9, refuting the objection in which the choice of the lesser good is asserted to be perverse, he responds thus: if "someone by judgment prefers that which is less good to the greater good, there will be perversity of choice; but not if he prefers it in desiring; for man is not held to pursue better things always in acting." Finally, in II, dist. 39, q. 3, a. 3, ad 6, where he speaks of the obligation of conscience, which is the practical dictate of reason showing what must be done here and now, he says: "When conscience dictates to someone that it is good to do some work of counsel: if

he does not do it, he does not sin, because he does not apprehend it as a due good and subject to precept."

St. Alphonsus does not explicitly treat the question, but he concedes that those who confess only some imperfections, about which it is doubted whether they reach venial sins, are absolved conditionally. Therefore he seems to deny that imperfections are necessarily venial sins.

Besides, note:

a) By the consent of all, one who neglects what here and now is more perfect can sin by reason of an inordinate motive, scandal, or contempt; furthermore he can expose himself to the danger that divine aids be diminished.

b) In practice it is often difficult to determine what here and now is more perfect, all the more because the reason that someone not be overwhelmed by excessive efforts, nor tortured by scruples, easily brings it about that what in itself is less perfect becomes here and now more perfect, or equally perfect.

c) "As regards the direction of souls, one must insist more closely on a pure and holy intention than on a longer examination of betterness. He who seeks God with a sincere will is led not so much by fear of sin as by the joy of love, and, arranging ascents in his heart, will freely fulfill all things which he perceives to be useful for greater holiness. In this sense is to be understood that very well-known saying of St. Augustine:[4] 'Love, and do what you will.... Let the root of love be within; from that root nothing can exist except good.'"[5]

[1] Thus, for example, De Lugo, *De poenit.*, disp. III, sect. 1, nn. 9-10; Garrigou-Lagrange, *Perfection chrétienne et contemplation*, t. III, p. 532.

[2] Thus, for example, Cajetan on II-II, q. 186, a. 2, ad 2; Prummer, *Man. Theol. Mor.*, bk. I, n. 131, and bk. II, n. 324; Kruysbergs, in *Collectanea Mechliniensia*, 1929, p. 425.

[3] Matt. 22:37.

[4] VII *In Ep. Jo.*, 8.

[5] Cruysberghs, in *Collectanea Mechliniensia*, 1929, p. 429.

Chapter II. On Conscience

(St. Thomas, I, q. 79, a. 13; I-II, q. 19, a. 5; *In II Sent.*, dist. 24, q. 2, a. 4; *De Veritate*, q. 17, a. 1; *Quodlibet* 8, q. 6, aa. 13 and 15; St. Alphonsus, *Theologia moralis*, bk. I, nn. 20-89, ed. Gaude; *Homo Apostolicus*, tr. 1).[1]

[1] Cf. Waffelaert, *De dubio solvendo in re morali dissertatio*; Gaude, *De morali systemate S. Alphonsi Mariae de Ligorio historico-theologica dissertatio*; Ter Haar, *De systemate morali antiquorum probabilistarum dissertatio historico-critica*; *Ven. Innocentii PP. XI de Probabilismo Decreti Historia et Vindiciae* (1924); Le Bachelet, *La question Ligorienne*; De Caigny, *De gemino probabilismo licito*; *De genuino morali systemate S. Alphonsi*; Mandonnet, *Le Decret d'Innocent XI contre le probabilisme*; Lehmkuhl, *Probabilismus vindicatus*; Jansen, *Geschichte und Kritik im Dienste der Minus-probabilis*; Wouters, *De Minusprobabilismo*; Pagani, *De regulis ad certam nobis conscientiam praestandam brevis tractatio*; Arendt, *Aequiprobabilismus ab ultimo fundamento discussus*; Bucceroni, *Commentarii... Commentarius secundus de Conscientia et de Probabilismo*; Frins, *De actibus humanis*, pars III, *De formanda conscientia*; Valensise, *Super systema Theol. Mor. hodie in scholis evulgatum brevis disquisitio*; Mondino, *Studio storico-critico sui sistema morale di S. Alfonso*; Beaudouin-Gardeil, *Tractatus de conscientia*; Noble, *La conscience morale*; Wurth, *Die psychologischen Grundlagen der Gewissensbildung*; Fernus, *Zur Vorgeschichte der Moralsysteme von Vitoria bis Medina*; Chollet, "Conscience," in *Dict. de theol. Cath.* III, cols. 1156-1174; Van Oosterhout, *Psychologie van het geweten*; Rombouts, *Geweten en gewetensvorming*; Sweens, *Theologia moralis fundamentalis*; Delerue, *Le systeme moral de St. Alphonse de Liguori*.

214 After we have spoken of the remote rule of morality, or law, we must discuss the proximate rule of morals, or conscience. Namely, in order that law here and now, or in second act, oblige, it is required that it become known to the individual and be applied by him to a particular act. But it is applied to a particular act through conscience, which, as St. Thomas teaches, "adds to knowledge the application of knowledge to a particular act" (*De verit.*, q. 17, a. 2, ad 2). And this is conscience properly so called, which accordingly imports a judgment concerning the morality of a particular act.

But conscience is also taken in a less proper sense for a habit or custom of judging about the morality of acts in this or that way; and thus strict, lax, and scrupulous conscience are distinguished. For the sake of practice we shall also undertake discussion of conscience considered in this way. Hence there is a twofold paragraph: the former concerning conscience properly so called, the latter concerning conscience improperly so called.

Article I. On Conscience Properly So Called

After an exposition has been set forth of notions that recur again and again, we shall speak first of the notion, division, and directive force of conscience properly so called; then of the conscience required for acting licitly; finally of the comparison of the conscience required.

§ I. On Preliminary Notions

215 The notions which recur most, and the prior exposition of which is of the greatest importance, are those of certainty, opinion, and doubt. For the sake of completeness we shall add some points concerning the notion of probability, the immoderate use of which has so greatly entangled the treatise on conscience.

I. Certainty is the state of a mind adhering to some knowable thing without a prudent fear of erring. It is said "without a prudent fear"; for an imprudent fear is not always absent even from the certainty of faith. "But sometimes," says Aquinas, "the possible intellect is determined to this, that it totally adhere to one part" (*De Verit.*, q. 14, a. 1). And elsewhere: "Certainty is nothing other than the determination of the intellect to one" (*In III Sent.*, dist. 23, q. 2, a. 4, sol. 3).

Certainty is distinguished into metaphysical, physical, and moral, according as it is founded in the essences of things, in physical laws, or in moral laws, that is, those which govern the inclinations and morals of human beings.

Moral certainty is usually divided into strict and broad. Strict certainty is that of which we have just spoken. Broad certainty is that which includes some prudent fear, or "which does not exclude every prudent fear" (St. Alphonsus, I, 81); hence it cannot be called certainty properly so called, but must be referred to opinion, as will be more evident from what is to be said.

II. Opinion is the state of a mind adhering to some knowable thing with a prudent fear of erring. "But sometimes the intellect is inclined more to one thing than to another; yet that which inclines it does not sufficiently move the intellect to this, that it determine it totally to one of the parts; hence it indeed accepts one part, yet it always doubts about the opposite: and this is the disposition of one opining, who accepts one part of a contradiction with fear of the other" (St. Thomas, *De Verit.*, q. 14, a. 1). And elsewhere: "One opining has thought without perfect assent; but he has something of assent, insofar as he adheres to one more than to another" (*In III Sent.*, dist. 23, q. 2, a. 2, sol. 1). Moreover, one opining gives the fearful assent of which there has been speech to a proposition, or to one part of a

contradiction, as true. "One opining," says St. Thomas, "says (certainly with fear) that what he opines is true" (*In VI Eth.*, lect. 8).

Corollary I. One who opines that a law exists does not wholly ignore the existence of the law, but knows it in some measure, or truly has a positive cognition of it, although a weak one.

Corollary II. One who opines that a law exists holds the opinion favoring the law as certainly more probable, but the opinion which supports liberty as certainly less probable. But since a small excess of probability is commonly not clearly, and therefore not certainly, perceived, an opinion that is certainly more probable will commonly be notably more probable, or certain in a broad sense, imperfectly and improperly (cf. St. Alphonsus, *Lettere*, III, n. 219).

III. Doubt is the state of a mind fluctuating between two parts of a contradiction because of no motives, or because of equal motives on both sides. "Our intellect," says the Angelic Doctor, "stands in different ways with respect to the parts of a contradiction. For sometimes it is not inclined more to one than to the other, either because of a defect of things moving it, as in those problems concerning which we do not have reasons, or because of the apparent equality of those things which move toward each part: and this is the disposition of one doubting, who fluctuates between two parts of a contradiction" (*De Verit.*, q. 14, a. 1). Again: "When a man does not have a reason for one part more than for the other, either because he has one for neither, which belongs to one who does not know, or because he has one for each, but an equal one, which belongs to one doubting, then he in no way assents, since his judgment is in no way determined, but is equally disposed toward different things" (*III Sent.*, dist. 23, q. 2, a. 2, sol. 1). Nor does St. Alphonsus speak otherwise: "A doubtful conscience is that which suspends assent for each part of the doubt, and remains uncertain and hesitating" (I, 20). "A doubtful conscience is that which, remaining undeliberated, suspends assent for each part" (*Homo Apostolicus*, tr. I, n. 12). Therefore the Doctors whom we have cited teach that one doubting gives assent, not even a weak assent, to neither part of a contradiction as true. St. Alphonsus gives the ultimate reason for this matter in these words: "For although, when reasons of equal weight support each opinion, each would have force to move the intellect to assent if they were not mutually opposed; nevertheless, since here they are directly opposed to each other, each is now deprived of the force of drawing assent to itself, and by reason of the equality of the weights one destroys the other, and both therefore bring forth nothing except mere doubt" (*Dichiarazione del Sistema*, appendix, n. 21).

Suspicion is reduced to doubt, that is, the state of mind in which either opinion seems to someone doubtfully more probable. "As all," says St. Alphonsus, "both Probabilists and Antiprobabilists, agree, when there is a slight preponderance between two opinions, so that the excess is very slight and doubtful, then both opinions are regarded as equally probable according to that common axiom: A little is reckoned as nothing" (I, 55, 7th ed.). Likewise St. Thomas: "Certain acts of the intellect have unformed thought without firm assent, whether they incline to neither part, as happens to one doubting, or incline more to one part, but are supported by some slight sign, as happens to one suspecting, or adhere to one part, yet with fear of the other, which happens to one opining" (II-II, q. 2, a. 1). Again: "Reason takes what is little as though it were nothing" (I-II, q. 14, a. 4).

Doubt, or a doubt, is distinguished:

1. Into strict and broad doubt. Strict doubt, or doubt properly so called, is that which we have just described. Broad doubt is some such doubting or hesitation which remains in the state of opinion; hence it is only doubt taken improperly.

Strict doubt is divided into positive and negative, according as someone doubts because of equal or nearly equal motives, or because of no motives, or slight motives, on either side.[1]

2. Into speculative and practical doubt, according as the doubt concerns the morality of an action considered in the abstract, for example whether it is licit to paint on a feast day, or concerns the morality of an action viewed in particular, for example whether it is licit for me to paint on this feast day (St. Alphonsus, I, 21).

3. Into doubt of law and doubt of fact. Doubt of law is had when there is doubt about the existence, sense, extension, or cessation from within of a law or disposition; for example, if there is doubt whether it is licit to paint on a feast day. Doubt of fact obtains when there is doubt about a particular fact or thing on which the application of a law or disposition to a particular case depends; for example, if there is doubt whether someone has fulfilled the law or is excused from the law. Yet authors do not agree in delineating doubts of law and of fact.

IV. Probability, or a probable *sententia* (opinion),[2] is taken by different persons in a different sense. Some call that opinion probable which rests on a grave foundation, even though perhaps on a foundation certainly less grave than the foundation of the opposite opinion; so the Probabilists. Others require that it rest on a foundation equally or almost equally grave as the opposite; so St. Alphonsus (*Dell' uso moderato*, c. 5, n. 25). Others require a foundation so grave that it merits the assent of a prudent man; this belongs only to the more probable opinion; so commonly the philosophers.[3] An opinion thinly or doubtfully probable is not called probable except improperly.

A probable opinion is distinguished:

1. Into probable absolutely, or in itself, and probable comparatively, or relatively, according as it is probable viewed in itself alone or compared with the opposite. What is comparatively probable is either far more probable, or most probable; or certainly, or much, more probable; or equally, or almost equally, probable; or, as others add, certainly, or much, less probable.[4]

2. Into probable in the logical sense and probable in the ethical or practical sense. Probable in the logical sense is what has grave reasons, or reasons fit for proving. Probable in the ethical sense is what has reasons so grave that, at least by force of a reflex principle, it can direct actions, or be approved for practice.

3. Into probable intrinsically and probable extrinsically. An opinion is called probable intrinsically if it is probable because of intrinsic reasons; probable extrinsically if such great extrinsic authority supports it that, because of that authority, it is prudently held as intrinsically probable. From these things it is clear that extrinsic probability is resolved into intrinsic probability. Besides, concerning extrinsic probability, first note proposition 27, condemned by Alexander VII: "If a book belongs to some junior and modern author, the opinion ought to be judged probable so long as it is not established that it has been rejected by the Holy Apostolic See as improbable."[5] Then observe these things:

a) "The authority of writers must be estimated not from their multitude, but from their weight; so that the authority of few, or even of one doctor endowed with special knowledge and piety, is sometimes to be preferred to many others" (St. Alphonsus, *Diss. de usu mod. op. prob.*, n. 88, year 1757).[6]

b) The authority of St. Thomas and St. Alphonsus is very great. That St. Thomas is to be preferred to all others, no one today will deny. Moreover, from the various ecclesiastical documents by which the

doctrine of St. Thomas is celebrated and inculcated in an entirely singular way, it is enough to recall to mind the encyclical *Aeterni Patris* (4 Aug. 1879), the Motu Proprio of Pius X, *De Studio doctrinae S. Thomae in scholis catholicis promovendo* (29 Jun. 1914), and canons 589, § 1 and 1366, § 2.

The very great authority of St. Alphonsus is clear both from the fact that he was raised to the dignity of Doctor of the Church,[7] and from the many, and singular, praises by which the Church has not ceased to adorn and commend his doctrine.[8] Hence in controversial matters those authors should be consulted cautiously who easily withdraw from the doctrine of St. Thomas and St. Alphonsus, and who are struck by these words which Mercurelli, at the command of Pius IX, wrote back to Vitozza, who had defended the doctrine of St. Alphonsus against Ant. Ballerini: "His Holiness judged it commendable that you undertook to defend the praises bestowed by the Church upon the doctrine of St. Alphonsus, and that you took pains to meet the malice of those who, abusing the dispositions instituted concerning that same doctrine, tried to depress it."[9]

c) Concerning the manner in which St. Alphonsus gives his judgment about the value of opinions, it is useful to note these things:

(alpha) Generally, for him that opinion is practically probable which he calls probable.

(beta) If he calls one opinion more probable and another probable, he understands them as doubtfully more probable and doubtfully less probable, so that the latter too is held by him as practically probable.[10] If concerning some opinion he says, "It is said not improbably," or "It does not seem improbable," or "Authors say probably," or, for example, "Lugo probably says," then regularly he holds the opinion in question as practically probable. If, once the doctrine set forth has been proved, he adds, for example, "Lugo observes," commonly he approves such an observation.

(gamma) If he writes, "The Doctors say that it is probably licit," from this it is not certainly clear what he himself thinks. If he calls certain opinions neither probable nor improbable, he keeps silent about his judgment concerning them. If he calls one opinion more probable, but gives no judgment about the opposite, or says of it, "I do not dare to condemn it"; "I do not dare to call it improbable," he does not therefore pronounce it practically probable, but leaves the matter to the judgment of others (Preface of St. Alphonsus, bk. V, n. 76).

(delta) If he calls some opinion truer, far, much, notably, certainly more probable, or more common and more probable, he does not hold the opposite as sufficiently founded.

(epsilon) If he calls an opinion common or more common, and gives no judgment about the opposite, the former commonly must be called his own.

Finally, if there is doubt about the doctrine of the holy Doctor, sometimes the doubt can be resolved from a comparison of different works and places.

[1] But if St. Alphonsus (I, 20) states that positive doubt is had "when for each part, or at least for one, there is a grave motive," he takes the word "doubt" in the broader sense, insofar as it includes both strict and broad doubt.

[2] It is better called an opinion (*sententia*) than an opinion (*opinio*), because *opinio* designates a state of mind.

[3] Cf. *De Minusprobabilismo*, pp. 14-17.

[4] An opinion which by some is called the only probable one falls into an opinion certain in the broad sense.

[5] Denzinger-Bannwart, n. 1127.

[6] Among grave authors St. Alphonsus counts: Suarez, Soto, Azor, Canus, Sylvius, Cajetan, Banez, Navarrus, Paludanus, Toletus, Sylvester, Lessius, Molina, Sanchez, Angelus, Vasquez, Armilla, Valentia, Layman, de Lugo, Castropalaus, Bonacina, Emmanuel Sa, Pontius, Cabassutius, Collet, Roncaglia, the Salmanticenses, Petrocorensis, Abelly, Cardenas, Coninck, Gamachaeus, Isambert, etc., besides St. Thomas, St. Bonaventure, St. Antoninus, and Scotus, whose authority indeed must be preferred to others (cited dissertation, loc. cit.).

[7] This dignity, according to the doctrine of Benedict XIV, "does not pertain to doctors who have been in the Church, but to doctors of the Church itself" (*De Serv. Dei beatif.*, etc., bk. 4, p. 2, c. 11, n. 11). For it, as the cited author teaches, there are required "eminent doctrine, notable sanctity of life... and besides this, the declaration of the Supreme Pontiff or of a General Council legitimately gathered" (loc. cit., n. 13).

[8] It is pleasing to report some excerpts from certain ecclesiastical documents: 1. The Sacred Penitentiary on 5 July 1831 responded that a confessor is not to be disquieted who in the practice of the Sacred Penitentiary follows all the opinions of St. Alphonsus, although he does not read the works of the blessed Doctor except to know his doctrine accurately, without weighing the arguments or reasons on which the various opinions rest. Yet you should not apply these things to opinions which are sufficiently established to be opposed to declarations of the Church, or which someone, after perhaps making inquiry and taking all things into account, judges to be certainly less probable. 2. The Sacred Penitentiary on 19 Dec. 1855 responded to a certain professor that, notwithstanding his oath of following Probabiliorism and the opinions of the Probabiliorists, he could "follow and publicly hand on in all things the doctrine of St. Alphonsus de Ligorio." 3. The decree *Urbis et Orbis*, dated 23 March 1871, concerning the concession of the title of Doctor: "He (St. Alphonsus) dispelled and drove away the darkness of errors widely diffused by unbelievers and Jansenists, by learned works, and especially by treatments of Moral Theology. Besides this he clarified obscure things and explained doubtful ones, since among the tangled opinions of theologians, whether laxer or stricter, he paved a safe way by which the directors of the souls of the Christian faithful could walk with unoffending foot." 4. The Apostolic Letter in the form of a Brief, dated July 1871, concerning confirmation of the title of Doctor: "Intending his mind solely toward the glory of God and the spiritual salvation of men, he wrote very many books, filled with sacred learning and piety, whether amid the tangled opinions of theologians, both laxer and stricter, for fortifying a safe way by which the directors of the souls of Christ's faithful could walk with unoffending foot, or for informing and instructing the clergy." 5. Finally, the Congregations in their responses, repeatedly and expressly, referred questioners especially to the doctrine of St. Alphonsus (*De Minusprobabilismo*, pp. 46-48).

[9] *Nouv. Rev. theol.* VII, p. 98.

[10] Cf. *De Minusprobabilismo*, pp. 64-65.

§ II. On the Notion, Division, and Directive Force of Conscience Properly So Called

216 Conscience can be taken both physically and morally. Conscience taken physically, or physiological conscience, is the cognitive faculty of returning to one's own acts. Conscience taken morally, or moral conscience, imports a judgment about the morality of our acts; and it is twofold, antecedent and consequent, according as it regards an act, or respectively an omission, to be placed or already placed. Antecedent conscience commands, forbids, or permits an act to be placed. Consequent conscience approves or reproves an act already placed, and consequently causes joy or remorse (St. Thomas, *De verit.*, q. 17, a. 1). But it is clear that the morality of an action does not depend on consequent conscience, which follows the act, but on antecedent conscience alone; in other words, this latter, not the former, is the rule of morality. Hence our discussion concerns antecedent conscience alone.

217 **I. Notion.** Conscience, moral and antecedent, is a dictate of the practical intellect by which someone judges that a particular action is commanded, prohibited, or free for him (St. Alphonsus, I, 2; cf. St. Thomas, I, q. 79, a. 13; *De veritate*, q. 17, a. 2). It is said:

1. **A dictate,** because conscience is an act, not a faculty or a habit.

2. **Of the practical intellect,** that is, of the intellect insofar as it directs to operation what it apprehends. This belongs to the practical intellect, which "knows truth as the speculative intellect does, but orders the known truth to work" (St. Thomas, I, q. 79, a. 11, ad 2).

3. **A particular action;** for conscience is not a judgment about the morality of an act considered in general and in the abstract, but about the morality of an act viewed in particular and in the concrete (St. Thomas, *De veritate*, q. 17, a. 2; St. Alphonsus, I, 2).

4. **For him,** namely, conscience judges about the morality of an act insofar as it belongs to the one judging himself, or insofar as it must be placed or omitted by the one judging himself, or can be placed or omitted at will.

5. **Commanded, etc.** That is, moral conscience does not judge about the utility or pleasantness of an act, but about its morality, that is, about the moral necessity or moral liberty of placing or omitting the act.

Corollary I. Conscience is the conclusion of a syllogism, at least a virtual one. The major proposition states some law. The minor proposition compares some act with the law; for example: Theft is illicit. But the taking of this thing would be theft. Therefore the taking of this thing is illicit for me.

Corollary II. Conscience differs from synderesis, from moral science, from casuistic science, from prudence, and from the last practical judgment.[1] Synderesis (Greek *synteresis*, that is, preservation) is the natural habit preserving the first and general practical principles, for example: good is to be done, evil is to be fled. Moral science is an acquired habit which concerns general conclusions deduced from first principles; for example: to each person his own must be left; but theft takes away from one's neighbor what is his; therefore theft must be rejected. Casuistic science is an acquired habit which applies the conclusions of moral science to particular cases considered in the abstract. But conscience applies general conclusions to particular cases, and to these as considered in the concrete, insofar as here and now they are to be brought into practice. Prudence is a habit which directs the intellect in deducing and applying conclusions. But conscience is the very act itself of applying conclusions to particular cases considered in the concrete. Finally, the last practical judgment dictates only that something is to be done or omitted; but it does not speak about the morality of the action or omission.

[1] Judgments formed in order to operation are distinguished into speculative, speculative-practical, and practical-practical. Speculative judgments regard the truth which founds the morality of a consequent act, for example the existence of some fact, as: Today is Sunday; or the value of an act, as: A sacrament administered in this way is invalid; etc. Speculative-practical judgments regard the morality of an act, but only in common, as: Mass is to be heard on Sunday. Practical-practical judgments concern the morality of an act in particular and constitute conscience properly so called, as: Today Mass is to be heard by me.

218 **II. Division.** Conscience is divided:

1. By reason of its relation to truth, into true or right[1] and false or erroneous, according as the morality which is predicated of a particular action is really present in the action or is not present in it (St. Alphonsus, I, 3).

An erroneous conscience is called vincibly or invincibly erroneous, according as the error can or cannot be driven out by moral diligence.

2. By reason of the morality which is judged to be present in the act, into commanding, prohibiting, and permitting conscience, according as something is judged to be commanded, prohibited, or free.

3. By reason of the state of the mind, into certain, opinionative, and doubtful conscience. Certain conscience is that by which someone judges firmly, that is, without prudent fear concerning the opposite, about the morality of a particular action. It is distinguished into two: directly and indirectly certain. The former rests on motives which show the objective morality of the action. The latter arises from a general, reflex, and certain principle, which is applied to an act about whose objective morality there is only doubt or opinion.[2] Opinionative conscience is that by which someone judges weakly, that is, with prudent fear concerning the opposite, about the morality of a particular action. Doubtful conscience is one which hesitates uncertainly concerning the morality of a particular action and suspends assent (p. 205; St. Alphonsus, I, 20).

A perplexed conscience is had when someone apprehends sin on both sides, and can neither form a safe conscience for himself nor abstain from choosing one side, as if someone judges, and persists in that opinion, that he sins whether by hearing Mass he leaves a sick person alone, or by remaining with the sick person he neglects Mass (St. Alphonsus, I, 10).

[1] Others call that conscience right which is prudently formed, whether it is true or false.

[2] Indirectly certain conscience is usually called probable conscience (St. Alphonsus, I, 40).

219 **III. Directive force of conscience.** 1. Certain conscience, whether true or false, or erroneous,[1] is the rule of morality; or it brings it about that an action has, with respect to the one judging it, that morality which is judged to be present in it. In other words, one who firmly judges that a particular action must be placed by him, or omitted by him, or is free for him, is in reality either bound to place it or omit it, or is free. For certain conscience involves a firm judgment about the ordinance of God the Best and Greatest concerning a particular action. But the mode or manner of acting must be conformed to such a judgment, whether it is true or false. For neglect of the aforesaid conformity would involve neglect of the divine ordinance itself (St. Thomas, *De veritate*, q. 17, a. 4, c. and ad 3; I, q. 79, a. 13; I-II, q. 19, a. 5; cf. St. Alphonsus, I, 5).

2. Certain conscience enjoys the force described above not from itself, but from the power of divine law. The reason is that the power of obliging, or of morally binding, cannot belong except to a superior. But a man's conscience is not superior to the man himself. "Conscience," says St. Bonaventure, "is like God's herald and messenger; and what it says, it does not command from itself, but commands as if from God, as a herald does when he publishes the edict of the king"[2] (cf. St. Thomas, *De veritate*, q. 17, a. 3).

3. Uncertain conscience, that is, opinionative or doubtful conscience, of itself lacks directive force, because direction necessarily takes place toward one thing, and therefore must proceed from a conscience which itself is determined to one thing. But uncertain conscience is not determined to one thing, but is disposed about different things. What must be done by one who is uncertain will be explained in n. 221.

Corollary I. One who acts against a certain conscience commanding or forbidding, whether true or false, commits as much and such a sin as he apprehends in the act. "A human act is judged virtuous or vicious according to the good apprehended toward which the will is borne, and not according to the material object of the act" (St. Thomas, *Quodl.* 3, art. 27).

Corollary II. One who apprehends the malice of an act, but thinks nothing, not even confusedly, about grave or light malice, sins only lightly. Nevertheless, commonly there is present, and therefore it is

presumed that there is had, sufficient advertence and consent, though confused, to grave malice: first, if the matter is manifestly grave; second, if there is question of a man little concerned about the quantity of sin.

Corollary III. One who from an erroneous conscience judges that he sins, whether by not fulfilling a precept which he physically cannot fulfill, or by suffering an evil, for example rape, which he cannot prevent, does not sin. For there is physical impotence, and therefore the voluntary is lacking.

Corollary IV. One who apprehends sin on both sides should, if he can, form a safe conscience for himself by seeking the truth and by prudently solving the doubt, should it perhaps persist, with the help of a reflex principle. If he can neither form a certain conscience for himself nor abstain from choosing, let him choose what appears the lesser evil.[3] If each appears equal, let him choose at will. If nevertheless he judges that he sins, he is still free from sin, because liberty is lacking and no one sins necessarily.

If he chooses what appears graver, he indeed sins, but only in proportion to the apprehended excess; since as regards the total malice he is not free, but he freely embraces the excess.

[1] Others add: provided it is invincibly erroneous. But certain conscience is necessarily here and now invincibly erroneous; for such a conscience supposes that here and now not even a suspicion of error is suggested. Hence such a conscience, if it commands or prohibits something, obliges, even if a vincibly erroneous conscience preceded it; if it permits something, it renders that thing licit here and now to the one so judging, although the erring person perhaps was not without fault led to such a conscience and therefore sinned before.

[2] *In II Sent.*, dist. 39, a. 1, q. 3.

[3] Of itself, that is, other things being equal, the transgression of a natural precept is to be guarded against more than that of a positive precept; of a divine precept more than of a human one; of a negative precept more than of an affirmative one.

§ III. On the Conscience Required for Acting Licitly

220 **Proposition.** For acting licitly, certainty strictly so called concerning the honesty of the action to be placed here and now is required. This is clear, first, from Sacred Scripture. "But he who discerns, if he eats, is condemned, because it is not from faith. But everything that is not from faith is sin" (Rom. 14:23). Here St. Paul treats the controversy about the eating of foods which the Mosaic law prohibited. Moreover, the Apostle teaches that he sins who eats the aforesaid foods while discerning, Greek *diakrinomenos*, which in the context means: struggling with himself, doubting, hesitating,[1] whether the eating is licit. But according to the Apostle the reason is that every action placed without a firm persuasion concerning the honesty of the action is sinful. "It is said," says St. Alphonsus, "from faith, namely, from a certain dictate of conscience, so that a man is persuaded in his conscience that by acting he acts rightly" (I, 55). This interpretation is deduced from the context of the discourse (vv. 2, 14, 22), and even today is commonly admitted.[2] There is added, second, an argument taken from reason. Beyond doubt, he sins who wills and chooses an action, whether it is good or evil, whether it offends God or does not offend God. But one acts thus who wills and chooses an action about which he doubts whether here and now it is licit. Hence St. Augustine: "To do that which is uncertain whether it is a sin is a certain sin."[3] St. Alphonsus asserts the same repeatedly (I, 22, 24; likewise I, 81 and *Homo Apostolicus* I, 65, where he teaches that not even a most probable opinion of itself and ultimately suffices).

Corollary I. Authors commonly teach that broad certainty suffices for acting licitly. But this is said less accurately; for broad certainty still admits prudent fear, or broad doubt. But it is not licit to place an

action as long as one still prudently fears that it is formal sin, or a true offense against God. Moreover, this fear or broad doubt is easily excluded through some general reflex principle, for example: It is licit to follow an opinion certain in the broad sense; which principle others also call concomitant.

Corollary II. It suffices that someone in good faith be certain of the liceity of an action, even if the foundation on which the certainty rests is less solid. Nor is it required that someone reflexively judge that he is certain.

Corollary III. One who acts with a practical doubt concerning the honesty of an action commits as much and such a sin as that about which he doubts; for he perpetrates as much and such a sin as the danger to which he exposes himself (St. Alphonsus, I, 22). If only the notion of sin is apprehended, there is had a sin of unnamed species; concerning this, however, observe these words of St. Thomas: "When reason apprehends something as evil, it always apprehends it under some notion of evil; for instance because it is contrary to a divine precept, or because it is scandal, or on account of something of this kind; and then such an evil will is reduced to such a species of malice" (I-II, q. 19, a. 5, ad 3). "Yet it must be noted for practice, what many are ignorant of, that it is gravely illicit to act with a practical doubt about grave sin."[4]

[1] The source's Greek form is badly OCR'd; the intended term is *diakrinomenos*.

[2] That by "faith" supernatural faith is not understood, but a dictate of conscience, is clear from Lateran IV (c. 41); and that a certain dictate is understood is taught by Estius, Beelen, Cornely, Reithmayer, Bisping, and other interpreters commonly.

[3] Bk. I, *De Baptismo*, c. 5.

[4] Cf. Marc, n. 37; *Vindiciae Alphonsianae*, I, p. 504; Aertnys-Damen, I, n. 64.

§ IV. On the Comparison of the Required Conscience

221 We speak about him who lacks the conscience required for acting licitly, that is, about him who is not certain of the honesty of the action to be placed. Moreover:

I. One who is not certain of the honesty of some action, unless he wishes to abstain from it, is held before all else to inquire into the truth, that is, to investigate what the morality of the action is; in other words, what the ordinance of the eternal law concerning it is. And indeed one who neglects the aforesaid inquiry holds the divine ordinance itself cheap, since he rashly exposes himself to the danger of violating it. Hence St. Thomas: "But in doubtful and uncertain matters, reason does not give judgment without a preceding inquiry; and therefore inquiry of reason before judgment about things to be chosen is necessary; and this inquiry is called counsel" (I-II, q. 14, a. 1). And St. Alphonsus: "For acting licitly in doubtful matters we must inquire into the truth" (I, 54).

222 **II. Concerning the manner of inquiring into the truth,** hold these things:

1. The arguments, intrinsic and extrinsic, or authorities, of each opinion mutually opposed to the other, must be investigated and compared. For in doubts one part must be chosen before the other. But "choice imports a certain preceding comparison" (St. Thomas, I-II, q. 13, a. 1).
2. The inquiry must be made with moral diligence proportionate both to the person inquiring and to the gravity of the matter of which there is question, and to the time that can be spent on the inquiry. The less learned should try to reach the truth by consulting the more learned, for example a pastor or confessor; the more learned, by their own inquiry. "It will be enough," says Benedict XIV

in the encyclical *De Praeparatione ad Annum Universalis Iubilaei* (26 Jun. 1749), "to have admonished confessors that in a doubtful matter they not rely on their own opinion; but before they decide the cause, they should consult very many books, especially those whose doctrine is more solid; and then they should descend to that opinion which reason persuades and authority confirms. Nor indeed did we teach anything else in our encyclical on usuries." Besides this, greater diligence is needed if there is question of a matter of great importance, say of notable restitution, than if the discussion concerns a small matter.

If someone, after the truth has been inquired into, continues to doubt, or is not certain of the honesty of the action, it is disputed to what extent one who thus doubts theoretically can come to practical certainty and place the action. Moreover, the diverse responses to this question constitute the diverse moral systems, about which we must now speak. But it is clear that this controversy is of the greatest importance: since a moral system governs the whole of moral doctrine and opens the way for solving for practice the innumerable doubts that occur in it. About to speak of this very grave matter, we shall set forth first the notion of a moral system, the state of the controversial question, and the diverse systems; then the proof of the system which seems true to us. Finally we shall add some points concerning certain sayings akin to the moral system, concerning the importance of the controversy between equiprobabilists and probabilists, and concerning the use of the moral system.

Point I. Notion of the System, State of the Question, Diverse Systems

223 **I. Notion of a system.** A moral system, as it is taken here,[1] is a general principle by which someone who, after due inquiry, is not certain of the honesty of an action or omission, forms a practically certain conscience for himself. The sense of this definition will be clear from the very state of the question now to be explained.

[1] A moral system taken in the broader sense is the whole science of morals constructed in suitable order through its first principles.

224 **II. State of the question.** The question concerns doubts which proximately and directly regard the morality of an action, but not other doubts. Therefore:

1. The question does not concern doubts which proximately and directly regard, for example, the validity of an act, the matter of the sacraments, etc. In these doubts, and generally whenever some good is to be obtained or some evil is to be avoided which does not depend on the dictate of conscience, the safer part or opinion, as it is called, must of itself be followed. Therefore this must of itself be chosen: first, in the conferral of the sacraments; second, in danger of one's own spiritual or temporal harm that must necessarily be avoided, such as, for example, danger of life or of formal sin; third, in danger of another's spiritual or temporal harm that must necessarily be forestalled. Hence, for example, a physician is held to apply the medicine which seems safer to him. I said "of itself," because if necessity presses and the safer part cannot be brought into practice, it is licit, for example in the ministration of a sacrament, to use even a thinly probable opinion (St. Alphonsus, I, 42-53). Moreover, all these things are developed more suitably and more abundantly in the respective treatises of Moral Theology and, as we said, do not pertain to the state of the question treated here.
2. But the question is what general principle there is by which, in a theoretical doubt about the honesty of an action, a practically certain conscience is obtained. In other words, we inquire to

what extent he acts licitly who, after the truth has been inquired into, is himself not certain of the morality of an action or omission; or who himself is not certain whether or not there exists a law which prohibits the action or omission, or whether the opinion which favors the law, or that which supports liberty, is true. It is said:

a) **To what extent he acts licitly.** Therefore it is not asked what someone can or ought to impose on others in doubt, but to what extent the doubter himself acts licitly.

b) **After the truth has been inquired into;** since, if due inquiry has been omitted, it is not licit to have recourse to a reflex principle.

c) **Himself.** Hence we do not inquire to what extent someone licitly places an action about whose objective morality others are not certain; but we investigate to what extent he licitly places it who himself is not certain of its objective morality.

d) **Is not certain,** that is, he is either in a state of doubt about the objective morality of an action, or opines that it is objectively dishonorable.

Therefore we seek a certain and universal rule by which, when two opinions about the morality of an action concur, one of which favors the law and the other liberty, it may safely be judged when in practice it is right to follow the part of liberty and when we must fulfill the law.

Moreover, the proposed question is answered in different ways by different persons; and indeed these different answers, as was already said above, constitute the different moral systems.[1]

[1] There are some who think that there is no need of a moral system. But those who think thus are mistaken and themselves unconsciously admit some system. For it is certain that very many doubts occur about the objective morality of actions. Hence the adversaries themselves must answer, and do answer, the question to what extent it is licit to act in doubts of this sort. Now that which they give as an answer to the question is their moral system.

225 **III. Diverse systems.** Seven are enumerated, namely: absolute Tutiorism, mitigated Tutiorism, Probabiliorism, Equiprobabilism, Probabilism, Laxism, and the System of Compensation.

Absolute Tutiorism states: It is not licit for me to follow an opinion favoring liberty unless this is certain to me; or: The law obliges me unless I am certain that it does not exist.

Mitigated Tutiorism teaches: It is not licit for me to follow an opinion favoring liberty unless this is most probable to me; or: The law obliges me unless I hold it as most probable that the law does not exist.

Probabiliorism states: It is not licit for me to follow an opinion favoring liberty unless this is more probable to me; or: The law obliges me unless I hold it as more probable that the law does not exist.

Equiprobabilism professes: In doubt about the making of a law, it is licit for me to follow an opinion favoring liberty, provided this is equally or almost equally probable to me as the opposite opinion favoring the law. But in strict doubt about the cessation or fulfillment of a law, the law is to be observed.

Probabilism contends: It is licit for me to follow an opinion favoring liberty, provided this is truly probable to me, and this even if the contrary opinion is certainly more probable to me; or: The law does not oblige me provided I hold it as truly probable that it does not exist, and this even if I hold it as more probable that it does exist. And these things hold even if the law certainly existed, provided it has probably ceased or has been fulfilled.

Laxism admits the use even of a thinly probable opinion.

The System of Compensation teaches that in doubts the safer thing is to be followed unless a relatively grave inconvenience excuses.[1]

Absolute Tutiorism,[2] mitigated Tutiorism, and Laxism[3] are commonly rejected; Probabiliorism, Equiprobabilism, Probabilism, and the System of Compensation are sustained. We admit Equiprobabilism, which system indeed we now undertake to prove and to vindicate from objections.

[1] Thus Laloux, *De actibus humanis*; Potton, *De theoria probabilitatis*; Boisdron, *Theorie et systemes des probabilites*; Prummer, *Manuale Theol. Mor.*, t. I, n. 351; McDonald, *The Principles of Moral Science*, p. 254. The system of Cardinal d'Annibale deserves special mention; in his *Summula Theologiae moralis* (I, nn. 262 and 264), relying only on the principle of possession, he gives his vote, with respect to doubt about the existence of a law, rather to Probabilism; and with respect to doubt about the cessation or fulfillment of a law, to Equiprobabilism. That system could be called the System of Possession, or Possessionism.

[2] Alexander VIII struck down the thesis: "It is not licit to follow an opinion, or among probable opinions the most probable one."

[3] Innocent XI condemned this proposition, the third: "Generally, while, relying on probability either intrinsic or extrinsic, however slight, provided one does not go beyond the limits of probability, we do something, we always act prudently."

Point II. Proof of the True System, That Is, Equiprobabilism

Equiprobabilism consists of three propositions, of which the first is opposed to Probabiliorism, the later ones to Probabilism. Namely, against the Probabiliorists the Equiprobabilists teach: One who strictly doubts about the making of a law is not held to observe it. Against the Probabilists they contend: One who strictly doubts about the cessation or fulfillment of a law is held to fulfill it; likewise: One who opines, that is, who holds it as certainly more probable that a law exists, is bound by the law. Therefore let these be:

Thesis I

226 One who strictly doubts about the making of a law, in other words, one who holds it as equally or almost equally probable that the law has not been made and that it has been made, is not held to observe it. It is proved:

I. From the authority of St. Alphonsus. For this authority is such that it seems to create a grave presumption in favor of the system which he himself defended. But the holy Doctor defended the proposed thesis.

The major is confirmed by these things: first, the Church recognized St. Alphonsus as an outstanding master of Moral Theology, and repeatedly declared that he was a most safe and divinely given guide of directors of souls (n. 215). Moreover, these things ought especially to hold for the principal question of Moral Theology, that is, for the moral system; indeed the aforesaid praises and commendations seem scarcely capable of being honorably explained if St. Alphonsus had erred in choosing the moral system which extends most widely throughout the whole of moral science and, as it were, pervades it, and by force of which the innumerable doubts that occur in the said science are solved for practice. These points are confirmed by what the *Vindiciae Alfonsianae* report from the Acts of the Cause of Beatification:[1] "Already a decree had been issued concerning 'Nothing worthy of censure,' and already the heroic virtues of Alphonsus had been discussed. But nevertheless, by command of the Pontiff, a new *Positio* on the Virtues was instituted, and indeed on Prudence, not with respect to the exercise of

that virtue, but because of some rules of morals contained in his works. Hence besides other particular questions, the moral system in particular and the doctrine on habitual sinners and recidivists were called back to a more severe weighing." Once these things had been carried out, Pius VII solemnly declared that the heroic degree of the virtues was established. In addition, the Sacred Penitentiary on 19 Dec. 1855 wrote back to a certain professor of Moral Theology that he, notwithstanding his oath to defend Probabiliorism, could follow and publicly hand on the doctrine of St. Alphonsus (n. 215). Hence several, and those distinguished, theologians confess that the system which St. Alphonsus embraced seems worthy of commendation.[2]

The minor is admitted by all.

Objection. When it was asked of the Holy See whether by the words of the Decree of 11 March 1871, by which St. Alphonsus is said to have "paved a safe way amid the tangled opinions of theologians, whether laxer or stricter...," whether, I say, by those words Equiprobabilism had been designated and commended before Probabilism, the response was that by those words the Sacred Congregation "had wished to condemn no opinion or prefer one to another, but only to designate a fact admitted by all, namely, that St. Alphonsus by his system took care to avoid both laxer and stricter opinions."

Response. This response did not proceed from legitimate authority, as was learned after diligent examination instituted at Rome. It is also absent from the authentic edition of the Decrees of the Sacred Congregation of Rites. It was given by the substitute of the Secretariat of the Sacred Congregation of Rites alone, in the name of the Secretary alone.[3]

II. From the authority of theologians. Theologians today almost commonly defend the thesis stated. Concerning the opinion of St. Thomas, there will be discussion later.

III. From reason. Preceptive and prohibitive laws are in the likeness of a spiritual bond, and therefore, in order that they obtain their effect, they must reach a human being positively; this cannot happen except through at least some knowledge properly so called of the making of the law. "Just as a rope," says St. Alphonsus, "does not bind unless it is applied to the thing to be bound by contact, so a precept does not bind except through knowledge of it" (I, 76). But in strict doubt, all knowledge properly so called of the making of the law is lacking. "Then," says St. Alphonsus, "...we do not have knowledge of the law, but only knowledge of the doubt or question whether the law exists or not" (I, 74). It is indeed known that each part, namely both the making and the non-making of the law, is equally probable; but no knowledge is had about the conclusion or term of the inquiry.[4]

Then, in strict doubt about the making of a law, that is, in strict doubt whether a law prohibits or permits some act, all knowledge properly so called about the ordinance of the law concerning the said act, or about the objective morality of that act, is lacking. Once this has been posited, that act in second act, as it is said, is situated with respect to me outside the order of morality, or is regarded as a merely physical act. But nothing prevents an act of this sort from being placed, provided a good end is added. Therefore in strict doubt whether some act is objectively permitted or prohibited, it is right to place that act for a good end.

So that the argument just brought forward may be more fully clarified, I note these things: by force of our rational nature we are, as regards being, in the moral order, that is, in first act we are bound by law; but as regards acting, by force of our rational cognition, we are constituted in the moral order, that is, in second act we are bound by law. Hence, since in strict doubt there is no knowledge properly so

called about the morality of an act, as regards acting we are not in the moral order except insofar as by a higher law the obligation of always acting for an honorable end is imposed on us.

Nor should you object that perhaps that act is prohibited by the legislator. This is true; but that prohibition, if it has place, binds only my rational being; in other words, it binds me because I have a rational nature, but my acting is bound only by rational cognition.

Hence in strict doubt the act, as regards my acting, is not in the moral order; but it is merely physical, and must receive morality from the end.

Finally, if the discussion concerns positive law, the principle proved in n. 229 has force: in strict doubt the condition of that which is prior is better than the condition of that which is posterior. But moral liberty is prior to a positive preceptive or prohibitive law.

[1] *Dissertatio*, Proemium, n. 46.

[2] Thus, for example, Lehmkuhl, *Theol. mor.*, I, 165; Noldin, *De Principiis theol. mor.*, n. 239; Sweens, *Theol. mor. fund.*, n. 700 sq.; Beauduin-Gardeil, cited work, p. 79.

[3] Cf. Ter Haar, *Ven. Innoc. P. P. XI de Probabilismo Decreti Historia et Vindiciae*, p. 107.

[4] Therefore neither do we deny that contradictory parts considered in themselves, or even compared, can retain the probability which they have from good reasons. But this is not the matter at issue. The matter concerns the parts insofar as they are contradictorily opposed, or insofar as they are simultaneous affirmation and negation with respect to one question of truth.

227 **Objection 1.** In doubt, before all things the danger of sinning materially, or of transgressing the prohibitive ordinance of God, must be guarded against.

Response 1. I turn the argument back: namely, if in doubt the danger of sinning materially had to be guarded against before all things, it would also be illicit to follow the more probable opinion for liberty. But the adversaries reject this together with us.

Response 2. I deny the assertion, at least insofar as it is applied to strict doubt. For it cannot be admitted that in strict doubt a prohibitive ordinance is to be preferred to a permissive ordinance. But if in strict doubt material sin had to be guarded against before all things, in the said doubt a prohibitive ordinance would have to be preferred to a permissive ordinance, or the former would have to be assumed before the latter as the norm of acting.

The major is deduced from the fact that the permissive ordinance of God the legislator is equivalent to a prohibitive ordinance, or from the fact that the rights of a human being, as flowing from the eternal law equally with his duties, are equally holy as duties.

What the law is in strict doubt must be deduced from other principles.

And these things also involve a refutation of the System of Compensation, which teaches that in doubt the safer thing is to be followed unless a relatively grave inconvenience excuses. For that system rests on the supposition that of itself duty is to be preferred to right, even if it is conceded that by accident, because of a relatively grave inconvenience, duty can be postponed. But from what has been said it is clear that the aforesaid supposition must be rejected. There is added that this doctrine scarcely seems capable of being applied; since in individual cases not only the gravity of the law and the inconvenience which fulfillment of the law, considering the circumstances, would bring with it would have to be weighed against each other, but also the degree of certainty of the law would have to be compared with

its inconvenience. To observe all these things rightly seems scarcely possible in practice. Moreover, no one would admit that a rule and norm of this sort for solving doubts is right.

Objection 2. In doubt the condition of the possessor is better, that is, of that which is prior by nature or time. But eternal law is prior to liberty, that is, to the moral faculty of placing an act. Therefore in doubt whether eternal law prohibits an act, the condition of eternal law is better.

Response. I concede the major. I distinguish the minor: namely, eternal law which permits an act is prior to liberty, that is, to the moral faculty of placing that act, I concede; eternal law which prohibits an act is prior to liberty, that is, to the moral faculty of placing that act, I deny. Or rather, in our case it is doubtful whether eternal law prohibits some act or permits it, that is, whether it grants the moral faculty of placing that act. In this doubt, as we have explained, a human being uses his physical liberty at will, provided he places his act for an honorable end.

228 **Corollary I.** Law does not oblige in strict doubt: first, whether it has been established or promulgated; second, whether it comprehends some case or person, because there is strict doubt whether it has been made with respect to that case or person; third, whether the fact founding the law has had place, because there is strict doubt whether the law has now begun, or rather, whether it can now be applied. Hence, for example, it is licit to eat meats in doubt whether Friday has arrived; likewise to eat with the intention of celebrating, in doubt whether it is midnight; likewise to celebrate in doubt whether you have taken something after midnight (St. Alphonsus, I, 32, 97).

Likewise, in strict doubt whether a law is mixed or purely penal, practically it can be held as purely penal, because there is strict doubt whether a law has been made which commands the act. Finally, in strict doubt whether a law obliges under grave or under light sin, the obligation is light, because there is strict doubt whether a law has been established which commands under grave sin (St. Alphonsus, loc. cit.).

Corollary II. Since a promissory oath and a vow are in the likeness of particular laws, obligation is lacking in strict doubt whether an oath or vow has been emitted (St. Alphonsus, I, 28).

Corollary III. If there is question of distinct things, it is licit in strict doubt to use now one opinion, now the other, or even both at the same time. Hence, for example, it is right, out of two testaments equally probably valid and invalid, to treat one as valid and the other as invalid, according as validity or nullity turns to your favor. I said "if there is question of different things," because it is impossible in one and the same individual thing to use two contrary opinions at the same time; in cases which are proposed by some authors, this has place only in appearance. Moreover, questions which are referred here by authors cannot be solved by a general principle, but rather each is treated separately in its own place.[1]

Corollary IV. A parishioner and penitent ordinarily safely follow the judgment of a prudent pastor or confessor, because they prudently opine, or at least hold as equally probable, that no law prohibits what is declared licit by them. These words of St. Thomas pertain here: "Someone of little knowledge is made more certain about what he hears from someone scientific than about what seems to him according to his own reason" (II-II, q. 4, a. 8, ad 2).

[1] Yet for the reader's sake it is pleasing to touch upon some questions. They ask, for example, whether it is licit for someone, relying on a sufficiently probable opinion about the validity of an informal testament, to accept an inheritance against the heir ab intestato, and at the same time, relying on an equally probable opinion about the nullity of the same testament, to retain legacies. Moreover, in the proposed example the legacies cannot be retained, because it is certain,

and therefore the case is entirely outside our matter, that they do not belong to the testamentary heir. For a testament in itself is either valid or invalid. If the former, the legacies belong to the legatee; if the latter, they fall to the heir ab intestato, or legal heir. They also ask what is licit for one who has before him two foods; one is certainly meat, but it is doubted which one is such. Moreover, it is sufficiently probably licit for him to eat both if the acts of eating are also morally speaking different; otherwise if morally speaking they constitute one act. The reason for the former is that each act is equally probably objectively, and therefore certainly subjectively, licit, and in the case there is no reason preventing the same solution from holding if there is question of two acts which morally speaking constitute one act. The reason for the latter is that it is not licit by acts which morally constitute one act certainly to violate the law. Objection: It is never licit certainly to violate the law. But this has place even if each act is also morally different. Response: It is never licit certainly to violate the law, that is, to place an act which you certainly know violates the law, I concede; that is, to place two morally different acts, one or the other of which will violate the law, although you do not know which of the two will violate the law, this seems to have to be denied, or at least is denied sufficiently probably.

Thesis II

229 One who strictly doubts about the cessation or fulfillment of a law, in other words, one who holds it as equally or almost equally probable that the law has not ceased or has not been fulfilled, is held to observe it.

It is said "one who strictly doubts," or "one who holds it as equally or almost equally probable"; since it is commonly admitted that the obligation of observing the law is absent in broad doubt about the cessation or fulfillment of a law, in other words, where it is more probable that the law has ceased or has been fulfilled. Besides, in doubt about the fulfillment of a law several principles are at hand, in view of which the fact of fulfillment can commonly be held as more probable. Principles of this sort are: What regularly, what ordinarily happens, is judged to have happened; from things commonly occurring a prudent presumption is made.[1] Likewise: In doubt every fact is presumed to have been done rightly;[2] or: In doubt one must stand for the validity of the act[3] (St. Alphonsus, I, 26). With these points noted, the thesis is proved:

I. From the authority of St. Alphonsus. Although I would not wish to deny that this thesis is not to be valued as much as the first and third theses are to be valued, nevertheless it cannot be denied that it extends very widely and pertains to the whole system, so that what we said above (nn. 214, 225) about the authority of St. Alphonsus is also to be applied to this thesis. But the holy Doctor, who had previously adhered to the more benign opinion, after considering the matter better, revoked it (I, 29) and defended the stricter opinion (I, 26-34); which in any case is now commonly admitted even by the adversaries themselves.[4]

II. From the authority of theologians. Our opinion was formerly commonly admitted, even by those authors who adhered to Probabilism. The witnesses of this assertion are Suarez[5] and Laymann.[6] The fact that afterward several withdrew from this opinion does not prevent the consensus of ancient theologians from supplying us some argument.

III. From reason. First, in strict doubt the condition of the possessor is better; or, to abstain from the ambiguous word "possessor," in strict doubt the condition of that which is prior seems to be better than the condition of that which is posterior.[7] But the law itself is prior to its cessation and fulfillment. Therefore, in strict doubt about the cessation or fulfillment of a law, the condition of the law seems to be better (St. Alphonsus, I, 29-34).

The major is established by these arguments: first, our principle of its own accord pleases reason more than the contrary principle, which would have to be admitted by the adversaries, namely: in strict

doubt the condition of that which is prior seems to be worse than the condition of that which is posterior. This spontaneous inclination of reason indeed seems to supply an argument for our doctrine. Second, a principle which favors stability, or a stable manner of acting, seems to be preferred to a principle which fosters mutability, or a changeable manner of acting. But our principle favors stability, while the contrary favors mutability. Third, there is added that the principle stated by us has force for the external forum. Why, precisely, would the contrary principle have to be admitted for the internal forum?

Then our thesis is proved from the fact that the thesis of the Probabilists is at least doubtful: namely, a law which has doubtfully ceased or has doubtfully been fulfilled obliges unless it is demonstrated, or certain, that it does not oblige. But no one who hears prudently will contend that that is certain.

The major is evinced from a principle admitted by all: in a practical doubt not entirely solved, the safer part is to be followed.

To prove the minor, it will be enough to advert to these things: first, the arguments of the adversaries, as we shall soon see, either involve a begging of the question, or are such that they themselves require further proof. Second, add that always very many, and those grave and distinguished, theologians supported the contrary opinion. Third, finally, our arguments seem to be of such a kind that not even the adversaries will deny them all probability. Once all these things have been attended to and well weighed, no one will have affirmed that the opinion of the Probabilists has been placed beyond doubt.

[1] Suppose someone, while praying Sext, doubts whether he has said Terce. In the case he can commonly hold it as more probable that Terce has been said, since from things commonly occurring a prudent presumption is made. But it commonly happens that Sext is not begun before Terce has been said.

[2] Suppose someone doubts whether he has confessed with true sorrow. In the case he can commonly hold it as more probable that true sorrow was present.

[3] Yet this principle, which canonists and moralists commonly use, is very ambiguous; namely, it has force only insofar as it rests on another principle of presumption. But this happens when there is doubt about the manner in which an act has been placed; in which case it can be held as more probable that all those things required for validity were done. It is otherwise if the manner in which the act was placed is known, but it is disputed whether the act so placed is valid.

[4] Cf. *De Minusprobabilismo*, pp. 133-139, where those things which some formerly objected are refuted.

[5] Suarez, treating the question whether one who has doubtfully fulfilled an oath is still held to fulfill it, responds: "It is beyond controversy that he is held," because "in doubt the condition of the possessor is better" (*De Relig.*, tr. 5, bk. 2, cap. 33, n. 7); this solution is a mere application of our thesis to a particular case.

[6] Laymann speaks thus: "But the latter part of the assertion is common" (*Theol. mor.*, bk. 1, tr. 1, c. 5, § 3, n. 31), namely, that one who doubts whether he has fulfilled a vow or promise, or satisfied any other debt whatsoever, is held by the obligation.

[7] In this sense St. Alphonsus and others take the principle of possession, insofar as it regards matter distinct from the matter of justice; but since others explain it otherwise, we have abstained from that designation, mindful of this: "It belongs to the wise man not to care about names" (St. Thomas, *In II Sent.*, dist. 3, q. 1). With these points noted, those things which several theologians object concerning the nature of the principle of possession do not harm our argument.

230 **Objection 1.** A strictly doubtful law, by the consent of all, does not oblige. But a law which has equally probably ceased is here and now strictly doubtful.

Response. I distinguish the major: a law which in the present is strictly doubtful and did not previously certainly exist does not oblige, I concede; a law which in the present is strictly doubtful but

did previously certainly exist does not oblige, I deny. That it does oblige has been proved above. With the same distinction I distinguish the minor.

You will insist: A law which in the present is strictly doubtful and did not previously certainly exist does not oblige precisely because it is doubtful. But if a law of this sort does not oblige precisely because it is doubtful, the same thing must be affirmed of every doubtful law. Now then, a law which has equally probably ceased is strictly doubtful. Therefore even a law of this sort does not oblige.

Response. The major is not very accurate, and is deficient on this head, that it neglects the principle of possession; since this precisely brings it about that a law which has equally probably ceased, although strictly doubtful, nevertheless obliges indirectly (n. 229).

Objection 2. It is repugnant that a doubtful law induce a certain obligation, because the effect cannot be more certain than the cause. But a law which has equally probably ceased has become doubtful.

Response. I distinguish the major: it is repugnant that a doubtful law induce a certain obligation directly, I concede; indirectly, that is, by force of the principle of possession or at least by force of the principle: in a practical doubt not solved the safer part is to be followed, I deny. Moreover, the adversaries themselves admit that a law which is not wholly certain, but only most probable or almost certain, induces an entirely certain obligation, certainly indirectly (n. 225).

Objection 3. Just as the beginning of obligation depends on certain or at least opinionative knowledge of the law, so also the continuation of obligation depends on the continuation of certain or at least opinionative knowledge. But knowledge of this sort is lacking in strict doubt whether the law has ceased or has been fulfilled.

Response. I deny the major, and this because of the dissimilarity which is had between the two cases; namely, possession does not favor a law equally probably beginning, but does favor a law which is equally probably continuing.

Objection 4. A doubtful obligation is no obligation. But the obligation of a law which has equally probably ceased becomes doubtful.

Response I. Let the major pass; I distinguish the minor: the obligation of a law which has equally probably ceased becomes doubtful, directly, I concede; with the principle of possession considered, I deny.

Response II. I deny the major unless a certain principle is alleged by which a doubtful obligation becomes certainly null. But a principle of this sort cannot be alleged; once this has been posited, the rule must be urged: in a practical doubt not solved, the safer part is to be followed.

Objection 5. When there is question of imposing an obligation, man must be regarded as the defendant, but the law as the petitioner. But in doubt the defendant defeats the petitioner.

Response. The parity of which the adversaries speak is invented without basis. Then, if we wish to set up a comparison, one who has doubtfully fulfilled the law must be regarded as a defendant who by force of a judicial sentence was bound by some obligation and has satisfied it only doubtfully. Whether or not the obligation should be urged in a case of this sort depends on the solution of the question now being treated by us. Moreover, let each person be persuaded that our controversy cannot be settled by comparisons of this sort.

231 **Corollary I.** Law obliges in strict doubt whether it has been explicitly or implicitly abrogated; whether there has been a dispensation in it; whether the time for which it was established has flowed past; or whether the fact founding the law has ceased; or whether the day to which it is affixed has passed. Hence, for example, it is not licit to eat meats in strict doubt whether Friday has passed (St. Alphonsus, I, 32).

Corollary II. Since a promissory oath, a vow, and an injunction of sacramental penance are in the likeness of particular laws, the obligation persists in strict doubt whether you have fulfilled an oath or vow, satisfied the penance, etc. (St. Alphonsus, I, 28, 29; *Elenchus 2 Quaestionum reformatarum*, q. 1).

Corollary III. Law indeed obliges in strict doubt whether the act by which it is fulfilled has been placed. But in strict doubt whether an act that has been placed suffices for fulfilling the law, further obligation is lacking, because in this hypothesis there is doubt whether the law commands another act than the one that has been placed.

Thesis III

232 One who forms the opinion, in other words, one who holds it as certainly more probable that a law exists, is held to observe it. It is proved:

I. From ecclesiastical documents. These, indeed, seem to be of such a kind that they create a presumption against the doctrine which teaches that it is licit to follow the certainly less probable opinion favoring liberty, or, what is the same thing, that there is no obligation of following the certainly more probable opinion favoring the law. It is useful to present the principal documents or edicts.

1. The Congregation of the Holy Office, by a decree issued on September 24, 1665, in the name of Alexander VII, not only condemned several laxer opinions, but also in the preface of the decree complains of "that extreme license of luxuriant minds... through which, in matters pertaining to conscience, a mode of opining has crept in which is wholly alien from Evangelical simplicity and from the doctrine of the holy Fathers, and which, if the faithful were to follow it in practice as a right rule, an immense corruption of Christian life would creep in." Now Stephen Gradius, who by command of the Congregation of the Index had drawn up a *Votum* concerning the decree that had been issued, expressly declares that by the mode and rule of opining disapproved by the Supreme Pontiff Probabilism is understood; and he adds that he had known this "on account of faithful knowledge of that time."[1]
2. Benedict XIV, in the constitution *De praeparatione ad annum Universalis Iubilaei* (June 26, 1749), admonishes confessors that in doubtful matters they should diligently inquire into the truth "and then descend to that opinion which reason persuades and authority confirms." But the less probable opinion is rather dissuaded by reason than persuaded by it. Therefore it is illicit to descend to it.[2]
3. Alexander VII, by his own exhortation, brought it about that the Dominican Order, from the year 1655, declared war on Probabilism and from that time waged it most strenuously.
4. The Congregation of the Holy Office, with the Supreme Pontiff Innocent XI presiding and present, on June 26, 1680, issued a decree by which "His Holiness... commanded that he himself (i.e., Thyrsus Gonzalez) freely and intrepidly preach, teach, and defend with the pen the more probable

opinion, and also manfully attack the opinion of those who assert that, in the concurrence of a less probable opinion with a more probable opinion thus known and judged, it is licit to follow the less probable." Then it is enjoined upon the Superior General of the Society of Jesus that he permit the Fathers of the Society to attack the less probable opinion, and that he make known to all the universities of the Society that it is the mind of His Holiness that each one freely oppose the aforesaid system.[3]

5. Innocent XI, by his counsel and direction, brought it about that Thyrsus Gonzalez was elected Superior General of the Society, and this for the purpose of turning the members of the Society away from Probabilism. Then the same Pontiff wished that a decree be issued by the General Congregation which had elected Gonzalez as Superior, granting permission to all members of the Society to defend the stricter doctrine; and this was done. Moreover, Innocent XI indicated to Thyrsus Gonzalez that "he desired something more from the Jesuits against Probabilism than was prescribed by that decree."[4]

6. The Congregation of the Holy Office, at the end of the month of June 1693, by common vote took the counsel of asking the Supreme Pontiff Innocent XII to see to the publication of the work of Thyrsus Gonzalez, since in it the laxer doctrine was attacked; and the Supreme Pontiff satisfied this wish.[5]

7. Clement XI indicated to the Superior General of the Society that "the Superiors of the Society would do a thing most pleasing to His Holiness if they ensured that the Jesuits abstained from leading and defending the opinion which asserts that the use of the less probable and less safe opinion is licit."[6]

8. Finally, here must be referred all those things by which the Church has positively commended, and does not cease to commend, the doctrine of St. Alphonsus. And indeed: 1. The commendation of which we have spoken, as is evident to everyone, is opposed to the doctrine which the holy Doctor, whose doctrine is commended, finally rejected. But Probabilism, as we shall prove later, was rejected by St. Alphonsus. 2. There is added the fact that the Church at length declared that the heroic degree of the virtues of St. Alphonsus was established only when the Advocate of the cause had proved that, according to the opinion of St. Alphonsus, only a strictly doubtful law does not oblige, or that Probabilism was rejected by him;[7] which certainly suggests that all those things by which the same Church afterward positively commended the doctrine of the holy Doctor favor Equiprobabilism and oppose Probabilism. But enough now concerning these matters, since from them, or from the authority of St. Alphonsus insofar as it rests upon them, we shall soon argue distinctly and specifically.

It is established, therefore, that the Church did not favor Probabilism, and inhibited it by edicts doctrinal, disciplinary, and mixed.

From what has been said there also follows, and I would like this noted in passing, how undeservedly several heterodox authors[8] reproach the Catholic Church for having fostered and commended a doctrine more lax than is just: the Catholic Church, I say, which on repeated occasions disclosed a mind opposed to Probabilism, far from fostering and commending the aforesaid system.[9]

II. From the authority of St. Alphonsus. This authority, as we said above, seems to be such as to create a grave presumption for the system which he himself defended. But the holy Doctor also

defended, to the best of his powers, the third thesis of Equiprobabilism.

The minor, which even now is denied by some, is established by these points:

1. First, there are at hand countless testimonies of the holy Doctor himself, several of which it is useful to present:[10]

a) *Dell' uso moderato dell' opinione probabile* (1765). There he teaches: "I have said so often that not only he who has evident knowledge of the law, but also he who, according to the light of reason, judges that the opinion standing for the law is notably or certainly more probable, is held to observe it, even if there is dispute among the doctors; just as in fact I myself have reprobated, in my moral work, several opinions formerly approved by many authors, as certainly less probable" (c. 3, n. 81).

b) Letter to Remondini (1769). "The Jesuits commonly defend that we can follow the less probable opinion; but I defend that, when it is known that the opinion favoring the law is more probable, we must follow this one, and that it is not licit for us to follow the less probable; concerning this matter the Jesuits have complained to me" (*Lettere*, II, n. 230).

c) Letter to Father Villani (1773). "In it (i.e., in the little work whose title is *Dichiarazione del sistema*) I shall make clear to all that I am the defender of the doctrine which asserts that the opinion favoring the law must be followed, if indeed this opinion is more probable, and that Probabilism is entirely reprobated by me. This one thing I say, namely, that a law does not oblige where the opinion supporting it is entirely doubtful" (*Lettere*, II, n. 284).

d) *Theologia Moralis* (7th ed., 1773). To this edition the holy Doctor added a *Monitum*,[11] in which he thus sets forth and proves his system: "I say that if the opinion which stands for the law seems certainly more probable, we are altogether held to follow it; nor can we then embrace the opposite opinion, which stands for liberty. The reason is that, in order to act licitly, we must in doubtful matters inquire into and follow the truth; but where the truth cannot be found clearly, we are held to embrace at least that opinion which comes nearer to the truth, such as the more probable opinion is."

e) *Dichiarazione del sistema che tiene l'autore intorno alla regola delle azioni morali* (1774). "Some reproach me, saying that I am a Probabilist. I again declare in this brief work that I am not a Probabilist, nor do I follow Probabilism; indeed I reprobate it... I say, first, that if the opinion which stands for the law appears certainly more probable, we are held to follow it for several reasons, the principal one of which is this, that in moral doubts we must follow the truth; wherefore, when we cannot clearly find the truth, we must at least follow that opinion which comes nearer to the truth, such as in this case is the very opinion which seems more probable to us. Therefore the truth itself, which obliges us to follow it, also obliges us to follow that opinion which stands for the law, when it comes nearer to that same truth" (n. 2).

f) *Theologia Moralis* (8th and 9th editions, 1779 and 1785). St. Alphonsus inserted in these editions the *Monitum* which he had added to the seventh edition, and so once again, from the obligation of following the truth, he deduces that the certainly more probable opinion must be followed (I, 54).[12] He repeats the same at I, 88: "For where we do not find certain truth, we must follow that opinion which approaches nearer to the truth."

Behold, then, certain testimonies which clearly show that St. Alphonsus rejected Probabilism.

2. Then our minor is confirmed by authority. For indeed almost all authors who are attached to no school testify that St. Alphonsus, at least from the year 1762 onward, supported Equiprobabilism.[13]

3. Lastly there is added the fact that the Church issued the "Decree concerning the doubt whether the virtues are established in a heroic degree" after it had ascertained that Probabilism had been rejected by St. Alphonsus (n. 225).

[1] *Disp. de opin. probabili cum Honor. Fabri*, c. 27; cf. *De Minusprobabilismo*, pp. 19-21.

[2] The Supreme Pontiff indeed speaks about an opinion to be imposed on others; but these things hold *a fortiori* when there is question of the opinion which we ourselves must follow. Cf. Patuzzi, *Regola prossima*, t. II, pp. 91-94; Gonet, *Clypeus*, t. III, diss. *De consc. prob.*, preface; Concina, *Apparatus*, t. II, p. 174 (ed. 1763).

[3] That the aforesaid decree is opposed only to the less probable opinion or Probabilism, and by no means to the equally probable opinion or Equiprobabilism, is clear from the tenor of the decree itself, which speaks only of the more probable and less probable opinions, and in no way of the equally probable opinion. Besides, compare what we have disputed elsewhere concerning this matter (*De Minusprobabilismo*, pp. 24-35).

Forstmann, with Noldin, denies that "by the words *with the more probable opinion thus known and judged* the Supreme Pontiff intended the certainly more probable opinion" (*Theol. Mor. Gen.*, n. 143). But it seems clear that the matters are being confused. The author adds: "Let us suppose that the Supreme Pontiff intended the certainly more probable opinion; then he did indeed attack Probabilism, but by this attack he did not yet condemn Probabilism." I grant these things freely; but a system attacked by the Supreme Pontiff, although not condemned, does not seem commendable. Forstmann indeed adds in the cited place: "For we can attack what we think good." But no one would admit that a moral system which the Supreme Pontiff held to be good or right was attacked by him.

[4] *De Minusprobabilismo*, p. 35.

[5] *De Minusprobabilismo*, p. 35.

[6] *De Minusprobabilismo*, pp. 35-36.

[7] Jansen, p. 34; *Vindiciae Alf.*, I, n. 46; Berthe, *Vie de S. Alf.*, II, p. 640.

[8] Thus Dollinger-Reusch, *Geschichte der Moralstreitigkeiten in der romischkatholischen Kirche seit dem sechzehnten Jahrhundert*; Hermann, *Romische und evangelische Sittlichkeit*; Harnack, *Lehrbuch der Dogmengeschichte*; Hoensbroech, *Die Ultramontane Moral*.

[9] Cf. Ter Haar, *Ven. Innoc.*

[10] Although St. Alphonsus at first supported Probabilism, and published two dissertations, anonymous however, which favored the aforesaid system, one in 1749 and the other in 1755, nevertheless he followed that system more from obedience than from inward conviction. This is so true that, when the holy Doctor was in the greatest danger of life in 1756, this one thing caused him fear: that he had supported Probabilism. "In the year 1756," Melchionna, who had seen and heard the matter in person, narrates, "our blessed Father had fallen mortally ill during Holy Week. When he had recovered somewhat from the illness, our whole Noceran family came to him rejoicing. Then Alphonsus spoke thus: 'Having been brought into this greatest danger of life, there was nothing that kept me disturbed and anxious. This alone caused me fear, namely, that I had followed a probable opinion; but the obedience that had to be given to my director required it.'" Moreover, in the cited dissertations he never explicitly defended the certainly less probable opinion, and in the second dissertation he expressly excludes notable excess. Indeed, already from the year 1759 he began to contradict Probabilism. Cf. Gaude, p. 17 sq.

[11] How highly the holy Doctor valued this *Monitum* is clear from these things which he wrote to his publisher Remondini: "This notice is certainly brief, since it is contained in a single folio; but I value this folio more than any other that might be desired in the book, both because I spent much labor in composing it, and because it embraces my whole system in moral matters" (*Lettere*, III, n. 308).

[12] In the last editions of the *Theologia Moralis*, the holy Doctor deleted these words: "I say certainly more probable; because when the opinion for the law is certainly and without any hesitation more probable, then that opinion cannot be anything but notably more probable. And in that case the safer opinion will no longer be doubtful (understand this of doubt strictly taken, as we shall say in the other question), but is morally or quasi-morally certain; at least it can no longer be called strictly doubtful, since it has in its favor a certain foundation that it is true. Hence then it comes about that the less safe opinion, which lacks a certain foundation, remains either slightly or at least doubtfully probable with respect to the safer one." These words, I say, which were found in the earlier editions, he deleted, and substituted for them the argument deduced from the obligation of following the truth. But he did this not because he held the things he had written to be false, but because they were less apt and less effective for his purpose than the argument from following the truth.

[13] *De Minusprobabilismo*, p. 56.

Thesis III. (Continued)

Objection 1. If St. Alphonsus, having left Probabilism behind, had embraced Equiprobabilism, he would have changed his *Theologia Moralis*, which he had composed according to the norm of Probabilism; but this was not done.

Response. St. Alphonsus composed and completed his *Theologia Moralis* according to the norm of Equiprobabilism; and this is clearly evident from the express testimonies of the holy Doctor. "I have decided to publish," he says in the *Monitum* to the reader which he prefixed to the second edition, "this new work, which would hold a middle place between opinions too benign and too severe... But in order that I might select, in each question, the opinions more conformable to truth, I spent no little labor." And in the dedicatory letters of the same edition to Benedict XIV he has these words: "I thought it suitable to select the more probable opinions, and those more useful for the salvation of souls" (*Lettere*, III, n. 5). Again: "In my moral work I reprobated many opinions, approved by many authors, as being certainly less probable" (*Dell' uso moder.*, c. 3, n. 81). Again: "Some have thought that in the greater work I follow the system of the Jesuits, which is not true; for in the conflict of opinions I followed the more probable" (*Lettere*, II, n. 308).[1]

Note. From what has been said it follows that, if St. Alphonsus again and again calls one opinion probable and the opposite one more probable, this is to be understood of one that is doubtfully more probable.

Objection 2. St. Alphonsus requires knowledge of the law, i.e., as he himself explains the word "knowledge," certain notice; indeed at times he requires that the law be manifest, evident, most certain.

Response. Those words cannot be taken in the strict sense, unless we wish to make St. Alphonsus a laxist of the first rank. In what sense the aforesaid expressions are to be taken, the holy Doctor himself explains, concluding the treatise in which statements of this kind chiefly occur with these words: "It is concluded that, unless the opinion which stands for the law is either certain or at least certainly more probable, as we said at the beginning, we are not held to follow it" (I, 83). It is clear, therefore, that the certainty of which the holy Doctor speaks in the texts objected is understood as certainty taken in the broadest sense.

Objection 3. St. Alphonsus admits the use of a probable opinion, even if the opposite is more probable.

Response. St. Alphonsus admits the use of a probable opinion even if the opposite is doubtfully more probable, I concede; even if the opposite is certainly more probable, I deny; for he expressly repeats hundreds of times that the certainly more probable opinion must be followed and the certainly less probable one must be abandoned (n. 232).

Objection 4. St. Alphonsus rejects the certainly less probable opinion only because, in his opinion, it ceases to be probable.

Response. I deny the assertion; for the holy Doctor especially rejects the certainly less probable opinion and imposes the certainly more probable one because the truth is to be followed. Hence he expressly calls that argument the principal argument (*Dichiarazione del sistema*, n. 2); hence, in the last editions of the *Theologia Moralis*, for the argument deduced from the slight or doubtful probability of the certainly less probable opinion, he substituted the argument deduced from the obligation of following truth. This argument entirely abstracts from the slight or doubtful probability of the more benign opinion, and proves that the certainly less probable opinion must be rejected, whether it is called probable or is not called probable.[2]

III. From the obligation of following truth in the moral order. One who forms an opinion, i.e., one who holds one opinion as certainly more probable and the contrary one as certainly less probable, is held sincerely to tend toward this: that he assume and follow as his norm of acting the true opinion, i.e., the opinion which is conformable to the objective Eternal Law or the supreme norm of actions, whether this imposes duties or grants rights.[3] But he does this only when he assumes and follows as his norm of acting the opinion which he thinks to be true, i.e., consonant with the aforesaid Law, and not when he assumes and follows as his norm of acting the opinion which he thinks to be false, i.e., dissonant from the aforesaid Law; in other words, he does this only when he assumes and follows as his norm the opinion which, in his judgment, is certainly more probable, and not when he assumes and follows as his norm the opinion which, in his judgment, is certainly less probable. Therefore one who forms an opinion is held to follow the opinion certainly more probable to him in favor of the law.

The major is clear from the fact that the Eternal Law is the supreme, primary, and independent norm of all moral goodness or rectitude, whereas reason is the inferior, secondary, and dependent rule, which borrows its whole force from the Eternal Law. Hence the Angelic Doctor excellently says: "In all ordered causes the effect depends more on the first cause than on the second cause, because the second cause does not act except in virtue of the first cause. But that human reason is the rule of the human will, from which its goodness is measured, it has from the Eternal Law, which is divine reason. Hence it is said in Ps. 4: Many say: Who shows us good things? The light of your countenance, O Lord, has been signed upon us; as if he said: the light of reason, which is in us, can show us good things and regulate our will insofar as it is the light of your countenance, that is, derived from your countenance. Hence it is manifest that the goodness of the human will depends much more on the Eternal Law than on human reason" (I-II, q. 19, a. 4). Moreover, no one will deny that one must sincerely tend toward the agreement of the norm of acting with the supreme, primary, and independent norm of moral rectitude, unless he has proclaimed human reason independent of, and autonomous from, the Eternal Law.

The minor also seems clear and plain. For one does not sincerely tend toward an end if, of two means, he chooses the one which in his own judgment more probably leads away from the end than toward it. Suppose, for example, a sick person chooses a medicine which, in the judgment of that sick person

himself, is more probably going to harm than to help him, while rejecting the medicine which is more probably going to help than to harm him: no one would contend that this sick person sincerely tends toward recovering health. By parity, one who would assume and follow as a norm the opinion which, in his own judgment, is more probably dissonant than consonant with the objective Eternal Law, while leaving aside the one which is more probably consonant than dissonant with the aforesaid Law, would in no way sincerely tend toward assuming as norm an opinion conformable with that Law.

And this argumentation is taken from those words by which St. Alphonsus, in the last editions of his *Theologia Moralis*, proves his system; because of the importance of the matter it is useful to cite them again: "I say that if the opinion which stands for the law seems certainly more probable, we are altogether held to follow it; nor can we then embrace the opposite opinion, which stands for liberty. The reason is that, in order to act licitly, we must in doubtful matters inquire into and follow truth;[4] but where truth cannot be found clearly, we are held to embrace at least that opinion which comes nearer to truth,[5] such as the more probable opinion is." And elsewhere: "The truth itself, which obliges us to follow it, also obliges us to follow that opinion which stands for the law, when it comes nearer to that same truth" (*Dichiarazione del sistema*, n. 2).

To forestall objections against the argumentation of St. Alphonsus, I would like you to notice what follows:

1. The argument is not deduced from the fact that I must sincerely tend toward the agreement of the norm to be assumed with truth, or with the Eternal Law certainly or certainly more probably known, but toward agreement with the Eternal Law as it is in itself. Therefore knowledge introduces a relation which must be absolutely excluded from the concept of the Law of which there is question in our argument, so that one who, in attacking our principle, makes mention of the aforesaid knowledge by that very fact departs from the meaning of the principle. In order that this may appear more clearly, I add these things: conformity with the norm certainly or certainly more probably known is to be actually attained, while one must tend toward the agreement of the norm with the Eternal Law as it is in itself.

2. The tendency of which we have spoken is nothing other than sincere love or an efficacious desire, appetite, and intention of assuming as norm of acting the true opinion, or the one conformable to the objective Eternal Law. This love and this intention ought to move each person in assuming the norm of acting, so that he may act honestly. One who is led and moved by this love alone or this intention as by a final cause can logically assume as norm only the more probable opinion, as being the means more probably leading to the end, and not the less probable opinion, as being the means more probably leading away from the end, i.e., away from the conformity of the norm of acting with the supreme norm.

3. I can intend the end, in this case truth or the conformity of the norm of acting with the objective Eternal Law, even if I do not know with certainty on which side the end is. Thus a sick person, by choosing the more probable remedy, intends health, even if he does not know with certainty on which side health is. Thus a traveler going to some city, by choosing the more probable of two opposite roads, truly intends the city, even if he knows only more probably, and not certainly, where the city is.

4. Tutiorism by no means follows from our argument; for, as we have said, the Eternal Law also wills very many licit things for us. Therefore, if, in equal probability about the licitness or illicitness of

some action, I were to assume as norm, "This action is illicit for me," I would not certainly attain truth, or the agreement of the norm of acting with the Eternal Law or supreme norm.

5. Nor does our argument involve a begging of the question. For from the certain obligation of sincerely and efficaciously intending truth alone, which is an obligation of natural law, there is logically deduced by reasoning the certain obligation of following an opinion not only certainly or almost certainly true, but also more probably true and known as such; hence this too obliges by force of natural law.

IV. From the fact that an act, with respect to the agent, has the morality which the agent thinks objectively inheres in the act. An act, with respect to the one acting here and now, is of that morality which the one acting thinks objectively inheres in the act, rather than of that morality which the one acting thinks does not objectively inhere in the act. Hence, if the agent thinks that some act is objectively prohibited and therefore not permitted, that act, with respect to the one forming the opinion here and now, is prohibited and not permitted.

Sweens says excellently: "Since a human act derives its morality from the object as that object is in the apprehension of the one acting, it is clear that the principal norm of acting rightly must be taken by us from the knowledge which we have concerning that object. But a solidly probable opinion[6] for the law begets in our mind knowledge concerning its object as commanded or prohibited; knowledge, I say, not indeed strictly certain and without fear concerning the opposite, but nevertheless positive and suitable for drawing the assent of a prudent man; in other words, as St. Alphonsus says, although such an opinion is not certainly true, it has a certain foundation that it is true. Therefore he would act unreasonably who would employ the reflex principle: A doubtful law does not oblige, in order to attribute to his action a goodness contrary to that which shines upon the action from its proper object. For this principle is wholly extrinsic to the action, and therefore it does not come into use except when, after prudent inquiry, no positive knowledge concerning the object of the action is available to us, or, what is the same thing, when concerning the direct goodness of the action we are in strict doubt, whether positive or negative; for such doubt is equivalent to invincible ignorance, as we have seen above."[7]

V. From the fact that Probabilism is at least doubtful. A doubtful system lacks practical value. But Probabilism, insofar as it permits us to follow the less probable opinion, is at least doubtful.

The major is made out from the fact that a moral system is itself the reflex principle which must serve for solving moral doubts for practice. But a reflex principle which is itself doubtful cannot solve doubts or induce a certain conclusion.

The minor is proved by these considerations: 1. As we shall soon note, all the arguments brought forward by the principal adversaries seem to involve a begging of the question. 2. Then, even if we grant that the arguments of the adversaries do not rest on a begging of the question, they nevertheless are not such as to settle the question, and they themselves need further proof. 3. Next, no one who is free from party zeal will deny that the arguments brought forward by us are at least such as to obtain true probability for our opinion. 4. Add that the highest men from every nation under the theological heaven have stood for anti-Probabilism, and even now not a few theologians support it; indeed Dr. Sawicki does not hesitate to assert that anti-Probabilism is becoming stronger day by day.[8]

Now who is there who, after all these things have been weighed in the scales of the sanctuary, would assert that Probabilism is indubitable?

Behold, then, the arguments by which our third thesis is proved sufficiently and more than sufficiently. It remains for us to present the arguments by which the Probabilists try to prove the contrary thesis.

[1] Nor should this seem strange to anyone, because St. Alphonsus, as we have said, defended Probabilism in the years 1749 and 1755, driven more by obedience than by conviction. These things are gathered both from those matters which we narrated above (p. 167), and from the fact that the holy Doctor, at the same times at which he composed the probabilistic and anonymous dissertations, publicly and non-anonymously, i.e., in the first four editions of the *Theologia Moralis*, expressly declares that he prescinds from the question whether or not it is permitted to follow the less probable opinion. Hence Dubois, with all the circumstances considered, rightly concludes that "the first dissertations of St. Alphonsus on the use of probable opinion were nothing except his preliminary inquiries and a certain exaggerated reaction against simple Probabiliorism, which he had previously defended. For he gathered all the arguments in favor of simple Probabilism, in order to persuade himself of its truth and of the licitness of its use" (*De Exemplarismo divino*, t. III, n. 1167). But the aforesaid persuasion was never such that a sincere lover of truth would have dared publicly and in his *Theologia Moralis* to approve for practice opinions which he himself held as more probably false than true. See this proved more fully in *De Minusprobabilismo*, p. 62.

[2] See other objections refuted in *De Minusprobabilismo*, pp. 58-59.

[3] Therefore the Eternal Law, as it is taken here, is the reason of divine wisdom insofar as it is directive of all human acts. Moreover, this Law either commands, prohibits, permits, or counsels, as has been explained more fully in n. 81.

[4] The truth which the holy Doctor here wishes to be inquired into and followed is certainly objective truth, not subjective truth, lest we fall into Kantism.

[5] That is, it appears nearer to truth or bears before itself a greater appearance of truth; with this noted, the things which some have criticized in the doctrine of St. Alphonsus fall away.

[6] A solidly probable opinion, as Sweens understands it, coincides with the more probable opinion.

[7] *Theol. mor. fund.*, n. 129.

[8] *Katholische Kirche und sittliche Personlichkeit*, p. 82. Even in this century distinguished authors have cast their vote for Equiprobabilism, such as Vinati, in *Divus Thomas*, 1905, p. 340; Berardi, *Theol. mor. fund.*, n. 514; Sweens, *Theol. mor. fund.*, n. 700 sq.; Koch, *Lehrbuch der Moraltheologie*, p. 97 sq.; Van Tuil, in *De Katholiek*, 1900, p. 145; Beysens, *Ethiek of Natuurlijke Zedenleer*, I, n. 234 sq.; Seysener, in *De Katholiek*, 1916, II, p. 83; Beauduin-Gardeil, *Tract. de Conscientia*; Valensise, *Super systema Theol. Mor... brevis disquisitio*, etc.

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33.

Objection 1. The Church cannot positively approve a doctrine pertaining to daily practice which is against good morals and promotes illicit actions. But in St. Alphonsus the Church positively approved the doctrine of Probabilism.

Response. A twofold approval can and must be distinguished, one negative, the other positive. Negative approval is that by which the Church declared that the works of St. Alphonsus contain "nothing worthy of censure"; this approval imports only this one thing, that a doctrine has not been reprobated. Positive approval is understood as that by which the writings of the holy Doctor were adorned with the highest praises, and the Author himself was proclaimed by the Church as an illustrious master of Moral Theology and a safe guide of theologians.

Moreover, I freely admit that negative approval belongs to all the works of St. Alphonsus, even the earlier ones which are probabilistic; but the commendation which is called positive favors only

Equiprobabilism, as was shown above (n. 232).

Objection 2. The Church cannot tolerate a doctrine pertaining to daily practice which is against good morals and promotes illicit actions. But the Church tolerates Probabilism; she could not do this if it were false, because she cannot tolerate a false doctrine which is against good morals and promotes illicit actions.

Response. The Church also tolerates Equiprobabilism and Probabiliorism; she could not do this if they were false, because even those doctrines which aggravate the yoke of the Lord more than is fitting must be said both to be dishonorable in themselves, or contrary to the divine ordination, and indirectly to harm good morals. Hence from tolerance as such nothing can be deduced in this case. But the tolerance of Probabilism does not prevent the Church from being opposed to Probabilism and from inhibiting it (n. 232); this, as it seems, continues to introduce some presumption against that system. Add what we have just said concerning the positive approval of the doctrine of St. Alphonsus, which favors only Equiprobabilism.

Objection 3. The supreme tribunal of the Church, i.e., the Sacred Penitentiary, in its solemn decrees admitted Probabilism as the practical norm for interpreting law. For in that decree given on February 11, 1661, by which it gave responses to a great number of questions concerning the obligation of denouncing a soliciting confessor, it gives this reason why in one question it affirms the obligation and in another it does not: that the opinion which denies the obligation "is not probable," or "is probable." This is nothing other than to acknowledge Probabilism, or solid probability, as the legitimate norm from which judgment is made concerning the licitness of acting.

Response 1. I deny the consequence; for this supposes that the word "probable" is taken in a logical sense, and in such a sense as also includes the certainly less probable. But neither point is proved, so that this word can be understood either of ethical probability (n. 215), or of logical probability, and indeed of such a kind as excludes the certainly less probable, according to what was said in the cited number.

Response 2. Even if we granted that the word "probable" is taken in the sense of the adversaries, nevertheless the consequence would have to be denied. For there is question of an odious law, namely of denouncing a confessor. Now, with the nature of a law of this kind considered, it was rightly answered that, according to the mind of the Church, a case which theoretically is probably not included under the law is practically not included under the law.

Objection 4. Probabilism was defended by countless and very grave theologians,[1] and is defended even now. But one who follows a doctrine which many and very grave theologians teach acts prudently; and one who acts prudently acts honestly.

Response. One who follows a doctrine which many and very grave theologians teach acts prudently if, after having seen the arguments of the adversaries, he holds it as certain that the system of the theologians whom he follows is true, I concede; otherwise, I deny. Let the reader see, therefore, whether, after considering the arguments brought forward against Probabilism, he can prudently judge that that system is certain and indubitable.

Objection 5. St. Thomas seems to favor Probabilism, since he requires knowledge in order that a precept oblige. But merely certain probabiliority does not import knowledge. "No one," says the holy Doctor, "is bound by any precept except through knowledge of that precept; and therefore he who is

not capable of notice is not bound by a precept; nor is anyone ignorant of a precept of God bound to do the precept, except insofar as he is held to know the precept" (*De Verit.*, q. 17, a. 3).

Response 1. From the fact that someone, especially formerly, i.e., before the controversy about the moral system arose, declares that no one is bound by any precept except through knowledge or notice of that precept, it cannot be deduced with certainty to which moral system, or even whether to any system, he adhered. For all will easily assert this, without attending precisely to this or that determinate sense of those words. Besides, this response being passed over:

Response 2. The holy Doctor, as is clear from the text brought forward, uses the words "knowledge" and "notice" interchangeably. Now even the state of one forming an opinion involves some notice, although imperfect (n. 215). This, moreover, the Angelic Doctor himself expressly affirms. "The more efficacious," he says, "the action of the agent is, the more quickly it induces the form; and therefore in intellectual matters we see that by one demonstration, which is efficacious, knowledge is caused in us; but opinion, although it is less than knowledge, is not caused in us by one dialectical syllogism, but several are required because of their weakness" (*De Virt.*, q. un., a. 9, ad 11). Elsewhere (I-II, q. 67, a. 3) he distinguishes perfect and imperfect cognition, of which the former is obtained through a demonstrative means or argument, and the latter through a probable means. "It must be considered that cognition can be imperfect in three ways: in one way on the part of the knowable object; in another way on the part of the means; in a third way on the part of the subject... But on the part of the means, the cognition which is of some conclusion through a demonstrative means and through a probable means differ according to perfect and imperfect."[2]

Response 3. For the sake of completeness it is useful to report what St. Thomas notes in the treatment of a particular question, and what seems to favor us. The holy Doctor, asking "whether consent in delectation is a mortal sin," responds that "concerning this some have held different opinions: for some have said that consent in delectation is not a mortal sin, but only venial; but others have said that it is a mortal sin; and this opinion is more common and more likely" (I-II, q. 74, a. 8). Now, after reading the whole article (cf. also I-II, q. 88, a. 5, ad 2), no one will easily deny that, according to the mind of the Angelic Doctor, only the latter opinion, although he calls it merely more likely, is safe in practice. This being posited, the more likely or more probable opinion, for that is the same thing, seems to St. Thomas to be the one to be followed. The principal places to which different supporters of different opinions refer are these: *Quodlibet* VIII, q. 6, a. 13; II-II, q. 70, a. 3.

Objection 6. A doubtful law does not oblige. But a law which exists only certainly more probably is doubtful.

Response. A law doubtful with strict doubt does not oblige, I concede; a law doubtful with broad doubt, such as a certainly more probable law is, does not oblige, I deny, for the reasons brought forward.

You will insist: An unknown, unrecognized law does not oblige. But a law which is known only certainly more probably is truly unknown.

Response. A law entirely unknown or entirely unrecognized does not oblige, I concede; a law which is known by opinionative notice does not oblige, I deny, for the reasons brought forward.

You will urge: A law does not oblige unless it is known in the strict sense, as St. Thomas teaches. But the state of one forming an opinion does not import knowledge strictly so called, for this is strictly

certain.

Response. I deny the major, and for the reasons brought forward I contend that even knowledge taken in the broad sense, i.e., opinionative cognition, suffices in order that a law oblige. Concerning the opinion of St. Thomas, enough has been said above.

Objection 7. It is repugnant that a certain obligation be induced by an uncertain law, because the effect cannot be more certain than the cause itself. But a law which exists only more probably remains uncertain.

Response 1. I turn back the argument: It is repugnant that a certain obligation be induced by an uncertain law. But a law which exists most probably or almost certainly is not altogether certain. Therefore not even most probable and almost certain laws oblige altogether certainly.

Response 2. I distinguish the assertion: It is repugnant that a certain obligation be induced by an uncertain law directly, I concede; indirectly, as happens if, for example, a law exists only most probably or almost certainly, i.e., by force of the principle explained in n. 232, or at least by force of the principle: In a practical doubt not solved, the safer part is to be followed, I deny.

Objection 8. An uncertain law cannot take away the certain right of liberty of determining oneself at will.

Response. The right of liberty, through the more probable law, directly becomes less probable. But the less probable right of liberty must yield to the more probable right of law, as follows from the arguments brought forward by us.

Objection 9. If the certainly more probable opinion had to be followed, each person would be held to institute a comparison between the various degrees of probability of each opinion; but this morally cannot be done by most people.

Response. This difficulty rests on the error which is called *ignoratio elenchi*. We require nothing else, nor by force of the system ought we to require anything else, except what is required by the Probabilists themselves, namely, that each person, before acting, inquire into the truth according to his powers or with proportionate diligence (n. 222). But if, after the truth has been inquired into with due diligence, it does not appear that the probability of one opinion surpasses the probability of the other, no obligation arises.[3]

Corollary. A law obliges if someone thinks or holds as more probable: 1. that the law exists; 2. that some person or case is comprehended by the law; 3. that the fact which founds the law has taken place. It obliges, moreover, in the cases set forth even if one who thinks that the law exists knows that extrinsic authority favors the more benign opinion more, provided, of course, that notwithstanding the extrinsic authority he holds the existence of the law as more probable (St. Alphonsus, *Dell' uso moderato dell' opinione probabile*, 1765; *Lettere*, III, 217).

[1] As regards the history of moral systems, it is useful to note these things:

1. With respect to the holy Fathers, I sincerely confess that, after looking over all their testimonies with an attentive eye, it remained doubtful to me whether they adhered to any moral system, and to which one, of course only implicitly. This one thing I observe: in view of the decree issued by Alexander VII in 1665, the doctrine of Probabilism is "wholly alien from Evangelical simplicity and from the doctrine of the holy Fathers" (n. 231). Let these things be said against those who have

gathered certain things from the holy Fathers, otherwise few and ambiguous, of which several do not even deal directly with moral matters. Nor does any one of them state, and this is the state of the question, that the one acting can perform what he himself holds as more probably objectively illicit.

2. Then it must be noted that before Bartholomew de Medina, who in 1577 first stated this thesis: "If an opinion is probable, it is licit to follow it, although the opposite is more probable" (*Expos. in I-II D. Thom.*, q. 19, a. 6, concl. 3), Probabilism was commonly repudiated. The ancient Probabilists themselves expressly testify to this (cf. *De Minusprobabilismo*, pp. 102-103).

3. After the year 1577, at which time Medina proposed the thesis cited above, very many theologians adhered to the new doctrine, and it gradually gained such strength that from the year 1620 up to the year 1665 it was received quite commonly. Yet it must not be judged that almost all after Medina, or from the year 1620 up to the year 1665, favored the new system; this is clear from very many testimonies of authors flourishing at that time (cf. *De Minusprobabilismo*, pp. 105-113).

4. After Alexander VII in 1665 had overthrown many laxer opinions, and had called Probabilism itself "a mode of opining wholly alien from Evangelical simplicity and the doctrine of the holy Fathers," the system more benign than is just vanished more and more, and, chiefly through the work of the Supreme Pontiffs (n. 232), for a long time was quite commonly reprobated (cf. *De Minusprobabilismo*, pp. 113-116).

From these things, which we have set forth more fully and confirmed with very many testimonies in our cited little work, from these things, I say, it is made out that the historical notice presented by several authors seems defective and not very accurate.

[2] By "probable means" the equally probable cannot be understood, since this introduces strict doubt and therefore excludes all notice. It remains that the more probable is understood, which therefore according to the mind of St. Thomas produces some cognition or knowledge, although imperfect.

[3] Please see the remaining arguments and objections of the adversaries refuted in *De Minusprobabilismo*, pp. 95-132.

Scholion. On the Code of Canon Law and the Moral System

234 **I.** "Laws, even invalidating and incapacitating laws, do not urge in doubt of law" (can. 15). Now, in establishing these things, the Code altogether abstracts from the moral system, or conforms itself to no system. For the moral system treats of private doubt; but the Code treats of public or objective doubt, so to speak. And indeed order would be disturbed too greatly if Authority rendered the efficacy of law dependent on private doubt. Suppose, for example, the case: Peter doubts whether someone can validly contract marriage with a blood relative in the third degree; relying on canon 15, he enters marriage with Anna, who is related to him in the stated degree. The marriage is certainly invalid; this proves that the canon is not speaking of private doubt.

II. "In doubt, the revocation of a preexisting law is not presumed, but later laws must be drawn to earlier ones and, insofar as can be done, reconciled with them" (can. 23). For the reason alleged under I, it must be said that once again the discourse is about public or objective doubt, and not about private doubt. Hence even if someone, for example, doubts whether the law of abstaining from meats on Saturday has been revoked, the said law is and remains revoked.

III. "In doubt... of fact the Ordinary can dispense in them (i.e., in laws, even invalidating and incapacitating laws), provided there is question of laws in which the Roman Pontiff is accustomed to

dispense" (can. 15). This canon establishes only that the Ordinary, in doubt of fact, can dispense as a precaution; but it abstracts from the question of what the law is if the Ordinary does not dispense.

Point III. On Those Things which Complete the Doctrine of the System

I. On Certain Sayings Annexed to the Moral System

235 The sayings to be explained either represent, in a brief formula, the moral system itself or its demonstration, or they exhibit rules by which doubts of fact are solved.

I. A doubtful law does not oblige. The sense is: A law whose existence or enactment is strictly doubtful does not oblige. But a law whose cessation or fulfillment is strictly doubtful does oblige; likewise a law whose existence or enactment is certainly more probable.

II. In doubt the condition of the possessor is better. Wherefore observe:

1. The principle has force both in the matter of justice and in the matter of other virtues, whenever the dispute is between liberty and law (St. Alphonsus, I, 26). Nevertheless the sense of the principle is different according as it regards justice or another virtue, as will be clear from what must be said under 2 and 3.
2. In the matter of justice he is said to possess who holds the thing about which there is dispute with the mind of an owner or as his own. In this matter the principle has force insofar as one who has begun in good faith to possess a thing can retain it until it is demonstrated that it belongs to another (St. Alphonsus, I, 36; VI, 904, 905).
3. But if the dispute is between liberty and law, that is said by us to possess which is at least prior by nature. Hence liberty possesses in doubt: 1. whether a positive law has been established or promulgated; 2. whether a law comprehends some person or case; 3. whether the fact founding the law has taken place. The law possesses in doubt whether it has ceased or has been fulfilled. But the principle has force only, or the condition of the possessor is better only, in strict doubt, and not if that which supervenes is more probable.

III. In doubt a fact is not presumed but must be proved. The principal fact is understood; such are, for example, the establishment of a law, the fact founding a law, the cessation and fulfillment of a law. These, therefore, are considered as if they had not taken place until, according to the things explained above, they have been sufficiently proved.

IV. In doubt that which has been done is presumed to have been done rightly; or: In doubt one must stand for the validity of the act. These have force if the principal fact is established, but there is doubt about an accessory fact or about the circumstance or manner in which the fact took place. In that case the fact is presumed to have been done duly. Hence one who doubts, for example, whether he confessed duly or obtained a dispensation validly, can stand for the validity of the act (St. Alphonsus, I, 182; VI, 461). The principle does not have force if the manner in which the act was placed is established, but there is doubt whether the act so placed is valid.

II. On the Practical Importance of the Controversy Between Equiprobabilists and Probabilists

236 Since several think that the controversy between Probabilists and Equiprobabilists is destitute of practical value, we judge that certain things must be added concerning this matter. Now we hold that this question is practical, and this for the reasons to be explained.

I. It is certain that for every learned person there are several opinions which he judges to be probable in the probabilistic sense, but certainly less probable. Now, according to the opinion of the Probabilists, it is licit to put these into practice; according to the opinion of the Equiprobabilists, it is not licit. Thus I myself, though unlearned, in order to bring forward some examples for the sake of argument, judge the following propositions to be probable in the sense of the Probabilists, but certainly less probable:

1. An act following from another action and foreseen, for example, blasphemy uttered in drunkenness and foreseen, does not come under the name of sin, and therefore there is no obligation of declaring an act of this sort in confession. 2. Sins do not receive numerical distinction from the plurality of objects. 3. He who, in the state of grave sin, successively absolves several persons perpetrates one numerically single sin. 4. There is no obligation of using a privilege if it removes an impediment to the observance of law, so that, for example, a sick person who has the privilege of a private oratory, and can conveniently assist at Mass there but not in church, is not held to it. 5. In common necessity there is no grave obligation of giving alms from goods simply superfluous. 6. Even laws which regard direct taxes are purely penal. 7. The law of military service is purely penal. 8. The special affection of a buyer toward a thing, provided it rests not only on necessity or need but on utility, convenience, or delight, can be numbered among special titles of selling beyond the highest price. 9. A deaf-mute is not held to confess in writing if he cannot do so otherwise. 10. There is no obligation of confessing a sin which cannot be declared without manifestation of an accomplice. 11. A grave sin declared as doubtful does not have to be declared again if afterward it is discovered to have been certainly committed. 12. In itself he does not sin gravely who, in a long series of confessions, omits only one or another necessary question. 13. A confessor does not sin gravely who for one or another grave sin imposes only a light penance. Come now: it would be licit for me to put into practice the opinions just mentioned, to which it would not be difficult to add very many others, if I were a Probabilist; now, since I adhere to Equiprobabilism, this very thing is illicit for me.

II. There is added that, as we shall note in the third scholion, the confessor is ordinarily held to impose not only on himself, but also on an unlearned penitent, the opinion which he himself holds as certainly more probable.

III. The final reason why this controversy seems practical is this: Probabilism of itself seems to lead to laxer opinions, to opinions, I say, which are not only certainly less probable, but improbable or slightly probable. For: 1. With the historical circumstances considered, it cannot be denied that the Supreme Pontiffs resisted Probabilism also for this purpose, that laxer opinions might be eliminated.[1] 2. The word "probable" is so vague and unbounded that it cannot be determined when an opinion ceases to be sufficiently founded. But doctrine of this sort, in view of man's inclination toward what is easier, of its own accord leads to embracing opinions more benign than is just.[2] 3. Finally, history and experience prove that not a few Probabilists, driven by force of their probabilistic and vague principle, inclined toward lax opinions later proscribed by the Church. I indeed confess that several more recent Probabilists are sufficiently moderate; but this in no way prevents me from not denying that some supporters of Probabilism, gradually and imperceptibly, incline toward opinions of which many are rejected by the graver Probabilists themselves as slightly probable or improbable. Opinions of this kind are, for example:

1. Only that occasion of sin is proximate in which someone is almost certainly or more probably going to fall, and not one in which he is only probably going to sin. 2. For receiving the sacraments of the living licitly, moral certainty, at least broad, concerning the state of grace is not required. 3. Extraordinary shame arising from an extraordinary circumstance excuses from the integrity of confession. 4. In itself broad moral certainty concerning the sufficient disposition of the penitent is not required, but probability suffices in order that absolution be conferred licitly. 5. Grave fear excuses from the reservation of sin. 6. There is no obligation of denouncing a confessor guilty of solicitation in the case of amendment so great and such that every fear of repetition is excluded. 7. A soliciting priest who, worn out by old age and hindered by chronic illnesses, is never again going to hear confessions, is not to be denounced. 8. A cleric habituated in hidden sins, for example of lust, can receive sacred orders without a preceding trial of amendment.

From what has been said it is clear how great an error holds those authors who think that Equiprobabilism and Probabilism scarcely differ practically and that our controversy is merely theoretical.

[1] *De Minusprobabilismo*, p. 19 sq.

[2] Cf. Mandonnet, *Revue Thomiste*, 1902, p. 511.

III. On the Use of the Moral System

237 **I. With regard to ourselves,** in itself it is better to follow the safer opinion. I said "in itself," because accidentally the contrary must sometimes be advised, for instance, so that scruples may be forestalled.

II. With regard to penitents. 1. Where the confessor, in view of the system which he embraces, practically holds something as licit, he does not impose the safer part, but at most recommends it, namely if the penitents show themselves prepared to follow safer things. Yet observe that sometimes an action licit in itself or sufficiently probably licit is illicit in view of the proximate danger of sinning which it creates for the penitent; this must be attended to especially if there is question of slippery matters (cf. St. Alphonsus, I, 83; V, 63; II, 456, 605; *Praxis conf.*, 69, 114, 192; *Homo Apostolicus*, appendix IV, n. XXI).

2. Where the confessor, in view of the system which is approved by him, practically holds something as illicit, one must act thus:

a) If the penitent is unlearned and cannot form his own conscience, the confessor should teach his own opinion or impose upon him that which he himself, namely the confessor, holds as practically prescribed. The reason is that the confessor must teach a penitent of this sort that practical norm of acting which he holds as true, and not that which he judges to be false (St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 118). The confessor indeed is not a judge of controversies, as they say; but this does not prevent him, with respect to a penitent who cannot form his own conscience, from being regarded as in the likeness of a judge who practically settles the controversy.

b) If the penitent is learned and in doubt can form his own conscience, the confessor should absolve him, unless he holds the penitent's opinion as improbable (St. Alphonsus, I, 83; III, 669; VI, 604; *Homo Apostolicus*, tr. 16, nn. 118, 119).

III. With regard to public direction. In catechism and in sermons the disputes of theologians should be omitted, and only those opinions should be presented which practically are admitted by all, or at least sufficiently commonly. In doubt one should proceed by recommending rather than by obliging (St. Alphonsus, II, 55; *Institutio... in praecepta Decalogi et sacramenta*, preface, nn. 2-4). Yet in scientific expositions before educated laypeople, it can also be indicated what it is licit for a person to do in doubt.

Article II. On Conscience Improperly So Called

As was already said (n. 214), conscience improperly so called is understood as a certain habitual state of judging in this or that way about the morality of actions. A threefold conscience is distinguished: strict, lax, and scrupulous.

§ I. On Strict and Lax Conscience

238 **I.** He has a strict conscience who habitually, from a slighter reason, judges that something is a sin or a grave sin which involves no malice or only slight malice. One who labors under a strict conscience should strive to submit his mind to the judgment of wiser and more prudent persons, especially with regard to the direction of others.[1] "It is indeed wrong to relax the observance of divine laws more than is permitted; but it is no less an evil to render the divine yoke harder for others than is fitting" (St. Alphonsus, I, 82).

[1] Cf. Sweens, *Theol. Mor. fund.*, n. 739.

239 **II.** He has a lax conscience who habitually, from a slighter reason, judges as licit what is illicit, or as venial sin what is mortal.

1. One who advertently acts according to the dictate of a lax conscience sins, because he rashly exposes himself to the danger of transgressing the law. Practically, however, not rarely it will be difficult to determine how far sufficient advertence, especially for sinning gravely, was present.
2. The principal causes of a lax conscience are: 1. bad education and association; 2. a soft and luxurious life; 3. the habit of sinning; 4. the reading of authors who are more benign than is just and easily depart from the stricter opinions of the masters of Moral Theology, especially St. Thomas and St. Alphonsus.
3. The principal remedies are: 1. removal of the causes set forth; 2. frequent confession made to a prudent confessor; 3. frequent and diligent examination of conscience; 4. assiduous prayer; 5. if there is question of clerics, reading of authors who press on in the footsteps of St. Thomas and St. Alphonsus. Concerning St. Alphonsus, the Decree by which the title of Doctor was granted testifies that "among the tangled opinions of theologians, whether laxer or stricter, he laid down a safe way" (n. 215).

§ II. On Scrupulous Conscience

240 He has a scrupulous conscience who habitually, from an empty reason and with a certain anxiety, apprehends sin where there is no sin; these things will become clearer from what must be said about scruples.

I. The notion of scruple. A scruple,[1] as is gathered from what has been said, is an apprehension resting on an empty reason and joined with anxiety of mind; an apprehension, I say, that something is or was a sin where there is not or was not sin.

It is called an apprehension, by which it is signified that scruple differs both from a determinate judgment that something is a sin and from a true doubt whether something is a sin. Scruple properly so called is had when the intellect neither determinately judges that something is a sin nor properly doubts about it, but, while having and retaining the judgment that it is not a sin, totters and fluctuates from a certain apprehension of evil (St. Alphonsus, I, 11; *Praxis Conf.*, n. 98).

It is said to be joined with anxiety of mind, by which it is indicated that scruple pertains not only to the intellect, but also to the will.

Scrupulous conscience also differs from tender or timorous conscience, which vividly apprehends even the smallest sins and defects.

II. The signs of a scrupulous conscience are:

1. If someone fears that those things are sins which commonly, even by the timorous, are not held as sins (St. Alphonsus, I, 11).
2. If he does not acquiesce in the judgment of a prudent confessor or director, and asks them again and again about the same matter, or commonly consults several (St. Alphonsus, cited place).
3. If he does not make an end of examining his conscience, opens in confession the most minute and irrelevant circumstances, or repeats the same thing rather often; if he often wishes to repeat confessions already made, either entirely or in part.
4. If he recites prayers anxiously, repeats them frequently, and often stops in order to renew intention and attention.
5. If he uses empty signs to drive away temptations, for example, by contracting the eyebrows, etc.

Note 1. Let someone not immediately be judged scrupulous: 1. who after a sinful life is for some time troubled about confessions already made, and after a general confession several times manifests some sins as not yet sufficiently declared; 2. who sometimes doubts whether he has sinned gravely, because the doubt can be prudent.

Note 2. There are also those who are scrupulous in certain matters and plainly lax in others. The remedies soon to be explained should not be applied to them except in the matter in which they are scrupulous.

III. Causes of scruples. Some are intrinsic, such as natural temperament, ignorance, inconstancy, obstinacy; sometimes also excessive austerities, by which, when the brain is weakened, the mind is easily made anxious. Others are extrinsic, such as the company of scrupulous persons, incautious reading of stricter authors either in Moral Theology or in asceticism, the use of a scrupulous confessor; besides these, the instigation of the devil, who introduces scruples in order to induce desperation or impede spiritual progress. God sometimes permits scruples, either as punishment for sins, or so that a man may more detest true sins, or so that he may exercise humility and patience.

IV. Harms of scruples. Scruples: 1. produce continual disturbance and affliction of mind; 2. close the approach to the consolations of the Holy Spirit; 3. draw the soul, weary from affliction, away from good

works; 4. disturb moral judgment and so render a man unfit for duties; 5. create danger of health being undermined, of madness or pusillanimity, of desperation (St. Alphonsus, I, 13).

V. The licitness and obligation of acting against scruples. 1. A scrupulous person can act against scruples. This is clear from the notion handed down, since a scruple "is not a true dictate of conscience or a formed conscience, as Gerson well distinguishes, nor a true practical doubt; nor does it take away the previously formed judgment, which virtually perseveres, although then because of the force of fear it is not noticed, namely, that he himself does not sin by doing anything which he does not recognize as certain sin. For then he acts not against conscience, but against that empty fear" (St. Alphonsus, *Praxis conf.*, n. 98).

2. A scrupulous person is often held to act against scruples, namely, so that the harms that would follow from scruples not resisted may be avoided (St. Alphonsus, I, 17). Nevertheless in practice he is commonly excused from formal sin, especially grave sin.

VI. Remedies of scruples. Some are general, others particular. The principal general remedy is that the scrupulous person subject himself altogether to the judgment of the confessor, and not examine the reasons, or, after consulting one, approach another. "Several Doctors assign rules for the scrupulous; but it is certain that for these persons, after prayer, the greatest remedy (indeed the only one, as Father Segneri rightly says) for curing them is obedience toward their own director" (St. Alphonsus, *Praxis conf.*, n. 95). The special remedies are:

1. "He who is always anxious about past confessions, because he fears that he failed in integrity or sorrow, if he himself has already completed a general confession at another time, or for some notable time has diligently made his confessions... should think no more about past faults, nor say a word about them in confession, unless he can swear with certainty that he committed those mortal sins, and besides that he has never confessed them. Indeed... someone can be troubled by scruples in such a way that, although it seems certain to him that he has not said certain things, he is still not held to confess them" (St. Alphonsus, I, 16; *Praxis conf.*, n. 97). Moreover, before confession the scrupulous person should not undertake a lengthy examination, especially concerning those things in which he is more vexed; nor should he confess distinctly except certain sins. Indeed, if there is question of a very scrupulous person, he should confess sins according to a fixed norm composed by the confessor, and should not be allowed to add anything.

If, however, there is question of a sinner recently converted, founded doubts about the integrity of a confession already made can more easily occur; account of this should be prudently taken in one or another confession. But if there is discourse about a sinner converted for a longer time, the rule set down above should be held as the norm.

2. He who always fears that he has given assent to evil thoughts, for instance against faith, chastity, or charity, "should not omit always using that rule wisely handed down by the Doctors, namely, that those who are of a timorous conscience, unless they know with moral certainty that they have consented to grave sin, are to be judged immune from sin; for, as Father Alvarez says, it is impossible for sin to enter a soul that abhors it without being clearly recognized by it" (St. Alphonsus, I, 15).

3. He who is troubled by scruples concerning the fulfillment of precepts, for example, the hearing of Mass or the recitation of the breviary, should never repeat the Hours, or for that reason assist at

another Mass. Indeed, "if someone were suffering grave anxieties, the recitation of the Office could sometimes even be forbidden to him until he seems able to recite without such great inconvenience, since great inconvenience excuses in itself from the precepts of the Church" (St. Alphonsus, IV, 177, at the end). Moreover, a scrupulous person is commonly excused from fraternal correction, both because he cannot discern when the obligation urges, and because it does not oblige with such great inconvenience.

4. Those who fear in every action lest they commit sin should "act freely, despise scruples, and act against them where evident sin does not appear; because ordinarily they themselves, on account of reason disturbed by excessive fear, fear that sin is present where it is not" (St. Alphonsus, I, 17).

VII. The confessor of a scrupulous person. 1. The confessor should kindly receive a scrupulous person destitute of a confessor, and the first time, or even a second time, should listen patiently until he has manifested his scruples; otherwise he will scarcely win the person's confidence. I said "a scrupulous person destitute of a confessor," since he should not easily admit another's penitent.

2. According to the different circumstances, he should assign to the penitent the remedies explained above and command him to use them; but especially he should "take care to persuade penitents vexed by scruples that he walks altogether safely who acquiesces in the counsels of his director and obeys in all things" (St. Alphonsus, I, 13). This obedience he should firmly require. "With obedient scrupulous persons one must act gently; but with those who fail in obedience, the greatest rigor and austerity must be exercised: for, deprived of this anchor of obedience, they themselves can never be healed" (St. Alphonsus, I, 16).

3. He should solve proposed doubts without hesitation. If sometimes he hears another's penitent once or again, he should not resolve much, lest from a solution perhaps different the scruples become worse. Besides, he should teach the scrupulous person to think of the Lord in goodness, "and should exhort him to live secure about his salvation, always fleeing to Jesus and Mary" (St. Alphonsus, *Praxis conf.*, n. 96).

[1] Thus called metaphorically from *scrupulus*, i.e., from a little stone fixed in the shoe, which troubles the foot and slows the step.

Part II. On Morality in Particular

The species, at least the supreme species, of morality are goodness, indifference, and malice (n. 62). Hence:

Section I. On the Good Act

We explained in n. 61 wherein the moral goodness of an act exists; here, however, it must be investigated further what is required so that an act may be clothed with moral goodness. Now:

241 **I. In order that an act be morally good,** it is not required that it be placed by one baptized or in the state of grace. The doctrine which teaches that all works of unbelievers or sinners are sins has been condemned; namely, the Baian propositions have been proscribed: the 25th, "All the works of unbelievers are sins, and the virtues of philosophers are vices";[1] and the 35th, "Everything that a sinner or servant of sin does is sin."[2]

[1] Denzinger-Bannwart, n. 1025.

[2] Denzinger-Bannwart, n. 1035.

242 **II. In order that an act be morally good, these things are required:**

1. The object must be good or at least indifferent (n. 66). If it is indifferent, the act becomes good if it is referred to a good end; in which case the end assumes the character of object.[1]
2. The act must be referred to a good end; for "since it belongs to reason to order, an act proceeding from deliberative reason, if it is not ordered to the due end, by this very fact is repugnant to reason and has the character of evil" (St. Thomas, I-II, q. 18, a. 9).[2]
3. Goodness must be intended in itself; otherwise it is not contracted subjectively. "In order that the will be good, it is required that it be good under the aspect of good; that is, that it will the good, and on account of the good" (St. Thomas, I-II, q. 19, a. 7, ad 3). But goodness is intended in itself when someone wills the good affected by its goodness, even if he does not reflexively think that he wills the good because it is good.

[1] On circumstances, see n. 69.

[2] Note, however, that an act good from its object is at least not deprived of goodness by just any bad end (n. 71).

243 **III. Of the conditions assigned, the second must be developed more fully;** in other words, it must be explained what kind of end is good, or to what end in the concrete an act must be referred. Now:

1. Every human act must be referred to an honorable end. Nevertheless any honorable end suffices, and it is enough that the honorable end be intended virtually. I said:

a) **Every human act must be referred to an honorable end.** The proposition is established against the Scotists, who teach that those acts which of themselves are ordered only to some comfort or relief of nature, such as walking, smelling flowers, stroking the beard, those acts, I say, can without sin be directly referred to the lower end alone, namely to comfort or pleasure, provided the ultimate end is not positively excluded.[1] According to the stated authors, one who directly rests in such an end neither sins, because to act for the end of the work alone is not evil, nor acts morally well, because he does not refer the act to an honorable end. Therefore he places an indifferent act. But the contrary opinion is

deduced from the fact that every human or deliberated act must be done for that end alone which befits rational nature. But it befits rational nature to act for an honorable end, and not for another (St. Thomas, I-II, q. 4, a. 2; St. Alphonsus, V, XLIV).

Objection. He who acts for the end of the work alone cannot sin. But the works about which there is controversy are, by their nature, ordered to pleasure alone.

Response. The argument proposed by us proves precisely that he sins who acts for the end of the work alone, if there is question of a work which by its nature is ordered to pleasure alone.

Corollary I. It is illicit to act for pleasure alone, so that an act placed for that end alone not only is destitute of goodness, but is also evil. It is, however, only venially evil, if there is question of a thing licit in itself or venially evil, because the disordered relation of an act licit in itself or slightly evil does not import grave disorder. Except the case in which pleasure would be intended as the ultimate end (St. Alphonsus, VI, 912).

Corollary II. It seems illicit to act, even, for pleasure, by resting, even, in it as such, because pleasure as such is not an honorable end. Yet to someone this will seem licit, insofar as the honorable act and its delectability constitute one thing.

Corollary III. It is licit to act for pleasure insofar as, from the intention of the Author of nature, it attracts to an act ordered in itself, for instance to conjugal intercourse; likewise insofar as it conduces to the well-being and operation of the body or soul. The reason is that pleasure, considered as such, has the character of an honorable end (St. Alphonsus, VI, 912; cf. St. Thomas, I-II, q. 34, a. 1; II-II, q. 141, a. 6, ad 2; II-II, q. 168, a. 2; *Contra Gentiles*, bk. 3, c. 9, n. 1).

b) **Nevertheless any honorable end suffices,** whether the end of the work or another intended by the agent, whether conceived in species or in a vague way. The very end of the work, at least to this extent, does not fall under precept, insofar as there is no obligation of intending it, although there can be an obligation of not impeding it. This being posited, the agent is free to set before himself another honorable end (St. Alphonsus, VI, 927; cf. 882 and 883). Nevertheless several think, as we shall soon note, that the end of the work itself, by the very fact that it is not positively excluded, is at least implicitly intended.

c) **It is enough that the honorable end be intended virtually,** or that the act be virtually referred to an honorable end, or that the act be placed by force of an honorable intention previously had. For it suffices that the act truly be referred to an honorable end; but it is truly referred to an honorable end if it is placed by force of an honorable intention previously had. There is added that the obligation of an actual relation "would be an unbearable weight and a matter entangled with six hundred scruples" (St. Alphonsus, V, XLIV).

d) **It is disputed whether one who places an act ordered by its nature to an honorable end, and does not positively exclude that end, by that very fact intends the honorable end, at least implicitly.** Most more recent authors affirm this; but it seems it must be denied. For that on account of which an act is distinguished is not implicitly intended by the very fact that the act is performed. But the end of the act is distinguished from the act itself, for example the procreation of offspring from intercourse, as effect from cause; hence in order that it be intended, a new act of the will is required. But the controversy is less practical, because one who places, in the due mode and order, an act

ordered by its nature to an honorable end, and does not positively exclude this end, commonly positively includes that end, although only confusedly and weakly.

2. It is disputed whether every human act must, in order to be good, be referred to God, or whether it suffices that it be referable to God.

Some teach that every act must be referred to God, because the dignity of the true ultimate end requires that all acts be referred to him. They add, however, that an implicit relation suffices, and that this is had by the very fact that the act is placed for an honorable end; because every honorable act by its nature is referred to God, the first and fontal honorableness of every particular honorableness.

Others deny that every act must be referred to God, and teach that, for a good act, it suffices that it be referable to God. They think this because acts cannot in any way be referred to God except through charity. But charity is certainly not required in order that a good act be placed; and this is already deduced from the 25th Baian proposition: "All the works of unbelievers are sins, and the virtues of philosophers are vices."[2] According to the latter opinion, a good act not referred to God is referred to beatitude in common as to the ultimate end (nn. 12 and 13).

3. A human act, in order to be good, does not have to be elicited from the motive of charity, nor from another supernaturally known motive; this again is already deduced from the 25th Baian proposition just cited.

4. Although a human act, in order to be good, does not have to be elicited from the motive of charity, nevertheless to this extent there is an obligation of referring one's acts through an act of charity to God as to the ultimate end, insofar as it is prescribed to elicit an act of charity at certain times. Another precept besides that which is identified with the precept of charity cannot be proved. Hence St. Thomas says: "If it is asked when one must refer an act to the ultimate end, this is nothing other than to ask when the habit of charity must go out into act, because whenever the habit of charity goes out into act, the ordering of the whole man to the ultimate end takes place, and consequently of all those things which are ordered to him as goods for him" (*In II Sent.*, dist. 40, q. 1, a. 5, ad 6).

Nor does St. Alphonsus contradict these things when he teaches that acts should be offered to God several times in the day, at least in the morning (V, XLIV). For, as is clear from the context, he does not speak about the relation of acts to God as to the ultimate end, but about the care of referring all one's acts, even those which from the object are indifferent, to a good or honorable end. In order that this be done certainly, a good intention should be repeated more often.

5. Those who think that, for the goodness of an act, it is not required that it be referred to God as to the ultimate end, since according to their opinion this cannot be done without charity, ask what kind of influence must proceed from charity in order that an act be referred to God.[3] Now:

Some require only habitual charity, without its influencing the act, since honorable acts are referred to God as if by their own weight.

Others likewise require only habitual charity; but according to them honorable acts which are placed in that state are always placed under the influence of the intention of God as ultimate end. For every agent, they say, acts from the intention of the ultimate end; but this, in one who is ordered to God, that is, in a just person, is God himself.

Others, besides habitual charity, require an act of perfect charity, by force of which good acts are referred to God. Of these, some say that in itself one act suffices for referring all future good acts to God, with the things that must be posited of course having been posited, namely that one not lose charity in the meantime. I said "in itself," because from another source there is the precept of eliciting an act of charity at certain times. Others think that the act of charity must be repeated at least from time to time. Here, however, it is further disputed whether the act of charity, in order to refer human acts to God, must be their causing principle, or whether it suffices that it be an ordering principle.[4]

Van Roey, who embraces the latter opinion, describes the stated ordering thus: "But if you ask how that virtual ordering of works is conceived, which is not virtual causality, we respond that it is a certain determination left behind from the first intention, some dictate arising from the first dictate, by force of which works are exercised in loving service of God and are determined and specified as friendly offerings made to God. This determination, this dictate, must be perceived as something truly persevering in the will, although here and now it does not occur to thought; the sign, indication, and argument of its real persistence is if someone, self-possessed and acting morally, is in such a disposition of mind that, seriously reflecting upon himself or asked why he does this or that work, finally and ultimately, after perhaps giving other particular motives, he answers that he acts on account of God, to please God, or something similar including explicitly or implicitly the motive of charity.

"If the matter is understood thus, it cannot be denied that the ordering of works is virtual; that is, the preceding intention, when it vanishes from the mind as an explicit intention, leaves behind some power, some determination, some disposition, which suffices so that the works, if they are done, are directed to God."

[1] Therefore they do not apply the doctrine to those acts to which the Author of nature has appointed the certain end of some honorable necessity or utility; such are, for example, eating, conjugal intercourse, etc. Besides, Innocent XI condemned proposition 8: "To eat and drink to satiety for pleasure alone is not a sin, provided it does not harm health, because the natural appetite can licitly enjoy its own acts"; and proposition 9: "The act of marriage exercised for pleasure alone is entirely free from all fault and venial defect" (Denzinger-Bannwart, nn. 1158 and 1159).

[2] Denzinger-Bannwart, n. 1025.

[3] Van Roey, *De virtute caritatis*, p. 26 sq.; Ernst, *Ueber die Notwendigkeit der guten Meinung*; Chr. Pesch, *Praelect. dogm.*, VIII, n. 639.

[4] Van Roey, *De virtute caritatis*, p. 232 sq.

244 **IV. Conclusion, by which the doctrine handed down is briefly gathered and completed.**

1. In order that an act be morally good, it suffices, with goodness or indifference of the object posited, that it be placed from an honorable end.

2. In order that an act be supernaturally good, besides the things just assigned, it is also required that it proceed from a supernatural elicitive principle. This is established from the First Council of Orange, can. 7. Whether or not every act must be elicited from a supernaturally known motive is disputed.[1]

3. In order that an act be meritorious *de condigno*, there is required:

a) On the part of the act: 1. that it be free in the moral genus; 2. that it be done in service of God, more probably from a supernatural motive, and indeed from a virtual influence or, as others say, under the virtual ordering of an act of charity (cf. n. 243).

b) On the part of the agent: 1. that he be in the state of the way; 2. that he be in the state of justice.

c) On the part of the one rewarding: that there exist a promise of reward, not indeed so that the act may acquire the condignity of reward, but so that it may be accepted by God in order to reward. Besides, these things are explained more abundantly by the dogmatic theologians.

4. Finally, if you ask to what ultimate end a good act is referred if it is not referred to God as to the ultimate end, I respond: it is referred to the indeterminate ultimate end, or to beatitude in common.[2] For on the one hand it is established that every act is referred to some ultimate end. But the act of which we speak is not referred to God, as we suppose; nor to a creature as to the ultimate end, because then it would be a sin, and indeed mortal. It remains, therefore, that it be referred to an indeterminate end or to beatitude in common. The same must be said of a venially evil act, since it is not referred to God, as is clear, nor to a creature as to the ultimate end, because this is mortal; therefore it is referred to beatitude in common. Others, however, speak otherwise (nn. 12 and 13).

[1] "Every" is said because with regard to some acts, for example the act of faith, it is established. Cf. Billot, *De virtutibus infusis*, p. 12 sq.

[2] I said "if," because others think that every good act is referred in some way to God (nn. 12 and 13).

Scholion. On the Conformity of the Human Will with the Divine Will

245 **I. These things are to be distinguished:** 1. the material thing willed, i.e., the thing itself willed; 2. the formal thing willed, i.e., the reason for willing, which is divided into proximate and ultimate. The proximate reason is the particular reason on account of which we will something; the ultimate reason is the glory of God.

II. The human will must be conformed to the divine will as follows:

1. The human will is held to be negatively conformed to the divine will in the thing willed, both material and formal; that is, it can never disapprove either that which God wills or the reason on account of which he wills it.
2. The human will is also held to be positively conformed to the divine will in the ultimate formal thing willed, but not always in the material thing willed, nor in the proximate formal thing willed.

a) It is held in the ultimate formal thing willed, because it is held always to will the glory of God; but the glory of God is the same as the ultimate formal thing willed.

b) It is not always held in the material thing willed, nor in the proximate formal thing willed; in other words, it can fail to will a thing willed by God, but under another reason. Namely, one and the same thing can, under different consideration, be good and evil; for example, the death of a robber considered by a judge as necessary for the common good is good; considered by his wife as harmful to the family, it is evil. Consequently the will by which the judge, whose role it is to attend to the common good, wills the death of the robber is good; and the will by which the wife, whose role it is to attend to the good of the family, does not will the death of her husband is also good, because the will which does not will a thing under the aspect of evil is no less good than the one which wills the thing under the aspect of good. But God as universal provider attends in willing to universal reasons, such as the common good of the universe, for which it is necessary that contrary things exist and be conserved, and the manifestation of his attributes; according to these reasons the thing willed by God is good, which nevertheless according to the particular reasons to which man must attend, and to which God

wills him to attend, is evil. Therefore the human will, in order that it be right, is not held to be conformed to the divine will in the material thing willed.

The minor will become clear by an example: God, as supreme director and provider of the whole world, according to the requirement and universal reasons of the common good and of his glory, wills my father to die. That death, considered according to those universal reasons, is good, and therefore good is the will which wills it. I, a private man, whose role it is not to attend to those universal reasons, but to particular ones, whether of my own supposit according to natural inclination, which is good and from God, or of my parent according to filial piety, which, even with God commanding, I am held to follow, do not will that death. That death, considered according to those particular reasons, is evil. Therefore good is the will which does not will it, so that although on the one hand I seem to depart from the divine will, on the other hand by willing thus I am indirectly conformed to the divine will itself, because God himself wills me to will thus.

Hence St. Augustine says in the *Enchiridion*, c. 101: "Sometimes with a good will a man wills something which God does not will; as if a good son should will his father to live, whom God with a good will wills to die" (St. Thomas, I-II, q. 19, aa. 9 and 10).

Section II. On the Indifferent Act

246 The discussion is of human or deliberated acts alone. Now:

I. There are acts indifferent according to species. For an act considered in species or in the abstract is understood as an act viewed according to its object. "But it happens that the object of the act does not include anything pertaining to the order of reason, i.e., it does not include anything which agrees with reason nor anything which is repugnant to reason, as to lift a straw from the ground, to go to the field, and things of this sort" (St. Thomas, I-II, q. 18, a. 8; St. Alphonsus, V, XLIII).

II. There are not, at least in themselves, acts indifferent in the individual, i.e., in the concrete, or with the circumstances also considered, especially the end of the one acting. This is established against the Scotists, who think that acts which by their nature are ordered to pleasure alone, such as smelling flowers, etc., are indifferent if they are exercised proximately for the end of the work alone, i.e., for pleasure alone. But rightly this is denied; for one who acts deliberately necessarily acts for some end, and indeed either for an honorable good or for a pleasurable good (n. 1). But an act ordered to an honorable good is morally good; one ordered to a pleasurable good alone is morally evil (n. 243; St. Thomas, I-II, q. 18, a. 9; St. Alphonsus, V, XLIV).

But it is more disputed whether by accident there is an indifferent act in the individual, namely: 1. if someone in no way attends to the morality of the act; 2. if, adhering to the opinion of the Scotists, he acts for pleasure alone. Now:

I respond to I that a deliberated act without any advertence to the morality of the act is admitted only with difficulty.

I respond to II that it seems improbable; since in the stated hypothesis the agent holds the act as licit. But what is held as licit or permitted by God, as such is held as honorable, and therefore the agent, although unconscious of it, acts honorably.[1]

[1] Billuart, *De act. hum.*, diss. 4, art. 7.

Section III. On the Evil Act, or on Sin

(St. Thomas, I-II, qq. 71-89; St. Alphonsus, *Theologia moralis*, bk. V).[1]

We shall speak first of sins in general, then specifically of certain classes of sins.

[1] Cf. Cajetan, *In I-II*, qq. 57-58; Billuart, I-II, *De peccatis*; Salmanticenses, *Cursus Theologicus*, tract. XIII, *De vitiis et peccatis*; Pegues, *Commentaire francais litteral de la Somme theologique*, t. VIII; Pesch, *Praelectiones dogm.*, t. IX, tract. II, *De peccato*; Billot, *De personali et originali peccato*; Landgraf, *Das Wesen der laesslichen Suende in der Scholastik bis Thomas von Aquin*.

Chapter I. On Sins in General

We shall discuss first the nature and conditions of sin, then the distinction, then the causes, next the effects, and finally the remedies of sins.

Article I. On the Nature and Conditions of Sin

247 **I. Nature.** Sin is usually defined with St. Augustine as: a word, deed, or desire against the eternal law.[1] It is understood as free; for "sin is nothing other than an evil human act" (St. Thomas, I-II, q. 71, a. 6). But a human act imports a free act. Besides, it is said:

1. **A word, deed, or desire,** by which the material element of sin is indicated, i.e., the word itself (sin of mouth), deed (sin of work), and desire (sin of heart); likewise the omission of a word, deed, and desire when their obligation is present (St. Thomas, cited place, body and ad 1).
2. **Against the eternal law,** by which the formal element of sin, or its malice, is assigned; this consists in the fact that it is opposed to the eternal law.

"Augustine," says St. Thomas, "placed two things in the definition of sin: one which pertains to the substance of a human act, which is quasi-material in sin, when he said: a word, or deed, or desire; the other, which pertains to the character of evil, which is quasi-formal in sin, when he says: against the eternal law" (cited place). Besides, observe:

a) The definition handed down agrees to original sin to this extent, insofar as Adam acted in the person of all of us, and therefore sin was in some way voluntary and free even for us.

b) Although the definition speaks only of the eternal law, nevertheless the transgression of other laws also, even ecclesiastical and civil laws, is comprehended, since all other laws borrow their force from the eternal law.

Corollary I. There is no purely philosophical sin, i.e., a sin which would indeed be opposed to right reason but not to the law of God, whether because the sinner was ignorant of God, or because he did not think about God. For reason is nothing other than a participation of divine law, so that what is repugnant to reason is ultimately repugnant also to law. Hence Alexander VIII condemned this proposition: "Philosophical sin, however grave, in one who either is ignorant of God or does not actually think about God, is grave sin, but it is not an offense against God, nor a mortal sin dissolving the friendship of God, nor worthy of eternal punishment" (St. Alphonsus, V, 11).

Corollary II. In sin one can distinguish the material element, or the material of sin, and the formal element, or the formal of sin. The material of sin is the physical act or its omission which is found in sin; the formal of sin is the very disorder or malice which is found in the act or in the omission.

Now it is asked in what the disorder or malice of sin consists, whether in privation or in something positive. Now the formal element of a sin of omission is situated in the privative, since it is nothing other than the omission of a due act.[2] But it is sharply disputed, even among Thomists,[3] whether the formal element of a sin of commission consists in the privative or in the positive. But it seems to consist in the privative; for if it consisted in the positive, God, as the author of every positive thing, would seem to become the author of malice itself.

Corollary III. Sin involves a manifold ugliness; for it is a disorder:

1. **Against rational nature,** according to these words of St. Thomas: "Vice is against the nature of man insofar as it is against the order of reason" (I-II, q. 71, a. 2).
2. **Against God,** whom the sinner offends: a) as Legislator; b) as Judge, by not fearing his sentence; c) as Witness, by not revering his presence; d) as the Supreme Good in himself, by despising his friendship and embracing those things which displease God exceedingly; e) as our Supreme Good, by not caring for God insofar as he is our exceedingly great reward; f) as Lord, by injuring God's supreme right over our actions; g) as Benefactor, by not taking account of God's gifts, abusing them to offend him.
3. **Against Christ the Redeemer.** Under this respect sin is in some way deicide;[4] for sins are the cause why Christ willed to undergo death. Hence one who, although he knows these things, nevertheless sins, constitutes himself the cause of the passion and death of Christ.
4. **Against the Sanctifying Spirit.** Under this respect sin in a Christian is in some way sacrilege, by which the faithful person, specially consecrated through the sacraments and the Holy Spirit dwelling within, is violated.

There is added that through sin a man is constituted a slave of the devil.[5]

Observe, however, that the described uglinesses are not contained according to formal species in every sin; for sin takes its species only from opposition to the motive on account of which the evil act is prohibited, as was explained elsewhere (n. 148). Hence, even if in every sin the aforesaid reasons of opposition to God are found, nevertheless for that reason it does not contain several species of malice or circumstances which must be declared in confession.

[1] *Contra Faustum*, bk. 22, c. 27.

[2] Billuart, diss. 1, a. 3.

[3] Cf. Billuart, cited place.

[4] Heb. 6:6.

[5] Sweens, *Theol. Mor. fund.*, n. 770.

248 **II. Conditions of formal sin.** For every formal sin there are required:

1. An act deficient from the rules of morals or contrary to some law, at least according to the apprehension of the agent. But it suffices that the act be repugnant to the rules of morals either on the part of the object, or on the part of the end, or on the part of the circumstance. "Any single defect causes evil; but good is caused from an integral cause" (St. Thomas, I-II, q. 18, a. 4, ad 3; St. Alphonsus). Cf., however, the things said in n. 69 sq., where we noted that the goodness of an act is not totally destroyed by just any evil end or circumstance.

2. Some advertence to the malice of the act, or to the act insofar as it is deficient from the rules of morals. Nevertheless it suffices that actual advertence was present when the cause of the evil act was placed; likewise that it be present or have been present only confusedly (St. Alphonsus, V, 4).

3. Some consent of the will, whether full or half-full (n. 19). But it is not required that the malice be intended; it suffices that the malice of the act be apprehended and the act nevertheless be placed. The reason is that evil must be avoided; and this is not done by one who chooses an act which he knows to be evil.

Article II. On the Distinction of Sins

Since it belongs to the confessor as judge to know what kind of sins there have been, and how often they have been committed, so that according to the words of Christ he may be able to remit or retain them, it follows, as the Council of Trent observes,[1] that a man must set forth in confession his mortal sins according to their species and number; and the Confessor himself will have to assist the penitent, perhaps less conscious of this obligation, in this declaration. Therefore the distinction of sins, both specific and numerical, must be treated.

[1] Session XIV, chapter 5 and canon 7.

§ I. On Specific Distinction

249 **I. The notion of specific distinction.** Specific distinction is the distinction by which one mortal sin differs from another, or one venial sin from another, in a morally diverse mode.

250 **II. The root of specific distinction.** 1. Sins of omission are distinguished by the omitted acts specifically distinct in moral being. For they are mere privations of a due act. Now privations are distinguished specifically by the forms specifically distinct of which they deprive. Therefore those sins of omission are of diverse species by which due acts of diverse moral species are omitted, for example, the omission of Mass and the omission of due alms (St. Alphonsus, III, 32).

2. With regard to sins of commission it is disputed whence their specific distinction is to be taken. Some, with Scotus,[1] take it from the specific distinction of the virtues to which they are opposed, or from the diversity of honorableness of which they deprive; others, with Vasquez,[2] from the specific distinction of the laws or precepts to which they are opposed; others, with St. Thomas (I-II, q. 72, a. 1), from moral objects diverse in species, because every act of commission is specified by the terminus *ad quem*, and not by the terminus *a quo*. Besides, the opinions set forth do not seem to differ very greatly among themselves, and in the end seem to return to the same thing; since virtues and precepts are distinguished in species according to objects (St. Thomas, I-II, q. 72, a. 1, ad 2; St. Alphonsus, III, 32).

[1] *In II Sent.*, dist. 37, q. 1, n. 9.

[2] I-II, disp. 98, c. 2.

251 **III. Norms determining specific distinction.** Once it is posited that specific distinction is taken from the specific distinction of objects, the norms which determine the specific distinction of objects also assign the specific distinction of sins. Now objects, and consequently sins, are specifically diverse when they contain a special repugnance with the eternal law; this has place:

1. **When they are opposed to diverse virtues.** For just as any virtue has distinct goodness, so the object opposed to it contains distinct malice. Hence, for example, fornication, which is opposed to chastity, and theft, which is opposed to justice, are specifically distinguished (St. Alphonsus, III, 31).

2. **When they are opposed to the same virtue, but according to a diverse reason** (St. Alphonsus, cited place). Now objects can be opposed to the same virtue according to a diverse reason in two ways:

a) In a contrary mode, i.e., through excess and through defect. Thus, for example, prodigality through excess, and avarice through defect, are opposed to liberality.

b) In a mode not indeed contrary, but nevertheless morally diverse. Thus, for example, superstition, blasphemy, perjury, and sacrilege are opposed to religion in a diverse mode.

3. **When they are opposed to laws or precepts morally diverse,** i.e., issued from a diverse formal motive (n. 148). Thus, for example, violation of a fast imposed by law of the Church is opposed to temperance; violation of a fast obliging from a vow is repugnant to religion. Since in this case diverse virtues, or diverse offices of the same virtue, are injured, this rule is to be reduced to the preceding ones (St. Alphonsus, V, 33).

Sins specifically distinct are not had if someone injures several laws distinguished only materially, for instance, issued by different legislators, but from the same formal motive. Hence he is guilty of only one sin who commits theft prohibited by both divine and human law. The same must be said of him who "culpably omits Mass on a feast day occurring on a Sunday, because for both cases the hearing of Mass is prescribed on account of the formal motive of religion" (St. Alphonsus, cited place).[1]

Corollary I. One act can contain several malices diverse in species. Thus, for example, he commits three sins specifically diverse who breaks a fast to which he is held by ecclesiastical law, by vow, and by the precept of a confessor. For he violates temperance, which the Church intends; religion, which commands the observance of a vow; and penance, from the motive of which the confessor imposes satisfaction (St. Alphonsus, V, 33). Likewise "a beneficed cleric, if he omits the Office and is unwilling to restore the fruits, will sin not only against religion, but also against justice" (St. Alphonsus, IV, 145).

Corollary II. Common estimation does not indeed found specific distinction, as is clear, but nevertheless it is an argument for it. Moreover, since sins diverse in species are usually indicated by diverse names, commonly from diversity of name one can conclude to diversity of sin.

Corollary III. Sins which are not repugnant to a determinate virtue, but to honorableness in common, such as the will of living badly, are said to be of an unnamed species.

[1] *Resp. Buscod.*, 1873, p. 403.

§ II. On Numerical Distinction

252 **I. Notion.** Numerical distinction is the distinction among several sins with respect to their individuality; or it is that by which several sins are distinct in the individual, for example, two fornications.

Now inquiry into numerical distinction has less regard to several malices distinct in species, which, according to what was said in n. 251, are sometimes contained in one act. It is rather commonly

admitted that, where by some act several malices specifically distinct in themselves are involved, there are also in fact and formally several malices specifically diverse,[1] and consequently several sins in number. But the question is when sins which are of the same species are distinguished from one another in number. The difficulty of discerning this arises from the fact that sometimes several physical acts are only one sin in number, while sometimes one physical act contains several sins.

[1] Few deny this with respect to some acts, for example, with respect to adultery, incest, and carnal sacrilege, and think that in the stated acts only one species of sin is formally contained (cf. John of St. Thomas, on I-II, q. 18, disp. 9, a. 6). But the controversy is not practical, because the Council of Trent (session XIV, canon 7) teaches that both the species of sins and the circumstances changing the species must be confessed.

253 **II. Roots of numerical distinction.** Two roots of numerical distinction are distinguished, namely: 1. plurality of acts, as if someone fornicates twice; 2. plurality of objects, as if someone by one act kills several men. We shall speak of each.

254 **III. Plurality of acts.** The general rule is this: there are as many sins as there are morally distinct acts, or as there are physical acts not morally united into some one thing. "According to the unity of the will," says St. Thomas, "judgment is to be taken concerning the unity of that which is said to be in the moral genus" (*In II Sent.*, dist. 42, q. 1, a. 1). Therefore where there is a morally diverse act of the will, there is a distinct sin. It remains to inquire when there is a morally diverse act; the particular rules will provide this, i.e., rules which regard diverse acts considered specifically. Now in relation to this matter acts are distinguished into internal acts, i.e., acts to be consummated in the will alone, and external acts.

Internal acts are divided into acts which do not tend toward another act, such as morose delectations, hatred, etc.; and acts which tend toward another act, such as the purpose of perpetrating an internal or external sin.

External acts are distinguished into complete and incomplete acts. Complete acts are those which by their nature are not ordered to another act of the same species, such as self-pollution, fornication, homicide. Incomplete acts are called acts which by their nature are ordered to another more principal act of the same species; thus an immodest touch is ordered to intercourse or to self-pollution. Sins of the mouth are equated with incomplete acts. There are added acts which, considered according to the notion handed down, are neither complete nor incomplete, namely acts indifferent by their nature, which are employed by the agent as means of arriving at a sinful act, such as taking the road in order to steal, preparing weapons in order to commit homicide. With these things noted, take the particular rules which follow:

1. **Internal acts which do not tend toward another act** constitute a new sin as often as they are repeated after a moral interruption; in other words, as often as they are repeated: 1. after formal revocation, i.e., a contrary act either of efficacious unwillingness or of simple displeasure; 2. after voluntary cessation, namely when someone indeed does not formally revoke the prior act, but nevertheless, reflecting upon it, either simply turns himself away from it, for example, from weariness, or turns himself to a work incompatible with the prior act, as if someone deliberately ceases from morose delectation and applies himself to study; 3. after indeliberate cessation, i.e., through natural inadvertence and distraction to other things, of such a delay that the repeated act cannot be said to proceed from the same impulse of passion, and so to be united with the prior act or acts in the same cause; practically, after a cessation of some delay. I say, of some delay, because

these sins, since they do not tend toward a work and therefore are plainly consummated in themselves, commonly do not proceed from the same impulse of passion as long as purposes do (St. Alphonsus, V, 37; *Homo Apostolicus*, tract. III, n. 58).

2. **Internal acts which tend toward another act** constitute a new sin as often as they are repeated after a moral interruption; in other words, as often as they are repeated: 1. after formal revocation; 2. after voluntary cessation; 3. after indeliberate cessation, if this is of so great a delay that the repeated purpose cannot be said to proceed from the same impulse of passion, and the purpose does not remain virtually in some effect leading to the intended work. It is said:

a) **If this is of so great a delay that the repeated purpose cannot be said to proceed from the same impulse of passion.** But how great a delay or sufficiently long interval is required depends on the intensity and firmness of the purpose. Nevertheless, according to St. Alphonsus, commonly an interval of two or three days suffices, because the same impulse of passion is with difficulty prolonged longer. "Hence he who perseveres in an evil will beyond two or three days must explain the time, so that in this way the number of internal acts concerning external sins may be morally understood" (St. Alphonsus, V, 39).

b) **And the purpose does not virtually remain in some effect leading to the intended end.** If this happens, the first purpose, whatever interval has intervened, is not morally interrupted. "Hence it is inferred: 1. that if someone proposes to kill a man, and for that reason prepares weapons, takes the road, and kills the enemy, he commits one sin, although he has sought him for many days and has repeated the will several times... 2. If someone resolves not to restore another's property, and always remains in the same will, even for a year, he commits one sin, because in that retention never retracted the first will virtually remains, as Roncaglia probably says... Nevertheless Diana rightly thinks... with authors cited by him, that if the thief becomes unable to restore, and then, having become able, does not restore when the opportunity is given, he commits a new sin. The reason is that in that case, through that time of inability, the will of not restoring does not persevere in the effect" (St. Alphonsus, V, 40). Understand this if the thief adverts that on account of inability he is not held to restitution and repudiates the depraved will which he had; otherwise the will morally perseveres in the effect, and it suffices for the penitent to declare the time during which he persisted in such a will (St. Alphonsus, III, 683). Finally, observe that a purpose not morally interrupted constitutes one sin in number with the external act.

3. **Complete external acts** constitute a new sin as often as they are repeated. Except if the acts, although complete in themselves, nevertheless constitute one whole with others and are not morally interrupted.

Corollary I. He commits several sins in number who twice defiles himself, twice fornicates, twice neglects Mass, etc.

Corollary II. Much more probably he commits several sins who successively absolves several persons. The reason is that each confecting of a sacrament constitutes an action complete in itself, nor do the diverse absolutions, although they may be done on the occasion of one session, constitute one whole. Thus, against several, St. Alphonsus (V, 50, q. 6), Billuart,[1] De Smet,[2] Pesch,[3] Prummer,[4] and others.

Corollary III. It is more doubtful how many sins are committed by one who celebrates in the state of mortal sin. Some think that only one is committed, because all these actions constitute or integrate

one sacrifice. Others admit two sins, one of unworthy consecration, the other of unworthy communion. Others add a third, namely of ministration to an unworthy person. But with St. Alphonsus (V, 44; VI, 35) it seems it must be said that four sacrileges are committed by a celebrant of this kind, namely: being unworthy, he consecrates; being unworthy, he receives communion; being unworthy, he ministers; and he ministers to one unworthy. The reason is that the aforesaid acts, for example the reception, confecting, etc., of a sacrament, seem so disparate that it is scarcely admitted that they coalesce into one sin in number, although they integrate one sacrifice. There is added that, for example, unworthy consecration and unworthy reception are so diverse that they seem to constitute sins of diverse species and therefore also distinct in number.

Corollary IV. Sufficiently probably he commits only one sin who, in the state of mortal sin, distributes the Eucharist once to several persons. The reason is that all the administrations constitute one banquet (St. Alphonsus, V, cited place).

Corollary V. He who from one intention omits all the canonical hours commits one sin, because the different hours constitute one whole, i.e., the Office of the day (St. Alphonsus, IV, 148).

Corollary VI. He who, from the intention of stealing 100 florins, commits several successive thefts, or, having taken the purpose of reading a bad book, completes the reading over several times, seems to commit only one sin, because the stated acts by force of the intention seem sufficiently to constitute one whole, namely the theft of 100 florins, or the reading of the whole book. Except if in the cases brought forward the acts are morally interrupted, for instance through a rather long delay.

4. **Incomplete external acts** multiply sins in this way:

a) If they are ordered by the agent to a complete act, and the complete act follows, they constitute one sin in number with the complete act, unless they are morally interrupted. The reason is that on the part of the matter they form one moral whole with the complete act, and by reason of the intention they are placed as such. The same must be said of incomplete acts which immediately follow a complete act, because they can be regarded as the complement of the complete act (St. Alphonsus, V, 41). If in the case the complete act does not follow, the incomplete acts constitute one sin among themselves, unless they are morally interrupted.

Incomplete acts, however, are morally interrupted: 1. by formal revocation; 2. by voluntary cessation; 3. by indeliberate cessation, if this is of so great a delay that the incomplete acts cannot be said to proceed from the same impulse of passion, and the purpose of arriving at the complete act does not remain virtually in some effect (p. 200).

Concerning the manner of confessing the aforesaid incomplete acts not morally interrupted, it must be said as follows: 1. if the intended complete act followed, it suffices to confess: I committed fornication; or: I committed adultery; etc. (St. Thomas, *In II Sent.*, dist. 42, q. 1, a. 1; St. Alphonsus, V, 41); 2. if the intended complete act did not follow, one can say, for example: From the intention of fornication, adultery, etc., I acted shamefully by kisses and touches (St. Alphonsus, V, 42).

b) If they are not ordered by the agent to a complete act, they constitute a new sin as often as they are repeated after a moral interruption; in other words, as often as they are repeated: 1. after formal revocation; 2. after voluntary cessation; 3. after indeliberate cessation of such a delay that the repeated act cannot be said to proceed from the same impulse of passion; practically, after an indeliberate cessation of a longer interval. Hence he commits one sin in number who "from the same impulse

strikes several times, touches dishonestly several times, blasphemes the same saint or several holy days, reviles or detracts from someone several times in the same matter" (St. Alphonsus, V, 41).[5]

Concerning the manner of confessing the aforesaid incomplete acts not morally interrupted, it suffices to confess, for example: I acted shamefully with a girl by kisses and touches.

The things which have been said about incomplete acts not ordered to a complete act are valid even if, after those acts have been perpetrated, with lust boiling over, someone proceeds to the complete act. Hence "if someone, having kisses, touches, etc., had not from the beginning willed intercourse, but afterward, because lust had increased, completed intercourse, it does not suffice if he confesses only intercourse" (St. Alphonsus, V, 43); but he is held to declare that, independently of intercourse, he acted shamefully with a girl by kisses, touches, etc.

[1] *De peccatis*, diss. 2, art. 4.

[2] *Collationes Brugenses*, 1905, p. 555.

[3] *Tractatus dogmaticus*, VI, n. 261.

[4] *Manuale Theologiae Moralis*, I, n. 380.

[5] Cf. p. 199, where we said that sins of the mouth are equated with incomplete acts.

255 **5. Acts indifferent by their nature,** which, considered according to the notion handed down above, are neither complete nor incomplete, but are employed by the agent as means of arriving at a sinful act - these acts, I say, are sinful, as having the malice of the intended end; but, like incomplete acts, they also form one sin with the intended and subsequently placed sinful act, unless they are morally interrupted. If the intended sinful act does not follow, they constitute one sin among themselves, unless again they are morally interrupted. Now they are morally interrupted by the same reason by which incomplete acts ordered by the agent to a complete act are interrupted. "Hence if someone, in order to commit homicide, buys weapons, takes the road, seeks his enemy, and kills him, he commits one sin" (St. Alphonsus, V, 41); and this is valid even if he has sought the enemy for many days. I said concerning acts indifferent by their nature; for otherwise it must be said concerning acts which involve a malice diverse from the sinful act, as if you use sorcery in order to be able to kill someone; in which case certainly a new sin, and indeed one of another species, is added.

Concerning the manner of confessing the aforesaid acts not morally interrupted, it must be said as follows: 1. if the intended sinful act follows, it suffices to confess the stated act; if it does not follow, it suffices to say: From the intention, for example, of theft, I employed means (St. Alphonsus, V, 42).

IV. Plurality of objects, i.e., of objects which are numerically distinguished and cannot coalesce into one object. Thus, for example, the lives of two men. Now an evil act which regards numerically distinct objects not coalescing into one object - as an act by which someone kills three men - contains as many sins as there are objects of this kind regarded. The reason is that that from which sin is caused must also, if it is multiplied, multiply sins. But sin is caused from an evil object. The major is confirmed from the fact that, as the adversaries concede, a married man who has intercourse with a married woman commits a double malice in number, i.e., injustice - one with respect to his own wife, the other with respect to the husband of the other woman - and consequently, as it seems, a double sin in number. The reason for this must be that the act placed regards two objects or injures two numerically distinct rights. Thus teach, against several, St. Alphonsus (V, 45; VII, 28), Billuart, Prummer, Sweens. Nevertheless, distinct objects are not so rarely conceived and reached by the agent in the manner of

one thing, namely under the concept of a multitude or of harm inflicted upon a multitude; in which case I do not deny that there is only one sin in number (St. Alphonsus, V, 50, q. 5, the third opinion, however, etc.). But from this some undeservedly conclude that the opinion of St. Alphonsus is false; since the question is whether there are several sins in number if the thing is conceived and reached as it objectively stands.

Corollary I. In themselves, several sins are committed:

1. By him who by one act kills several persons, defames several, gives scandal to several, or wishes evil upon several; likewise by him who proposes to kill several, defame several, etc.
2. By him who in one speech detracts from someone in diverse matters or affects someone with diverse insults. For the right that I not be detracted from in one matter is distinguished from the right that I not be detracted from in another; likewise the right that I not be affected with this insult differs from the right that I not be affected with another (St. Alphonsus, V, 48).

"Nevertheless, here it is well to observe that... little women and common people, who while quarreling together load one another with diverse insults from the same impulse, commit one sin. The reason is that according to common estimation these do not injure reputation and honor; because, on the one hand, insults among persons of this kind are not apprehended as grave, and on the other hand, hearers place no trust in them, thinking that they proceed rather from the impulse of anger than from the mind and truth of the matter. And therefore such quarrelers are for the most part excused from mortal sin, unless perhaps they reproach the adversary about some particular fact" (St. Alphonsus, cited place).

3. By him who by one act, or by acts not morally interrupted, wishes diverse evils upon someone. For the right that one evil not be wished upon someone differs from the right that another not be wished upon him.
4. By him who in one speech defames an entire family, because each member has a distinct right to reputation; likewise by him who injures goods belonging by distinct ownership to several owners. It is otherwise "if someone were to injure goods which a city, monastery, or chapter possesses in common; for then the right does not belong to the individuals in particular, but only to the whole community; hence one right is injured" (St. Alphonsus, V, 46).

I said that in the cases set forth several sins are committed in themselves; for in practice, as has already been noted, distinct objects are often conceived and reached in the manner of one thing, so that commonly there is no obligation of asking penitents, for example, before how many persons they had immodest conversations, etc.

Corollary II. One sin is committed:

1. By him who denies several articles of faith, because the right of God that I assent to one truth revealed by him is one with his right that I assent to others (St. Alphonsus, V, 50).
2. By him who blasphemes, for example, against the twelve Apostles, because the right of God, to whose dishonor the blasphemy tends, is one (St. Alphonsus, V, 47).
3. By him who detracts from someone before several persons, "since the right to reputation is single before all, and not multiple" (St. Alphonsus, V, 49).

Concerning the practice of asking penitents about the species and number of sins, cf. the treatise on Penance.

§ III. On the Unequal Gravity of Sins

The discussion is not of that unequal gravity of sins by which one sin is mortal and another venial; concerning that question we shall speak later. Rather, the question is generally whether sins are of unequal gravity, and whence this comes.

256 **I. Existence of unequal gravity.** Not all sins are equally grave. This is of faith against the Stoics, Jovinian, and others. It is proved: 1. from Sacred Scripture: "He who handed me over to you has the greater sin."[1] It is proved: 2. by reason. Sin involves a departure from the rectitude of reason; "and therefore it is of great importance for the gravity of sin whether there is a greater or lesser departure from the rectitude of reason; and according to this it must be said that not all sins are equal" (St. Thomas, I-II, q. 73, a. 2).

[1] John 19:11; cf. John 7:26; Matt. 5:22; 12:31; 1 John 5:16-17.

257 **II. Root of inequality.** Unequal gravity is taken from the object, circumstances, and end of the sinful act. For "everything is naturally increased from the same thing from which it is caused" (St. Thomas, I-II, q. 73, a. 7). But sin is caused from the disorder of the object, circumstance, and end.

1. **From the object, or, practically, from the dignity of the virtue to which it is opposed;** "for contraries are about the same thing, and in this way it is necessary that a graver sin be opposed to a greater virtue" (St. Thomas, I-II, q. 73, a. 3). Now virtues, considered according to their dignity, come in this order: 1. charity; 2. faith; 3. hope. The cardinal virtues follow, and their parts, concerning each of which it is difficult to determine in what order, considered according to their dignity, they should be counted. There is added that account must also be taken of the particular good of some virtue which is injured by sin; and when all these things are considered, the inequality of gravity can scarcely be determined accurately.

I add these things from St. Thomas:

a) Hatred of God is the gravest of sins (St. Thomas, I-II, q. 73, a. 3, ad 3).

b) "Sins which are committed against one's neighbor are to be weighed in themselves according to the harms which are inflicted upon one's neighbor, because from this they have the character of fault. But the harm is greater insofar as a greater good is taken away. Now there is a threefold good of man, namely the good of the soul, the good of the body, and the good of external things. The good of the soul, which is greatest, cannot be taken away by another except occasionally, for example, through evil persuasion, which does not impose necessity. But the other two goods, namely of the body and of external things, can be taken away violently by another. But because the good of the body surpasses the good of external things, sins by which harm is inflicted upon the body are graver than those by which harm is inflicted upon external things. Hence among the other sins which are committed against one's neighbor, homicide is graver, by which the life of the neighbor already actually existing is taken away. Consequent to this is adultery, which is against the due order of human generation, through which there is entrance into life. Consequent to this are external goods, among which reputation surpasses riches, because it is nearer to spiritual goods; hence it is said in Proverbs 22: 'A good name is better than many riches.' And therefore detraction according to its genus is a greater sin than theft; yet less than homicide or adultery" (St. Thomas, II-II, q. 73, a. 3).

2. **From circumstances and end,** for example, from circumstances:

a) Of the person sinning. Hence in themselves the sins of the faithful are graver than those of unbelievers (St. Thomas, I-II, q. 73, a. 10).

b) Of the person against whom the sin is committed. Hence sins against God are graver than sins against oneself and one's neighbor (St. Thomas, I-II, q. 73, a. 9).

c) Of the perfection of the depraved act, for example, on account of greater deliberation, intensity, duration, etc. Hence spiritual sins are graver than carnal sins (St. Thomas, I-II, q. 73, a. 5), and sins of malice are graver than sins of weakness (St. Thomas, I-II, q. 78, a. 4).

Article III. On the Causes of Sins

258 The discussion is of the efficient causes of sins. Now the efficient causes of sin can be distinguished as: 1. immediate; 2. mediate.

The immediate cause of sin is the perverse will of man. "It is certain that sin is committed by the will, as all teach with St. Augustine and St. Thomas" (St. Alphonsus, V, 5). The reason is that the whole essence of sin is founded on the free voluntary. But the immediate cause of the free voluntary is the will. "If you say that not all sins are elicited by the will, but many are commanded by it, such as heresy, intemperance, etc.; I respond that these and similar things indeed are not elicited by the will as to their material element, yet they are as to their formal element, namely as to the character of the voluntary and aversion from God."[1]

The mediate causes, i.e., the causes which induce the will to sin, are some external and some internal; and to know these causes is of the highest importance, so that the priest may be able to speak to the penitent more aptly and efficaciously concerning the state of conscience and manner of life, and may select more suitable remedies and make them acceptable to the penitent. Hence we shall speak of each.

[1] Billuart, *De peccatis*, diss. 4, art. 1.

§ I. On External Causes

259 The external causes are the world and the devil.

I. The world; by which are signified: 1. sensual pleasures, riches, and honors, which move the will from without and entice it to sin; 2. worldly men, who by examples, exhortations, speech, gesture, writings, rewards, threats, and violence try to lead others to sin.

260 **II. The devil,** who, retaining the original acuteness of his mind, knows innumerable arts of exercising influence upon men.

1. That the devil continually attacks men we are taught from Sacred Scripture itself: "Brethren, be sober and watch, because your adversary the devil goes about like a roaring lion, seeking whom he may devour; resist him, strong in faith."[1] "Put on the armor of God, that you may be able to stand against the snares of the devil. For our wrestling is not against flesh and blood, but against principalities and powers, against the rulers of the world of this darkness, against the spirits of wickedness in the heavens. Therefore take up the armor of God, that you may be able to resist in the evil day, and in all things to stand perfect."[2]
2. Concerning the manner in which the devil induces to sin, these things should be noted:

a) He cannot be the direct cause of sin for man. "For he cannot be the cause of sin except either by acting interiorly upon the will and moving it to sin, or by proposing an object and persuading its appetibility. But he cannot do the first; for it belongs to God alone to move the will interiorly by acting upon it. The second does not suffice, because the will is moved by no object of necessity, except by the ultimate end alone."[3]

b) The devil can be for men an indirect cause of sinning, namely by proposing to the senses, whether external or internal, something appetible, and by exciting passions in the sensitive appetite (St. Thomas, I-II, q. 80, a. 2). The "devil also has the power by his own virtue, unless he is restrained by God,... to induce someone of necessity to do some act which by its genus is sin" (St. Thomas, I-II, q. 80, a. 3); likewise so to disturb the interior faculties that the use of reason is wholly impeded. In these cases, because of defect of liberty, the act is not imputed (St. Alphonsus, *Praxis Confessarii*, c. 7, § 8; *Correspondentia specialis*, II, n. 377).

Corollary. They reason badly who wish to acknowledge the devil's influence only when it is placed beyond every doubt, although from the doctrine of the Gospel it ought to be judged frequent. Therefore priests are advised to use a private adjuration from time to time, for which the license of the bishop is not required. St. Alphonsus (*Praxis Confessarii*, n. 113) advises this formula to be recited over those whom the devil vexes: As a minister of God I command you, or you, unclean spirits, to depart from this creature of God. The priest can also use such or a similar private exorcism if he should notice that the penitent does not grieve for sins, or should fear that he is not manifesting some sin. Moreover, against the demon one must act with great confidence and humility. Here should be noted the "Exorcism against Satan and the Apostate Angels," published by order of Pius XI, Supreme Pontiff, which those priests may use who have obtained the faculty for this from their bishop.[4]

Note. God is not the cause of sin formally taken, or according to its formal being; nevertheless he is the cause, and indeed the first cause, of the material being or physical entity of the sinful act.

[1] 1 Pet. 5:8.

[2] Eph. 6:11 ff.

[3] Billuart, *De peccatis*, diss. 5, art. 9.

[4] *Rituale Romanum*, title XI, chapter 3.

§ II. On Internal Causes

The general internal cause of every sin is disordered love of self, according to Augustine's saying: "Two loves have therefore made two cities: namely, love of self even to contempt of God made the earthly city, but love of God even to contempt of self made the heavenly city."[1] This disordered love manifests itself by a threefold concupiscence: namely, the concupiscence of the flesh, by which man is inclined to the pleasure of taste and touch; the concupiscence of the eyes, by which he is inclined to riches and temporal goods; the pride of life, by which he is enticed to the undue honors of his estimated excellence (St. Thomas, I-II, q. 77, aa. 4 and 5).

Specifically and practically, culpable ignorance, concupiscence, slothfulness, and malice are assigned as internal causes of sin.

[1] *De civitate Dei*, bk. 14, c. 28.

261 **I. Culpable ignorance;** which can be a cause of sin to the extent that man, if he had expelled the ignorance, would have abstained from the depraved act. To this cause also belongs defect of consideration, which is a certain actual culpable ignorance, concerning which the prophet Jeremiah says: "With desolation the whole land is made desolate, because there is no one who reflects in the heart."[1]

[1] Jer. 12:11.

262 **II. Concupiscence** - by which here is understood every passion or motion of the sensitive appetite - is the cause of sin according to these words of St. James: "Each one is tempted by his own concupiscence, drawn away and enticed. Then concupiscence, when it has conceived, brings forth sin."[1] Sins which are perpetrated from concupiscence are called sins of weakness (St. Thomas, I-II, q. 77, a. 3). Such commonly are self-pollutions, morose delectations, drunkenness, hatred of neighbor, blasphemies, which nevertheless by others are also uttered from malice (St. Alphonsus, VI, 463).

[1] James 1:14.

263 **III. Slothfulness,** i.e., lack of zeal and affection toward those things which concern the salvation of the soul. From slothfulness commonly arise neglects of Mass, of the abstinence to be observed, etc.

264 **IV. Malice,** i.e., the depravity of the will by which someone sins even if vehement passion does not incite him to sin. Among sins from malice are counted hatred of God, hindering the good which priests and other good men promote; likewise, commonly, sins against the Holy Spirit, and those which are said to cry to heaven.

Finally, note that one actual sin is sometimes the cause of other sins: first, indirectly, when God, in order to punish sin, permits that someone fall into sin, whether light or grave. Of this both the doctrine of the Saints and especially St. Paul in the Epistle to the Romans is witness: "On account of this," i.e., on account of the sin of neglecting the glorification of God, "God handed them," that is, the ancient philosophers, "over to passions of shame."[1] In another way, directly, sin is the cause of sin, namely by force both of an increased inclination toward sins of the same species and of the connection which exists among depraved acts of diverse species. Thus - the examples are legion - thus Cain first sinned by envy against his brother, then by hatred, then by homicide, and finally despaired of the mercy of God... Thus also Judas first sinned by avarice, then handed over Jesus Christ, and finally brought death upon himself (St. Alphonsus, *Sermoni compendiati*, Twenty-Second Sunday after Pentecost). To this, moreover, those sins especially are to be referred which are called capital, because from them as from heads other sins naturally arise. Of these there will be a specific discussion later.

[1] Rom. 1:26.

Article IV. On the Effects of Sins

Dogmatic theologians treat of the effects of original sin; hence our discussion is chiefly of the effects of personal sin. Three are assigned, namely the corruption of natural good, the guilt of fault or stain of sin, and liability to punishment.

265 **I. Corruption of natural good** consists in this, that personal sin causes the wounds inflicted by original sin to become worse. These are:

1. **Ignorance,** insofar as reason is so deprived of its order to the true that it is prone to assenting to the false, and finds assenting to the true difficult, and is deprived of knowledge of necessary things.

2. **Malice,** insofar as the will is so deprived of its order to the good that it is prone to evil and finds choosing the good difficult.
3. **Weakness,** insofar as the irascible appetite is so deprived of its order to the arduous that it is weak for tolerating adversities.
4. **Concupiscence,** insofar as the concupiscible appetite is so deprived of its order to sensible good that it is prone to desiring it against the order of reason.

Now "these four are wounds inflicted upon the whole of human nature from the sin of the first parent. But because the inclination to the good of virtue in each person is diminished by actual sin, as is clear from what has been said, articles 1 and 2 of this question, these also are the four wounds resulting from other sins; namely, insofar as through sin reason is dulled especially in practical matters, and the will is hardened toward the good, and greater difficulty of acting well increases, and concupiscence burns more intensely" (St. Thomas, I-II, q. 85, a. 3).

266 **II. Guilt of fault or stain.** 1. **Notion.** The stain of sin is the privation of the beauty of the soul, connoting the sin from which it was contracted. It is said "connoting the sin from which it was contracted," because the stain has the character of fault; hence it is moral and voluntary, or it connotes the act of the will by which it was produced. The stain does not differ from fault and habitual sin. It is called fault insofar as it is conceived as the privation of the order due to God; habitual sin, insofar as it is considered as the state of the soul remaining from actual sin not remitted.[1]

2. **Existence.** The stain remains in the soul after the act of sin. This is clear: 1. from Sacred Scripture: "Is it a small thing to you that you sinned in Beelphegor, and unto the present day the stain of this crime remains in us?"[2] 2. By reason. "Stain, as was said, imports a certain defect of brightness on account of departure from the light of reason or of the divine law; and therefore, as long as man remains outside light of this kind, the stain of sin remains in him. But after he returns to the light of reason and to the divine light, which happens through grace, then the stain ceases. Although the act of sin ceases, by which man departed from the light of reason or of divine law, nevertheless man does not immediately return to that in which he had been; rather, some motion of the will contrary to the first motion is required. Just as if someone is distant from another through some motion, when the motion ceases he does not immediately become near to him, but it is necessary that he approach by returning through a contrary motion" (St. Thomas, I-II, q. 86, a. 2). Hence proposition 56 among the Baian propositions was deservedly condemned: "In sin there are two things, the act and the guilt; but when the act has passed, nothing remains except the guilt or obligation to punishment."[3]
3. **Division.** The brightness of the soul, in the privation of which the stain consists, is twofold according to these words of St. Thomas: "The soul of man has a twofold brightness: one from the shining of the rational light of reason, by which it is directed in its acts; the other from the shining of the divine light, namely of wisdom and grace, by which also man is perfected for acting well and fittingly" (I-II, q. 86, a. 1). Therefore:

a) The stain of mortal sin consists in the privation of rectitude both natural and supernatural, i.e., of sanctifying grace, charity, the supernatural virtues, except faith and hope, the gifts of the Holy Spirit, and merits.

b) The stain of venial sin is situated in the privation of the fervor of charity. "It must be said that stain can be in two ways: in one way through the privation of beauty, and thus in venial sin no stain remains, because it does not take away grace, which is the beauty of the soul. In another way through this, that the beauty which belongs to grace is impeded from appearing outwardly, just as the beauty of a face is spoiled by dust; and such a stain is in venial sin, because the beauty of grace is impeded from being shown outwardly in acts" (St. Thomas, *In IV Sent.*, dist. 16, q. 2, a. 2, ad 1). From these things it is clear why St. Thomas does not call the stain of venial sin a stain simply, but in a certain respect (I-II, q. 89, a. 1), namely because it does not deprive of grace, through which beauty is present in the soul.

Corollary I. The stains of diverse sins differ, since a stain is a privation connoting the sin from which it was contracted; hence it is diverse insofar as the sin which it connotes is diverse (St. Thomas, I-II, q. 86, a. 1, ad 3).

Corollary II. A new sin is said to cause a new stain insofar as of itself it is privative of grace, and therefore constitutes a new cause of privation.

[1] Billuart, *De peccatis*, diss. 7, art. 1.

[2] Josh. 22:17.

[3] Denzinger-Bannwart, n. 1056.

267 **III. Liability to punishment.** 1. **Notion.** Liability to punishment is the condignity of undergoing punishment because of sin committed. Now punishment is some evil to be inflicted, or inflicted, by legitimate authority upon an agent for a morally evil action.

2. **Existence.** Sacred Scripture teaches that liability to punishment is induced by sin: "Many are the scourges of the sinner."[1] "Tribulation and anguish upon every soul of man working evil."[2] Then reason requires that he who has violated order be cast down by the prince of order, namely so that the violated order may in some way be restored through a certain repayment of punishment (St. Thomas, I-II, q. 87, a. 2).

3. **Quality of the punishment to which sins induce liability.**

a) Mortal sin induces liability to a twofold punishment, namely of loss and of sense, each eternal; this the dogmatic theologians prove at length.

b) Venial sin of itself induces liability to temporal punishment. But by accident it induces eternal punishment when the sinner dies with venial sin not remitted as to fault. Thus St. Thomas (I-II, q. 87, a. 5, ad 3) against Scotus. And indeed, while fault remains, liability to punishment remains. But in the damned there remains the fault of venial sin not remitted in this life, since the damned are simply at the terminus, and therefore incapable of acts of charity or repentance.

Note. Mortal or venial sin remitted in this life as to fault, more probably, is not punished in hell by eternal punishment; rather, once satisfaction has been made, the punishment comes to an end.

[1] Ps. 31:10.

[2] Rom. 2:9.

Article V. On the Remedies of Sins

Since it belongs to the scope of moral theology to provide that knowledge of sin which tends toward practice, and therefore also toward uprooting sin, it is of the highest importance to know the remedies of sin, by which both the inclination toward sin may be weakened, consent to it excluded, and the wound inflicted by it upon the soul repaired.

The principal remedies are:

268 **I. Flight from occasions of sin.** "He who loves danger will perish in it."[1] "And if your hand or your foot scandalizes you, cut it off and cast it from you: it is good for you to enter into life maimed or lame, rather than having two hands or two feet to be cast into eternal fire. And if your eye scandalizes you, pluck it out and cast it from you: it is good for you with one eye to enter into life, rather than having two eyes to be cast into the hell of fire."[2]

[1] Ecclus. 3:27.

[2] Matt. 18:8-9.

269 **II. Meditation,** i.e., consideration of those things which pertain to the salvation of the soul. By this consideration ignorance is expelled, inadvertence is prevented, hatred of sin and love of virtue are promoted. That saying of St. Augustine is well known: "A thoughtful understanding is the beginning of every good." Now among those things which cohere with the loss of grace through sin, the punishment which God, so merciful, decrees in his justice against the sinner must be considered in the first place. Hence Sacred Scripture: "The fear of the Lord drives out sin."[1] "Remember your last things, and you will not sin forever."[2] Hence Christ himself turns man away from sin by the commemoration of punishments, as is clear from the text cited above. Therefore spiritual exercises, to be undertaken either privately or together with others, for example in a so-called retreat house, cannot be commended enough.

[1] Ecclus. 1:27.

[2] Ecclus. 7:40.

270 **III. The exercise of those acts which are more opposed to the individual sins** into which one has fallen or toward which one is inclined, whether acts of penance or of the virtues opposed to those sins. To this especially belongs the exercise of the love of God by repeated acts; its force efficaciously opposes every sin, and even the demons, who instigate to sin, greatly dread it, as St. Anthony the Great testifies: "Believe me, brethren, Satan greatly fears the vigils, prayers, fasts, voluntary poverty, mercy, and humility of the devout; but especially ardent love for Christ the Lord, by whose one sign of the Most Holy Cross, weakened, he flees."[1] To this, finally, refer the things we noted above where we spoke of exercising the energy of the will (n. 50).

[1] *Breviarium Romanum*, January 17 and November 2.

271 **IV. Reception of the sacraments,** as will be clearly evident from the treatise on the Sacraments.

272 **V. Prayer,** according to these words: "Ask, and it shall be given you; seek, and you shall find; knock, and it shall be opened to you. For everyone who asks receives, and he who seeks finds, and to him who knocks it shall be opened."[1] Now both by the voice of the Church and by the sayings of the Saints we are taught that the grace which we seek is to be sought especially through Mary, Mother of Mercy; she is the universal mediatrix of grace for us before Jesus.

[1] Matt. 7:7-9.

Chapter II. On Some Classes of Sins in Particular

273 **I. First, sins are divided:**

1. **Into original and personal.** The former is what we have from Adam; the latter, what we have committed by our own will.
2. **Into actual and habitual.** Actual sin is a sinful act; habitual sin is the state of the soul remaining from a sinful act not yet remitted.
3. **Into sin of commission and omission,** insofar as a prohibited act is placed, or a commanded act is omitted.
4. **Into internal and external.** Internal sin, which is also called sin of the heart, is that which is consummated in the heart alone, such as heresy. External sin is that which is indeed begun in the heart, but completed by an external work, for example, by the mouth or speech, as a lie; or by deed, as theft. Hence external sins are distinguished into sins of the mouth and of deed.
5. **Into sin of ignorance, weakness, slothfulness, and malice,** insofar as it is committed from culpable ignorance, or from vehement passion, or from slothfulness, or from perversity (nn. 261-264).
6. **Into sin against God, neighbor, and oneself,** insofar as offices proximately due to God, to one's neighbor, or to oneself are injured.
7. **Into spiritual and carnal,** insofar as it consists in disordered internal delectation, as pride, or in disordered external delectation, as lust and drunkenness.[1]
8. **Into mortal and venial,** insofar as it overturns the due order as to substance, or only as to integrity (n. 285).
9. **Into formal and material.** Formal sin is a culpable transgression of law. Material sin is an inculpable transgression of law; this definition of material sin needs a fuller explanation on account of questions to be treated later. It is said:

a) **Transgression;** by this word an act of the person is designated, not an act, or rather a passion, of nature. Hence a merely natural pollution, as it is called, is not even a material sin. It must be said otherwise if an act of the person is added, as if pollution is excited by the touch of one sleeping. Nor is there material sin if someone by absolute force is compelled, for example, by touch to produce pollution; for then he is a pure and simple instrument of the one compelling, so that the act does not proceed from an intrinsic principle, and therefore cannot be called an act of the person.

b) **Of law,** i.e., of a law existing here and now with respect to the one who acts. Hence material sin is not had if someone, for example, eats on a fast day, either because he has been dispensed or because he is excused from the law on account of inconvenience.

c) **Inculpable,** either because the law was entirely unknown, or because someone erroneously thought that he was dispensed or excused from the law.

Corollary I. If someone does not observe a law while in doubt whether it exists or has ceased, it is doubtful whether there is material sin; or material sin is had or not had insofar as the law objectively

has been made or has not ceased, or objectively has not been made or has ceased.

Corollary II. It is illicit to induce someone to material sin; for it is dishonorable to induce someone to an act which in first act is prohibited to him, and which you know to be so prohibited.

[1] We use this word because the divisions to be assigned do not in any way constitute just as many species of sins. Namely, the notion of sin is found fully and perfectly only in personal mortal sin; in the others it is found only defectively, so that personal and original sin, and likewise personal mortal and personal venial sin, are called sins not univocally but only analogically (n. 285).

274 **II. Besides these, there are distinguished:**

1. **Sins against the Holy Spirit,** i.e., sins which are more directly directed against the very direction of the Holy Spirit, and from this are graver and more difficultly remitted by God. They are: despair; presumption of arriving at salvation by the mercy of God alone, excluding repentance and cooperation; attack upon the known truth of faith; envy of fraternal charity, namely by which someone is saddened over God's love toward his neighbor; obstinacy in sinning, refusing the influence of grace and counsel; impenitence, or the deliberate exclusion of repentance. These sins are called against the Holy Spirit because through them the influence of the Holy Spirit upon the heart of man is deliberately impeded and repelled (cf. St. Thomas, II-II, q. 14).
2. **Sins crying to heaven.** Namely, certain crimes are said by Sacred Scripture to cry to heaven; this indicates their special and monstrous gravity in injuring the order constituted by God. First this is said of deliberate homicide: "The voice of your brother's blood cries to me from the earth";[1] then of the sin of Sodom: "The cry of Sodom and Gomorrah has been multiplied";[2] of the oppression of the poor, widows, and wards: "You shall not hurt a widow or an orphan. If you hurt them, they will cry out to me, and I will hear their cry";[3] "If he," that is, the poor man, "cries out to me, I will hear him, because I am merciful";[4] "Do not the tears of the widow run down upon her cheek, and her cry against the one bringing them down?";[5] finally, of the defrauding of the wages of workers: "Behold, the wage of the workers who have reaped your fields, which has been defrauded by you, cries out; and their cry has entered into the ears of the Lord of Sabaoth."[6]
3. **Others' sins,** which are perpetrated by others but are imputed to us as causes, either because we have cooperated positively in them, or because we have not impeded them although we should have impeded them. The discussion of these will be in the treatises on charity and on justice.

Once these things have been noted in general concerning classes of sins, we shall speak specifically of some of them, because several things must be noted about them; of some, I say, namely of sin of commission and omission, of mortal and venial sin, and of internal sins.

[1] Gen. 4:10.

[2] Gen. 18:20.

[3] Exod. 22:22-23.

[4] Exod. 22:27.

[5] Ecclus. 35:18.

[6] James 5:4.

Article I. On Sin of Commission and Omission

275 **I. Notion.** Sin of commission is situated in the placing, sin of omission in the omitting, of a commanded act. It is disputed whether a free and culpable omission can physically be given without any positive act morally affecting the omission. Certainly, however, it ordinarily occurs with a positive act, namely with the will of omitting or with another act which is known to be incompatible with the commanded act.

276 **II. Morality.** With respect to the morality of sin of commission, nothing special needs to be noted.

1. With respect to sin of omission, these things must be observed specifically:

a) Sin of omission begins to be imputed as soon as someone wills to omit the prescribed act, or places an act incompatible with the prescribed act.

b) Sin of omission, in the case in which the depraved will has not been retracted, is externally completed or consummated at the time when the prescribed act begins to bind; and the consummation lasts until the time for fulfilling the precept expires. If the depraved will is truly retracted before the precept binds, the sin is not consummated; if it is retracted after the precept has begun to bind, the consummation ceases (St. Alphonsus, V, 10; cf. St. Thomas, II-II, q. 79, a. 3, ad 3).

2. With respect to acts joined with omission, such as playing, eating, etc., I note:

a) They become sinful if they are the cause of the omission, as if someone from love of play omits Mass. An act causing malice is necessarily itself infected by the malice. Nevertheless, its malice is not diverse from the malice of the omission, so that it suffices to confess the omission alone. Except if the cause of the omission is gravely evil in itself, as if someone omits Mass in order to steal. Nevertheless, in that case "theft can be stated in confession separately from the omission of Mass, because then theft is only a cause aggravating, not changing, the species" (St. Alphonsus, cited place) of the omission.

b) They do not become sinful, and therefore do not have to be confessed, if they only accompany the omission, as if someone omits Mass and meanwhile, lest he remain idle, reads a book (St. Alphonsus, cited place).

Article II. On Mortal and Venial Sin

§ I. On Mortal Sin

277 **I. Existence of mortal sins.** There are mortal[1] or grave sins. This is of faith from these words of the Council of Trent: "If anyone shall say that there is no mortal sin except unbelief, or that grace once received is lost by no other sin, however grave and enormous, except the sin of unbelief, let him be anathema."[2] The same Council teaches that "all mortal sins must be recounted by penitents."[3] It is proved: 1. from Sacred Scripture, which very often declares that there are sins because of which men are deprived of divine friendship and are damned eternally. Thus, for example, "The impious man and his impiety are hateful to God";[4] likewise, "Depart from me, you cursed, into eternal fire."[5] It is proved: 2. from the holy Fathers. Thus St. Jerome: "There are light sins, there are grave ones";[6] St. Augustine: "For who would say that one must sin, even if one sin is damnable, another venial?";[7] likewise St. Basil,[8] St. John Chrysostom,[9] St. Ambrose.[10] It is proved: 3. from reason, because there are sins which plainly turn one away from the ultimate end, as we shall soon explain more fully.

[1] It is called mortal because it takes away the principle of spiritual life, namely habitual grace, and brings death to the soul (St. Alphonsus, V, 51; St. Thomas, I-II, q. 72, a. 5).

[2] Session 6, canon 27.

[3] Session 14, chapter 5.

[4] Wis. 14:9.

[5] Matt. 25:41.

[6] Bk. 2, *Against Jovinian*, n. 30.

[7] *Contra mendacium*, c. 8, n. 19.

[8] Homily on Psalm 7, v. 3, n. 2.

[9] Homily 12 on the Epistle to the Romans, n. 18.

[10] Bk. 2, *De poenitentia*, c. 18, n. 95.

278 **II. Nature of mortal sin.** Every sin is a certain disorder from the ultimate end, i.e., from God, or a certain deformity from the rule, i.e., from the law directing man to the ultimate end. Now mortal sin is disorder in every way, or aversion from the ultimate end. Therefore such a sin utterly overturns the due order to the ultimate end; hence it is said to be against the substance of the due order. "When the soul," says St. Thomas, "is disordered by sin even to aversion from the ultimate end, namely God, to whom it is united by charity, then it is mortal sin" (I-II, q. 72, a. 5; St. Alphonsus, V, 11). Now aversion from the ultimate end, which is contained in mortal sin, takes place through conversion toward a creature as toward the ultimate end.

Corollary. Mortal sin is of infinite malice, because by placing a creature before the infinite God it inflicts an infinite injury upon God. "Whoever," says St. Thomas, "places something less worthy before something more worthy, does injury to it, and so much the more as the thing is more worthy. But whoever establishes for himself an end in a temporal thing, which everyone sinning mortally does, by this very fact, as to his affection, places the creature before the Creator, loving the creature more than the Creator" (*De veritate*, q. 28, a. 2).

279 **III. Division of mortal sin.** Mortal sins are divided into mortal sins from their genus, mortal sins from their whole genus, and mortal sins by accident. Now:

1. Those are usually called **mortal from their genus**[1] which according to their proper matter can be grave, and in fact are grave or light according as the matter is grave or light.
2. **Mortal sins from their whole genus** are those whose matter is always grave, so that they cannot be light except from ignorance of the grave malice, or from imperfection of the act. Such are, for example, unbelief, despair, blasphemy, perjury, etc.
3. There will be discussion of mortal sins by accident in the scholion.

[1] According to St. Thomas, mortal from its genus seems to be that which, if it is present according to its perfect notion, is always grave. This seems to be deduced from these words of the holy Doctor: "It must be said that one who does injustice in small things falls short of the perfect notion of doing what is unjust, insofar as it can be held not to be altogether against the will of the one who suffers this; for example, if someone takes one apple from another, or something of that sort, concerning which it is probable that the other is not injured by it and that it does not displease him" (II-II, q. 59, a. 4, ad 2; II-II, q. 66, a. 6, ad 3).

280 **IV. Conditions of mortal sin.** For mortal sin there are required: 1. grave matter; 2. the legislator's intention of obliging under grave obligation; 3. full advertence; 4. full or perfect consent. The reason for the first and second has been explained in n. 149. The reason for the third and fourth is that, in order that man simply turn himself away from the ultimate end and merit eternal punishment, a perfect human act is required (St. Alphonsus, V).

1. What grave matter is, see n. 149 and the things to be said under VI.
2. Whence the legislator's intention of obliging under grave obligation is discerned, see n. 149. This intention, with regard to divine law, whether natural or positive, is always present if the matter is grave. With regard to human laws in grave matter, it is presumed to be present unless the contrary is established (n. 149).
3. **Full advertence,** and actual advertence, either in the act itself or when its cause was placed. Now full advertence is had when someone, fully self-possessed or with mind free, adverts to the grave malice. It suffices, however, that he advert to it confusedly (St. Alphonsus, V, 3).
4. **Full consent** is that which follows full advertence.

281 **V. Effects of mortal sin.** Mortal sin: 1. deprives one of sanctifying grace and charity, and of the other supernatural virtues except faith and hope, and finally of the gifts of the Holy Spirit. 2. It renders dead the good works done while sin has not yet been remitted, i.e., worthy of no heavenly reward; likewise it renders works done previously mortified, so that they are to be deprived of heavenly reward unless they revive through repentance. 3. It deprives the sinner of the special providence by which God rules his friends; deprived of this, the sinner, unless he soon comes to his senses, will soon slip into other sins. 4. It often induces temporal evils, both public and private. 5. It induces liability to punishment, concerning which there was discussion in n. 267.

282 **VI. Criteria for discerning mortal sins.** Mortal sins are discerned, as was said concerning discerning the grave obligation of law (n. 149): 1. from Sacred Scripture; 2. from definitions of the Church; 3. from the consensus of the holy Fathers; 4. from the consensus of theologians; 5. from the gravity of the terms by which some sin is prohibited; 6. from the gravity of the punishment; 7. finally, from the intrinsic reason, insofar as it demonstrates that some sin is opposed to charity. Concerning this, observe: since mortal sin consists in aversion from the ultimate end (n. 278), but conversion toward the ultimate end takes place through charity, therefore those sins are mortal which are simply opposed to charity. Now these are simply opposed to charity: 1. those which are opposed to charity contrarily, such as sins of hatred against God, society, or neighbor; 2. those which inflict grave injury, whether upon God himself, as unbelief and despair; or upon the good of God, i.e., his honor, as the explicit choice of a creature for the ultimate end, idolatry, simony, etc.; or upon the good of the species, as lust; or upon one's own good, as suicide; or upon the good of neighbor and society, as grave theft (cf. St. Thomas, I-II, q. 88, a. 2; II-II, q. 59, a. 4; II-II, q. 66, a. 6). But for judging whether something is gravely opposed to the good of God, of society, of oneself, or of one's neighbor, not only competent authority must be attended to, but also, if authority does not settle the matter, common estimation.

Scholion. On Mortal Sin by Accident

283 Mortal sin by accident is had when a sin venial in itself becomes mortal from an added circumstance. Now a sin venial in itself, and likewise an act indifferent in itself, can become mortal:

I. From invincible erroneous conscience, as if someone thinks the theft of a small thing to be grave sin.

II. From an added end, or if the venial act is referred to a gravely evil end, as if someone lies in order to extort intercourse (St. Alphonsus, V, 59).

III. From proximate danger or grave danger of mortal sin, as if someone from a somewhat immodest touch will probably consent to the venereal delectation to follow, or goes to a person with whom he is probably going to sin (St. Alphonsus, V, 63). Concerning proximate danger, more fully in the treatise on Penance.

IV. From scandal, as if a priest should go about half-drunk before others.

V. From the ultimate end constituted; this happens explicitly if someone holds a lightly evil thing as the supreme good; implicitly, if someone is actually prepared to transgress a grave precept rather than abstain from an act in itself venially evil or not evil at all, as if someone actually proposes rather to neglect Mass than to stop playing (St. Alphonsus, V, 60).

VI. From contempt of authority, namely if someone transgresses a law or precept because he despises the law or precept itself, or the superior as such. It must be said otherwise when someone neglects a law or precept in a light matter, either because the thing commanded is esteemed little, or because the superior is held in little account not as such but as unlearned, imprudent, etc. (St. Alphonsus, I, 142; IV, 161, q. 3).

Likewise one sins gravely, even if the matter in itself is light, if one does not observe a precept because one does not wish to be subject to authority (St. Thomas, II-II, q. 186, a. 9, ad 3).

With these things noted concerning contempt of authority, it is pleasing to add certain things concerning contempt in general. Therefore let there be:

1. **Notion.** Contempt is despising a person or thing which is worthy of esteem. It can be either merely internal or externally manifested.
2. **Quality of the sin.** Contempt is opposed to that virtue from whose motive it is prohibited. Thus, for example, despising God is opposed to religion; despising one's father as such is opposed to piety; despising a superior as such, i.e., authority, is opposed to observance.
3. **Gravity of the sin.** Contempt is a grave or light sin according as it involves grave or light irreverence, etc. Thus, for example, contempt of God, of a man as such, of one's father as such, are grave. It must be said otherwise of contempt of a man or father insofar as, for example, he is given to drunkenness, or of a superior insofar as he is imprudent, proud, etc.

Corollary. He who transgresses even the very slightest law or precept from contempt of the legislator or commander as such sins gravely against dulia. He who transgresses these because he does not wish to be subject to authority sins gravely against obedience. He who transgresses these neither because he contemns authority nor because he does not wish to be subject to authority, but from another motive, sins against that virtue from whose motive the law or precept was given; therefore against obedience if, which will rarely happen, they were given from the motive of obedience. And indeed he sins gravely or lightly according to the matter.

§ II. On Venial Sin

284 **I. Existence of venial sins.** There are venial[1] sins, distinct from mortal sins. Luther and Calvin taught that all sins by their nature are mortal and worthy of eternal punishment; nevertheless they are called venial: according to Luther, because they are not imputed to one having faith; according to Calvin, because they are not imputed to the predestined. Likewise Baius taught that no sin is venial by its nature, but that some are such from the mercy of God.

Concerning the stated proposition the Council of Trent has these words: "For although in this mortal life, however holy and just they may be, they sometimes fall into at least light and daily sins, which are also called venial, they do not on that account cease to be just. For that voice of the just is both humble and true: Forgive us our debts."[2] There is added the condemned second proposition of Baius: "No sin is by its nature venial, but every sin merits eternal punishment."

The proposition is proved from Sacred Scripture, which compares some sins to very light things, others to very grave things. Thus some are compared to a gnat, others to a camel;[3] some to a mote, others to a beam;[4] some to hay and stubble placed upon the foundation of Christ.[5] Then Sacred Scripture declares that all men sin, although some persevere in the justice and friendship of God: "In many things we all offend";[6] "If we say that we have no sin, we deceive ourselves, and the truth is not in us."[7]

[1] It is called venial because, with the principle of spiritual life, namely grace, preserved, it inflicts upon the soul a languor easily curable, and easily obtains pardon (St. Alphonsus, V, 51).

[2] Session 6, chapter 11.

[3] Matt. 23:23-24.

[4] Luke 6:41.

[5] 1 Cor. 3:12 ff.

[6] James 3:2.

[7] 1 John 1:8.

285 **II. Nature of venial sin.** Venial sin is not aversion, as mortal sin is, but a certain disorder from man's ultimate end. It is called a certain disorder from the ultimate end insofar as it involves an act which is not referable to God as ultimate end; nevertheless, neither is it referred to a creature as to the ultimate end, in which case it would be mortal, but it is referred to beatitude in common as to the ultimate end. Therefore such a sin does not overturn the order toward God; hence it is said to be against the integrity of the due order. "But when," says St. Thomas, "disorder takes place short of aversion from God, then there is venial sin" (I-II, q. 72, a. 5). And elsewhere: "Venial sin falls short of mortal sin in this, that it does not entirely disorder from the end. But in some way it delays from the end, while the order to the end is preserved" (*In II Sent.*, dist. 35, q. 1, a. 2, ad 2; St. Alphonsus, V, 11).

Corollary I. From what has been said about mortal and venial sin, it is clear in what sense mortal sin is said to be against the law, while venial sin is only beside the law (St. Thomas, I-II, q. 88, a. 1, ad 1). Namely, the former is against the law, the latter beside the law, insofar as by law is understood the divine disposition which establishes the substance of order, or the order essential with respect to the ultimate end. Nevertheless, venial sin can to this extent be called against the law insofar as it is opposed to something contained in the law, or, as St. Thomas says, insofar as "it does not observe the mode of reason which the law intends" (cited place), i.e., as St. Alphonsus explains, it does not observe

the mode of the law. Now the mode of the law against which venial sin strikes is the integrity of order (V, 11).

Corollary II. Sin is predicated of mortal and venial sin not univocally, but only analogically,[1] because the notion of sin, namely disorder, is altogether diverse in each. For mortal sin altogether disorders from the ultimate end, but venial sin only in some way delays from the end, while the order to the end is preserved. Hence "the division of sin into venial and mortal is not the division of a genus into species which equally participate in the notion of the genus, but of an analogue into those things of which it is predicated according to prior and posterior; and therefore the perfect notion of sin, which Augustine sets down, belongs to mortal sin. But venial sin is called sin according to an imperfect notion, and in order to mortal sin; just as accident is called being in order to substance, according to the imperfect notion of being" (St. Thomas, I-II, q. 88, a. 1, ad 1). Therefore mortal and venial sin differ in the whole genus, or in theological species, as they say.

[1] Something is predicated of several things univocally if it is in them in the same mode; analogically, if in a diverse mode.

286 **III. Division of venial sin.** Venial sins are divided into venial sins from their genus and venial sins by accident.

1. Those are called **venial from their genus** whose proper matter is essentially light, so that mortal sin cannot be had unless malice of another species is added. Such, for example, is a lie (St. Alphonsus, V, 52).

2. There will be discussion of venial sins by accident in the scholion.

287 **IV. Conditions of venial sin.** For venial sin, imperfect or half-full advertence and consent suffice. Now:

1. The signs of imperfect advertence are: 1. if you were half-asleep or half-drunk; 2. if you adverted to the malice lightly, like one half-asleep; 3. if you were so carried away by passion, apprehension, or distraction that you hardly knew what you were doing; 4. if, after weighing the matter better, you judge that you certainly would not have acted if you had been watchful, sober, and with mind calm (St. Alphonsus, V, 54). Moreover, with regard to sins committed before the seventh year, in doubt full advertence is always presumed to have been absent.

2. He who doubts whether he fully consented can presume that he did not consent, at least not fully: 1. if one of the signs of imperfect advertence assigned above is present; 2. if he was so disposed that although he could easily have carried out the sin, nevertheless he did not carry it out; 3. if he remembers that he proceeded timidly; 4. if, immediately reflecting upon the act placed, he is terrified, saddened, and at once repels it.

And indeed these things are valid generally. But abstraction having been made from the signs set forth, in doubt about full consent, the timorous person can always presume that he did not fully consent. It is otherwise if someone has been accustomed to consent to sins. One who now consents, now does not consent, cannot resolve the doubt by the help of presumption (St. Alphonsus, V, 55; VI, 476). Besides, commonly one should abstain from direct investigation, both because for the most part it will be fruitless, and because it will rather often be a new excitation to temptation.

3. He who deliberates whether he wishes to consent to a mortal sin, supposing full advertence to the grave malice of the proposed thing, sins gravely, because he lays aside the absolute will of not

sinning. Nevertheless, in practice there is often not perfect deliberation, but only a certain negligence in fighting the temptation.

288 **V. Effects of venial sin.** Venial sin: 1. diminishes fear of God and tenderness of conscience, and increases tepidity of soul. 2. It impedes special graces and renders us unworthy of that special affection with which God follows the just who are fervent in his love. 3. It disposes toward mortal sin, both directly and indirectly. Directly, by generating and increasing a depraved habit; thus small thefts dispose toward grave ones. Indirectly, insofar as they diminish the fervor of charity and actual graces. 4. It induces liability to punishment, concerning which we have spoken.

Scholion I. On Venial Sin by Accident

289 **I. A sin mortal in itself becomes venial by accident:**

1. From invincible erroneous conscience, as if someone holds the theft of a grave thing to be venial.
2. From defect of perfect consent (St. Thomas, I-II, q. 88, a. 6; St. Alphonsus, V, 54, 55).
3. Some add: from an excusing cause, which because of only a slight defect does not excuse from the whole. But the legislator, if he urges the substance of a grave precept, seems always to urge it under grave obligation, so that one who injures a grave precept according to its substance without a truly sufficient cause seems to sin gravely.

Scholion II. On Multiplied Venial Sins

290 **I. Venial sins multiplied by reason of multiplication alone do not make a mortal sin.** The reason is that multiplication alone cannot introduce a wholly diverse notion of sin. But the notion of sin is wholly diverse in mortal and in venial sin (St. Thomas, I-II, q. 88, a. 4). And this is valid even if multiplied venial sins are united in one intention, for example, in the purpose of lying on any occasion whatever. For the purpose cannot involve greater malice than the acts proposed (St. Thomas, I-II, q. 88, a. 4; St. Alphonsus, V, 57, 3).

From what has been said it follows that he also does not sin gravely who induces several persons to sin venially, as if someone causes several persons to labor a little on a feast day, whether they work simultaneously or successively. For the one inducing cannot sin more than the individual persons induced (St. Alphonsus, III, 306).

It is asked whether he sins gravely who proposes in no way to care about venial sins and to avoid only mortal sins.

I respond: against several, with St. Alphonsus it seems this must be denied, because a purpose of this kind leads only remotely to mortal sin. Except, however, venial sins which induce a proximate danger of sinning gravely; such things occur especially in venereal matter (St. Alphonsus, IV, 12). Observe besides that multiplied venial sins easily lead to mortal sin, both because the desire of sinning grows, because the fervor of charity becomes lukewarm, and because graces are diminished (cf. St. Thomas, I-II, q. 88, aa. 3 and 4).

291 **II. Multiplied venial sins can become mortal by reason of coalescing matter.** Now matter coalesces[1] if venial sins are multiplied against one obligation in number. I say one: whether by reason of harm physically or morally continued, as if someone commits several small thefts retained or not morally interrupted; or by reason of time through which one and the same obligation is prolonged, as

"if you omit at intervals several psalms from the same Office; if on the same fast day you several times eat a little; on the same feast day you several times labor a little" (St. Alphonsus, V, 57). But not if you labor a little on different feast days, if daily in Lent you eat a little, "even if at the same time you had the purpose of doing so" (St. Alphonsus, cited place); or by reason of the intention by which the one commanding or vowing imposed acts, although wholly disparate or to be performed at different times, in the manner of one obligation. If, for example, a confessor orders a penitent to recite five Our Fathers and Hail Marys daily for a week, the omissions made on individual days would coalesce, because the confessor is considered to have imposed all the prayers in the manner of one grave satisfaction. On the contrary, "he does not sin mortally who on different days violates a vow of praying some little thing daily or on individual days, or of giving a small alms, if it is a burden affixed to the day; because, since the obligation of each day is extinguished daily, those matters are not continued... If, however, similar vows are not a burden affixed to the day, but only the day is fixed beforehand as a terminus beyond which execution is not to be delayed, there will be mortal sin after notable matter has been reached" (St. Alphonsus, cited place).

[1] Matter coalesces only in appearance if someone, for example, after several excesses in food or drink finally by a new excess falls into drunkenness; likewise if someone after repeated slight vexations and insults finally excites another to grave anger, quarrel, etc. I said only in appearance, because, strictly speaking, in the cases brought forward, once the preceding acts and their effect have been posited, the final act is gravely evil by reason of itself.

292 **III. He who by multiplied and coalescing transgressions arrives at grave matter:**

1. Already by the first transgression he sins gravely, if from the beginning he intends to proceed through coalescing transgressions to grave matter. Namely, although the execution of the individual transgressions is externally light, nevertheless, insofar as it is subject to a gravely evil intention, it is gravely evil. Nevertheless, these several transgressions constitute only one sin in number, unless the depraved intention is morally interrupted.
2. If he does not intend to proceed to grave matter, then he sins gravely when he advertently completes grave matter. Light transgressions which follow the completed grave matter, according to others, involve a continuation of the same mortal sin in number; according to St. Alphonsus and others, they do not constitute mortal sin unless they reach a new grave quantity (St. Alphonsus, III, 538).

Practical Admonitions. 1. Let the confessor strive to remove penitents, especially pious ones, even from venial sins. Hence: a) "Let him inculcate in his own the greatest possible horror of mortal sin; for the more vivid this is, the more efficaciously it will deter men even from venial sins, which dispose toward mortal sin. b) Let him repeatedly insist on the question of the Catechism: 'What evils do venial sins cause us?' c) Let him strive to know the dominant vice of the penitent, to which he may suggest suitable remedies. Thus, if he has found it to be a desire for riches greater than is fair, let him prescribe more ample alms; if excessive ambition, let him urge flight from conversations; if wandering of mind in prayers and other duties, let him indicate greater recollection and solitude; and so in the others. For contraries are most excellently cured by contraries. d) Let him very much commend daily and particular examination.

2. But if venial sins must be avoided by a simple member of the faithful, how much more by clerics! Therefore, as Trent admonishes, 'let them flee light offenses, which would be very great in them, so that their actions may bring veneration to all' (session 22, chapter 1, *De Reformatione*). Before the

others, let them avoid omissions and negligences in prayer or in the duties of their state, useless conversations or familiarities with persons of the other sex, a critical spirit toward the precepts of superiors, and detractions concerning fellow clerics, especially when laypersons are listening."[1]

[1] Sweens, *Theologia moralis fundamentalis*, n. 850.

Article III. On Internal Sins

(St. Thomas, I-II, q. 74, a. 8; St. Alphonsus, *Theologia Moralis*, bk. V, 12-28; *Homo Apostolicus*, tract. 3, nn. 47-54.)

Three internal sins are distinguished: morose delectation, desire, and joy, insofar as the will is borne toward an act as such - abstraction having been made from its present, past, or future execution - toward an act to be perpetrated, or toward an act perpetrated. Therefore joy regards the past, desire regards the future, while morose delectation abstracts from both, indeed even from the present, because delectation concerning a present act coincides with the act itself. We shall speak first of morose delectation, then of desire and joy; and indeed of the latter in one treatment, because they are governed by almost the same rules. We pass over delectation concerning a present work, because, as we have said, it coincides with the work itself.

§ I. On Morose Delectation

293 **I. Notion.** Morose delectation[1] is a free complacency of the will concerning an evil act taken objectively. It is said:

1. **Complacency,** i.e., rest in some object.
2. **Of the will,** i.e., of the rational appetite. Therefore, strictly speaking, the discussion is not of complacency of the sensitive appetite, but of the consent of the will in the complacency of the sensitive appetite. Namely, the will does not immediately delight in a sensible object, but mediately, i.e., through the mediation of the sensitive appetite (St. Thomas, I-II, q. 74, aa. 6 and 8).
3. **Free,** i.e., that to which the will assents after the advertence of the intellect to the malice of the act.
4. **Concerning an evil act taken objectively, without addition.** Hence the object of morose delectation, as we have already insinuated, is not an evil act whether future or to be perpetrated, whether past or perpetrated, whether present or being perpetrated here and now; nor is its object the thought about an evil act; nor even the evil act thought about, although thought is the condition without which the will cannot be borne toward the evil act, or the operation by which the evil act is presented to the will. The object of morose delectation is the evil act itself taken objectively. "Therefore," says St. Alphonsus, "one thing is delectation concerning an evil work, so that the evil work is the object of the delectation, which is always evil. Another is delectation concerning the thought of an evil object, so that not the evil work, but the thought itself about the work is per se the object of the delectation" (V, 17; cf. St. Thomas, I-II, q. 74, a. 8, ad 4).

[1] It is called morose not from a delay of time, but from a delay or lingering of the will, which can take place in an instant.

294 **II. Morality.** 1. Morose delectation concerning an evil act is evil, and indeed gravely or lightly evil, according as it regards an act gravely or lightly illicit. The reason is that, as is clear from the notion handed down, it involves an affection of the will toward an evil act. But affection of the will toward an

evil act is evil, and indeed gravely or lightly evil, according as it regards an act gravely or lightly illicit (St. Thomas, I-II, q. 74, a. 8 and q. 88, a. 5, ad 2; St. Alphonsus, V, 17).

"But that," says St. Thomas in the cited place, "someone thinking about fornication should be delighted by the very act thought about happens from this, that his affection is inclined toward this act. Hence that someone consents to such delectation is nothing other than that he himself consents to this, that his affection be inclined toward fornication; for no one is delighted except in that which is conformed to his appetite. But that someone by deliberation chooses that his affection be conformed to those things which in themselves are mortal sins is mortal sin; hence such consent to the delectation of mortal sin is mortal sin."

2. Morose delectation takes its species:

a) **From the object considered according to its generic species,** so that, for example, delectation concerning an act of lust is opposed to chastity, and concerning vengeance to charity (St. Alphonsus, V, 28). It is disputed whether it also takes its species from the object considered according to its lowest species. A few deny this with regard to sins of lust, because a lustful affection seems to be more general, i.e., toward venery generally, than special toward such an object. But the contrary seems altogether to be admitted, because the lowest species of the object, as for example fornicatory or sodomitical intercourse, enters into the object of delectation, and therefore specifies the affection of the will which is borne toward the object (cf. St. Alphonsus, *Praxis Confessarii*, n. 39, 1). Here, nevertheless, note that immodest acts, for example looking at or seeing an obscene thing, do not differ in species in themselves.

b) **From circumstances of the subject.** Hence, for example, one bound by a vow of chastity, if he is morosely delighted concerning an act of lust, also commits a sin against religion, and indeed personal sacrilege, at least if he is bound by a public vow; namely, the vow of chastity also excludes internal sins. Many affirm the same concerning the circumstance of marriage, because even marital fidelity seems to forbid an affection toward sin with another.

c) **From circumstances of the object,** if the delectation is also occupied around those circumstances, because then the circumstance pertains to the object of the delectation. Otherwise, against others, it seems this must be denied, because where delectation concerning the circumstance is absent, the circumstance does not seem to enter into the object of the delectation. Hence if someone is morosely delighted concerning intercourse with a blood-relative or a married woman as such, he contracts the malice of incest or adultery; but not if he is delighted, as commonly happens, concerning intercourse with a blood-relative or married woman as beautiful. Nevertheless, morose delectation must be said to take its species from a circumstance of the object if it induces proximate danger of desiring the act, for example, intercourse with a blood-relative (St. Alphonsus, cited place). But in order that this malice be contracted, attention must be paid to it; this commonly does not take place. Hence for the most part there is no obligation of declaring the aforesaid circumstances in confession, or of asking about them.

295 **Corollary I.** It is licit for spouses to be morosely delighted concerning intercourse or immodest acts with the partner, even if on account of the latter's absence they cannot take place here and now. The reason is that the delectation regards acts licit for spouses (St. Alphonsus, V, 25). Nevertheless, if the delectation takes place with a rather grave venereal commotion, danger of pollution will easily be present. If it takes place with a light commotion and danger of pollution is absent, an act of this kind,

as by its nature regarding the partner, perhaps to be equated with mutual incomplete acts, and therefore seems licit (St. Alphonsus, V, 25).

Corollary II. With St. Alphonsus and others, though several contradict it, it seems it must be said that it is illicit for widows to be morosely delighted concerning intercourse had, and for betrothed persons concerning future intercourse. The reason is that in the case the object of the delectation is not intercourse had or future as such - for as such it is the object of joy or desire - but intercourse had objectively, or taken in itself. But all intercourse for widows and betrothed persons is intrinsically evil. Therefore the object of the delectation of which we speak is evil, and consequently the voluntary delectation itself concerning it is also evil (St. Alphonsus, V, 24). Those who think that the aforesaid delectation is licit in itself nevertheless warn that by accident it easily becomes sinful, on account of the danger both of exciting venereal commotions and of consenting to them.

Nevertheless, it is licit for betrothed persons to rejoice over the fact that intercourse will be licit; likewise to desire it or to have the will of exercising it after marriage has been entered, because the intercourse then to be had is good, and therefore the object of such desire is good (St. Alphonsus, V, 24).

Corollary III. It is licit to be morosely delighted concerning an act licit in itself and prohibited only by positive law, for example, concerning the eating of meat on a day of abstinence, provided the delectation is not concerning the act as prohibited. The reason is that in the case the delectation is concerning the eating of meats taken objectively. But the eating of meats taken objectively is good, and therefore the object of delectation is good (St. Alphonsus, V, 27).

Corollary IV. It is licit to be morosely delighted concerning the manner, for example, the dexterity or industry by which an evil act was perpetrated, provided nevertheless that the manner is not evil in itself. Hence "without sin fables, comedies, wars, homicides, frauds, thefts, the fall of a man, for example from a horse, etc., often delight us, not according to themselves, but the manner of stealing, the unexpected manner of falling" (St. Alphonsus, V, 18).

Corollary V. Knowledge, or habitual cognition, of lustful acts is not evil in itself, because in itself it does not involve an affection of the will toward the acts themselves; indeed it can be joined with the greatest aversion from acts of this kind. Likewise and for the same reason, thought about a lustful act is not evil in itself; nor consequently is morose delectation concerning the knowledge or thought of a lustful act evil in itself, namely because the very object of such delectation is not evil (St. Thomas, I-II, q. 74, a. 8; St. Alphonsus, V, 17). Nevertheless, thoughts and delectations of this kind can become evil, and very often do become evil, by reason of the danger either of exciting venereal motions or pollution, or of being morosely delighted concerning the evil act which is thought about. Hence St. Alphonsus, cited place: "Thought can be good if there is a just cause for thinking, for example, for the sake of study, consultation, etc., with abhorrence of the object; or it can be venially evil if it is done from curiosity, etc.; or it can sometimes even be gravely evil if there is proximate danger of consent."

Besides, in this matter the descent is easy from delectation of the thought to delectation of the thing thought about, especially if it is a useless and vain thought; hence one who dwells long upon it exposes himself to danger.[1]

When it is doubted whether the delectation was concerning the thought itself or concerning the thing thought about: if the thought with delectation frequently thrusts itself in without necessity or utility, it

is a sign that the delectation is concerning the thing thought about, because frequency of thought of this kind without necessity or utility seems to arise from a depraved inclination of affection toward the things themselves. But if such a thought is not importunate, but follows the judgment and moderation of reason, it is a sign that the delectation is only concerning the thought itself.[2]

Corollary VI. Thought and morose delectation concerning an object which, if, for example, it were seen or touched, is apt to excite venereal motions, for example, concerning an obscene part of the body which someone represents to himself, are not evil in themselves, because the object itself is not evil. Nevertheless they will easily become evil by reason of the danger annexed to such thought and delectation, for example, of exciting venereal motions, etc.; therefore apply the things said in Corollary V concerning thought about a lustful act and concerning morose delectation with respect to such thought.

[1] Billuart, *De temperantia*, diss. 6, art. 15, § I.

[2] Billuart, cited place.

§ II. On Desire and Joy

296 **I. Notion and Division.** Desire is distinguished into simple desire and purpose. Simple desire is an act by which the will is indeed borne toward carrying out a work, but which nevertheless does not reach the purpose of carrying that work out. Purpose is an act by which the will proposes to carry out a work. It is distinguished into absolute and conditional, according as someone resolves to commit an act absolutely or conditionally.

Joy is here understood as deliberate complacency concerning an act committed. Joy expressed in words is called boasting.

297 **II. Morality.** 1. Simple desire, absolute purpose, and joy concerning an evil act are evil, and indeed gravely or lightly evil, according as the act is gravely or lightly evil. For they involve an affection of the will toward an evil act, which they embrace: desire with respect to the future, joy with respect to the past. But an affection of this kind is manifestly evil, and indeed gravely or lightly evil, according as the act is gravely or lightly evil. Add these words of Sacred Scripture: "Thou shalt not covet thy neighbor's wife."[1]

2. Simple desire, absolute purpose, and joy take their species both from the object considered according to its lowest species and from the circumstances both of the subject and of the object. The reason is that they tend toward an act according as it is or was in reality, with all its circumstances. It is said:

a) **From the object considered according to its lowest species.** Hence one who proposes to himself to commit, for example, pollution or fornication, contracts the guilt of pollution or fornication.

b) **From circumstances of the subject,** as was said concerning morose delectation.

c) **From circumstances of the object.** Hence one who takes the purpose of sinning with a married person, a blood-relative, etc., becomes guilty of adultery or incest.

The foregoing points, moreover, hold even if desire or joy regards an act that is only materially evil. Hence proposition 14 was deservedly proscribed by Innocent XI: "It is licit for a son to rejoice over the parricide of his parent, perpetrated by himself in drunkenness, on account of the immense riches

obtained from the inheritance thereby"[2] (St. Alphonsus, V, 20). It is licit, however, to rejoice that the materially evil act happened as materially rather than formally evil.

Note. Boasting about a sin truly committed commonly carries with it joy, properly so called, concerning the sin. But boasting about a fictitious sin seems rather to involve morose delectation than joy properly so called; indeed sometimes delectation concerning only the manner of the evil work. Hence to this boasting are to be applied the things which we have said concerning morose delectation, whether of the work or only of the manner (St. Alphonsus, V, 26).

3. Conditional purpose concerning an act which, apart from the condition, would be wicked:

a) It is evil if the condition does not remove the malice of the object; this has place if the condition does not regard the malice of the act, as if someone were to say: "I would steal, if there were no hell; I would kill my enemy, if I had a sword; I would fornicate, if I were not a religious," etc. (St. Alphonsus, V, 13).

b) It is not evil, at least not gravely, if the condition removes the malice of the object. "And this can occur, not only in things forbidden by positive law (as if you were to say: I would eat meats in Lent unless the Church forbade it), but also in things forbidden by natural law, in the case in which the object could be licit (namely by saying: If God permitted it, I would wish to take that thing of Titius; if I were not a priest, I would marry; and similar things)... We said: at least not gravely; for ordinarily desires of this kind are not excused from venial sin, since commonly they are dangerous or at least idle" (St. Alphonsus, cited place).

c) What if someone were to say that he would do something which is intrinsically evil, adding the condition: if it were licit; for instance, if you were to say: "if it were not a sin, I would wish to blaspheme, perjure myself, commit adultery, fornicate, take revenge, and similar things" (St. Alphonsus, cited place). Now most authors charge the one who speaks thus with sin, because the condition is impossible and therefore cannot remove the malice of the object. Be it so; but one rightly doubts whether in the case there is a true desire, or, to use the words of St. Alphonsus, "it is said, with sufficient probability, that when the will desires some impossible evil object under the condition if it were licit, it never efficaciously consents to it; for when you wish for that object by saying if it were licit, and you know that it is not and cannot be licit, you do not truly wish, but only show your propensity. It would be different, however, if you wished that that evil object were not prohibited; because it is evil in itself to will that the order and law of nature be overturned" (St. Alphonsus, cited place). So also Cajetan,[3] the Salmanticenses,[4] and Suarez.[5]

[1] Exod. 20:17.

[2] Denzinger-Bannwart, n. 1165.

[3] Cajetan, *In I-II*, q. 13, a. 5.

[4] Salmanticenses, tract. 20, *De principiis moralitatis*, c. 13, n. 62.

[5] Suarez, *De legibus*, bk. 3, c. 13, n. 10.

298 **Corollary I.** It is licit to rejoice and to take delight in a good effect, for example, in a temptation quieted through pollution, in offspring conceived from fornicatory intercourse, etc. The reason is that the object of the delectation is good. Nevertheless "delectations of this kind are sometimes not without danger" (St. Alphonsus, V, 20), because there is an easy transition to delectation concerning the wicked act itself which was the cause of the effect.

Likewise, once an evil act is supposed, it is licit to desire its good effect, for instance that someone, if he sins again, may be punished and amended. But it is not licit to desire that someone sin again, even for this end, that he may be punished and come to his senses.

It is disputed whether it is licit to rejoice and to take delight in an evil act, for example, in fornication, insofar as it was the cause of a good effect (not because it was such a cause). With St. Alphonsus (V, 20), against several others, it seems this must be denied, because that expression, "insofar as it was the cause of a good effect," or "as cause of a good effect," is not really distinguished from the evil act, so that joy concerning such an act as cause of the effect in reality embraces the evil act itself, and therefore becomes evil from an evil object.

Corollary II. It is licit, for an honorable end, to rejoice over merely natural pollution and to wish for it, because it is not a sin, not even materially (St. Thomas, *In IV Sent.*, dist. 9, q. 1, a. 4, sol. 1, ad 5; St. Alphonsus, cited place; n. 65). The contrary must be said of another pollution, even if it was only a material sin (St. Alphonsus, cited place).

In what respect it is licit to rejoice over a temporal evil of one's neighbor or to wish for it is explained in the treatise on the cultivation of charity.

Article IV. On Capital Sins

299 Capital sins are those which before the rest are causes and as it were heads from which other sins proceed. They would more correctly be called capital vices, because capital sins are not sources of sins except insofar as they are vices. Ordinarily seven are enumerated: pride, avarice, lust, envy, anger, sloth, and gluttony. "The reason for this number seven from St. Thomas (I-II, q. 84, a. 4) is this: Man can either pursue or flee that which is good in itself in a manner discordant with reason. Goods of this kind in themselves, which man can pursue in a manner discordant with reason or inordinately, are either honor and glory, and their inordinate pursuit is called pride; or the conservation of the individual through food and drink, and the inordinate pursuit of this is called gluttony; or the conservation of the species through acts destined for the propagation of the human race, and the inordinate use of these acts is lust; or riches, and the inordinate appetite for these is avarice. The good which someone can flee in a manner discordant with reason is either his own good, and thus sloth has place; or another's good, and this is either envy, which by sadness, or anger, which by appetite of vengeance, is hostile to another's good."[1] We shall speak of each one.

[1] Konings, *Theologia Moralis*, n. 235.

§ I. On Pride

300 **I. Notion.** Pride is the inordinate appetite of one's own excellence (St. Thomas, II-II, q. 162, aa. 1 and 2; St. Alphonsus, V, 65), by which someone either judges that he has a good from himself; or, although he believes that he has received a good from God, ascribes it to his own merits; or boasts that he has a good which he lacks; or desires to seem singularly to have that which he has (St. Thomas, cited place, a. 4).

301 **II. Division.** Pride is distinguished as twofold, perfect and imperfect. Perfect pride is that by which someone disdains to be subject to divine authority. Imperfect pride is that by which someone, while preserving due subjection, esteems himself more than is just or inordinately desires to excel others (St. Alphonsus, V, 65).

302 **III. Morality.** 1. Perfect pride is a mortal sin from its whole genus, and indeed a most grave sin.

a) **It is a mortal sin from its whole genus.** For the root of pride is considered in this, that "man in some way is not subject to God and His rule. But it is manifest that this very thing, not to be subject to God, has the nature of mortal sin; for this is to turn away from God; hence it follows that pride according to its genus is mortal sin" (St. Thomas, II-II, q. 162, a. 5).

b) **It is a most grave sin.** For aversion from God, which formally completes sin, belongs per se to pride, while it is as it were consequent in other sins. Therefore pride is a most grave sin. The major is proved by St. Thomas thus: "In other sins man is turned away from God either on account of ignorance, or on account of infirmity, or on account of desire for any other good whatever; but pride has aversion from God from this very fact, that it does not will to be subject to God and His rule" (II-II, q. 162, a. 6).

2. Imperfect pride is per se venially evil, because it involves excess in an indifferent matter, such as, for example, esteem of oneself, the praise of men, etc. It becomes mortally evil if grave contempt of others is added, or a manner of acting injurious to God; the latter would have place if someone behaved as if he had his goods either from himself or as owed to his own merits (St. Alphonsus, V, 65).

303 **IV. The daughters of pride are:**

1. **Presumption,** "which is the inordinate appetite of undertaking something beyond one's powers. It is commonly only venial. It becomes mortal, however, if it brings harm to God or one's neighbor; for example, if you presume ecclesiastical jurisdiction, the power of sacred Order, likewise the office of physician, advocate, confessor, etc., without due skill" (St. Alphonsus, V, 66).
2. **Ambition,** "which is the inordinate appetite for dignity and honor not owed, or greater than is owed; as if you seek a benefice or office of which you are unworthy; or by an illicit manner and means, for example, by simony. It is per se a venial sin. But it becomes mortal either by reason of the means through which honor is sought, or by reason of the harm which is brought upon one's neighbor. Finally, if honor is sought moderately for an honorable end, it will be an act of magnanimity" (St. Alphonsus, cited place).
3. **Vain glory,** which is the inordinate appetite of praise and fame to be obtained by the manifestation of one's own excellence. "It is called vain when it is sought from a bad, false, or fictitious thing; or from something which is not worthy of glory, or not of so much glory, as from riches, trifles, etc.; or among those who do not judge rightly about the thing; or without a due end. It is per se a venial sin; often mortal by accident, as was said concerning ambition" (St. Alphonsus, cited place).

By vain glory one sins in two ways:

a) "Directly; and this either by words, and it is boasting, which is venial per se, if it is about good things, for example, fasting, prayer, etc., although by accident, often by reason of harm, if it is false, it becomes mortal; as also: 1. If one says something against the glory of God, as in Ezekiel 28: 'I am God.' 2. If he breaks forth into insults; for example, 'I am not as the rest of men, an adulterer, etc., or even as this man.' 3. From an evil end. 4. If it is done with notable harm to one's neighbor. 5. If it is about a mortally evil matter... Or by deeds, which, if they are true and have something of admiration, is called the invention of novelties, for the common people are accustomed to admire these, such as foreign garments, opinions, etc.; mortal, if it notably corrupts youth or morals. But if the deeds are false, it is

hypocrisy; for example, if someone does some good thing so that he may seem good, although he is not" (St. Alphonsus, V, 66; St. Thomas, II-II, q. 132, a. 5).

b) "Indirectly, insofar as someone does not wish to be less than another. This happens in four ways: 1. Through the intellect; and it is pertinacity, by which someone adheres too tenaciously to his own opinion, which is mortal if truth of great moment is opposed, or if it is joined with danger to a third party, for example, if a physician remains in his opinion with danger to the sick person. 2. Through the will; and it is discord, by which one sins mortally when it concerns the good of God or of one's neighbor, in which they ought to be concordant. 3. Through words; and it is contention, which is mortal when, with a mind to contradict, you wrangle about truth pertaining to the faith or to the salvation of soul or body. 4. Through deeds, when someone does not wish to carry out what he ought; and it is disobedience" (St. Alphonsus, cited place; St. Thomas, cited place).

304 **V. Remedies of pride are:** 1. Consider that you are nothing and sinful.[1] 2. Weigh the hatred by which God rejects and punishes the proud, while He affects the humble with benefits.[2] 3. Meditate on the example of Christ.[3] 4. Exercise humility, especially by tolerating humiliations.[4]

[1] 1 Cor. 4:7.

[2] Ecclus. 10:7; 35:21; Matt. 23:12; Luke 1:48 sq.; Rom. 1:21, 26; 1 Pet. 5:5, 6.

[3] Phil. 2:7.

[4] Sweens, *Theologia moralis fundamentalis*, n. 956.

§ II. On Avarice

305 **I. Notion.** Avarice is the inordinate appetite for goods of fortune. It is opposed to liberality.

306 **II. Morality.** Avarice per se, i.e., insofar as it is opposed to liberality, is venial. It can become mortal, for example, by reason of violated justice, charity, etc.

307 **III. The daughters of avarice are:** hardness of heart, restlessness of heart, violence, fallacy (deceit in words), fraud (deceit in deed, for example, in contracts), betrayal (deception against faith given or owed) (St. Thomas, I-II, q. 84, a. 1; II-II, q. 118; St. Alphonsus, V, 68-70).

308 **IV. Remedies of avarice:** 1. Weigh the vanity of earthly goods, which slip away, while heavenly goods endure.[1] 2. Consider that you are destined for higher things and therefore that the heart of man is not satisfied by riches.[2] 3. Consider the example of Christ, who for our sake was made poor.[3] 4. Exercise liberality, by distributing alms, etc.[4]

Note. Just as avarice is opposed to liberality by defect, so prodigality is opposed to it by excess. Now prodigality is a superfluous distribution of one's own goods. Prodigality per se, i.e., insofar as it is opposed to liberality, is a venial sin. It can become mortal, for example, by reason of harm to the family that will follow, etc. (St. Thomas, II-II, q. 119; St. Alphonsus, V, 68).

[1] Luke 12:20.

[2] Eccles. 5:9; Matt. 16:26; Luke 12:31.

[3] 2 Cor. 8:9.

[4] Cf. Sweens, *Theologia moralis fundamentalis*, n. 96.

§ III. On Lust

309 **I. Notion.** Lust is the inordinate appetite for venereal things.

310 **II. Division.** Lust is distinguished as consummated and non-consummated, according as the act of lust is completed or not completed; in other words, according as it carries with it extreme or non-extreme venereal commotion.

311 **III. Morality.** Lust, both complete and incomplete, is a grave sin from its whole genus; nevertheless, if it is only indirectly voluntary, it admits smallness of matter. These points are more fully explained in the treatise on chastity.

312 **IV. The daughters of lust are eight, four on the part of the intellect and four on the part of the will, namely:**

1. **Blindness of mind:** when someone is so addicted to foulness that he does not think about heavenly things.
2. **Precipitation:** by which someone, from the same cause, i.e., from affection toward pleasures, acts without counsel.
3. **Inconsideration:** when he sins in the manner, inconsiderately doing things which are unbecoming to his state or person.
4. **Inconstancy:** when someone, from the same affection for pleasures, soon falls away from pious resolutions.
5. **Self-love.** For such a man, on account of pleasures, makes himself, not God, the end of his actions.
6. **Hatred of God.** For the lascivious man is accustomed to abhor divine things, indeed God Himself, as the avenger of sins.
7. **Affection for the present age.** For love of carnal pleasures so affects the soul that at times it would even be prepared to renounce eternal blessedness, if it were permitted always to enjoy present things.
8. **Horror of the future age:** "when, immersed in pleasures, one inordinately fears death, and not wishing to think about it, strives to prolong life by illicit means, etc." (St. Alphonsus, V, 71).

§ IV. On Envy

313 **I. Notion.** Envy is sadness concerning the good of one's neighbor, estimated as one's own evil, i.e., as something diminishing one's own excellence (St. Thomas, II-II, q. 36, a. 1). Now:

1. Envy differs: 1. from sadness concerning another's good insofar as from it you fear harm to yourself or to others, for example, concerning the eminent knowledge of a wicked deputy; 2. from sadness concerning the good of one's neighbor, not because the neighbor has it, but because it is lacking to you; "and this properly is zeal... and if this zeal is concerning honorable goods, it is praiseworthy, according to that saying in 1 Corinthians 14: Seek earnestly spiritual things" (St. Thomas, II-II, q. 36, a. 2); 3. from sadness concerning another's good because he is unworthy of that good, as if someone grieves over an office conferred on an unworthy person; "and this sadness... is called nemesis (or indignation) and belongs to good morals" (St. Thomas, cited place). So also St. Alphonsus, V, 72.

2. Envy is found especially among those who are equal, or nearly equal, in something (St. Alphonsus, V, 72). "No one," says St. Thomas, "strives for those things in which he is greatly deficient; and therefore when someone surpasses him in this, he does not envy him. But if he is deficient only slightly, it seems that he could attain to this; and thus he strives for it; hence if his striving is frustrated on account of the excess of another's glory, he is saddened. And from this it is that lovers of honor are more envious; and likewise the faint-hearted are envious, because they reckon all things great; and whatever good happens to anyone, they reckon themselves to have been surpassed in something great; hence also in Job 5 it is said: Envy slays the little one. And Gregory says in the fifth book of the *Moralia* (cap. 31) that we cannot envy any except those whom we think better than ourselves in some respect" (II-II, q. 36, a. 1, ad 3). Moreover, those who are accustomed to sin by the vice of envy are:

a) "The ambitious, and those who seek glory from some thing; since, when they place glory in this, that in that matter they be alone and singular, they grieve and are saddened if others approach it" (St. Alphonsus, V, 72; St. Thomas, II-II, q. 36, a. 1, ad 3).

b) "The faint-hearted, to whom, since all things seem great, any good whatever of another seems to diminish their own. Thus women, for example, easily apprehend and grieve that they are surpassed by another's good, for example, by beauty" (St. Alphonsus, cited place; St. Thomas, cited place).

c) "Old men with respect to young men; and whoever have with difficulty obtained something which others easily attain" (St. Alphonsus, cited place; St. Thomas, cited place).

314 **II. Morality.** Envy is a mortal sin from its genus, which is clear both from Sacred Scripture, which excludes the envious from the kingdom of heaven,[1] and from the fact that it is opposed to charity (St. Thomas, II-II, q. 36, a. 3; St. Alphonsus, V, 72). But more often it is venial, either on account of smallness of matter, or because a great good is envied only slightly (cf. St. Thomas, cited place).

[1] Gal. 5:21.

315 **III. The daughters of envy are:** 1. hatred; 2. whispering; 3. detraction; 4. exultation in the adversities of one's neighbor; 5. affliction at his prosperity (St. Thomas, II-II, q. 36, a. 4, ad 3; St. Alphonsus, V, 72).

316 **IV. Remedies of envy.** 1. Be humble and weigh the vanity of honor.[1] 2. Consider that one's neighbor is a son of God and your brother in Christ. 3. Exercise charity, by pursuing one's neighbor with honor and by praying for him.

[1] Gal. 5:26.

§ V. On Gluttony

317 **I. Notion.** Gluttony, taken generally, is the inordinate appetite either for food or non-intoxicating drink, or for intoxicating drink.

318 **II. Division.** Gluttony, taken generally, comprises gluttony strictly so called, or excess in eating and drinking, and drunkenness.

319 **III. Gluttony strictly so called.** 1. **Notion.** Gluttony strictly so called, or excess in eating and drinking, as has already been said, is the inordinate appetite for food or non-intoxicating drink; it is opposed to abstinence.

2. **Morality.** Gluttony per se, i.e., insofar as it is opposed to abstinence, is venial. The reason is that it involves excess in a thing indifferent in itself. It becomes mortal, for example, if someone gravely harms his health, if from gluttony he becomes unequal to sustaining his family or paying his debts (St. Alphonsus, V, 73).

Corollary I. Gluttony is not a grave sin even when someone eats or drinks to the point of vomiting. It is doubted whether those sin gravely who purposely vomit what they have taken, so that they may eat and drink again. Several affirm it, because that seems to involve great deformity against rational nature. But gluttony by reason of itself is never forbidden under mortal sin; nor is it clearly seen that by a deformity greater only in degree another species of sin is introduced.

Corollary II. The eating of human flesh or blood seems to be a grave sin. For an act of this kind, at least according to common estimation, redounds upon the person of the deceased, and therefore is opposed to observance, insofar as this virtue extends itself in some way to all; moreover, that it is gravely opposed is clear from the very nature of this act. The contrary must be said if someone eats human flesh from necessity.

320 **IV. Drunkenness.** 1. **Notion.** Drunkenness is the inordinate appetite for intoxicating drink; it is opposed to sobriety.

2. **Division.** Drunkenness is distinguished:

a) Into perfect and imperfect, according as reason is wholly or not wholly disturbed.

b) Into direct and indirect. It is direct when the intoxicating act, insofar as it is such, is intended as an end or is assumed as a means by which another end is obtained. Otherwise it is indirect.

3. **Morality.** a) Perfect and direct drunkenness is a grave sin, at least if it is induced for a notable time. This is clear: 1. from Sacred Scripture, which excludes drunkards from heaven;[1] 2. from reason; for a grave disorder is contained in an act which induces deprivation of the actual use of reason, indeed even of the proximate faculty of using reason for every sudden necessity; a deprivation, I say, which subsists in so unnatural a manner (St. Alphonsus, V, 75, 76). Now the unnatural manner consists in this, that the lower powers operate without reason directing them.[2] Therefore the malice of drunkenness is not found precisely from the deprivation of the actual use of reason - for this also has place in sleep - but from the said deprivation subsisting in such a manner. Nevertheless, according to most authors drunkenness is not mortal "if it deprives one of reason for a short time. But La Croix says that a long time seems to be one hour" (St. Alphonsus, V, 75). But this observation is of lesser importance, because a slight duration of drunkenness commonly cannot be foreseen.

b) Perfect and indirect drunkenness likewise is per se gravely illicit; but for a proportionate cause it is licit, if the end cannot be obtained by a more harmless means. The reason for the former is that it is per se gravely illicit to posit a cause from which a gravely evil effect will follow, such as the deprivation of the use of reason while the lower powers are operating. The latter follows from what was said concerning a cause with a double effect (St. Alphonsus, V, 76; cf. St. Thomas, I-II, q. 88, a. 5, ad 1; II-II, q. 150, a. 3, ad 3).

c) Imperfect and direct drunkenness of itself is only venial, because in it the lower powers are not simply deprived of the guidance of reason. It can become mortal, for example, on account of harms to

the family that will follow, on account of foreseen blasphemies, on account of grave scandal that will arise, etc.

Likewise, imperfect and indirect drunkenness is per se venial; for a just cause it is licit, if the end cannot be obtained by a more harmless means.

d) Finally, alcoholism, as it is called, must be very greatly condemned, since it harms the health of the body, gradually dulls the mind, incites to venereal things, extinguishes religious and moral sentiments, and takes away the happiness and prosperity of the family. Add that alcoholics not rarely beget children who are prone to venereal things, labor under abnormal affections, or are even exposed to the danger of mental deficiency. Hence the remedies, concerning which we shall speak under VI, should be diligently inculcated upon those given to alcoholism.

Corollary I. With the required conditions posited, it is licit to make oneself drunk to expel disease, or to lessen grave pains to be undergone in a surgical operation. The reason is that the act of drinking is not chosen insofar as it is intoxicating, but insofar as it is healing. I said, "with the required conditions posited," because to lessen pains a more natural means can commonly be used just as safely, and therefore must be used in preference to drunkenness, for example, ether taken by inhalation. Driving away melancholy does not constitute a sufficient cause (St. Alphonsus, V, 76, q. 1; cf. St. Thomas, cited place).

It is disputed whether it is licit for someone to make himself drunk in order to avoid death with which another threatens him unless he becomes drunk. Several affirm it, but with St. Alphonsus (V, 76, q. 2) it seems this must be denied, because evils are not to be done that goods may come. But in the hypothesis posited the act of drinking is evil. The reason is that the act of drinking is evil when it has no other effect than drunkenness; and this obtains in the case, because immunity from death is not an effect of the act of drinking itself.

Corollary II. For a grave cause it is licit to give another an occasion of making himself drunk; likewise it is licit to induce another to drunkenness so that he may be impeded from a greater evil, for example, from homicide (St. Alphonsus, V, 77; II, 57). These things will be further explained and proved in the treatise on charity.

Corollary III. Sins committed in drunkenness are imputed according to what was said in n. 60. By most authors insults against men are excepted, because they are usually reckoned as nothing. The contrary seems to be said of blasphemies, because the honor of God seems to demand that they be forestalled; likewise the contrary must be said of obscene words, by reason of scandal, and of defamation of one's neighbor, by reason of the harm that will arise (St. Alphonsus, V, 78).

[1] Gal. 5:21.

[2] This does not happen of itself in sleep or after the use, for example, of morphine; besides, sleep deprives one only of the use of reason, but not of the proximate faculty of using it, because a sleeping person can immediately be aroused from sleep.

321 **V. The daughters of gluttony are:** 1. dullness of mind; 2. foolish merriment; 3. much talking; 4. buffoonery; 5. uncleanness of body (St. Thomas, II-II, q. 148, a. 6; St. Alphonsus, V, 74).

322 **VI. Remedies of gluttony, especially of drunkenness.** 1. Consider its very evil effects. 2. Flee occasions. 3. Exercise sobriety, even by sometimes withdrawing from the appetite things which are licit. Especially let heavy drinkers be advised to enroll in a society instituted for promoting sobriety.[1]

Let habitual drunkards be required to abstain entirely from intoxicating liquor, because moderate use is morally impossible for them.

On the use of chloroform, morphine, etc., consult the treatise on charity toward oneself.

[1] Societies of this kind have more than once been approved by the Holy See and enriched with indulgences (cf. *Acta Apostolicae Sedis*, 6 May 1914; 12 June 1914).

§ VI. On Anger

323 **I. Notion.** Anger is the inordinate appetite of vengeance. It is opposed to meekness. According to St. Thomas (II-II, q. 158, aa. 2 and 3), the inordinateness can be: 1. on the part of the object, as if you desire vengeance plainly unjust, or greater than is just, or to be inflicted by private authority, or to be inflicted from hatred, and not for the due end of preserving justice and correcting fault; 2. on the part of the manner of becoming angry, when someone either inwardly blazes up too much or outwardly discloses anger too much (St. Alphonsus, V, 79). "If vengeance is desired ordinately, it is not the sin of anger: as when superiors are angry at the faults of subjects, and punish or avenge them" (St. Alphonsus, cited place).

324 **II. Morality.** 1. Anger inordinate on the part of the object is mortal from its genus; this is clear first from Sacred Scripture, according to which anger excludes from heaven;[1] then from the fact that it is opposed to charity or even to justice (St. Thomas, II-II, q. 158, a. 3; St. Alphonsus, V, 79).

2. Anger inordinate on the part of the manner is venial, as is every inordinate use of a licit thing. "It can nevertheless become mortal by accident, as if blasphemy or cursing is added" (St. Alphonsus, cited place; St. Thomas, cited place).

[1] Gal. 5:20-21. The printed note at this point appears to be misplaced; the Peter/Luke citations printed near the same marker belong to the following remedy on Christ's meekness.

325 **III. The daughters of anger are:**

1. **In the heart:** indignation; and swelling of mind, by which someone morosely devises diverse ways of vengeance and by these thoughts swells up his soul.
2. **In the mouth:** shouting, insult, blasphemy, cursing.
3. **In deed:** quarrel and fights (St. Thomas, II-II, q. 158, a. 7; St. Alphonsus, V, 80-83).

326 **IV. Remedies of anger:** 1. Consider the meekness of Christ.[1] 2. Weigh that you almost always repent of what you have said or done when angry.[2] 3. Accustom yourself to resist at once the rising movement, and abstain from acting and speaking until anger has cooled.[3]

[1] 1 Pet. 2:23; Luke 23:34; Matt. 11:29.

[2] Hence the saying: An angry man, when he has returned to himself, is angry with himself.

[3] Cf. Sweens, *Theologia moralis fundamentalis*, n. 979.

§ VII. On Sloth

327 **I. Notion.** Sloth is twofold, one universal, the other special. Sloth taken universally is sadness concerning a human spiritual good - i.e., concerning cultivating virtue or fulfilling precepts - insofar as it is laborious. Sloth accepted in this way is not a special sin, but is one and the same with the violation of the virtue or precept which flows from it. Sloth taken specially, or insofar as it is a capital

vice, is sadness concerning a divine spiritual good pertaining to us, insofar as it is to be obtained through difficult acts. Under the name of divine good come grace, or divine friendship, beatitude, and the means of attaining them (St. Thomas, II-II, q. 35, a. 2; St. Alphonsus, V, 84).

328 **II. Morality.** Sloth, namely the capital vice, is a mortal sin, because it is repugnant to the charity of God, or involves contempt for divine friendship and beatitude (St. Thomas, II-II, q. 35, a. 3; St. Alphonsus, cited place). Nevertheless, on account of defect of full consent, it is often only venial.

329 **III. The daughters of sloth are:** 1. "malice, by which someone hates spiritual goods,... 2. faint-heartedness and despair of salvation,... 3. rancor, by which those who lead one to spiritual things are wearisome; 4. torpor, when good things are done without due fervor; 5. wandering of mind, by which someone wanders in the exercise of spiritual things" (St. Alphonsus, V, 84).

330 **IV. Remedies of sloth.** Weigh: 1. what Christ and His saints have done;[1] 2. vigorously undertake good works; 3. from time to time withdraw into spiritual retreat.

[1] Rom. 12:11.

Scholion. On Imperfections

331 **I. Notion.** Imperfection is sometimes taken for a wholly involuntary transgression of a precept, such as involuntary distractions during prayer, involuntary excesses in indignation, jesting, laughter, etc. Now although these things do not contain sin, nor can all of them be avoided, nevertheless let us strive to lessen them.

Imperfection by force of the word is the absence of some perfection. It is distinguished as negative and positive. Negative imperfection is the mere absence of perfection; positive imperfection, which is also called privation, is the absence or lack of a perfection which it is fitting should be present in someone, and it is had when someone deliberately chooses the less perfect, according to what was said in n. 213.

332 **II. Morality.** 1. Negative imperfection - for instance, lack of the holiness of the Blessed Virgin Mary - as is clear, is not sin.

2. In what respect positive imperfection is sin we explained in n. 213.

Treatise III. On Those Things which Dispose Toward Human Acts, or on Habits

333 **I.** The name habit is said to be derived from the verb *to have*, insofar as by this verb is indicated the manner in which something has itself in itself, either well or badly. A habit can be defined: **A quality stable of itself, by which a subject is disposed well or badly, either according to itself or in order to operation.** It is said:

1. **A quality stable of itself,** i.e., a quality by its nature difficult to move, since its subject is of the immaterial order; and thus it is distinguished from a disposition, "to which it belongs according to its proper nature that it be easily lost, because it has a changeable cause, as sickness and health do" (St. Thomas, I-II, q. 49, a. 2, ad 3).
2. **By which a subject is disposed well or badly,** i.e., according as the subject has a certain mode either fitting or unfitting to its nature.
3. **Either according to itself or in order to operation,** i.e., either according to its essence, and it is called an entitative habit; or according to its powers, and it is called an operative habit (St. Thomas, I-II, q. 49).

II. In what follows we shall discuss only operative habits. But since the things to be said about the habits of virtues are easily applied to habit as such, it is pleasing to abstain here from further investigation of habit, but to insert it into those things which we shall present concerning virtues in general. And thus it will happen that we avoid saying the same things twice, and that we bring greater light to the virtues themselves.

Moreover, there will not be a special discussion of bad habits, partly because enough has been said about them above, and partly again because many things to be said about the habits of virtues are easily applied to bad habits.

III. Good operative habits are virtues and the gifts of the Holy Spirit.

Hence:

Dissertation I. On Virtues

(St. Thomas, I-II, qq. 55-67; II-II, qq. 1-170; disputed questions *On Virtues in Common*; *On the Cardinal Virtues*; *In III Sent.*, dist. 33.)[1]

We shall speak first of virtues in general, then of virtues in particular.

[1] Cf. Cajetan, *In I-II*, qq. 55-67; *In II-II*, qq. 1-170; Suarez, *In I-II; In II-II, De virtutibus et peccatis*; Salmanticenses, *Cursus theologicus*, tract. XII, *De virtutibus*; Pegues, *Commentaire francais litteral de la Somme theologique*, vols. VII and VIII; Pesch, *Praelectiones dogmaticae*, vol. VIII, tract. I, *De virtutibus infusis in genere*; vol. IX, tract. I, *De virtutibus moralibus*; Billot, *De virtutibus infusis*; Schiffini, *Tractatus de virtutibus infusis*.

Part I. On Virtues in General

In order that full knowledge of virtues in general may be had, six chapters chiefly occur that must be elucidated: namely, the notion of virtues and their division, the subject in which they immediately inhere, the cause from which they take their origin, the manner by which they are increased or destroyed, their permanence in the other life, and their diverse properties.

Section I. On the Notion, Object, Division, and Specific Distinction of Virtues

334 **I. Notion of Virtue.** With respect to the etymology of the word, virtue seems to be derived from the word *force*. Now, as Aquinas teaches: "Force is said according as some thing, through the complete power which it has, can follow its impulse or motion" (*De virtutibus in communi*, a. 1); whence "virtue, according to the meaning of its name, designates the complement of a power," or "a certain perfection of a power" (St. Thomas, I-II, q. 55, a. 1).

"But the perfection of each thing is considered chiefly in order to its end; and the end of a power is act" (St. Thomas, cited place). Hence "the complement of a power is attended to according to this, that it receives complete operation" (St. Thomas, *De virtutibus in communi*, a. 1), or is best disposed for acting rightly and perfectly.

Although the word virtue, understood in this way, can be applied to every power of every creature, whether rational or irrational, by long usage it has been sanctioned that by the name virtue there is no longer designated that which perfectly disposes the power of an irrational creature to its operation, but only that which in such a way disposes the powers of man, insofar as he is a rational creature, or those powers of man by which he can elicit the best operation consonant with human nature as such, namely an honorable or morally good action. Therefore this human virtue, with which alone we must now deal, is defined: **An operative habit disposing one to act honorably.** It is said:

1. **Habit,** i.e., a stable disposition, not a passing inclination.
2. **Operative,** i.e., a stable disposition which perfects man not according to being, but in order to his operation.
3. **Disposing one to act honorably,** i.e., to act well in the moral order. For virtue is perfect when it renders not only the work good, but also the one working.

Note. Habits which perfect the intellect of man only in order to truth, and are called intellectual virtues, are not virtues simply, but only in a qualified sense, since they do not regard a morally good act. Such are wisdom, understanding or the habit of first principles, science, and art, or right reason about things to be made; but not prudence, which, although it is in the intellect, nevertheless does not perfect it in order to truth alone, but in order to the good to be pursued by the will, and therefore is virtue simply. Intellectual virtues do not pertain to the object of this treatise; hence we shall scarcely speak further of them.

335 **II. Object of Virtue.** The object is distinguished as twofold, material and formal. The material is called that about which the virtue is occupied; and it is twofold, remote and proximate, according as the virtue regards it remotely or proximately. The formal object is the reason under which the proximate material object is considered, or the motive on account of which the said object is chosen. Thus, for example, the remote material object of justice is a thing owed to another according to

equality; the proximate material object is the actions which are prescribed by reason of the thing owed to another according to equality; the formal object is the very notion of debt.

336 **III. Division of Virtues.** Virtues are distinguished:

1. **By reason of origin, into infused and acquired.** Infused virtue is that which is infused by God Himself, without us effecting it; it can be either per se or per accidens infused. It is called per se infused when as to its essence it is supernatural, since it can have its origin only from God. It is called per accidens infused when as to its essence it is natural, and therefore could be acquired by natural acts, but in fact has been infused by God. Acquired virtue is a virtue which arises from the repetition of acts.
2. **By reason of principle, into natural and supernatural.** Natural virtue is a virtue which proceeds from a natural principle and tends toward a natural end. Supernatural virtue is a virtue which proceeds from a supernatural principle and tends toward a supernatural end.
3. **By reason of perfection, into formed and unformed.** Formed is said of that virtue which is joined to charity and informed by it. Unformed is said of a virtue which is in a subject lacking charity, and which therefore is not informed by it.
4. **By reason of object, into theological and moral.** Theological virtue is an infused and supernatural virtue whose immediate material object, at least principal, is God Himself, as He is the author and end of the supernatural order, and whose formal object is God Himself or His attributes. Moral virtue is that whose material object regards the honorable good of an intermediate end, and whose formal object is the conformity of this honorable good with the rule of right reason. If the honorable good regards a natural intermediate end, and its conformity is regulated according to natural principles, it is a natural moral virtue; on the contrary, if it regards a supernatural intermediate end, and its conformity is regulated according to supernatural principles, it is a supernatural moral virtue.
5. **By reason of degree, into common and heroic virtues.** They are called common when they follow the ordinary mode of acting; heroic, when they surpass the ordinary mode of acting.

Note. Certain persons, extolling natural virtues beyond measure,[1] divide virtues into active and passive. They call, for example, zeal for souls, liberality, etc., active virtues; and, for example, obedience, patience, etc., passive virtues. They add that the former are more fitting to the present age, while the latter were better suited to past ages. Now the division into active and passive virtues is contrary to the very notion of virtue; for a virtue which is truly passive neither is nor can be, since the end of every virtue is act (St. Thomas, I-II, q. 55, a. 1). But what they add, that active virtues are more fitting to the present age and passive virtues to a past age, is contrary to the Evangelical Spirit: "Christ is the teacher and exemplar of all holiness; to His rule it is necessary that all should be conformed, as many as desire to be inserted into the seats of the blessed. Now Christ has not changed as the ages have progressed, but is the same yesterday and today and forever. Therefore to men of all ages belongs that saying: Learn from Me, for I am meek and humble of heart[2]... and in every age the Apostle's saying is valid: those who are Christ's have crucified their flesh with its vices and concupiscences."[3]

[1] This is the principal error of the system which by some is indicated, less happily, by the general name Americanism; it rests on the false supposition that supernatural virtue would stand in the way of virtue which perfects the natural powers of man, whether in order to himself or in order to society. But grace does not destroy nature; it perfects it. Cf. Letter of Leo XIII to the Archbishop of Baltimore, 22 January 1899 (*Acta Leonis XIII*, XIX, p. 13).

[2] Matt. 11:29.

[3] Gal. 5:24; cited Letter of Leo XIII.

337 **IV. Specific Distinction of Virtues.** This is to be taken from the specific distinction of formal objects. For specific distinction must be drawn from the specific distinction of the honorable good which virtue is apt to attain. But the specific distinction of the honorable good depends on the formal object, or on the reason under which the material object is attained. Thus, for example, the three theological virtues, whose material object is God, are specifically distinguished because their formal objects, or the reasons under which they regard God, are specifically distinct.

Note. Acts of virtues are distinguished into elicited and commanded acts. An act is called elicited if it is immediately elicited by a certain virtue. But it is called commanded when it is not immediately elicited by that virtue to which, as commanded, it is ascribed, but by another, by force of the one commanding. Thus, for example, if someone, moved by charity toward God, elicits an act of abstinence, this act is an elicited act of the virtue of abstinence, and a commanded act of the virtue of charity.[1]

[1] Cf. St. Thomas, *In III Sent.*, dist. 23, q. 2, a. 4, sol. 3; Salmanticenses, *De virtutibus*, disp. 2, dub. 1, n. 8 (tract. 6, p. 241).

Section II. On the Subject of Inherence of Virtues

338 **I.** In asking about the subject of inherence of virtues, we inquire which powers of the soul can be perfected by virtues; for virtues are in their subject as perfecting accidents. I said the powers of the soul; for from the notion of virtues handed down, it is easily clear that their proximate subject of inherence is not the soul itself, but its powers. For virtue imports the perfection of a power; and perfection is in that of which it is the perfection (St. Thomas, I-II, q. 56, a. 1). Therefore, just as sanctifying grace, which is an entitative habit, inheres in the soul itself, so virtues, which are operative habits, have the powers of the soul as their proximate subject of inherence.

Now it is clear that the intellect alone is the subject of intellectual virtues, since these regard only truth, i.e., the object of the intellect alone. Hence it remains to inquire which powers can be the subject of virtues strictly so called. Now only those powers can be the subject of these virtues which both consummate the honorable good, i.e., actively concur in constituting it, and in their activity are not determined to that good. For powers which either do not consummate the honorable good, or are determined to it, cannot be perfected by virtues.

Hence the subjects of inherence of virtues are:

1. **The will.** That the will consummates the honorable good is clear in itself. Moreover, although the will by reason of its power is determined to good in general and to its own good, nevertheless it is not determined to the good owed to another; therefore it can be perfected by virtues which render it capable of desiring the due good promptly, uniformly, and delightfully (St. Thomas, I-II, q. 56, a. 6).

2. **The intellect, both speculative and practical.**

a) The speculative intellect, which under the motion of the will, or freely, tends toward truth, manifestly consummates the honorable good. Moreover, although the said intellect can attain truth, nevertheless it is not determined to this, but has itself indifferently either to truth or to falsity;

therefore it can be perfected by virtues by which it may uniformly, promptly, and delightfully attain truth.

b) The practical intellect, which under the motion of the will judges what must be done in a particular case, likewise, as is clear, consummates the honorable good. Moreover, since it is not determined to judging rightly, it can be perfected by virtues by which it may uniformly, promptly, and delightfully form a right judgment (St. Thomas, I-II, q. 56, a. 3).

3. **The sensitive appetite, both irascible and concupiscible,** which under the motion of the will have themselves rightly toward sensible good, likewise consummate the honorable good. Moreover, since of themselves they are often opposed to reason, they can be perfected by virtues by which they may uniformly, promptly, and delightfully conform themselves to reason (St. Thomas, I-II, q. 56, a. 5).

But the other powers of the soul, for example, the apprehensive internal senses, such as imagination, memory, and common sense, are not the subject of virtues, because they do not consummate the honorable good, but rather prepare for the acts of the powers which are consummative of that good (cf. St. Thomas, I-II, q. 56, a. 5).

II. Which virtues the enumerated powers are in fact the subject of will be stated in its own place.

Section III. On the Origin of Virtues

There is one origin for natural virtues and another for supernatural virtues; therefore each must be discussed separately.

339 **I. Origin of Natural Virtues.** Natural virtues are generated from the repetition of acts, whence they are also called acquired. For upon powers which by their nature are not determined to one mode of acting, through individual acts, at least acts proportionally equal or superior in intensity, there is impressed a certain inclination toward this mode of acting. This inclination, by repetition of acts, as experience establishes, passes into a stable disposition or habit; and the more intensely these acts are placed, the more quickly stability of inclination arises from them.

From this origin of natural virtues it becomes clear of itself that dispositions which are often born with a man, and which render him inclinable to this or that act, for example, of mercy, by no means deserve the name of virtues. For virtue is a stable disposition arisen from the repetition of honorable acts, or acts which have been placed according to the norm of right reason; but those dispositions are not subject to reason. They can, however, be called virtues inchoatively, insofar as the soul is thus more disposed to acquire similar virtues for itself.

340 **II. Origin of Supernatural Virtues.** 1. Supernatural virtues are generated by infusion from God; whence they are also called infused. Now:

a) With regard to the theological virtues, this doctrine according to some must be held as of faith; according to others, it is so certain that the contrary must be held erroneous. It is proved: 1. from the Council of Trent, which teaches thus: "In this justification, together with the remission of sins, man receives all these gifts infused at the same time through Jesus Christ, into whom he is inserted: faith, hope, and charity."[1] Now it is clear from the context that the Council intends not acts of faith, hope, and charity, but habits, since it speaks in the same way of these as of sanctifying grace. It is proved: 2. from the Catechism of Trent, which, speaking of grace infused in Baptism, adds: "To this is added the

most noble company of all the virtues, which are divinely infused into the soul together with grace."[2] 3. It is confirmed by reason. For all supernatural gifts wholly exceed the natural faculties of man; hence they can be bestowed on us by God alone (cf. St. Thomas, I-II, q. 63, a. 3; *De virtutibus in communi*, a. 10).

b) As regards moral virtues, that they too have their origin only from divine infusion is taught by the more common and more probable opinion, against Scotus and the Scotists. This opinion is founded on the mind of the Church. For the Council of Vienne,[3] choosing as the more probable the opinion teaching that even in little children grace and virtues are infused in Baptism as to habit, openly supposes this opinion. For that by those virtues are understood not only theological virtues but also moral virtues is clear from the fact that the Council chooses that opinion which in those times theologians admitted with St. Thomas against the Scotists, namely, that moral virtues also are infused, and which Innocent III had mentioned in his own time but had left undecided. Now Innocent says that this opinion maintains that "faith and charity and the other virtues" are infused into little children. There is added the authority of the Catechism of Trent, which teaches: "To this [sanctifying grace] is added the most noble company of all the virtues, which are divinely infused into the soul together with grace."[4] It then calls them "an abundance of virtues," and again "so great an abundance of virtues." But these things cannot rightly be said of the three theological virtues alone. Moreover Leo XIII, in the Letter to the Archbishop of Baltimore,[5] openly distinguishes supernatural moral virtues from natural acquired virtues; once this is posited, they must be called infused and not acquired. The proposed opinion is confirmed by reason. For the order of grace is more perfect than the order of nature, and perfects it. Now in the order of nature man is perfected in operations concerning intermediate ends by natural moral virtues; therefore, a fortiori, in the order of grace by supernatural moral virtues.

2. Once the doctrine is supposed that all supernatural virtues take their origin in souls from infusion, it is further investigated at what time this infusion takes place. Now:

a) All agree that the virtue of charity is infused together with sanctifying grace.

b) With regard to supernatural moral virtues, theologians who teach that they arise in the soul by infusion also affirm that they are always infused together with sanctifying grace.

c) As regards the virtues of faith and hope, a distinction must be made between little children and adults. For little children all assign the infusion of sanctifying grace as the moment of infusion. For adults, different authors establish different moments of their infusion.

alpha) Some teach that the virtues of faith and hope are infused by God into the souls of adults as soon as they elicit, by the help of actual grace, acts of these virtues; therefore even before justification itself. On the one hand they say that these virtues can exist without sanctifying grace, as is clear; on the other hand the infusion of these virtues seems more fitting if the soul is sufficiently disposed by elicited acts of these virtues.

beta) Others teach that these virtues also are always infused at the moment of justification, with one case excepted, namely when the sacrament of Baptism is received validly but unformed; because the sacraments, they teach, produce their effect insofar as no obstacle is opposed to it. Now just as adherence to mortal sin is not an obstacle to the permanence of these virtues, so neither does it seem to be an obstacle to their infusion in valid but unformed Baptism.

gamma) Finally others, and indeed more probably, say that the infusion of these virtues takes place only together with sanctifying grace, as was said about the virtue of charity. This opinion is defended by St. Thomas (III, q. 69, a. 4), and is proved from the Council of Trent, which teaches that for adults, in order to obtain justice, a disposition is required which also contains faith;[6] and nevertheless these adults receive the virtue of faith and hope in justification. This is also clear from the same Council, which declares: "Whence in justification itself, together with the remission of sins, man receives all these things infused at the same time through Jesus Christ, into whom he is inserted: faith, hope, and charity."[7] Therefore God had not yet infused the enumerated virtues into these adults already believing before Baptism. This opinion is clear besides from the authority of Clement V in the Council of Vienne,[8] and is supported by reason. For it seems improbable that the powers of the soul should be elevated earlier by a habitual supernatural quality than the very essence of the soul has been enriched with sanctifying grace, and this all the more since all supernatural virtues must more probably be said to result from sanctifying grace by a physical emanation (St. Thomas, III, q. 62, a. 2).

Note. Although in justification the sinner receives together with grace all infused virtues, nevertheless he does not at once lose acquired bad habits, as experience makes clear. The reason is that infused virtues do indeed complete the elective powers of acts, and thus bestow facility of acts per se and intrinsic facility, but not extrinsic facility, which is had from the removal of impediments and depraved dispositions. Only acquired virtue does that; yet not formally and reduplicatively as virtue, as if it were formally the removal of impediments and indispositions, but only concomitantly, because such virtue is generated by the repetition of acts, and thus by force of these acts depraved dispositions and those impediments are taken away. Moreover, infused virtues are not directly contrary to vices, since they are not of the same order, nor do they exist in the same subject taken formally.

[1] Session 6, chapter 7.

[2] Part II, chapter 2, q. 39.

[3] Denzinger-Bannwart, n. 483.

[4] Part II, chapter 2, q. 39.

[5] 22 January 1899.

[6] Session 6, chapters 5 and 6.

[7] Cited place, chapter 6.

[8] Denzinger-Bannwart, n. 483.

Section IV. On the Increase of Virtues and on their Diminution and Destruction

Virtues, whether acquired or infused, are not immutable, but can either be increased, diminished, or destroyed; therefore we shall say something briefly about each of these.

341 **I. Increase of Virtues.** 1. **Notion.** The increase of some habit or quality is either extensive or intensive. Extensive increase is taken in order either to the parts of the subject in which it exists, as, for example, when heat in the hand is extended to the feet; or to the parts of the object, as, for example, when knowledge is extended from fifty conclusions to sixty. Intensive increase is taken in order to the same indivisible subject. Now, speaking of the increase of virtues, we intend intensive increase. Concerning the essence of this intensive increase, authors do not agree, and there are chiefly two opinions about it. Suarez with his followers explains the essence of the intensive increase of some

habit by the addition of degree to degree; some think these degrees are of the same nature, others of a different nature. But in this opinion it is difficult to preserve the simplicity of an immaterial habit. Hence the opinion which is that of St. Thomas and his school seems much more reasonable; according to them, the increase of a habit takes place through the greater rooting in the subject of the same form produced from the beginning: "It must be said that the infusion of charity imports a change according to having charity and not having it; and therefore something must arrive which was not there before. But the increase of charity imports a change according to more and less, and therefore it is not necessary that something be present which was not present before, but that what was previously present less be present more" (St. Thomas, *De virtutibus in communi*, aa. 11 and 12; I-II, q. 52).

2. **Mode.** Just as there is one origin of natural virtues and another of supernatural virtues, so also the mode of their increase is diverse.

a) Natural virtues are increased by acts whose "intensity is proportionally equal to the intensity of the habit, or even exceeds it... But if the intensity of the act proportionally falls short of the intensity of the habit, such an act does not dispose to the increase of the habit, but rather to its diminution" (St. Thomas, I-II, q. 52, a. 3).

b) Supernatural virtues are increased by God alone, and indeed by reason of the increase of sanctifying grace, from which infused virtues more probably physically emanate. Therefore, because the just man by each individual supernatural good work done in God's service certainly merits a right to an increase of sanctifying grace, even if the works are of less intensity than the habit of virtue, and more probably also gains an actual increase, therefore he also certainly merits a right to an increase of supernatural virtues, and more probably also an actual increase of them. This increase is added not only to the virtue by whose help the good work was placed, but equally to all infused virtues, both theological and moral. Hence just as all are infused together with sanctifying grace, so together with the increase of this grace all are increased. It does not stand in the way of this doctrine that in various saints certain virtues shine externally more than others. For this arises either from greater habituation in eliciting acts of such virtues, or from a better disposition of nature, or finally from the grace of the Holy Spirit, who divides to each as He wills and impels toward more frequent operations of such virtues (St. Thomas, I-II, q. 53, a. 3).

It should be noted that by the repetition of supernatural acts in a just agent, besides the increase of supernatural virtues by reason of the increase of sanctifying grace, there also arises a certain natural habit with respect to those determined acts; this habit, or acquired faculty of acting, destroys the opposite natural habit and assists the agent by removing difficulties.

342 **II. Diminution of Virtues.** 1. Natural virtues are diminished directly and indirectly. Directly, by placing acts contrary to the virtues, by which, as is clear, the stability of the disposition is diminished; indirectly, by ceasing from act. For St. Thomas says: "When someone does not use the habit of virtue for moderating his passions or proper operations, it is necessary that many passions and operations arise beyond the mode of virtue, from the inclination of the sensitive appetite and from other things which move externally; whence virtue is corrupted or diminished through cessation from act" (St. Thomas, I-II, q. 53, a. 3). Indeed, as we noted above, acts less intense than the habit already in some measure dispose to diminution.

2. Supernatural virtues are not diminished directly but only indirectly. Not directly, for this diminution would occur either effectively, through contrary acts; which cannot happen, since a

thing is made and diminished by the same one, and therefore God alone could effect this; or it would occur on account of demerit; which also cannot happen, since mortal sin removes the infused virtues to which it is contrary, while venial sin is not a demeritorious cause of the diminution of grace, and therefore not of virtues either. Nevertheless they are diminished indirectly, insofar as the acts of infused virtues are neglected, by which negligence, because of rising passions, man is disposed to mortal sin, by which the infused virtues to which it is contrary are removed. Hence St. Alphonsus rightly says, "Each virtue lives by its acts" (II, 6).

343 **III. Destruction of Virtues.** 1. Natural virtues are destroyed directly and indirectly. Directly, by the repetition of acts which are contrary to the virtues, and by which there arise bad habits which destroy the opposed good habits. Indirectly, in the same way as was said above concerning diminution.

2. With regard to supernatural virtues a distinction must be made:

a) The virtue of charity and all moral virtues are destroyed by any mortal sin whatever. With respect to charity this is clear from the contrary opposition which exists between charity and any mortal sin whatever. For charity is a union of friendship, by which man is actually turned or habitually turned toward God as the ultimate end; mortal sin actually and habitually turns man away from God as the ultimate end. As regards supernatural moral virtues, they are habits which regard intermediate ends, or ends which necessarily involve a relation to the ultimate supernatural end; therefore, when the habitual supernatural relation to the ultimate supernatural end has been lost, habitual supernatural relations to intermediate ends cannot remain.

b) The said reason of destruction, which is present in any mortal sin, does not touch the supernatural virtues of faith and hope; therefore these virtues are not destroyed by every mortal sin, but only by sins directly or indirectly contrary to them: faith, namely, by the sin of heresy; hope by the sin of despair, heresy, and presumption joined with heresy or infidelity (nn. 357, 362). With regard to faith this is clear from the Council of Trent;[1] with regard to hope theologians commonly deduce it from the analogy of faith and hope (cf. St. Thomas, I-II, q. 65, a. 4).

[1] Session 6, chapter 15 and canon 28.

Section V. On the Permanence of Virtues After This Life

After the origin, increase, diminution, and destruction in this life of all virtues, both natural and supernatural, have been considered, certain things remain to be explained concerning their permanence after this life. To hand these down in order, the discussion will first be about the permanence of virtues with respect to the Blessed, then with respect to the damned, and finally with respect to those being purified.

344 **I. Permanence of Virtues in the Blessed.** As a general rule it can be established: in the blessed there remain all virtues which are, and insofar as they are, compossible with their state of beatitude. For God, as most highly loving the blessed, does not take away their perfections; now that virtues are perfections is clearer than light. Hence we conclude:

1. Among the theological virtues, in the blessed there remains only charity, and this most perfect. For this follows of itself from the perfect intellectual apprehension of God. But the virtues of faith and hope do not remain. Faith, as such, concerns things not seen and cannot be combined with the light of glory; and hope, since it is occupied around things not possessed, cannot be combined with the apprehension of God itself. And since in the beatitude of the soul the future glorification of the

body is already possessed as in an absolute cause, the act which the blessed place with respect to the glorification of the body is not an act of hope, but properly of desire; hence for this reason the virtue of hope is not required.

2. With regard to moral virtues it must be said that in the blessed they do not remain according to their material being. "For in the future life there will not have place concupiscences and delights of foods and venereal things; nor fears and daring concerning dangers of death; nor distributions and communications of things which come into the use of the present life." Nevertheless they remain according to their formal being, or according to their being in accord with the order of reason, "insofar as the reason of each one will be most right concerning those things which pertain to him according to that state, and the appetitive power will be moved wholly according to the order of reason in those things which pertain to that state; whence Augustine says that prudence will be there without any danger of error; fortitude without the trouble of enduring evils; temperance without the rebellion of passions; so that it belongs to prudence to prefer or equal no good to God, to fortitude to adhere to Him most firmly, to temperance to be delighted by no harmful defect. Concerning justice, however, it is more manifest what act it will have there, namely, to be subject to God; because even in this life it pertains to justice to be subject to a superior" (St. Thomas, I-II, q. 67, a. 1). It must be observed, however, that before the day of resurrection moral virtues, such as fortitude and temperance, which have the sensitive appetite as their immediate subject of inherence, do not remain actually in the separated soul, but only in the root, insofar as radically they are in the intellect and the supernatural will; but after the resurrection they will exist actually, just like the other virtues (St. Thomas, *De virtutibus in communi*, q. 1, a. 5, ad 3; I-II, q. 67, a. 1).

345 **II. Permanence of Virtues in the Damned.** No virtue remains in them, neither natural nor supernatural. For they are so confirmed in evil that at least there is in them a strictly so called moral impossibility of ever placing a naturally honorable act; and certainly there is a physical impossibility with respect to any supernatural act, since grace is entirely lacking. Now a state of soul so perverse, in which no honorable act at all, either supernatural or natural, is ever admitted, certainly does not admit a habit which inclines solely to honorableness.

346 **III. Permanence of Virtues in Souls Being Purified.** Since they are in the state of sanctifying grace, they have charity and all moral virtues in that manner in which the Blessed have them before the day of resurrection. Moreover faith and hope remain in them, since they still lack the light of glory, which removes faith in the Blessed, and they still tend toward the fruition of God, who in prison has remained for them a good absent and arduous.

Section VI. On the Properties of Virtues

Three properties of virtues are chiefly enumerated: their being in a mean, their mutual connection, and their inequality. Concerning each property these things are noted:

347 **I. The Being of Virtues in a Mean.** 1. **Notion.** "The good of some thing," says St. Thomas, "consists in a mean, according as it is conformed to a rule or measure which can be transcended and fallen short of" (St. Thomas, I-II, q. 64, a. 3). Therefore the mean of virtue is the conformity of the act of virtue with its rule.

2. **Division.** The mean of virtues is twofold: either determined from the nature of the thing, or to be determined by reason. The first regards exterior things, and indeed their objective equality;

therefore it is the same mean for all. The other regards interior passions, "in which the right cannot be established in the same way, because men have themselves differently toward passions" (St. Thomas, I-II, q. 64, a. 2); hence this mean is not the same for all.

3. **Existence.** a) Theological virtues, whose measure is God Himself, do not per se have being in a mean; for no one can believe God too much, hope in Him too much, or love Him too much. I say per se, for per accidens they have being in a mean, namely on our part, "because although we cannot be borne toward God as much as we ought, nevertheless we ought to be borne toward Him by believing, hoping, and loving according to the measure of our condition" (St. Thomas, I-II, q. 64, a. 4).

b) Moral virtues, whose rule is right reason, per se have being in a mean; for acts of moral virtues cannot be conformed to right reason except by avoiding defect from it or excess beyond it. But since justice regards exterior things, the mean of reason in this virtue necessarily coincides with the mean of the thing, and therefore is the same mean for all. The contrary occurs in the remaining moral virtues, whose mean must be determined by right reason according to diverse circumstances.

348 **II. Mutual Connection of Virtues.** There is one mutual connection of acquired virtues, another of infused virtues; there is also one connection of acquired virtues if they are considered in a perfect state, another in an imperfect state.

1. Acquired virtues in a perfect state are so connected among themselves that one cannot exist without the others. For the perfection of acquired virtues, as moral, depends on perfect prudence, since prudence must establish the mean in any given case; therefore, when perfect prudence is absent, the other acquired virtues are not perfectly present either. St. Augustine excellently illustrates this, saying: "Virtues which are in the human soul, although each is understood in one way or another, are nevertheless in no way separated from one another, so that whoever are equal, for example, in fortitude, are equal also in prudence, temperance, and justice. For if you say that these men are equal in fortitude, but that one excels in prudence, it follows that the fortitude of this one is less prudent, and by this very fact they are not equal in fortitude, since the fortitude of the other is more prudent. And thus you will find concerning the other virtues, if you run through all of them by the same consideration."[1]

2. Acquired virtues in an imperfect state can exist one without the others. For someone can elicit more frequent acts of some virtue while neglecting acts of other virtues; but by acting thus he acquires for himself the virtue corresponding to the acts frequently placed. Therefore St. Thomas says: "We see someone... from some custom to be prompt for works of liberality, who nevertheless is not prompt for works of chastity" (St. Thomas, I-II, q. 65, a. 1).

3. Infused theological virtues are so connected among themselves that charity cannot exist without faith and hope; but faith and hope can indeed exist without charity. The first is clear from this, that charity is infused only with sanctifying grace; and the virtues of faith and hope always coexist with sanctifying grace. The second, with regard to the virtue of faith, is taught by the Council of Trent;[2] moreover, when the virtue of faith remains, there also remains the foundation of hope, which is not destroyed by every mortal sin, since mortal sin as such is opposed only to charity. Nor should it be said that faith and hope perish for this reason, that together with charity sanctifying grace is lost, which is the root of the origin of faith and hope. For even though it is true that faith and hope take their origin from sanctifying grace, nevertheless, once they have arisen, they no longer inhere in

sanctifying grace as in a subject; rather, their immediate subject of inherence is the powers of the soul. Therefore the loss of sanctifying grace is not the reason for the loss of these virtues.

4. Infused moral virtues: 1. are so connected among themselves that one cannot exist without another; for all proceed equally from sanctifying grace and regard their intermediate ends on account of the ultimate end. 2. Infused moral virtues are so connected with charity that they cannot exist without it; for when man's habitual relation to the ultimate supernatural end perishes, habitual supernatural relations to intermediate ends also perish.

[1] Augustine, *De Trinitate*, bk. 6, c. 4, n. 6; cf. Salmanticenses, *De virtutibus*, disp. 4, dub. 1, whole (t. 6, p. 374 ff.).

[2] Session 6, canon 28.

349 **III. Inequality of Virtues.** By inequality of virtues is understood their diverse moral goodness. Now the moral goodness of virtues in human acts is attended to according as they are regulated by the due rule; the higher the rule, the nobler the moral goodness. But if diverse virtues are regulated by the same rule, the magnitude of their moral goodness must be measured by their diverse nearness to this rule; the nearer some virtue is to the rule, the greater its goodness. From these things the following conclusions result:

1. Theological virtues surpass moral virtues in dignity, because their rule, which is God Himself, surpasses in dignity right reason, which is the rule of moral virtues. But among theological virtues, charity surpasses in dignity, since it is nearer to the rule. Now St. Thomas says: "That which is through itself is greater than that which is through another. But faith and hope indeed attain God according as from Him there comes to us either knowledge of truth or acquisition of good; but charity attains God Himself, so that it rests in Him, not so that something may come to us from Him; and therefore charity is more excellent than faith and hope" (St. Thomas, II-II, q. 23, a. 6).
2. Among moral virtues, which are all regulated by the same rule, namely right reason, whether illuminated only by natural light or by supernatural light, prudence surpasses in dignity, because it perfects reason itself and attains it according to itself. Then follows justice, as residing in the will, which is nearer to reason and has as its object a good proposed by reason. Fortitude follows next; for it resides in the irascible appetite, which acts according to the cogitative power. Finally comes temperance, since as its subject of inherence it has the concupiscible appetite, which acts according to imagination (St. Thomas, I-II, q. 66, aa. 1 and 4; II-II, q. 123, a. 12).

Scholion. On the Relation Between Natural or Acquired Virtues and Supernatural Virtues

350 **I. Natural and supernatural virtues differ very greatly:**

1. By reason of origin, as was explained in nn. 339, 340.
2. By reason of end, because natural virtues tend toward a natural end, supernatural virtues toward a supernatural end.
3. By reason of motive or formal object; for the motive of natural virtue is the honorable, insofar as it stands under natural reason; but the motive of supernatural virtue is the honorable, insofar as it stands under reason illumined by faith.
4. By reason of material object, insofar as supernatural virtue regards, besides the objects of natural virtue, many other things which have been established by God by positive law.

5. By reason of increase, diminution, and destruction, as we have explained.

6. By reason of the powers required for exercise; for the exercise of natural virtues the natural powers of themselves suffice; for the exercise of supernatural virtues grace is required.

7. By reason of merit, insofar as the just man, by an act of supernatural virtue, merits an increase of sanctifying grace and glory; for these things natural virtue is unfit.

351 **II. Natural virtues assist supernatural virtues, insofar as by repetition of acts they remove contrary dispositions, and in that sense conduce to the exercise of supernatural virtues (St. Thomas, I-II, q. 65, a. 3, ad 2).**[1]

[1] With regard to the supernatural virtues of fortitude and temperance, there is dispute about the subject of inherence. Cf. Potters, *Compendium Philosophiae moralis*, n. 293 sq., and the dogmatic theologians.

Part II. On Virtues in Particular

After the things that occurred to be said concerning virtues in general have been completed, we now pass to those things which must be demonstrated concerning them in particular. By reason of object, as we indicated at the beginning, virtues are divided into theological and moral virtues; therefore Part II contains two chapters, the one which treats theological virtues, the other which deals with moral virtues.

Section I. On Theological Virtues

Chapter I. On Theological Virtues in General

352 **I. Notion.** The principles, as St. Thomas teaches, by which man is ordered to supernatural beatitude are called theological virtues, "both because they have God as object, insofar as by them we are rightly ordered to God; and because they are infused into us by God alone; and because only by divine revelation in Sacred Scripture are virtues of this kind handed down" (St. Thomas, I-II, q. 62, a. 1).

Therefore for a threefold reason these principles are called theological virtues: by reason of object, by reason of cause, and by reason of cognition. The first reason, as being of greatest importance for our scope, will be explained briefly.

In order that a virtue, by reason of its object, may claim for itself as proper the name theological virtue, it must on the one hand have God Himself as its immediate material object. Otherwise moral virtues, which mediately, i.e., by means of an intermediate end, also attain God as the ultimate end, would have to be called by an equal name. From this, however, it does not follow that God must be the adequate material object, but only the primary; for the things which are attained by reason of the primary object are reduced as a secondary object to the same virtue. Thus, for example, one's neighbor must be called the secondary object of the virtue of charity, since he is attained by reason of the primary object, which is God.

On the other hand, God Himself also, or His perfections, must constitute the formal object of theological virtue; for it belongs to the formal object to constitute a virtue in its species. Hence, in order to constitute some virtue in the species of theological virtue, God Himself or His divine attributes must be the formal object of that virtue.

From what has been said it follows that theological virtue is aptly defined: **A virtue whose immediate object, both material, at least principal, and formal, is God Himself as author and end of the supernatural order.**

353 **II. Number.** That the theological virtues are only three in number, namely faith, hope, and charity, the universal Church has always held as certain, and in this sense also interprets the words of the Apostle: "And now there remain faith, hope, charity, these three; but the greater of these is charity."[1] For no reason can be assigned why the Apostle enumerates these virtues as three distinct species of one genus, distinct from all other virtues, unless because these three are theological exclusively.[2] It is also confirmed by reason. For in order that man may arrive at the supernatural end, he must tend stably toward it by operations of intellect and will proportioned to this end. Now for this, three theological virtues are required: faith, namely, which perfects the intellect for knowing the

supernatural end; hope, which perfects the will for firmly desiring the same end as possible of attainment and perfective of the one desiring; and charity, which perfects the will for firmly desiring the aforesaid end as a good in itself, to which man must order himself and whatever else.[3]

[1] 1 Cor. 13:13.

[2] Cf. Origen, bk. 4, *Commentary on the Epistle to the Romans*, c. 4, n. 6; St. Augustine, sermon 27, n. 1; *Enchiridion*, c. 6, n. 1 and c. 9, n. 2, at the end; St. Gregory the Great, bk. 1, *Moralia*, c. 27, n. 38.

[3] Cf. Salmanticenses, commentary on I-II, q. 62, a. 3; Mazzella, nn. 43-44.

Chapter II. On Theological Virtues in Particular

Article I. On the Theological Virtue of Faith

In order that we may acquire full knowledge of this virtue, its notion, division, object, subject, and properties must be inspected.

354 **I. Notion of Faith.** Faith is a theological virtue inclining man to assent firmly to truths revealed by God, on account of the authority of God revealing. It is said:

1. **To assent firmly.** By this firmness "faith is distinguished from opinion, suspicion, and doubt, through which there is not a firm adherence of the intellect to something" (St. Thomas, II-II, q. 4, a. 1).
2. **On account of the authority of God revealing.** For this is the formal object of theological faith, by which it is distinguished both from science, which is assent on account of the intrinsic truth of the thing, and from human faith, by which we assent on account of the authority of man.

355 **II. Division of Faith.** Faith is divided:

1. **By reason of charity, into formed and unformed faith.** It is called formed if charity accompanies it; for charity, although it is not intrinsic to faith and therefore cannot be called its substantial or accidental form, nevertheless that which is left in faith from charity is intrinsic to faith. It is unformed when the virtue of faith is in a faithful subject lacking charity.
2. **By reason of object, into explicit and implicit faith.** Explicit faith is said to be that by which those things are believed which have been revealed in their proper terms; implicit faith, that by which revealed things are believed which are contained implicitly and formally in what is explicitly revealed.
3. **By reason of believers, into Catholic and theological or divine faith.** Catholic faith is said to be that which obliges all the faithful, since the object has been proposed by the Church with infallible authority as revealed. Theological or divine faith is that which obliges only those who perceive that the object has been revealed by God, when an infallible definition of the Church proposing it to all as revealed is lacking.

356 **III. Object of Faith.** 1. **Material object.** The material object of faith in general is all and only revealed truths. I say all and only revealed truths, because on the one hand only truths which have been spoken by God can be believed on account of the authority of God revealing; on the other hand, all truths spoken by God can be admitted on account of this authority, whether they have been

manifested by public revelation or, as seems altogether to be admitted against a few, by private revelation. Moreover, observe:

a) Revealed truths, or truths manifested by God, are said to be those which God has manifested either explicitly or implicitly formally. Now He has explicitly manifested those which He has revealed in their proper terms; He has implicitly formally manifested those which the human mind deduces by a merely explicative discourse from explicitly revealed truths. But if an illative discourse is required for the deduction of truths, the things so deduced are called implicitly virtually revealed, and since assent to these truths rests in our intellect, they cannot be believed by theological faith. When such conclusions are confirmed by the infallible magisterium of the Church, they must of course be admitted by irrevocable assent; but theologians dispute whether the assent then ought to be called an act of divine faith or of ecclesiastical faith. More probably it must be held to be an assent of ecclesiastical faith, because it immediately rests on the authority of the Church; nevertheless the assent is reduced to the habit of divine faith, since the authority of the Church has been revealed by God.

b) The material object of divine faith is twofold: primary, or that which the virtue of faith attains by reason of itself; and secondary, which the virtue of faith attains only by reason of the primary object.

The primary object is God Himself, the first truth in being. For the primary object of faith, since faith is a participation in divine cognition, is the same as the primary object of divine cognition. And the primary object of divine cognition is God Himself, as the first truth in being (St. Thomas, II-II, q. 171, a. 6).

The secondary object is constituted by all the other revealed things, since these have been manifested by God for this reason, that we may have a fuller knowledge of Him and a more fervent love toward Him.

2. **Formal object.** As concerns the formal object of the theological virtue of faith, it is of faith that the motive is the authority of God revealing. For the Vatican Council defined: "If anyone says that divine faith is not distinguished from natural knowledge about God and moral things, and that therefore it is not required for divine faith that revealed truth be believed on account of the authority of God revealing, let him be anathema."[1] Now:

a) The authority of God arises from His veracity and wisdom. This is clear both from the same Council, which teaches that by divine faith we believe on account of the authority of God Himself revealing, who can neither be deceived nor deceive,[2] and from reason, because the irrevocable assent of faith supposes in the one testifying that he absolutely knew the truth communicated and communicated it without falsity.

But if it is further investigated whether both essentially constitute the formal object, the answer must be given with a distinction. With regard to veracity, it must be said affirmatively. This is clear both from Sacred Scripture, which assigns the veracity of God as the motive of faith,[3] and also from reason; for the veracity of God makes the statement supremely credible, and into it the assent of theological faith is ultimately and formally resolved.

As regards wisdom, it is certain that it is required presuppositively and by connotation for constituting the formal reason which can deserve irrevocable assent; but it is not required for this formally and directly. For supreme veracity, such as divine veracity is, of itself imports absolute conformity both with the mind of the speaker and with the things spoken. If it did not import this absolute conformity,

veracity would not be supreme, since a veracity which always testified words conformed to things would be greater. From this it follows that wisdom does not essentially constitute the formal object of theological faith, but nevertheless concurs toward it as a condition without which not.

b) Revelation itself can be considered actively and passively. Active revelation consists in the very will of God to reveal, or is the act of will by which God orders His concepts to men. Passive revelation is the effect immediately produced by God for testifying to some truth, or is the act which manifests divine truth outwardly. Now it must more probably be said that active revelation, like veracity, essentially constitutes the formal object of theological faith. For the assent of faith is the conjunction of the intellect with the thing revealed, constituted by the formal object as by an efficient cause. Now the veracity of God taken simply abstracts from conjunction with the object to which the believer assents; therefore veracity alone cannot efficiently constitute the assent of the believer, but for this there is required veracity testifying to the truth. But this testification is formally constituted by active revelation. Therefore.

I say that it is formally constituted by active revelation; for by this revelation infinite truth enjoys veracity. Passive revelation, however, is necessary only to this extent, that the believer may be able to know that God has in fact ordered His concepts to him, i.e., to the believer, through active revelation. Therefore passive revelation does not enter essentially into the formal object of theological faith, but is a condition without which there is no act of it.

[1] Session 3, canon 2, on faith.

[2] Chapter 3, on faith.

[3] For example, 1 Thess. 2:13; 1 John 5:9 sq.

357 **IV. Subject of Faith.** The subject of some virtue is distinguished as twofold: the subject *by which* and partial, which is the power itself in which the virtue resides; and the subject *which* and total, which is the person himself who possesses some virtue. Now:

1. The subject *by which* and partial of theological faith is the intellect. This is clear from Sacred Scripture: "bringing every intellect into captivity unto the obedience of Christ."[1] It is also confirmed by reason: for theological faith is the principle of an act which is occupied around revealed truth; but an act of this kind is an intellective act; hence the habit of faith also resides in the intellect (St. Thomas, II-II, q. 4, a. 2). Although, however, the act of faith is an act of the intellect, nevertheless, in order that it take place, a prior motion of the will is required. For the proper terminus of the intellect is the vision of some truth; but this vision is not had in the act of faith, since that act is always placed on account of extrinsic authority. Therefore, in order that the intellect assent on account of this extrinsic authority, it is required that the will, piously affected by grace toward the object of faith, by a certain weight impressed on the intellect, draw it to firm and perfect assent (St. Thomas, *De veritate*, q. 14, a. 1).
2. The subject *which* and total of theological faith are: 1. all just wayfarers; for sanctifying grace is always joined with faith; and since the souls in purgatory, with respect to the beatific vision, are still on the way, they too are the subject "which" of faith; 2. all wayfaring sinners who nevertheless have not sinned directly against faith.[2] This is clear from the Council of Trent.[3] Those who are in no way wayfarers, or wayfarers who are formally heretics, lack faith. With regard to the Blessed, this is clear because they have vision; with regard to the damned, it follows from their impossibility of

tending toward the supernatural end; with regard to wayfarers who are formally heretics, it is clear from the Council of Trent.[4]

[1] 2 Cor. 10:5.

[2] Although by sins which are not directly against faith the formal object of faith is not destroyed, and therefore the sinner perpetrating such sins can still believe all revealed things, nevertheless, since all infused virtues flow from habitual grace as properties from a nature, when this is lacking, faith too ought of itself to be lacking. Therefore there is a special law, mercifully established by God, that the virtue of faith remains notwithstanding the loss of grace. But we can know the existence of such a law from revelation alone.

[3] Session 6, chapter 15 and canon 28.

[4] Session 6, chapter 15.

358 **V. Properties of Faith.** Five properties of faith are suitably assigned, namely truth, certitude, obscurity, liberty, and necessity. Although these properties immediately pertain to the act of faith, mediately, namely by means of the act, they are also predicated of the habit by whose help the act is placed. Therefore we wish to discuss them briefly here.

1. **Truth of faith** consists in this, that the act of faith essentially and necessarily is occupied around revealed truth; so that by force of this property, faith can never elicit an act regarding an estimated but not real revelation, whether this estimated revelation is in itself a truth or a falsity. That faith has this property is openly clear from the Council of Trent, which says that the certitude of faith is such that falsity cannot underlie it.[1] Besides, it is clear by reason itself; for what has not been revealed by God cannot be believed on account of His authority; but what has been revealed is necessarily true. Hence it follows that both the formal and the material object of faith are lacking whenever someone admits either some truth not revealed, or, a fortiori, some falsity, as a revealed truth. In either case someone can think that he elicits an act of faith, but he does not truly elicit it.[2]
2. **Certitude of faith** consists essentially in this, that the believer assents to what is revealed by an assent firm above all things. Therefore, although the assent of faith excludes every prudent fear, nevertheless the essence of the property of certitude is not to be placed, not even partly, in this negative element; for the exclusion of prudent fear is proper to every certitude strictly so called. The essence of this property is solely in the positive element, namely in firm assent above all things.

Nor is the certitude of faith firmer than every other certitude in the sense that it more strongly excludes every prudent fear; on the contrary, in this respect it can be called weaker, since intellectual vision is more opposed to the possibility of doubt than assent on account of an extrinsic cause, even the firmest, as occurs in the act of faith. But it is more certain than every other certitude in the sense of infallibility and therefore of adherence. This greater firmness or certitude is founded: 1. on the fact that the authority of God revealing is more essentially opposed to falsity than any other cause of certitude. Hence St. Thomas teaches: "As to firmness of adherence, faith is more certain than every act of understanding and science, because the first truth, which causes the assent of faith, is a stronger cause than the light of reason, which causes the assent of understanding or science" (St. Thomas, *De veritate*, q. 14, a. 1, ad 7; II-II, q. 4, a. 8). It is founded: 2. on grace, without which an act of supernatural faith cannot be elicited; for grace is never given for assent to falsity. From this we conclude that the believer ought to be so disposed in soul that he rejects as absolutely erroneous any doctrine whatever which is certainly opposed to doctrine certainly revealed.

3. **Obscurity of faith** consists in this, that the believer in the act of faith assents to the revealed object not on account of the intrinsic evidence of the object, but on account of the extrinsic authority of God attesting the truth of the object. This obscurity, which flows from the formal object, is necessarily joined with every act of faith; and it alone must be called essential. The reason for the former is that without the formal object, which in the act of faith is the authority of God, there cannot be an act of faith. The reason for the latter is that according to the more probable opinion even truths evidently known to reason, or admitted on account of their intrinsic evidence, can be believed by divine faith. Once this is posited, only the obscurity which flows from the formal object of faith is essential; but the obscurity which is often present in the material object, as, for example, in mysteries to be believed, or which proceeds from the non-evidence of the fact of divine testimony, is only accidental.
4. **Liberty of faith** is that property by which the assent of faith is immune from every necessity. Hermes denied that this is a property of faith, teaching that faith consists in a necessary persuasion induced by compelling reasons, so that when this necessity is lacking, nothing remains except vain credulity.[3] The Vatican Council condemned this error: "If anyone says that the assent of Christian faith is necessarily produced by reason, let him be anathema."[4] This liberty of faith arises from the fact that in the act of faith the intellect assents to the object to be believed not on account of intrinsic evidence. Hence the act of faith is free with the liberty both of exercise and of contrariety. But if you posit a case in which the material object by its own evidence, acquired by reasoning, is present to the intellect, the liberty of contrariety perishes, yet liberty of exercise remains, because either the assent of science or the assent of faith can be chosen.
5. **Necessity of faith.** a) The habit of faith, or habitual faith, is necessary for salvation for all by an absolute necessity of means. For no one is saved without sanctifying grace. But the habit of faith is infused together with sanctifying grace. Therefore, just as sanctifying grace is necessary by necessity of means for individual men, so also is the habit of faith.

b) In what respect the act of faith, or actual faith, is necessary will rather be explained in Book II, where the discussion will concern the exercise or cultivation of virtues.

[1] *De iustificatione*, session 6, chapter 9.

[2] Nevertheless he has the merit of faith from the pious affection of credulity, since he is prepared to subject himself to divine authority.

[3] *Collectio Lacensis*, t. VII, p. 529 (17).

[4] Session 3, on faith, canon 5.

Article II. On the Theological Virtue of Hope

Concerning this second theological virtue, which in the order of generation follows faith and precedes charity, its notion, object, subject, and properties must be investigated, just as was done above concerning faith.

359 **I. Notion of Hope.** Hope is a theological virtue inclining man to expect, with certain confidence, through the help of God, eternal beatitude and the means necessary for attaining it (St. Alphonsus, *Homo Apostolicus*, tr. 4, n. 6). It is said:

1. **With certain confidence.** By these words is indicated the essential property of the virtue of hope; if this is lacking, the virtue of theological hope cannot exist.
2. **Through the help of God.** These words assign the formal object of the virtue of hope.
3. **Eternal beatitude and the means necessary for attaining it.** By these words is indicated the material object of this virtue, both primary, which is beatitude, and secondary, namely the means to attaining it.

Since the virtue of hope, as we have indicated, is not destroyed by just any mortal sin, but only by the sin of heresy and of despair, it is clear that, equally with faith, by reason of charity it is distinguished into formed and unformed hope, according as it exists in a subject which has charity or lacks it.

360 **II. Object of Hope.** 1. **Material object.** All agree that beatitude is the primary material object of theological hope. But beatitude is twofold: objective, which is God Himself, and subjective, which is the possession of God. Theologians dispute in which beatitude the primary material object is to be placed. Some admit both kinds of beatitude as such; others admit objective beatitude only. This latter, which is the opinion of the Thomists, seems to be admitted as more probable. For that is the primary material object of hope which beatifies man. Now it is not the very action by which we attain that object which beatifies us, but the object itself. There is added the fact that the primary material object of a theological virtue is immediately God; and this cannot be said of possession itself. It is indeed true that God is not the material object of theological hope except insofar as He is attained by means of subjective beatitude; but this merely makes subjective beatitude a condition without which not.

To the secondary material object of hope pertain all supernatural goods, and even natural goods, insofar as they conduce to beatitude. For the same virtue which primarily tends toward some end secondarily tends toward the means conducing to that end, since they stand under the same formal object.

2. **Formal object.** Omitting the opinions of the few who assign as the formal object of the virtue of hope either the arduousness of the good to be obtained, or only the goodness of God as desirable by us, with the far greater part of theologians we admit as certain that the formal object consists in divine help. But theologians dispute what divine attributes divine help involves by reason of the formal object. More commonly they teach that divine help, by reason of the formal object, involves at least omnipotence, by which in every case God can help us, and relative goodness, by which God wills to help us. With regard to the fidelity of God in His promises, authors disagree. But with St. Alphonsus (*Theologia moralis*, II, 21) and many others we admit that this fidelity is also a constitutive part of the formal object. For a formal object which regards the future moves to an act only insofar as that object is certain. But that object becomes certain for us through fidelity. For fidelity is that property by force of which the help of God is known as immutable; but help known as immutable is certain help; therefore help becomes formally certain for us through fidelity, and therefore fidelity is a constitutive part of the formal object of theological hope. Yet from this it does not follow that promise too enters into the essence of the formal object; for this is required only so that by divine faith we may be able to believe in divine help, and it is a condition without which there is no eliciting of an act of hope.

361 **III. Subject of Hope.** 1. The subject *by which* and partial of hope is the will. For the virtue of hope is occupied around the divine good, known by reason illumined by faith; but this is the good of the

will.

2. The subject *which* and total of hope are:

a) **All just wayfarers.** For in the just there are all infused virtues compossible with their state. But the virtue of hope is compossible with all wayfarers, even with souls detained in purgatory, since beatitude is for them an arduous good, not yet possessed and possible to obtain.

b) **All faithful wayfarers, although sinners, provided they are not guilty of the mortal sin of despair or of unbelieving presumption.** This doctrine is founded on the analogy of faith and hope. For on the one hand it is established that divine faith is not always lost when charity is lost. On the other hand: a) while faith remains, the foundation of hope remains, and so hope is not destroyed indirectly;[1] b) hope, like faith, is in its essence independent of charity and of habitual grace, although this is the connatural principle of both habits; c) the act of hope, like the act of faith, is, as is clear from the Council of Trent, a remote disposition to justification.[2] Therefore, just as the merciful God leaves divine faith in the sinner as long as he does not directly destroy it by the sin of infidelity or heresy, it must be presumed that God similarly does not take away theological hope as long as the sinner does not despair or presume unbelievingly.

Corollary. From what has been said it follows that the subject *which* and total of the virtue of hope is in no way: 1. the Blessed, for they are possessors of the good to be hoped for; 2. the damned, for whom beatitude is simply impossible; 3. formal heretics as such, since by the sin of infidelity the foundation of hope is destroyed; 4. sinners guilty of the mortal sin of despair, by which the formal object of hope is directly destroyed, and sinners guilty of the sin of presumption joined with the sin of infidelity, by which the formal object is indirectly destroyed through the destruction of its foundation.

[1] A virtue is said to be destroyed directly, or per se, by an act contrary to it, by which the object is destroyed; but it is said to be destroyed indirectly, or per accidens, when the foundation is removed.

[2] Session 6, chapter 6.

362 **IV. Properties of Hope.** The properties of hope are enumerated as: certitude, moral goodness, utility, and necessity.

1. **Certitude of hope** consists in this, that it firmly expects its object insofar as the attainment of it depends on God's help; it is therefore founded on a complete persuasion that God on His part will furnish man all things necessary for salvation, so that, if man falls short of his end, he ought to ascribe this ruin to himself. From these points it follows of itself that most certain hope does not exclude fear. For man, in cooperating with the grace of God, which is required for salvation, is defectible of himself; and to this defectibility of nature there is added the arduousness of obtaining the good, which can turn man aside from his duty. Hence the certitude of hope and the fear of one hoping are very well joined together. For the one hoping is certain on the part of the motive on which hope rests, but he fears on the part of his own defectibility; this leaves the nature of hope intact.

That certitude belongs to hope is taught 1. by the Council of Trent,[1] saying: "All ought to place and repose a most firm hope in the help of God"; 2. by Sacred Scripture, which in various places praises it, for example, as "a sure and firm anchor of the soul";[2] 3. by theological reason, because the expectation of some thing participates in the state of mind in which it is founded. Now the expectation of

beatitude is founded on certitude, namely that God on His part will furnish the things necessary for beatitude (St. Thomas, II-II, q. 18, a. 4).

2. **The moral goodness of hope** consists in this, that the virtue of hope inclines man to acts conformed to right reason; from this it follows that the habit itself and its acts, elicited with a view to reward, are morally good. That this property is truly present in the virtue of hope is established from the Council of Trent: "If anyone says that the justified man sins when he works well with a view to eternal reward, let him be anathema."[3] It is further proved from Sacred Scripture, in which men are urged countless times to good works with a view to eternal happiness.[4] It is confirmed by reason. For that habit and its acts are certainly morally good by which man is inclined to his salvation according to that order by which God Himself has set it before man, that is, by referring it, or at least leaving it referable, to God as the ultimate end. But man by the habit of hope and by its act tends toward himself as the end to whom he wills the good, yet without excluding the further relation, or at least referability, of this act to God as the ultimate end.
3. **The utility of hope** is derived both from its moral goodness just explained and from its necessity still to be explained.
4. **Necessity of hope.** a) The habit of hope, or habitual hope, is necessary for salvation for all men by necessity of means. For no one is saved without sanctifying grace. But sanctifying grace is not granted without the habit of hope. Therefore, just as sanctifying grace is necessary by necessity of means, so also is the habit of hope.

b) In what respect the act of hope, or actual hope, is necessary, we shall explain in Book II, where we shall speak of the exercise or cultivation of virtues.

[1] Session 6, chapter 13.

[2] Heb. 6:18.

[3] Session 6, canon 31.

[4] Cf. Gen. 15:1.

Article III. On the Theological Virtue of Charity

The theological virtue of charity,[1] with which we must now deal, holds primacy among the other virtues; therefore St. Paul, speaking of it, says: "But now there remain faith, hope, charity, these three; and the greatest of these is charity."[2] St. Clement of Rome deservedly wrote of it: "You see, dearly beloved, how great and admirable a thing charity is, and that its perfection cannot be explained."[3] Yet, that we may in some measure behold its excellence, we shall investigate four things: namely its notion, object, subject, and qualities.

[1] Cf. Van Roey, *De virtute caritatis*.

[2] 1 Cor. 13:13.

[3] *Epistula I ad Corinthios*, c. 50 (M.P.G. 1, col. 311).

363 **I. Notion of Charity.** Charity is: a theological virtue inclining man to love God on account of Himself, and ourselves and our neighbor on account of God. It is said:

1. **To love God.** By these words is indicated the primary material object of charity, while the words *and ourselves and our neighbor* denote its secondary material object.

2. **On account of Himself, and ourselves and our neighbors on account of God.** This indicates the formal object of this virtue.

364 **II. Object of Charity.** 1. **Material object.** The material object of charity, or the object to whom we will good, and indeed the primary one, is God Himself. This is clear from Sacred Scripture, which calls the love of God the greatest and first commandment.[1] It is confirmed by reason. For the material object of some virtue is said to be that which primarily stands under the formal object of charity and by reason of which the other things are attained. But God primarily stands under the formal object of charity, and the other things are attained by reason of God; for the formal object of charity is divine goodness in itself, which is essentially in God and participatively in others.

The secondary material object, therefore, is constituted by all things which can be attained by the virtue of charity by reason of God; and by reason of God all rational creatures can be attained, whether the Blessed or those capable of beatitude, since they participate, or at least are able to participate, in God Himself through grace and the light of glory.

Corollary. To the secondary material object pertain: 1. all the Blessed, whether men or angels; 2. all souls in purgatory; 3. all wayfarers, indeed the wayfarer himself in relation to himself; 4. the body of the neighbor and of the lover himself insofar as, as the Angelic Doctor teaches, "from the enjoyment of the soul a certain beatitude redounds to the body" (St. Thomas, II-II, q. 25, a. 5, ad 5). But the damned, whether angels or men, cannot pertain to the secondary object; for they are incapable of grace and of the light of glory.

2. **Formal object.** The formal object of theological charity is the supernatural goodness of God, lovable in itself and on account of itself. It is said:

a) **The supernatural goodness of God,** that is, the goodness of God insofar as it is known by the light of faith, so that it may be distinguished from the goodness of God insofar as it is known by the light of reason, which would be the formal object of natural love.

b) **Lovable in itself and on account of itself.** And thus the distinction is had between the formal object of charity and of hope; for the formal object of hope is the relative goodness of God, while it must be said "that by charity God is loved on account of Himself" (St. Thomas, II-II, q. 25, a. 3, ad 2). In this doctrine all theologians agree, except one or another; but they disagree in assigning what the supernatural goodness of God must involve in order to be the formal object of charity. Two opinions chiefly exist concerning this question. Some say that any divine perfection whatever suffices for the formal object of charity. But others, with St. Thomas,[2] to whom St. Alphonsus adheres (*Theologia moralis*, II, 24, conference VI, 436, and *Homo Apostolicus*, tr. 4, n. 9), teach that this goodness is composed of all God's perfections, and therefore of the goodness of the essence and of all the attributes. The reason for this opinion is that by the virtue of charity God is loved as the supreme good; but in order that He can be so loved, He must first be known as the supreme good, according to the saying: nothing is willed unless known. But he who loves God from the motive of one attribute taken separately does not know Him in this attribute as the supreme good; for the attribute contains God as the supreme good only implicitly and virtually. But things which are only implicitly and virtually contained in something explicitly known are not known in such a way that they can be a motive for acting. There is added the fact that the formal object of charity on the way and in the homeland must be the same, since the virtue is specifically the same, as the Apostle bears witness: "Charity never falleth away."[3] Now charity in the homeland has as its formal object the goodness of

God composed of all God's perfections; otherwise the one loving would not be blessed, because he would not see God as He is.

Corollary I. The desire of possessing God on account of God's own glory, that is, so that He may be loved perfectly by us, is a perfect act of charity; but the desire of possessing God on account of attaining one's own beatitude is an act of hope, or of the love of concupiscence (St. Alphonsus, II, 24, distinction 1).

Corollary II. The love of God on account of His benefits is an act of charity if the one loving looks at the benefits as communications of divine goodness, since then he loves not his own utility, but the goodness of God in itself. But if he looks at the benefits as conferred on us, it is an act of a grateful soul, or of gratitude.

[1] Matt. 22:37.

[2] Cf. Salmanticenses, disp. 2, dub. 2, §§ 2-3, where they indicate various places of St. Thomas.

[3] 1 Cor. 13:8.

365 **III. Subject of Charity.** 1. The subject *by which* and partial of the theological virtue of charity is the will. For theological charity is occupied around the good of God Himself as good to Him; but good is the object of the will. Therefore the virtue of charity has the will as the immediate subject of inherence. And thus it is clear that charity is really distinguished from sanctifying grace, since the latter immediately inheres in the essence of the soul.

2. The subject *which* and total of the theological virtue of charity is everyone, and only one, who is supernaturally just. It is said:

a) **Everyone who is supernaturally just,** because together with justifying or sanctifying grace charity too is infused.

b) **Only one who is supernaturally just,** because mortal sin, together with justifying or sanctifying grace, also destroys charity; for charity is conversion to God, while mortal sin is aversion from Him; these cannot be present together in relation to the same terminus.

366 **IV. Properties of Charity.** Two properties especially of theological charity remain to be briefly explained here: its being the form of the other virtues, and its necessity.

1. **Its being the form of the other virtues.** This property consists in this, that every virtue draws its perfection from charity. For the perfection of every virtue consists in attaining the ultimate end. But no virtue immediately attains the ultimate end as ultimate end except charity. Hence it remains that the other virtues have this perfection through charity. Yet this is not to be understood as if charity were intrinsic to the other virtues, "but that which is left in faith (and in the other virtues) from charity is intrinsic to faith," says St. Thomas (*De veritate*, q. 14, a. 5, ad 4); and in another place he says: "That which is of perfection in faith is derived from charity, so that charity has it essentially, but faith and the other virtues participatively" (ibid., art. 1).

2. **Necessity.** a) The habit of charity, or habitual charity, is necessary for salvation for all men by necessity of means. For no one is saved without sanctifying grace. But the habit of charity is indivisibly connected with sanctifying grace. Therefore, just as sanctifying grace is necessary by necessity of means, so also is the habit of charity.

b) In what respect the act of charity, or actual charity, is necessary, we shall say in Book II, where we treat of the cultivation of virtues.

Section II. On Supernatural Moral Virtues

Chapter I. On Supernatural Moral Virtues in General

367 **I. Notion of a Supernatural Moral Virtue.** Just as the theological virtues immediately regard the supernatural ultimate end, so supernatural moral virtues immediately regard intermediate supernatural ends. From this it follows that the material object of these virtues can be constituted only by those actions which immediately touch intermediate ends. But since such acts of themselves have their being in a mean, which can be predicated of the theological virtues only per accidens, it is also clear that their morality must be measured according to reason illumined by the principles of faith. From this doctrine it follows that a supernatural moral virtue is suitably defined: a supernatural virtue inclining or disposing one to exercise supernatural acts concerning the means to the supernatural end.

Note. Since natural virtues in their own order, both as to objects and as to number, agree entirely with supernatural virtues, therefore, with due qualifications, the things which we shall say about supernatural virtues can be applied to natural virtues. But since we have been called to the supernatural order, when in the future we speak of moral virtue, of itself we understand supernatural virtue.

368 **II. Existence of Supernatural Moral Virtues.** Scotus and the Scotists deny that there are supernatural moral virtues, and say that natural moral virtues, that is, acquired virtues, suffice even in the supernatural order, because they can receive a rule from faith and be commanded by charity, and thus can attain a supernatural end. Nevertheless this opinion has become obsolete, and the existence of supernatural moral virtues is now almost commonly admitted.

It is proved:

1. **By the mind of the Church.** The Council of Vienne,[1] choosing as more probable the opinion teaching that grace and virtues, as to habit, are infused even into little children in baptism, openly supposes the proposed opinion. For that by those virtues are understood not only theological virtues but also infused moral virtues is clear from the fact that the Council chooses that opinion which: a) theologians at that time, with St. Thomas against the Scotists, admitted, namely that even moral virtues are infused; and b) Innocent III in his own time had mentioned but left undecided. But Innocent says that this opinion asserts that "faith and charity and other virtues" are infused into little children.[2] The Roman Catechism teaches: "To this [sanctifying grace] is added the most noble company of all the virtues, which are divinely infused into the soul together with grace." Then it calls them "an abundance of virtues," and again "so great an abundance of virtues";[3] these phrases are less suitably applied to only the three theological virtues. Leo XIII, in the letter to the Archbishop of Baltimore given on January 22, 1899, openly distinguishes supernatural moral virtues from natural acquired virtues and teaches that the former must be preferred to the latter.
2. **By the testimonies of the holy Fathers.** Thus teach St. Augustine,[4] St. Clement of Rome,[5] St. Polycarp,[6] Origen,[7] St. Basil,[8] St. Gregory Nazianzen,[9] St. Hilary,[10] St. Ambrose,[11] St. Prosper,[12] and St. Gregory the Great.[13]

3. **By theological reason.** Man constituted in the supernatural order must be perfected both as to essence and as to operation in relation to the supernatural ultimate end, and also as to operation in relation to the intermediate ends through which he must tend toward this ultimate end. But as to essence he is perfected by habitual grace; as to operations in relation to the ultimate end, by infused theological virtues. Therefore it is connaturally necessary that he be perfected as to operation in relation to intermediate ends by infused moral virtues.

Confirmation. The order of grace is more perfect than the order of nature and perfects it. But in the order of nature man is perfected not only in operations concerning the natural ultimate end by the habit of first principles and by the natural rectitude of the will and inclination toward that end, but also in operations concerning intermediate ends by acquired moral virtues.

[1] Denzinger-Bannwart, n. 483.

[2] *Corpus Iuris*, book 3, Decretals of Gregory, title 42, chapter 3, *Maiores*.

[3] Part 2, chapter 2, questions 39-40.

[4] *Enarratio in Psalmum* 83, v. 8, n. 11 (ed. G., 4, col. 1267).

[5] *Epistula I ad Corinthios*, cc. 35 and 58 (M.P.G. 1, cols. 278 and 327).

[6] *Epistula ad Philippenses*, c. 12 (M.P.G. 5, cols. 1015-1016).

[7] Book 10, *In Epistolam ad Romanos*, n. 7 (M.P.G. 14, col. 1261 B).

[8] Homily on Psalm 29, n. 5, § 8 (M.P.G. 29, cols. 315-318 inclusive).

[9] Oration 21, c. 1 (M.P.G. 35, cols. 1082-1083 A inclusive); book 1, theological poems, section 2, poem 49-51 inclusive (ibid. 37, cols. 949-950); cf. Oration 14, cc. 1-5 inclusive (ibid. 35, cols. 859 A-863 B inclusive).

[10] Commentary on Matthew, c. 11, n. 9 (M.P.L. 9, cols. 982 C-983 A inclusive).

[11] Book 6, *Hexaemeron*, c. 7, n. 42 (M.P.L. 14, col. 258 B); *De paradiso*, n. 14 (ibid., col. 280).

[12] *Contra Collatorem*, c. 9, n. 3 (M.P.L. 51, cols. 237 B-238 A inclusive).

[13] Book 2, *Moralia*, c. 49, nn. 76-77 (M.P.L. 75, cols. 592-593); book 1, Homily 5 on Ezekiel, n. 11 (ibid. 76, col. 825).

369 **III. Number of Moral Virtues.** As concerns the number of moral virtues, take the following:

1. Since the distinction of virtues is taken from the specific distinction of formal objects, there exist as many specifically distinct moral virtues as there are formal objects of them distinct in species. Therefore, since the formal object of moral virtues is their conformity with reason illumined by faith, there are as many specifically distinct moral virtues as there are specifically distinct reasons of conformity.

2. Among moral virtues some are distinguished as principal, not because they are more perfect than all the others, but because human life is more principally occupied in them and the other virtues are founded on them. These principal virtues are called cardinal, from the hinge on which a door turns, because moral life too in some way turns and is founded on these virtues as on certain principles (St. Thomas, *De virtutibus cardinalibus*, q. 1, a. 1). Four cardinal virtues are enumerated: prudence, justice, fortitude, and temperance. This is clear from Sacred Scripture: "And if anyone loves justice, her labors have great virtues: for she teaches sobriety and prudence, and justice and virtue, than which nothing is more useful to men in life."[1] This doctrine is confirmed by the holy Fathers, among whom, for example, St. Augustine teaches: "For the virtues of our active life are described by many as four, and they are found in Scripture. Prudence is said to be that by which we

distinguish between good and evil. Justice is said to be that by which we render to each one his own. ... Temperance is said to be that by which we restrain lusts. Fortitude is said to be that by which we bear all troublesome things."[2] Finally it is proved by reason, and indeed in two ways: first, from the side of the formal principle of virtue; second, from the side of the subject.

Therefore from the side of the formal reason of virtues it is shown thus: the formal reason of virtues is the good of reason, and this good can be considered in two ways. In one way, insofar as it is in the very consideration of reason alone, and thus there will be the virtue of prudence. In another way, insofar as the good of reason is placed concerning something. And this is considered in two ways: either as it is concerning operations, and thus justice is posited; or as it is placed concerning passions. And this in two ways: either concerning passions impelling toward the contrary of what reason dictates, and thus temperance is posited; or concerning passions drawing one back from the good of reason on account of difficulties, and thus fortitude is posited.

But from the side of the subject the conclusion is proved as follows. For the subject of virtue is twofold: either rational by essence, which is the intellect, and in this prudence is posited; or rational by participation, and this is either the will, which is the subject of justice; or the concupiscible appetite, which is the subject of temperance; or the irascible appetite, which is the subject of fortitude.[3]

But that the things said above may be taken more rightly, observe the following:

a) The cardinal virtues can be considered under a twofold aspect: either as general modes or properties of all virtues, or as special virtues. Taken in the former sense, they are not special and distinct habits, but properly general conditions of every virtue. Thus prudence so considered is nothing other than a certain rectitude of discretion in any act and any matter; justice, a certain rectitude of soul by which a man works what he ought in any matter; temperance, a certain disposition of soul which preserves measure for every passion and operation, lest they be carried beyond what is due; fortitude, a certain disposition of soul by which a man is formed according to reason against any impulses of passions or labors of operations whatever (St. Thomas, I-II, q. 61, a. 4).

Taken in the other sense, the cardinal virtues are special and distinct habits, and as their material object they have that matter in which the general mode of which we have spoken above is especially evident. Now rectitude of discretion appears especially in the command of reason; therefore prudence is the virtue commanding what things are to be done or omitted. Rectitude of soul in performing what is due is especially evident in those things which are with equality toward another; hence justice is the virtue which renders to each one his right. The disposition of soul preserving measure in operation and passion appears especially in restraining the pleasures of touch; therefore temperance is the virtue which moderates these pleasures. The disposition of soul sustaining the impulses of passions and the labors of operations is especially evident before all else in undergoing dangers of death; hence fortitude is the virtue by which we undergo dangers of death (St. Thomas, I-II, q. 61, a. 3). Considered in this way, the cardinal virtues are opposed to the four wounds of original sin: prudence is opposed to the wound of ignorance, justice to malice, fortitude to weakness, and temperance to concupiscence (St. Thomas, I-II, q. 85, a. 3).

b) The other moral virtues are reduced to these cardinal virtues, indeed either as subjective parts, or as potential parts, or as integral parts, according as they participate in their reason in different ways.

alpha. **Subjective parts** of some cardinal virtue are called those virtues which truly participate in the general reason of that cardinal virtue, although they nevertheless have their own specifying object. Thus, for example, sobriety is a subjective part of the cardinal virtue of temperance; for just as temperance moderates the passion of touch, so sobriety moderates the passion for intoxicating drink. But because subjective parts participate in the general reason of their cardinal virtue, there cannot exist subjective parts of a cardinal virtue which already has an entirely specific notion, as happens in relation to the cardinal virtue of fortitude, which has a plainly determinate matter, namely dangers of death.

beta. **Potential parts** are called those virtues which agree with a cardinal virtue in the general formal mode of attaining their object, but differ from it insofar as they do not have as their object that matter in which the general formal mode is especially evident. Thus meekness, which moderates anger, is a potential part of temperance; just as temperance moderates the pleasure of touch, so meekness moderates the passion of anger.

gamma. **Integral parts** of a cardinal virtue are not virtues of themselves, but only conditions or dispositions which, as the Angelic Doctor teaches, "must concur for the perfect act of virtue" (St. Thomas, II-II, q. 48, single article). Thus, for example, shamefacedness is fear of a base act insofar as it is reproachable. It primarily regards reproach, and therefore, by suffusing the soul with horror of baseness, it helps the virtue of temperance to place a perfect act; therefore it is an integral part of this cardinal virtue.

[1] Wis. 8:7.

[2] *Enarratio in Psalmum* 83, v. 8, n. 11 (ed. G., 4, col. 1267).

[3] Hieronymus de Medicis, on I-II, q. 61, a. 2; nevertheless, with regard to the supernatural virtues of temperance and fortitude, there is dispute concerning the subject of inherence (n. 370).

370 **IV. Subject of Inherence of Moral Virtues.** The subject *which* and total of moral virtues, equally with that of theological virtues, is, as is clear, the person himself who possesses the said virtues. It remains, therefore, that we speak of the subject *by which* of inherence. Now:

1. **As regards natural moral virtues,** the following hold:

a) The cardinal moral virtues inhere as follows: prudence, since as a perfection of practical judgment it is right reason concerning things to be done, inheres in the practical intellect; justice, as perfecting the rational appetite in the pursuit of the neighbor's good, inheres in the will; fortitude, which perfects the sensitive appetite in overcoming dangers, inheres in the irascible sensitive appetite; temperance, perfecting the sensitive appetite in moderating pleasures, inheres in the concupiscible sensitive appetite.

b) Moral virtues which are subjective parts of a cardinal virtue have the same subject *by which* of inherence as the cardinal virtue itself, because a species is never outside its genus.

c) Moral virtues which are potential parts do not of themselves inhere in the subject in which the cardinal virtue is, whose formal mode of attaining the object they agree with. Thus, for example, humility is in the irascible sensitive appetite and yet is reduced to the cardinal virtue of temperance, which is in the concupiscible sensitive appetite, because it follows not the formal mode of fortitude, which is in the irascible appetite, but that of temperance.

2. **As regards supernatural moral virtues,** the following hold:

a) The cardinal moral virtues inhere as follows: prudence inheres in the practical intellect; justice inheres in the will. With regard to fortitude and temperance there is dispute. According to some, they inhere in the will;[1] according to others, fortitude inheres in the irascible sensitive appetite, and temperance in the concupiscible sensitive appetite.[2]

b) Moral virtues which are subjective parts of a cardinal virtue have the same subject of inherence, because, as we said above, a species is never outside its genus. Hence the subjective parts of prudence inhere in the practical intellect, the subjective parts of justice in the will; the subjective parts of temperance, according to some, in the will, and according to others, in the concupiscible sensitive appetite. Fortitude lacks subjective parts.

c) Moral virtues which are potential parts of a cardinal virtue, according to those who teach that the sensitive appetite is not a subject of inherence of supernatural virtues, according to them, I say, the potential parts of prudence are in the practical intellect, and the potential parts of the other cardinal virtues are in the will. But those who think that the sensitive appetite is also a subject of inherence of supernatural virtues teach the same here as was said above concerning the potential parts of natural virtues (IV. 1. c).

[1] Cf. Billot, *De virtutibus infusis*, p. 128 sq.

[2] Cf. Gonet, *Manuale*, second part, tract 3, chapter 4.

Chapter II. On Supernatural Moral Virtues in Particular

Article I. On Prudence

371 **I. Notion of Prudence.** Prudence, whose name seems to be derived from "seeing from afar" (St. Thomas, I-II, q. 57, a. 5), and which is first in dignity among all moral virtues, can be defined: a moral virtue inclining man to determine rightly, by an act of command, what in individual cases is to be done or omitted in conformity with the supernatural end. It is said:

1. **By an act of command.** For the proper act of prudence "consists in the application of things counseled and judged" (St. Thomas, II-II, q. 47, a. 8).
2. **What is to be done ... in individual cases.** For it belongs to prudence to assign to each individual act its conformity with right reason.
3. **In conformity with the supernatural end.** Thus supernatural prudence is distinguished from the virtue of natural prudence.

372 **II. Object of Prudence.** 1. **Material object.** The material object of prudence is all moral acts. For acts are moral insofar as here and now they are conformed to right reason; but it belongs to prudence alone to determine what in an individual case must be done or omitted in conformity with right reason. For moral virtues indeed incline man toward their objects taken in a general sense, for example temperance toward living temperately, justice toward rendering to each one his own; but for this reason they do not attain in their object the mean of reason required for an individual act. This mean must be shown in all moral acts by the virtue of prudence; and thus it is clear that all moral acts are the material object of prudence.

2. **Formal object.** The formal object of prudence is the conformity of practical judgment with the moral order, or with the supernatural end; for this conformity is the motive for which the act of command is placed.

373 **III. Acts of Prudence.** A virtue which brings it about that an act conformed to right reason is elicited must furnish three things: first, to investigate what means exist for placing an act honorably; then, to establish an elective judgment concerning the means found; and finally, to impose the chosen means by commanding its execution. Therefore a threefold act of prudence is distinguished: consulting, judging, and commanding. This last act is most proper to prudence; for prudence is rightly called right reason concerning things to be done. Hence the act of practical reason which applies the chosen means to the work is the proper act (St. Thomas, II-II, q. 47, a. 8). And thus it is clear that prudence, although it inheres in the intellect, is nevertheless a moral virtue, since it establishes the norm of the morally good, which is the object of the will.

374 **IV. Connection of Prudence with the Other Moral Virtues.** This connection is mutual; for prudence supposes man's relation to the due end through the other virtues, but it directs them in eliciting their acts. For the office of prudence is not to direct man to the due end, but to determine what in particular is to be done or omitted in order to the due end. Therefore if, antecedently to the act of command, man is not directed to the due end through the moral virtues, prudence will not exercise its act of commanding; but these virtues without prudence will not rightly place their acts. And thus the virtue of prudence is rightly called the charioteer of the virtues.

Therefore St. Thomas teaches: "No moral virtue can be had without prudence, because it is proper to moral virtue to make a right choice, since it is an elective habit. But for right choice there suffices not only an inclination to the due end, which is directly through the habit of moral virtue, but also that someone directly choose those things which are toward the end; this is done through prudence, which counsels, judges, and commands concerning the things which are toward the end. Similarly, prudence cannot be had unless the moral virtues are had; since prudence is right reason concerning things to be done, which, as from principles, proceeds from the ends of things to be done, toward which someone is rightly disposed through the moral virtues" (St. Thomas, I-II, q. 65, a. 1).

375 **V. Parts of Prudence.** 1. **Subjective parts.** It belongs to prudence, as we noted above, to direct man in individual acts to the due end; but man can be considered as an individual person or as a person of a society. In either consideration, a special mediate end has been set before him, which must also be attained by special acts. Hence there is also a twofold subjective part of prudence: one is personal prudence, which is also called private, monastic, or solitary; the other is governing prudence, which is often called polyarchic or social.

a) **Personal prudence** is that by which someone rules himself in conformity with the supernatural end, in order to a private good.

b) **Governing prudence** is that by which someone rules, in conformity with the supernatural end, both a multitude and himself in order to a multitude. This differs according as multitudes differ. Hence it is distinguished as domestic, political, and military.

Domestic prudence is said to be that "which is ordered to the common good of a house or family" (St. Thomas, II-II, q. 47, a. 11; cf. II-II, q. 48, single article, and q. 50, a. 8).

Political prudence is that which is ordered to the common good of the city (St. Thomas, II-II, q. 47, a. 11; cf. II-II, q. 48, single article), and in authority it is called regal, while in subjects it is simply called political (cf. St. Thomas, II-II, q. 50, a. 1, corpus and ad 2; a. 2; q. 48, single article).

Military prudence is that which is ordered "to resisting those who attack and corrupt from without" (St. Thomas, II-II, q. 50, a. 4) the common good of the city (cf. St. Thomas, II-II, q. 48, single article).

Take care, however, lest from what has been said you conclude that every just person, because he has the supernatural virtue of prudence, is also fitted for governing, and that the holier person is by that very fact more fitted for this office. For for the office of superior there is required not only the virtue of prudence, whose act is to render acts of ruling conformed to the ultimate end, but also an art which is occupied around external governance. Hence the holier person is quite often less fit for the office of superior, because he lacks this art of ruling.

2. **Potential parts of prudence** are eubulia, synesis, and gnome.

a) **Eubulia** is the habit of consulting well. By this virtue man is directed to considering rightly the various means conducing to the end and the various ways in which the end can be attained. Hence it imports a certain inquiry of reason concerning things to be done (St. Thomas, II-II, q. 51, a. 1).

b) **Synesis** is the habit of judging rightly concerning those things which must be done according to common rules. Therefore this virtue brings it about that man rightly judges which, among the various means found by eubulia, with the circumstances considered, is here and now better, more useful, and more fitting according to common rules (St. Thomas, II-II, q. 51, a. 3; I-II, q. 57, a. 6).

c) **Gnome** is the habit of judging rightly, but concerning those things which must be done according to rules that are not common but higher, contrary indeed to the tenor of the law, but not contrary to the mind of the legislator. Therefore this virtue brings it about that in circumstances in which common rules cannot rightly be applied, we judge that means to be chosen which, with these circumstances considered, is here and now better, more useful, and more fitting according to higher rules (St. Thomas, II-II, q. 51, a. 4).

3. **Integral parts of prudence** are:

a) **Memory,** which is recollection of past things; experience of these greatly conduces to forming a prudent judgment about present or future things.

b) **Understanding,** which consists in full knowledge both of the action to be placed and of the principles of morality.

c) **Docility,** which is a disposition of soul toward learning from others, "and especially from elders, who have attained sound understanding concerning the ends of things to be done" (St. Thomas, II-II, q. 49, a. 3).

d) **Shrewdness,** which is a certain sagacity of mind for finding a suitable means, especially in sudden matters.

e) **Reasoning,** which brings it about that the agent "can well apply universal principles to particulars, which are various and uncertain" (St. Thomas, II-II, q. 49, a. 4).

f) **Foresight,** which foresees future contingents, whether good or evil, which are to follow from the action.

g) **Circumspection,** by which man "compares that which is ordered to an end also with the things which surround it" (St. Thomas, II-II, q. 49, a. 7).

h) **Caution** is that by which evils are avoided which can vitiate the work of virtue.

376 **VI. Opposed Vices.** Vices opposed to prudence are some by defect, others by excess.

1. **Vices by defect** are called by the common name of imprudence, and they are four: precipitation, inconsideration, inconstancy, and negligence.

a) **Precipitation** is directly opposed to eubulia, and by it man is borne to acting by an impulse of will or passion, sufficient counsel of reason being omitted (cf. St. Thomas, II-II, q. 53, a. 3).

b) **Inconsideration** is a vice by which man is inclined to contemning or neglecting those things from which right judgment proceeds; and therefore synesis and gnome are opposed to it (cf. St. Thomas, II-II, q. 53, a. 4).

c) **Inconstancy** is a vice inclining one to withdraw from a defined good proposal; by it reason fails in commanding those things which right counsel and right judgment dictate must be commanded. Hence it is directly opposed to prudence (St. Thomas, II-II, q. 53, a. 5).

d) **Negligence** is a vice by which man is inclined to neglecting right command, through a defect of solicitude and promptness of will; for this reason it too is directly opposed to prudence (St. Thomas, II-II, q. 54, a. 2, corpus and ad 3; ibid., a. 1).

From these points it is clear that imprudence has under itself as many species as there are potential parts of the virtue of prudence (St. Thomas, II-II, q. 53, a. 2). St. Thomas alleges lust as the origin of these vices (II-II, q. 53, a. 6). But imprudence considered in this way constitutes a special sin, because it is contrarily opposed to the virtue of prudence; and just as prudence is a special virtue, so also its contrary is a special sin. But if by the name of imprudence there is indicated not so much the contrary as the lack of prudence, imprudence does not constitute a special sin, but rather a general one, insofar, namely, as it participates in the nature of the sin which is committed against that virtue for whose exercise the act of prudence was being commanded. "For just as prudence is in some way participated in all virtues, insofar as it directs them, so also imprudence is in all vices and sins; for no sin can happen unless there is a defect in some act of reason directing, which pertains to imprudence" (St. Thomas, II-II, q. 53, a. 2).

2. **Vices by excess** have some likeness with prudence itself, but they apply its offices to an undue object, namely to a dishonorable matter; hence they bear before themselves a false species of prudence. These vices are: prudence of the flesh or of the world, craftiness, guile, fraud, excessive solicitude for temporal things, and excessive solicitude for future things.

a) **Prudence of the flesh or of the world** is a vice "according as someone has the goods of the flesh as the ultimate end of his life" (St. Thomas, II-II, q. 55, a. 1); and it obtained this name because "prudence is concerned with those things which are toward the end of the whole of life" (St. Thomas, II-II, q. 55, a. 2).

b) **Craftiness** is a vice by which someone, "for attaining some end, whether good or evil, uses not true ways, but simulated and apparent ones" (St. Thomas, II-II, q. 55, a. 3).

c) **Guile** is the execution of those things which craftiness thinks out, whether it is done by words or by deeds; and therefore it pertains to craftiness (cf. St. Thomas, II-II, q. 55, aa. 4 and 5).

d) **Fraud** differs from guile in this, "that guile pertains universally to the execution of craftiness, whether it is done by words or by deeds; but fraud more properly pertains to the execution of craftiness insofar as it is done by deeds" (St. Thomas, II-II, q. 55, a. 5).

e) **Excessive solicitude for temporal things** is had either by seeking temporal things as an end, the spiritual end being excluded; or when superfluous effort is applied to procuring them, "on account of which man is drawn back from spiritual things, which he ought principally to serve" (St. Thomas, II-II, q. 55, a. 6); or when "someone fears that, by doing what he ought, necessary things will fail him" (St. Thomas, II-II, q. 55, a. 6).

f) **Excessive solicitude for future things** is had when someone is solicitous about future things before the opportune time (St. Thomas, II-II, q. 55, a. 7).

St. Thomas assigns avarice as the principal source of these vices (St. Thomas, II-II, q. 55, a. 8).

Article II. On Justice

To the cardinal virtue of justice, besides subjective and integral parts, several potential parts are assigned; each of these requires a longer exposition. Therefore we divide this matter into three sections, which are: 1. on justice in general; 2. on the subjective and integral parts of justice; 3. on the potential parts of justice.

§ I. On Justice in General

377 **I. Notion of Justice.** Since justice of its own nature imports a certain rectitude of order, it can be taken in a broad sense, "according as the highest thing in man is subjected to God, and the lower powers of the soul are subjected, namely, to reason" (St. Thomas, I-II, q. 113, a. 1). In this sense justice is nothing other than the complex of all virtues and coincides with holiness. But justice is also taken in a less broad and in a strict sense.

Justice taken in a less broad sense is said of every moral virtue which is toward another and renders to him his right, whether taken more strictly or broadly; in this sense justice comprehends both justice strictly so called and its potential parts.

Justice taken in the strict sense is said of that moral virtue which renders to another a right taken in the stricter sense; and it is usually defined: a supernatural moral virtue inclining man to render to each one his own right (understand this as taken more strictly) (St. Thomas, II-II, q. 58, a. 1). It is said:

1. **His own right.** Here this is understood as a juridical debt which can be rendered according to equality.

a) **A juridical debt,** that is, a debt which someone must render to another because the other enjoys the power of exacting it, as a debt toward God, toward parents, or toward the seller of some thing.

It is distinguished from a moral debt, which someone must render to another from the moral goodness of virtue alone, without the other having the right to exact it. These debts do not pertain to justice properly so called, but to other virtues, for example gratitude and liberality.

b) **Which can be rendered according to equality.** Namely, among juridical debts some are so great that they cannot be paid according to equality, for example toward God (St. Thomas, II-II, q. 57, a. 1, ad 3) and parents. Nor do these debts pertain to justice properly so called, but to religion, piety, and observance. Other juridical debts are of such a kind that they can be rendered according to equality, for example the debt of a buyer toward a seller, likewise of a member toward a society or of a society toward a member. Now only these latter debts are spoken of in the definition given.

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2. **To each one,** that is, to anyone who is at least morally another, as we shall soon explain more fully.

II. Object of Justice. 1. The material object is a thing, or an action or omission, owed to another according to equality; and in this indeed consists the remote material object of justice, while its proximate material object is formed by the very actions which the thing owed to another according to equality, whether to be preserved or to be restored, prescribes.

2. The remote formal object of justice is a thing owed to another according to equality, insofar as it is owed, or the very reason of debt; the proximate formal object is the special moral goodness shining forth in rendering the debt just explained.

379 **III. Conditions Required for Justice.** "The nature of justice consists in this, that there be rendered to another what is owed to him according to equality" (St. Thomas, II-II, q. 80, single article). From these words of the divine Thomas it follows that three conditions are required for justice, namely the condition of otherness, of debt, and of equality.

1. **The condition of otherness.** This condition is something specifically proper to the virtue of justice. For while the other cardinal virtues regard the internal acts of the agent himself, whether of the intellect, as prudence does, or of the will insofar as it is ordered to commanding the irascible sensitive appetite, as fortitude does, or of the will insofar as it is ordered to commanding the concupiscible sensitive appetite, as temperance does, justice by its nature has reference to another. But for this condition of otherness it suffices that the other person, although physically one, be virtually twofold: either by reason of office, as, for example, a creditor who at the same time is a guardian, for as creditor he can demand the debt from the ward, and as guardian in the ward's name render it back to himself; or by reason of a twofold nature, as in Christ, who as man made satisfaction for the sins of the human race to Himself as to another, namely considered under the divine nature.

2. **The condition of debt,** that is, of juridical debt, as was explained above, whether that debt arises from the title of a special destination of a thing for someone's advantage, or from a title inhering in the subject, for example one worthy to whom some good is granted, or from a title of jurisdiction.

3. **The condition of equality,** namely between the right which belongs to one and that by which this right is satisfied. Equality is distinguished as threefold, namely: 1. equality of thing to thing, specially destined for someone's advantage; it is called arithmetic and is regarded by commutative justice; 2. equality to be rendered, with the merit of the parties compared with one another being considered; it is usually called geometric, or of proportions, and is regarded by distributive justice; 3. equality to be rendered, with the necessity of the whole being considered; it is called equality of necessity and is regarded by legal justice.

§ II. On the Subjective and Integral Parts of Justice

The subjective parts of justice are those which participate in the general reason of justice, or in which the conditions required for justice, namely otherness, debt, and equality, are verified. They are verified in commutative, distributive, and legal justice, as follows from what has been said and will be clearer from what is to be said. We must speak of each.

380 **I. Commutative Justice.** 1. **Notion.** Commutative justice is justice inclining an individual man to render to another individual his own right, that is, a strict right, or a right founded on the special destination of a thing for the advantage of some individual. But note that even a moral body or society is sometimes in the manner of an individual or private person. It is called commutative because it chiefly occurs in exchanges and contracts (St. Thomas, II-II, q. 61, a. 2; St. Alphonsus, III, 486).

2. **Opposed vices.** To commutative justice is opposed a vice by which the strict right of another is injured without title. This is done in goods of fortune by the sin of theft, robbery, and fraud of every kind; in goods of the body, by the sin of homicide and mutilation; in goods of the soul, by the external sin of infamy, contumely, whispering, violation of a secret, and by the internal sin of rash judgment; in goods of marriage, especially by the sin of adultery.

381 **II. Distributive Justice.** 1. **Notion.** Distributive justice is justice inclining the ruler to render to the members of society, as such, their own right, that is, goods[1] which belong to them in view of their capacity, merits, and necessity. It is called distributive because it is primarily occupied in the act of distributing by the ruler; secondarily it is in the members insofar as they subject themselves to a just distribution (St. Thomas, II-II, q. 61, a. 1; St. Alphonsus, cited place).

2. **Opposed vices.** To distributive justice are opposed, on the part of the ruler, every sin of acceptance of persons, whether internal or external; and on the part of the subject, every sin of murmuring, whether internal or external (St. Thomas, II-II, q. 63, a. 1).

[1] According to others, distributive justice is also occupied around burdens; but with respect to burdens there is required a debt to society, which belongs to legal justice; but with respect to goods, a debt is rendered to a member, which belongs to distributive justice. According to others, distributive justice is indirectly occupied around burdens, insofar as the ruler, by imposing a burden on one, frees another from a burden, which has the reason of a good. But freedom from a burden is rather, and at most, a quasi-consequence of legal justice exercised, than a good granted by distributive justice.

382 **III. Legal Justice.** 1. **Notion.** Legal justice is justice inclining the ruler and the subject to render to society, as such, its own right, that is, the good which is owed to society, as such, with regard to its end, which is to provide for the common good. It is called legal "because it belongs to law to order toward the common good" (St. Thomas, II-II, q. 58, a. 5; St. Alphonsus, cited place). It is also called social,[1] because it regards the good of society and is exercised by men joined in society. It is also called general or universal, insofar as the acts of diverse virtues can be directed to the common good or be placed from the motive of the common good. Moreover, legal justice too is a special virtue according to its essence, insofar as it regards the common good as its proper object. But it is "in the ruler principally and as it were architectonically; in subjects, however, secondarily and as it were administratively" (St. Thomas, II-II, q. 58, a. 6). Therefore in the ruler it is exercised especially by establishing laws useful for the common good and by preserving right order; in the subject, chiefly by fulfilling laws insofar as they serve the common good.

2. **Opposed vices.** To legal justice is opposed, besides contempt of the common good, the transgression of a law enacted from the motive of the common good, that is, of a good owed to the

community, as such, such as a military or tributary law, as will be explained more fully in its place.

There is also a justice which is called vindicative, and which inclines one to inflicting just punishment on the guilty: just punishment, I say, by which the injured order is repaired and injuries to order are guarded against. Now, with its ends considered, it seems to regard the common good and to be reduced to legal justice, unless, which seems not altogether improbable, it must be held as a special virtue and a potential part of justice which in a private person is called vindication (n. 407).

Objection. Vindicative justice seems to be reducible to commutative justice, because it concerns rendering a debt according to equality of thing to thing.

Response. It concerns rendering a debt according to equality of thing to thing, that is, to a thing specially destined for the advantage of someone, I deny; according to equality proportionally defined (n. 379), I concede. Now commutative justice seems to regard only the former equality.

Nevertheless, by force of a tacit contract, a judge is bound by commutative justice to discharge his office rightly.

Corollary I. Besides commutative justice, concerning which there is no dispute, the reason of justice truly belongs also to distributive and legal justice. The reason is that the three conditions required for justice according to the explanation given above are found in each.

Corollary II. Commutative, distributive, and legal justice differ in species, because their formal object, that is, the reason of debt as founded on a morally diverse title (n. 379), is morally diverse.

Corollary III. Although the reason of justice truly belongs to the aforesaid justices, it is nevertheless doubted whether or not justice is divided into them as a genus into species, or in other words whether the division of justice into commutative, distributive, and legal justice is univocal or only analogical. On this point first observe that a division of a genus into species is had when the species or parts of the division participate perfectly in the reason of the genus. Now some deny that the division of justice into commutative, distributive, and legal justice is a division of a genus into species, because the reason of justice is found perfectly in commutative justice alone, and not in the others. In it there is the perfect reason of another, since ordinarily it has reference between two equal and independent individuals or quasi-individuals; the perfect reason of debt, since it is founded on the strict right of another; and the perfect reason of equality, namely arithmetic equality. The other two justices lack this perfect reason: distributive justice lacks the perfect reason of another, since it is constituted in the relation of the whole to the part; it lacks the perfect reason of debt, since greater dignity or more suitable capacity does not furnish a strict right, and consequently neither a strict debt; it lacks the reason of equality, since it claims for itself only geometric equality. The same must be said of legal justice: it falls short of the perfect reason of another, since it is between the part and the whole; it falls short of the perfect reason of debt, since its debt has its foundation only in the ruler's power of jurisdiction; it falls short of the perfect reason of equality, since it regards only equality of necessity.

Others admit the contrary, because the reason of justice is found perfectly both in commutative justice and in distributive and legal justice. For justice is the habit of rendering to each one his own right; hence the concept of the genus of justice involves rendering a debt to another proportionately. Now the concept of debt imports nothing other than debt as such, no matter in what title it is founded; the concept of another imports nothing other than someone distinct; the concept of rendering proportionately as such regards both arithmetic proportion and another kind. But if these things are

true, the reason of justice is found in the three justices in every way, or perfectly, and therefore justice is divided as a genus into three species. Who will disentangle these involved matters!

[1] Cf. the encyclical of Pius XI, *Quadragesimo anno*, May 15, 1931.

383 **IV. Integral Parts of Justice.** According to St. Thomas (II-II, q. 79, a. 1), the integral parts of justice are two, namely: 1. to do good under the reason of debt, whether in relation to the community or in relation to the neighbor; 2. to decline from evil under the reason of what is harmful, whether in relation to the community or in relation to the neighbor. These, namely, are required for perfect justice. For "it belongs to the same thing ... to establish something, and to preserve what has been established in those things which are toward another. But someone establishes the equality of justice by doing good, by rendering to another what is owed to him; and he preserves the equality of justice already established by declining from evil, that is, by inflicting no harm on the neighbor" (St. Thomas, II-II, q. 79, a. 1).

§ III. On the Potential Parts of Justice

384 The potential parts of justice are several. For justice is a virtue toward another, rendering to him what is owed according to equality. Therefore every virtue which by its nature is toward another, but falls short of justice by reason either of debt or of equality, must be joined to justice as a potential part. Now the virtues which fall short by reason of debt, or in other words which regard not a juridical debt but only a moral debt, that is, one to be rendered from the moral goodness of virtue alone, are of two species. For some regard a debt "so necessary that without it moral goodness of conduct cannot be preserved" (St. Thomas, II-II, q. 80, single article); and these are truth, gratitude, and vindication. Others regard a debt which "is necessary as contributing to greater moral goodness, without which nevertheless moral goodness can be preserved" (St. Thomas, cited place); and these are liberality and affability. By reason of equality those virtues fall short, or in other words regard a debt which can in no way be rendered according to equality: religion, penance, piety, and observance.

Therefore there are nine virtues which are referred to justice as potential parts; two of them regard a debt toward God, namely religion and penance; the remaining seven have as their object a debt toward the neighbor.

Point I. On Religion

385 **I. Notion of Religion.** Religion, since it is more probably derived from the word *religare*, by the force of the word indicates the bond by which man is bound with God. Taken in a broader sense, it indicates the complex of all acts by which man is perfectly ordered to God; therefore it includes not only the act of worshiping God, but also the act of obeying laws, whether natural or positive. But taken in the proper sense, insofar as it is a special virtue, it can be defined: a moral virtue inclining man to render to God, as First Principle and Supreme Lord, the worship owed to Him (St. Thomas, II-II, q. 81, aa. 1 and 2). It is said:

1. **As First Principle and Supreme Lord.** This signifies the cause of the special worship.
2. **Worship,** namely testimony by which God's excellence and our subjection to Him are indicated.
3. **Owed.** By this word the obligation of this worship is not set forth, but its specification; therefore it denotes worship which corresponds to God's supreme excellence and our complete subjection.

386 **II. Object of Religion.** 1. The remote material object is the very worship owed to God; the proximate material object is all acts, whether internal or external, by which God's supreme excellence and our complete submission are signified.

2. The remote formal object is the supreme excellence of God, on account of which worship is owed to Him, insofar as He is the first principle of all things, the supreme Lord of all, and the end of all; the proximate formal object is the special moral goodness shining forth in showing due worship to infinite Excellence.

From what has been said it follows:

1. That the virtue of religion differs from the theological virtues. For these regard God immediately as formal and material object; religion, on the contrary, is occupied immediately around the worship owed to God and all those things which we offer to God in worshiping Him, and does so on account of moral goodness. Therefore God is not immediately its object, neither formal nor material (cf. St. Thomas, II-II, q. 81, a. 5; *De virtutibus*, a. 12, ad 11).[1]
2. That the virtue of religion is a species distinct from the other virtues, since in it there is a special reason of moral good, namely honor and service owed on account of the excellence of God, which is plainly special and singular (cf. St. Thomas, II-II, q. 81, a. 4).
3. That religion is the most excellent of all purely moral virtues. For those things which are ordered to an end obtain goodness from their order to the end; and therefore the nearer they are to the end, the better they are (St. Thomas, II-II, q. 81, a. 6). Now among purely moral virtues religion "comes nearer to God, insofar as it works those things which are directly and immediately ordered to divine honor" (St. Thomas, II-II, q. 81, a. 6).
4. That religion, although it falls short of the perfect reason of justice because it does not render an equal thing, nevertheless surpasses justice both by reason of being toward another, because it is toward God, and by reason of debt, because the debt owed to God is greater than the debt owed to man, and by reason of the object, which comes nearer to our end, that is, to God. And therefore religion is simply a more perfect virtue than justice itself, although justice surpasses it in a certain respect, that is, by reason of equality.

[1] Cf. Gonet, d. 3, a. 1, nn. 1-3 inclusive; Salmanticenses, *Arb. praed.*, n. 60 (t. 6, p. 450); Lessius, *De iure et iustitia*, book 2, c. 3, *De religione*, d. 2, n. 10.

387 **III. Acts of Religion.** The acts of religion are distinguished into internal and external acts. The internal acts are devotion and prayer. External acts are those by which we worship God either through one's own body, and this is adoration; or by offering to God some external thing, and these are sacrifice, oblation, and vow; or by assuming something pertaining to God, namely either the Sacraments or the name of God, which can be assumed either by invocation, or by oath, or by adjuration (St. Thomas, II-II, q. 84, Preface). Concerning each of these, discussion will be had in Book II.

388 **IV. Sins Opposed to Religion.** Sins opposed to religion can be distinguished into negative and positive sins. Sins negatively opposed to religion consist in the omission of acts here and now prescribed by religion; sins positively opposed consist not in the omission of prescribed acts but in the placing of contrary acts. And because religion, as a moral virtue, of itself has its being in a mean, acts positively opposed to it can be contrary to it in two ways: either by excess or by defect. Some act is

contrary to religion by excess "not because it offers more in divine worship ... but because it offers divine worship either to one to whom it ought not, or in a way in which it ought not" (St. Thomas, II-II, q. 92, a. 1). These sins are indicated by the name of superstition and irreligiosity. To superstition pertain idolatry and superstitious observance, as it is called. To irreligiosity pertain perjury, tempting God, blasphemy, vain usurpation of the divine name, sacrilege, and simony. Concerning these matters there will be discussion in Book II.

Point II. On Penance

389 **I. Notion of Penance.** Penance, as regards the etymology of the name, signifies the same as *poenae tenentia*, a holding of punishment, "for he who truly repents does nothing else," says St. Augustine,[1] "except that he does not allow what he has done badly to be unpunished." It is suitably defined: a moral virtue inclining man to the destruction of his own past sin, insofar as it is an offense against God (St. Thomas, III, q. 85, a. 2). It is said:

1. **To the destruction of his own past sin.** By these words is indicated the material object of the virtue of penance.
2. **Insofar as it is an offense against God.** This indicates the specific reason under which the virtue of penance considers sin, and thus it is distinguished both from charity, which destroys sin as opposed to the friendship of God, and from religion, which considers sin as opposed to divine worship.

[1] *Epistula* 153, c. 3, n. 6.

390 **II. Object of Penance.** 1. The remote material object is every personal sin, even one remitted. It is said:

a) **Sin,** so that imperfections may be excluded; for these are acts morally good in species and in the individual, in which God is pleased. Therefore they do not contain an offense against God. If someone grieves over imperfections, he rather elicits acts of charity, since he grieves that by his acts he has not pleased God more perfectly.

b) **Personal,** so that both original sin and another's sin may be excluded, since neither can be an object of the virtue of penance. Not original sin: "for contrition is sorrow regarding and in some way breaking down the hardness of the will. And therefore it can be only concerning those sins which come into us from the hardness of our own will" (St. Thomas, Supplement, q. 2, a. 2). Now original sin was not brought in by our will, and therefore there can be no contrition over it, but only displeasure. Nor can another's sin be its object. For sin cannot be expiated unless reconciliation with God is had, and therefore the subjection of the offender himself with respect to God, whom he has offended. Therefore a virtue which regards sin as expiable through satisfaction cannot be occupied around another's sin.[1] Hence the Holy Office, on July 15, 1893, deservedly condemned the following expressions: "the penitent Heart of Jesus"; "Jesus penitent for us," etc.,[2] since on the one hand Christ is wholly impeccable, and therefore neither had nor could have a sin of His own, and on the other hand no one can repent of another's sins.

c) **Every,** whether it is mortal or venial, whether remitted or not remitted. Mortal sin is nevertheless the primary object of this virtue, since it is an offense simply; venial sin is secondary, since it is only an offense in a certain respect. But even if sin, both as to guilt and also as to temporal punishment, has been entirely destroyed, nevertheless it remains the material object of penance. For since penance falls

short on the part of equality, and therefore no creature can repair according to equality the injury inflicted on God through mortal sin, penance can always be performed concerning mortal sins, even those already remitted, since they always remain expiable through satisfaction. Indeed, although more probably we can satisfy according to equality for venial sins,[3] nevertheless they too, even with their remission and satisfaction according to equality being supposed, remain the remote material object of the virtue of penance, since this satisfaction has the aforesaid value from grace and is made through acts which are already owed to God under other titles. Hence it never has equality by the rigor of justice,[4] and therefore venial sins always remain expiable through more abundant satisfaction.[5]

Corollary I. Although penance primarily and of itself is occupied around sin already actually committed, since only that is actually repairable or expiable, nevertheless secondarily it also attains future sin as something to be avoided, since true penance concerning past sins must include a purpose of avoiding future sins.[6]

Corollary II. Because penance tends remotely toward sin insofar as it is expiable through satisfaction, but proximately toward the acts by which the injury inflicted on God is repaired, the evil of punishment which the penitent embraces for satisfying for sins also pertains to the remote material object of the same virtue.[7]

The proximate material object of penance is its acts, whether elicited or commanded. The principal elicited acts are sorrow, detestation, and the purpose of not sinning any more; the commanded acts are all those acts of other virtues which the penitent places from the motive of penance, or which he directs to expiating the offense.

2. The remote formal object of penance is the divine right injured as to be repaired through satisfaction; the proximate formal object is the special moral goodness shining forth in repairing through satisfaction the injured divine right.

[1] Cf. Salmanticenses, *De poenitentia*, disp. 2, n. 63 sq. (p. 410 sqq.).

[2] *Acta Sanctae Sedis*, t. 26, p. 319.

[3] Cf. Salmanticenses, *De poenitentia*, disp. 1, dub. 5, nn. 129-133 inclusive (t. 19, pp. 88-91 inclusive).

[4] Cf. Salmanticenses, cited place, disp. 5, dub. 4, nn. 133-134 (t. 19, pp. 463-465 inclusive).

[5] Cf. Billuart, *De poenitentia*, d. 2, a. 1, "dico 3. Si dicas"; Lugo, *De poenitentia*, d. 3, s. 1, n. 15.

[6] Cf. Gonet, d. 2, a. 2, § 3; Salmanticenses, cited place, disp. 5, dub. 2, n. 40 (pp. 393-394).

[7] Salmanticenses, *De poenitentia*, disp. 5, dub. 4, nn. 133-134.

391 **III. Subject of Penance.** 1. The subject *by which* is the will. For the acts of penance, since they are occupied around a debt toward God to be restored, are consummated by the will through a voluntary and free conversion to God and aversion from sin; hence the virtue too must inhere in the will.

2. The subject *which* and total of the virtue of penance is all just men who have at some time sinned, or are capable of sinning. For insofar as it is an infused moral virtue, it is only in the just, as was said above; but insofar as it is penance, it is only in those who are capable of its acts, since every virtue is given for the sake of acts. Such are only the just men mentioned above, since the sin of angels is irremissible, or not expiable through satisfaction, on account of the intrinsic inflexibility of free choice after deliberate election, by which it happens that they adhere immovably to the

object once chosen (cf. St. Thomas, I, q. 64, a. 2; *De malo*, a. 5).[1] But penance, as was said above, is occupied around sin as expiable through satisfaction (cf. St. Thomas, Supplement, q. 16, a. 3).[2]

Hence it follows: 1. that Christ, as intrinsically impeccable, always lacked this virtue; 2. that probably the Blessed Virgin Mary similarly lacked it, since before all ages she was predestined to the fullness of graces by which impeccability belonged to her perpetually, and therefore the virtue of penance would have been given superfluously to this sweetest Mother of God and of us;[3] 3. that the Blessed possess this virtue, even when they never sinned, as, for example, little children who died after Baptism. For God, as was said above, preserves all virtues in the Blessed, provided they are and insofar as they are compossible with their state. Nevertheless this virtue, as St. Thomas teaches, "will not have the same act which it now has, but another, namely to give thanks to God for mercy forgiving sins" (Supplement, q. 16, a. 2);[4] 4. that the first parents had this virtue already before the fall.[5]

[1] Salmanticenses, *De angelis*, disp. 13 (t. 4, p. 764 sqq.).

[2] Salmanticenses, Commentary on III, q. 85, a. 4, n. 8 (t. 19, pp. 646-647).

[3] Cf. Billuart, *De poenitentia*, d. 2, a. 2, inferes 2. Others admit the contrary opinion, because the Blessed Virgin is not, as Christ is, impeccable by her nature. Thus, for example, Salmanticenses, Commentary on III, q. 89, a. 4, n. 9 (t. 19, p. 647).

[4] Cf. Billuart, cited place, dico 2; Salmanticenses, cited place, n. 10 (pp. 647-648).

[5] Cf. Salmanticenses, cited place, n. 10 (p. 648).

392 **IV. Necessity of Penance.** 1. The habit of penance, or habitual penance, is necessary by necessity of means for salvation. The reason is that it is indivisibly connected with sanctifying grace, which is required for salvation by an absolute necessity.

2. **The act of penance, or actual penance:** a) In this economy of salvation it is necessary by necessity of means for all who have sinned mortally. I say *in this economy of salvation*, since it seems that it must be affirmed that even mortal sin absolutely can be pardoned without actual penance being prerequired on the part of the sinner. I say further *who have sinned mortally*, because venial sin, even if it is not remitted on this earth without at least an implicit act of penance, can also be remitted in the other life.

The proposition understood in this way is established from the Council of Trent,[1] and is abundantly clear from many places of Sacred Scripture.[2] It is confirmed by reason, since it is altogether fitting that the offender not obtain pardon from the offended one except by means of compensation for the injury inflicted, as by a necessary means.

Nevertheless, all concede that actual penance which is included in the act of perfect charity suffices for those who are forgetful of mortal sin. Whether or not the same virtual or implicit penance also suffices for those who have mortal sin in memory is disputed by authors. Perhaps it is more fittingly said that the case in which someone, mindful of grave sin and eliciting an act of perfect charity, does not also place an explicit act of penance, is hypothetical, since from a soul so disposed an explicit act of penance follows of itself. That an explicit act of penance is required in the sacrament of penance will be proved in its own place.

b) It is necessary by necessity of precept; for this, besides following from necessity of means, is taught in express words of Sacred Scripture.[3]

[1] Session 14, chapter 1.

[2] Ezek. 18:21; Luke 13:5.

[3] Matt. 3:2; Acts 2:38.

393 **V. Opposed Vices.** Apart from positive law, the one sin opposed to penance is: not willing to repair the injury inflicted on God through sin. Delaying penance is not opposed to the virtue of penance, but to another virtue, for example to charity owed to oneself. I said *apart from positive law*, because positive law and precept are sometimes made from the motive of penance; in that case transgression contains a sin opposed to penance.

Point III. On Piety

394 **I. Notion of Piety.** The name piety in Sacred Scripture sometimes denotes religion itself;[1] likewise the affection of mercy.[2] But in the sense of some special virtue it is defined: a moral virtue inclining man to show due duty and honor to parents and country, insofar as they are principles of our being and governance. It is said:

1. **To show due duty and honor.** By these words is indicated the material object of this virtue.
2. **To parents and country.** By these words is indicated the terminus *to whom* of this virtue; and by the name of parents are primarily indicated father and mother, as properly and immediately the authors of our life; secondarily also our blood relatives, who in part are remotely the authors of our life, and all who share the blood of the authors of life and thus represent them to us. By the name of country are also understood fellow citizens and all friends of the country, on account of the intimate connection (St. Thomas, II-II, q. 101, a. 1).
3. **Insofar as they are principles of our being and governance.** Thus is indicated the proper reason or cause why due duty and honor must be shown.

[1] 1 Tim. 4:7.

[2] Ecclus. 2:13.

395 **II. Object of Piety.** 1. The material object is all acts by which we show due duty and honor to them. These are acts of love, reverence, obedience, and assistance, whether with respect to body or with respect to soul.

2. The remote formal object is the reason of debt on account of the received benefit of origin and governance. Therefore St. Thomas says: "Man is made debtor in different ways to others, according to their different excellence and the different benefits received from them. But in both respects God holds the highest place, who is both most excellent and is for us the first principle of being and governance; secondarily, however, the principles of our being and governance are parents and country, from whom and in which we were born and nourished. And therefore, after God, man is debtor above all to parents and country. Hence, just as it pertains to religion to show worship to God, so in a secondary degree it pertains to piety to show honor to parents and country" (II-II, q. 101, a. 1). The proximate formal object is the special moral goodness shining forth in rendering this debt.

396 **III. Opposed Vices.** One sins against piety either by omission of prescribed acts or by commission of contrary acts; these are contained under the common, though ambiguous, name of impiety. Acts of commission are hatred, irreverence, and disobedience.

Point IV. On Observance

397 **I. Notion of Observance.** Observance is a moral virtue inclining man to show due honor and reverence to persons excelling in dignity, insofar as they are a principle of governance with respect to some matters (St. Thomas, II-II, q. 102, a. 1). It is said:

1. **Due honor and reverence.** By these words is indicated the material object of the virtue of observance, namely the reverence and honor which correspond to the dignity of the person.
2. **To persons excelling in dignity.** This indicates the terminus *to whom*, namely one excelling in dignity. But as the Angelic Doctor observes, "because through knowledge and virtue and all other things of this sort someone is rendered suited for a state of dignity, the reverence which is shown to some on account of any excellence whatever pertains to the same virtue" (St. Thomas, II-II, q. 102, a. 1, ad 2). "And hence it happens," the Salmanticenses rightly say,[1] "that there is no person to whom we do not owe some observance; because in all we can consider some perfection which does not belong to us, at least from ourselves; and so, considering in ourselves that which is from ourselves, and in others what they have from God, there will be no person to whom we ought not in some way to submit ourselves, according to that saying of the Apostle: 'Esteeming others better than themselves,'[2] and 'In honor preventing one another.'"[3]
3. **Insofar as they are a principle of governance with respect to some matters.** By these words is indicated the reason why reverence and honor must be shown.

[1] *Arb. praed.*, n. 77 (t. 6, p. 459).

[2] Phil. 2:3.

[3] Rom. 12:10.

398 **II. Object of Observance.** 1. The material object is all acts by which we honor the terminus *to whom* of this virtue, insofar as he enjoys the power of ruling us, but not insofar as he exercises this power, since as such he demands from us an act of obedience.

2. The remote formal object is the reason of debt on account of the excellence of the principle of governance, belonging more or less to these persons. And thus observance is distinguished from piety, which has its formal reason in being a principle; observance, however, in the excellence or dignity of the principle. The proximate formal object is the special moral goodness shining forth in rendering this debt.

399 **III. Opposed Vices.** To observance is opposed any sin of irreverence, whether of omission or of commission; and this whether internal or external, whether by defect or by excess.

400 **IV. Species of Observance.** Since there are as many different grades of excellence and dignity as there are those whom observance regards, this virtue is not an ultimate species, but a subaltern one, divided into several ultimate species, of which nevertheless only three obtain a special name, namely dulia, hyperdulia, and obedience; while the others claim for themselves the common name of special observance or courtesy. Concerning the first three, take the following:

1. **Dulia,** in Greek *douleia*, although by the force of the word it signifies servitude, and thus as regards the native signification of the word is that ultimate species of observance by which a servant honors his master, has already for a long time among theologians designated that species of observance by which, on account of supernatural excellence, we honor and venerate the angels and

saints in heaven, except the Blessed Virgin Mary, whose cult enjoys the name of hyperdulia (can. 1255, § 1).

2. **Hyperdulia,** from *hyper*, that is, above, and *douleuo*, that is, to serve, is that species of observance by which we honor and venerate the Blessed Virgin Mary on account of the special and singular dignity of divine motherhood. And this virtue is more probably distinct in species from dulia, because, as the Angelic Doctor teaches, "where there is a different reason of debt, there must be a different virtue which renders the debt" (II-II, q. 103, a. 3).[1]

3. **Obedience.** a) **Notion.** Obedience, as if *obaudientia*, in a broad sense is taken for every fulfillment of a precept, even when it is not done with the intention of fulfilling it. But in the strict sense, and insofar as it is a special virtue, it is defined: a moral virtue inclining a subject to comply with an honorable precept of a legitimate superior, because and insofar as it is such a precept. It is said:

alpha. **With an honorable precept.** This indicates the material object of obedience.

beta. **Of a legitimate superior.** This indicates that the honorable precept is the material object of the virtue of obedience of this subject.

gamma. **Because and insofar as it is such a precept.** This indicates the formal object of obedience; or it indicates that the precept under this respect alone is the material object of obedience.

b) **Object.** alpha. The material object is constituted by all precepts which, and insofar as, they are imposed by a legitimate superior, whether the precepts are express or tacit. "For the will of the superior," says the Angelic Doctor, "in whatever way it becomes known, is a certain tacit precept; and obedience seems the more prompt, the more it anticipates an express precept by obeying once the will of the superior is understood" (St. Thomas, II-II, q. 104, a. 2). "The object of obedience ... is ... the precept of any superior whatever, whether express or interpretative, namely a simple word of a prelate indicating his will, to which the prompt obedient person obeys" (St. Thomas, II-II, q. 104, a. 2, ad 2).[2]

But if the superior does not command either expressly or tacitly, or commands beyond his legitimate authority, desires or precepts of this sort do not properly constitute the material object of obedience; and their execution in the subject is formally an act of that virtue by whose formal object he is moved, for example observance, piety, religion, etc. Reductively, however, acts of this sort can be referred to the virtue of obedience, insofar as they are placed from the affection of perfectly disposing and preparing oneself for the fulfillment of a precept, and of removing the danger of disobedience to a legitimately imposed precept.

beta. The remote formal object is the reason of debt arising from the legitimate power of the superior to command. Hence it is clear, on the one hand, that not every fulfillment of the precept of a legitimate superior is formally an act of the virtue of obedience, but only if the fulfillment is done from the motive of obedience; on the other hand, neither is there a sin of disobedience if the precept is fulfilled from another motive, unless an act of obedience from the motive of obedience had been prescribed. The proximate formal object is the special moral goodness shining forth in rendering this debt.

3. **Opposed vices.** To obedience is opposed the sin of disobedience; note, however, that the transgression of a precept is then only a sin of disobedience when the precept was made from the motive of obedience, which often does not occur (n. 148).

[1] Cf. Salmanticenses, *Arb. praed.*, n. 78 (t. 6, p. 459); Haine, *De Hyperdulia*, Prolegomena, § 5, n. 10, pp. 33 ined.-36 inclusive; Sylvius, on II-II, q. 103, a. 4.

[2] Cf. Salmanticenses, *Arb. praed.*, n. 80 (t. 6, p. 461); Billuart, d. 2, a. 1, dico 2; Pesch, nn. 257-260 inclusive.

Point V. On Truth

401 **I. Notion of Truth.** Truth or veracity is a moral virtue inclining man faithfully to signify outwardly his own judgment (St. Thomas, II-II, q. 109, a. 1). It is said:

1. **His own judgment,** that is, the concepts which he has in his mind about some matter.
2. **Faithfully to signify outwardly,** that is, to communicate with others in conformity with his own mind.

402 **II. Object of Truth.** 1. The material object is formed by all the modes by which something can be communicated, whether signs, words, writings, or deeds.

2. The remote formal object is the special reason of debt of signifying truth to others (St. Thomas, II-II, q. 109, a. 3); the proximate formal object is the special moral goodness shining forth in rendering the debt.

403 **III. Opposed Vices.** To truth is opposed every act of manifestation not agreeing with the internal concept; this act is called a lie if it is done by words, signs, or writings; simulation, if it consists in deeds.

Note. With truth coincides internal simplicity. "Simplicity," says the Angelic Doctor, "is said by opposition to duplicity, namely by which someone has one thing in his heart and shows another outwardly; and thus simplicity pertains to this virtue, that is, to truth" (II-II, q. 109, a. 2, ad 4).[1]

[1] External simplicity in clothing, etc., according to St. Thomas, II-II, q. 169, a. 1, corpus, pertains to the virtue which is called modesty of attire, concerning which below; cf. St. Peter Damian, *Opusculum* 45 (M.P.L. 145, cols. 695-794 inclusive); Benedict XIV, *De canonizatione et beatificatione Sanctorum*, book 3, c. 24, nn. 11-12 (Padua edition, 1743, t. 3, pp. 211-213 inclusive).

Point VI. On Gratitude

404 **I. Notion of Gratitude.** Gratitude or thanks can be defined: a moral virtue inclining man to acts by which thanks are shown to one's benefactor as such. It is said:

1. **To acts by which thanks are shown.** By these words is indicated the material object of gratitude.
2. **To one's benefactor as such.** By this the formal object is assigned; for by this reason gratitude is distinguished both from piety, by which we honor parents, and from observance, by which we honor persons excelling in dignity (St. Thomas, II-II, q. 106, a. 1, ad 2).

405 **II. Object of Gratitude.** 1. The material object is all actions by which this debt is rendered, and these can be reduced to three: 1. to acknowledge the received benefit; 2. to praise the benefactor and give him thanks; 3. to repay according to place and time, according to one's ability (cf. St. Thomas, II-II, q. 107, a. 2, and q. 106, aa. 4-6 inclusive).[1]

2. The remote formal object is the special reason of debt, not indeed strict, but honorable, toward the benefactor as such, arising from the benefit received (St. Thomas, II-II, q. 106, a. 1, ad 2). For by this reason gratitude is distinguished both from piety, by which we honor parents, and from observance, by which we honor persons excelling in dignity (St. Thomas, II-II, q. 106, a. 1), and it is clear that it is a virtue specifically distinct from them. The proximate formal object is the special moral goodness shining forth in rendering this debt.

[1] Cf. Salmanticenses, *Arb. praed.*, n. 81; Pesch, nn. 282-284 inclusive.

406 **III. Opposed Vices.** To gratitude is opposed ingratitude; but this is had only when the placed act, or the omission of some act, is prohibited by the motive of gratitude.

Point VII. On Vindication

407 **I. Notion of Vindication.** Vindication is a moral virtue inclining a private man to seek vengeance for an injury inflicted, by due punishment, according to the prescription of right reason illumined by faith. It is said:

1. **Inclining a private man.** Thus is indicated the subject of this virtue; concerning by what virtue a public person is bound to vengeance for an injury, see n. 382.
2. **To seek vengeance for an injury inflicted by due punishment, etc.** By these words is assigned the material object.

408 **II. Object of Vindication.** 1. The material object is constituted by all acts by which a private man seeks that due punishment be inflicted on the injurer by legitimate public authority. Hence the material object of the virtue of vindication is not the execution itself of the due punishment; for an act of this sort is dishonorable for a private man, because he lacks legitimate power to punish. And because man is more inclined to greater than to milder vengeance, the virtue of vindication serves especially to moderate the appetite for revenge.

2. The remote formal object is the special reason of debt for seeking vengeance for an injury inflicted; the proximate formal object is the special moral goodness shining forth in seeking this debt (St. Thomas, II-II, q. 108, aa. 1 and 2).

409 **III. Opposed Vices.** To vindication are opposed all acts by which either excessive punishment, or an unduly milder punishment, or unduly no punishment, is sought. Nevertheless, as regards omission of the petition for punishment, it must be observed that it is often more perfect to forgive an injury and thus for the sake of a higher good to omit the petition of vindication; but not always, since supernatural reason dictates that sometimes, for the good either of the community or of the delinquent himself, punishment is to be sought.

Point VIII. On Liberality

410 **I. Notion of Liberality.** Liberality is a moral virtue inclining man to give money and things estimable by money according to the prescription of reason illumined by faith.

411 **II. Object of Liberality.** 1. The remote material object is money and things estimable by money, while the proximate object is constituted by the affections of the soul toward the remote object.

2. The remote formal object is the special reason of debt of giving riches. Thus liberality is distinguished from mercy, which has the need of the neighbor as motive, and from beneficence, which acts from love, while liberality proceeds from moderation of affection toward riches. The proximate formal object is the special moral goodness shining forth in rendering this debt (St. Thomas, II-II, q. 117, a. 1).

412 **III. Opposed Vices.** To liberality are opposed: by defect, avarice, by which someone omits to give riches according to the debt of moral goodness; by excess, prodigality, by which someone gives riches more than the prescription of reason illumined by faith permits, or to one to whom it does not permit.

Point IX. On Affability

413 **I. Notion of Affability.** Affability is a moral virtue inclining man to converse with his neighbor fittingly and pleasantly, according to the prescription of reason illumined by faith. It is said:

1. **To converse,** that is, in common association as it relates to social life.

2. **Fittingly and pleasantly, etc.,** that is, as the condition of persons and the circumstances require.

414 **II. Object of Affability.** 1. The material object is all external words and deeds of which conversation with one's neighbor consists (St. Thomas, II-II, q. 114, a. 1).

2. The remote formal object is the special reason of debt from moral goodness, by which fitting and pleasant conversation is owed to the companions of life; and thus affability is distinguished from friendship, which acts from benevolence. The proximate formal object is the special moral goodness shining forth in rendering this debt.

415 **III. Opposed Vices.** To affability are opposed: by defect, contentiousness, by which someone contradicts another beyond what is due; by excess, flattery, by which someone desires too much to please another, praising him beyond what is due (St. Thomas, II-II, qq. 115-116).

Article III. On Fortitude

We shall speak first of fortitude itself, then of its parts.

§ I. On Fortitude Itself

416 **I. Notion of Fortitude.** Fortitude, which is the third cardinal virtue, and which in dignity is surpassed by prudence and justice, but surpasses temperance, can be defined: a moral virtue inclining man to moderate the passions of fear and daring in sustaining and attacking dangers of death. It is said:

1. **To moderate the passions of fear and daring.** Thus it is indicated that it belongs to fortitude that man proceed by a middle way between excessive fear and excessive daring.

2. **In sustaining and attacking dangers of death.** By these words is indicated the object around which the passions must be moderated.

417 **II. Object of Fortitude.** 1. The proper and primary remote material object of fortitude is dangers of death; nevertheless, "because," as St. Thomas says, "he who stands firm against greater things, consequently stands firm against lesser things" (St. Thomas, II-II, q. 123, a. 2), fortitude is extended secondarily also to lesser dangers (St. Thomas, II-II, q. 123, a. 4). The proximate material object is the movements of fear and daring. For fortitude inclines one to preserve the mean of reason illumined by faith amid dangers of death; moreover, the passions by which man is drawn away from this mean are fear, "which implies a certain withdrawal from an evil that has difficulty" (St. Thomas, II-II, q. 123, a. 3), and daring, by which the appetite rises up against a terrible evil so as to overcome it.

2. The remote formal object is firmness of soul in moderating the passions of fear and daring amid dangers of death; the proximate formal object is the special moral goodness shining forth in the aforesaid firmness.

418 **III. Acts of Fortitude.** The acts of fortitude are two, namely to sustain and to attack. For sometimes right reason dictates that, with danger of death, we attack the adversaries of the good, so

that they may be driven back and the assault against the good may cease; but sometimes, and more often, that we patiently sustain such dangers for the sake of the good of virtue, from which one must never withdraw, not even for the sake of removing them. This last act, namely to sustain, is the principal one. For "to attack pertains to fortitude insofar as it moderates daring; but to sustain follows the repression of fear" (St. Thomas, II-II, q. 123, a. 6). Now "fortitude is more concerned with repressing fears than with moderating acts of daring; for it is more difficult to repress fear than to moderate daring, because the very danger which is the object of daring and fear contributes of itself somewhat to the repression of daring, but works toward the increase of fear."

Since the cardinal virtue of fortitude is occupied around whatever dangers of death, which, insofar as they are such, are all of the same species, it lacks subjective parts (St. Thomas, II-II, q. 128, single article). But the principal act of fortitude shines forth especially in martyrdom; therefore we wish to note certain things concerning it.

1. **Notion of Martyrdom.** By the force of the word, martyrdom - for it is derived from the Greek word *marturon* (μαρτύρων) - signifies any testimony whatever; but by usage it has long been received that by this word, by antonomasia, there is designated an act of supernatural fortitude by which a singular testimony is given for the truth of the Christian faith, and which can be defined: the voluntary endurance of torment lethal of itself for the faith of Christ. This definition will become clearer from the conditions to be assigned.

2. **Conditions of Martyrdom.** Some conditions are on the part of the torment, namely that it be lethal of itself; others on the part of the martyr, namely that he voluntarily undergo the endurance of torment and from a supernatural motive; others on the part of the persecutor, namely that he be distinct from the one being tormented and inflict the torment from hatred against the faith of Christ. Therefore it is required:

a) **That the torment be lethal of itself.** "A martyr is so called," says St. Thomas, "as a witness of the Christian faith, by which visible things are proposed as things to be despised for the sake of invisible things" (St. Thomas, II-II, q. 124, a. 4). Moreover, so long as a man does not undergo torment lethal of itself, he does not show by deed that he despises all bodily things. But according to the more common opinion it is not demanded that death in fact follow; this is only the natural consequence of martyrdom, and does not pertain to its essence. This is clear both from the practice of the Church, which, for example, venerates St. John the Evangelist as a martyr because he voluntarily endured for the faith of Christ a torment lethal of itself, although by a miracle he came out unharmed from the vat of boiling oil; and from reason. For he who suffers torment lethal of itself, even if divine omnipotence prevents death, shows by deed that he despises all temporal things for the faith of Christ; and in this the outstanding act of fortitude formally exists.

b) **That the endurance of torment be voluntary.** For where the voluntary is lacking, an honorable act in general is also lacking. Therefore, although this condition, insofar as martyrdom is baptism of blood, is not required for little children, nevertheless it is required for adults, in whom martyrdom must always be an honorable act. An actual voluntary acceptance of this torment is best; a virtual voluntary acceptance also suffices; concerning the sufficiency of a habitual voluntary acceptance authors dispute.

c) **That the voluntary endurance of torment be accepted from a supernatural motive,** namely for bearing witness to the faith of Christ. For martyrdom is testimony shown to Christ; now he who dies, but not for the faith of Christ, does not show testimony to Christ. Therefore it is required that the

truth which the martyr testifies to by his torment be a truth taught by Christ. Hence it follows that before the Church he is not a martyr who dies to avoid a sin which he erroneously thinks to be a sin (St. Thomas, II-II, q. 124, a. 5; Supplement, q. 69, a. 6, ad 9).

d) **That another inflict the torment out of hatred against the faith of Christ.** For the martyr's testimony for the faith of Christ is solemn, as is clear from the words of Christ;[1] wherefore death must be inflicted by another in hatred of Christ; otherwise testimony is not had.

It is disputed whether soldiers who are killed in a sacred war while fighting for the defense of the faith can be called martyrs in the true sense. Some deny it, since the nature of martyrdom, as the most excellent act of fortitude and an imitation of the Passion of Christ, seems to require that the endurance of torment lethal of itself be sustained patiently without attack. There is added the practice of the Church, which never venerates these soldiers as martyrs. Others, however, affirm it, since by attacking and defending, the soldiers seem to defend the Church and Christ more than themselves; and they try to explain the practice of the Church from the difficulty of investigating from what motive, divine or human, the soldiers fought.

Corollary. Neither a soldier in any war, nor a priest, nor a religious woman who succumbs in the duties of his or her office or of charity, is to be called a martyr; indeed, not even a priest who, falsely accused of homicide and able to free himself by violating the sacramental seal, is condemned to death. The cause of the death appointed on the part of the judge is not the cause of Christ, but the supposed homicide. Nevertheless, all these who succumb in fulfilling their office from a supernatural motive, although they are not martyrs, must truly be said to exercise the most perfect act of the virtue of fortitude; indeed, they place the most perfect act of charity according to the words of Christ: "Greater love than this no one has, that someone lay down his life for his friends";[2] but that act is not martyrdom, which theologians call baptism of blood.

3. **Effects of Martyrdom.** a) In the just man it effects second sanctifying grace, and the remission of all venial faults of which he repents, even if attrition without martyrdom would not suffice for their remission, and the removal of all temporal punishments.

b) In the sinner, martyrdom effects first sanctifying grace and the remission of sin, both original sin, if it has not yet been remitted, and personal mortal sin, and the removal of eternal punishments and the other effects assigned for the just man.

Venial sins to which a martyr might die adhering are remitted for him as to guilt by the first act of charity which he elicits immediately after departure from this life (St. Thomas, *De malo*, q. 7, a. 11; St. Alphonsus, *Opera dogmatica*, ed. Walter, t. 1, p. 672); and since nothing can delay a martyr from entrance into eternal beatitude, the temporal punishments remaining for these venial sins are removed still by the force of the martyrdom suffered, by the same reason by which the sacrament of Baptism removes these punishments in those adults who, baptized with an affection for venial sins, would immediately depart from life without any sin committed after Baptism.

Note. Concerning the condition required in a martyr that he may obtain the effects of martyrdom, and concerning the manner in which martyrdom produces its effects, cf. the treatise on Baptism.

[1] Matt. 10:32-39.

[2] John 15:13.

§ II. On the Parts of Fortitude

419 Since this virtue is occupied around whatever dangers of death, which insofar as they are such are plainly of the same species, it lacks subjective parts. Therefore it remains to speak of its potential parts.

"For the act of attacking," says the Angelic Doctor, "two things are required; the first of which pertains to the preparation of the soul, namely that it have a ready soul for attacking" (St. Thomas, II-II, q. 128, single article). For this magnanimity is given (St. Thomas, cited place). "But the second pertains to the execution of the work, namely that one not fail in the execution of those things which he began confidently" (St. Thomas, cited place). And for this magnificence is posited (St. Thomas, cited place). "But for the other act of fortitude, which is to sustain, two things are likewise required; the first of these is that the soul not be broken by sorrow on account of the difficulty of imminent evils, and fall from its greatness" (St. Thomas, cited place). And as regards this, patience is given (St. Thomas, cited place). "But the other is that from the long-lasting suffering of difficult things man not become wearied to the point that he desist" (St. Thomas, cited place). And therefore perseverance is posited (St. Thomas, cited place). Moreover, these four parts, although insofar as they "are restricted to the proper matter of fortitude, namely to dangers of death" (St. Thomas, cited place), they are integral parts of this virtue, nevertheless "if ... they are referred to certain other matters, in which there is less difficulty, they will be virtues distinct from fortitude according to their own species" (St. Thomas, II-II, q. 128, single article). These things noted, we shall speak of each part separately.

Point I. On Magnanimity

420 **I. Notion of Magnanimity.** Magnanimity is a moral virtue inclining man to work great things, and things worthy of great honor, insofar as they are such. It is said:

1. **To work great things, and things worthy of great honor.** By these words is indicated the object around which this virtue is occupied.
2. **Insofar as they are such.** Thus is indicated the reason under which these works are attained by magnanimity.

421 **II. Object of Magnanimity.** 1. The material object is constituted by all works great in any genus of virtues whatever, and consequently, insofar as they are such, worthy of great honor. Moreover, because great honor is owed to great works, it also belongs consequently and secondarily to the virtue of magnanimity to moderate the appetite for honor. Therefore it inclines one to despise small honors, since greater honors are owed to great works; on the contrary, it inclines one to accept great honors according to the due measure of reason, that is, not on account of the honors themselves, but insofar as they are owed to great works; and in such a way that one neither lifts up the soul in receiving them, nor desists from virtue because of their absence (cf. St. Thomas, II-II, q. 129, a. 1 and a. 2, corpus, and a. 3).[1]

2. The remote formal object is the reason of the greatness of these works; and thus it is clear that this virtue differs specifically from those virtues which attain the same material object. For it considers this object under the respect of greatness, which is proper to it alone. The proximate formal object is the special moral goodness shining forth in working great things worthy of great honor.

[1] Cf. Salmanticenses, *Arb. praed.*, n. 98 (p. 472); Billuart, diss. 2, a. 2. On the principal acts of this virtue, which the Stagirite enumerates in book 4 of the *Ethics*, c. 3, one should by all means read St. Thomas, on book 4 of the *Ethics*, c. 3, lessons 9-10; Salmanticenses, cited place, n. 99 (pp. 472-473); Lessius, *De iure et iustitia*, nn. 14-17 inclusive.

422 **III. Opposed Vices.** By excess there are opposed to magnanimity: presumption, by which someone attacks great things above his powers; ambition, by which someone inordinately seeks honor; vain glory, by which someone inordinately seeks glory. By defect there is opposed pusillanimity, or excessive diffidence, by which someone shrinks from great works, and from honor and glory owed to him (St. Thomas, II-II, qq. 130-133; St. Alphonsus, *Theologia moralis*, V, 66).

Point II. On Magnificence

423 **I. Notion of Magnificence.** By the force of the word, magnificence denotes doing something great. But *to do* can signify an immanent action, or a transitive action, that is, an action in an external thing (St. Thomas, II-II, q. 134, a. 2). Here it is taken in this last sense; therefore magnificence is very well defined: a moral virtue inclining man to execute great works with proportionate expenditures. It is said: **to execute great works with proportionate expenditures:** by these words it is indicated that it belongs to this virtue to preserve the mean of reason between the greatness of the works and the employment of expenditures.

424 **II. Object of Magnificence.** 1. The remote material object is great works insofar as they must be executed with great expenditures; but the proximate object is constituted by the actions by which these expenditures are distributed in the execution of great works.

2. The remote formal object is the reason of due proportion between great works and the expenditures to be applied to them; but the proximate formal object is the special moral goodness shining forth in executing those great works with proportionate expenditures. For right reason dictates that, where great works must be done, abundant monies also be paid out for this end, as, for example, if churches, monasteries, or public buildings must be constructed (St. Thomas, II-II, q. 134, a. 1).

425 **III. Opposed Vices.** By defect there is opposed parvificence, by which someone pays out insufficient expenditures in relation to the greatness of the work, or makes a work not great enough (St. Thomas, II-II, q. 135, a. 1); by excess, consumption, by which someone pays out expenditures beyond his powers or makes a work too great (St. Thomas, II-II, q. 135, a. 2).

Point III. On Patience

426 **I. Notion of Patience.** Patience is a moral virtue inclining man to moderate sorrow in sustaining evils below dangers of death. It is said: **in sustaining evils below dangers of death;** by these words it is indicated that it is a potential part of fortitude.

427 **II. Object of Patience.** 1. The remote material object is external actions, such as words and gestures of the body, by which internal sorrow is externally manifested; but the proximate object is the internal feelings of sorrow in sustaining evils below dangers of death.

2. The remote formal object is the reason of debt by which we do not allow the mind to succumb to sorrow (St. Thomas, II-II, q. 136, a. 1); but the proximate formal object is the special moral goodness shining forth in the moderation of sorrow.

428 **III. Opposed Vices.** By defect there is opposed impatience, by which someone indulges sorrow more than is fair, and which is accustomed to lead to complaints, anger, etc.; by excess, insensibility, by which someone is moved less by evils, whether his own or another's, than right reason prescribes.

Point IV. On Perseverance

429 **I. Notion of Perseverance.** Perseverance is a moral virtue inclining man to persist in good works up to the limit prescribed by reason, notwithstanding the difficulty which arises from their duration. It is said: **notwithstanding the difficulty which arises from their duration:** by these words is indicated the matter of this virtue, as distinct from the matter of patience.

430 **II. Object of Perseverance.** 1. The remote material object is all good works insofar as they are lasting; but the proximate object is the difficulty which flows from duration.

2. The remote formal object is the reason of debt by which we are not overcome by the difficulty of duration; but the proximate formal object is the special moral goodness shining forth in overcoming difficulty of this sort.

431 **III. Opposed Vices.** By defect there is opposed softness, by which someone, on account of the difficulty of the work's duration, withdraws from it against reason (St. Thomas, II-II, q. 138, a. 1); by excess, pertinacity, by which someone persists in a work undertaken, adhering to his own judgment against reason (St. Thomas, II-II, q. 138, a. 2).

Article IV. On Temperance

Several subjective, integral, and potential parts are joined to the cardinal virtue of temperance, and they require a longer exposition. Hence, for the sake of clarity, we distinguish this matter into four articles, which are: 1. on temperance in general; 2. on the subjective parts of temperance; 3. on the integral parts of temperance; 4. on the potential parts of temperance.

§ I. On Temperance in General

432 **I. Notion of Temperance.** Finally, the fourth and last cardinal virtue in order of dignity is temperance. Indeed, "according to the commonality of its signification ... it is not a special virtue, but a general one; because the name temperance signifies a certain tempering, that is, moderation, which reason places in human operations and passions; and this is common in every moral virtue" (St. Thomas, II-II, q. 141, a. 2). But "if temperance is considered antonomastically, according as it restrains the appetite from those things which most allure man, in this way it is a special virtue" (St. Thomas, cited place). Now temperance, which is a special cardinal virtue, can be defined: a moral virtue inclining man to moderate the pleasure of touch and taste in the conservation of the species and of the individual. It is said:

1. **The pleasure of touch,** that is, that pleasure which by its nature is joined to actions of conserving the species and the individual.

2. **The pleasure of taste,** that is, that pleasure which tends to increase the former, for example the pleasure of the flavor of food or drink (St. Thomas, II-II, q. 141, a. 5).

433 **II. Object of Temperance.** 1. The remote material object is inclinations which serve for the conservation of the species, and things which contribute to the conservation of the individual; the proximate material object is constituted by the acts by which the species is propagated and the individual preserved.

2. The remote formal object is the reason of debt by which we do not go forward in the use of these things beyond the measure prescribed by right reason; the proximate formal object is the special

moral goodness shining forth in moderating the pleasure of touch and taste in relation to acts of conserving the species and the individual.

434 **III. Opposed Vices.** By excess there is opposed insensibility, by which someone refuses to place pleasurable acts where reason prescribes it (St. Thomas, II-II, q. 142, a. 1); by defect there is opposed intemperance, by which someone would seek pleasurable actions prohibited either in themselves, or as to manner, or as to time, or as to degree.

§ II. On the Subjective Parts of Temperance

The subjective parts of temperance are counted as three: abstinence, sobriety, and chastity.

Point I. On Abstinence

435 **I. Notion of Abstinence.** Abstinence is a moral virtue inclining man to moderate the pleasure of touch and taste in the use of food and non-intoxicating drink. It is said:

1. **The pleasure of touch and taste,** that is, as we indicated above, the pleasure which flows either from the use of food and drink as such, or from the special flavor of this food or drink.
2. **In the use of food and non-intoxicating drink.** By these words abstinence is distinguished from sobriety, since sobriety is given for overcoming the special difficulty in the use of intoxicating drink.

436 **II. Object of Abstinence.** 1. The remote material object is constituted by foods themselves and non-intoxicating drinks; but the proximate object is the pleasures of touch and taste which arise in their use.

2. The remote formal object is the reason of debt of preserving the mean of right reason in the use of these things; but the proximate formal object is the special moral goodness shining forth in moderating the pleasure of touch and taste in the use of food and non-intoxicating drink.

437 **III. Opposed Vices.** By defect there is opposed gluttony strictly so called, or surfeiting, by which someone uses food and non-intoxicating drink beyond the measure of right reason; by excess there is opposed excessive abstinence, by which someone abstains from their use against right reason (St. Thomas, II-II, q. 148).

Point II. On Sobriety

438 **I. Notion of Sobriety.** Sobriety is a moral virtue inclining man to moderate the pleasure of touch and taste in the use of intoxicating drink. It is said **in the use of intoxicating drink;** by these words its specific distinction from abstinence is indicated. For a special moral goodness is found in taking precaution lest the special pleasure of intoxicating drink be admitted against right reason.

439 **II. Object of Sobriety.** 1. The remote material object is constituted by intoxicating drinks; but the proximate object is the pleasures of touch and taste in the use of intoxicating drink.

2. The remote formal object is the reason of debt of preserving the mean of pleasure in the use of intoxicating drink; the proximate formal object is the special moral goodness shining forth in moderating this pleasure.

440 **III. Opposed Vices.** By defect there is opposed drunkenness, by which someone uses intoxicating drink beyond the measure admitted by right reason; by excess, excessive sobriety, by which someone abstains from intoxicating drink against right reason.

Note. Concerning the virtues of abstinence and sobriety, it must be observed that in these the measure of reason must be determined from the end of foods and drinks, and of the pleasures which are joined to their use. Now this end is the preservation of the health of the body, and the suitable disposition of the mind for acting. Therefore right reason demands that in using food and drink, as an end and primarily, there be sought the preservation of the health of the body and the suitable disposition of the mind for acting; while the joined pleasures are licitly sought, but only secondarily and as a means to the end. Therefore proposition 8 was deservedly condemned by Innocent XI: "To eat and drink even to satiety for the sole sake of pleasure is not a sin, provided it does not harm health; because the natural appetite can licitly enjoy its own acts."

Point III. On Chastity

441 **I. Notion of Chastity.** Chastity is said from chastising, because it regards movements and operations which must especially be chastised or restrained (St. Thomas, II-II, q. 151, a. 1). Now chastity is: a moral virtue inclining man to temper the appetite and use of venereal things.

442 **II. Object of Chastity.** 1. The remote material object is the appetite and use of venereal things; the proximate object is the acts of tempering the aforesaid.

2. The remote formal object is the reason of debt in tempering the appetite and use of venereal things; the proximate formal object is the special moral goodness shining forth in tempering them (cf. St. Thomas, II-II, q. 151, a. 2).

443 **III. Division of Chastity.** Chastity is divided:

1. By reason of the subject, into youthful, conjugal, and widowed chastity. Youthful chastity is that by which young people before marriage abstain from every venereal act. Conjugal chastity is that by which spouses exclude all venereal acts illicit for them, while prudently moderating those which are licit. Widowed chastity is that by which someone abstains from all venereal things during widowhood.

2. By reason of the object, into common chastity and virginity, according as it moderates venereal things, or, according to what will be said, excludes them.

Note. To chastity is referred modesty, which moderates acts which are ordered to venereal things, of which sort are looking, kisses, embraces, and dishonorable touches (St. Thomas, II-II, q. 151, a. 4).

444 **IV. Opposed Vices.** To chastity is opposed lust, which is an inordinate appetite and use of venereal things; immodesty is also referred to it. Now of the acts of lust, some are sinful because they are not ordered to generation; others are prohibited because they are not ordered to due generation. The former are said to be done against nature, the latter according to nature. The species of lust according to nature are: fornication, adultery, incest, carnal sacrilege, deflowering, and abduction. The species against nature are: pollution, sodomy, bestiality, and unnatural intercourse with a person of the other sex.

We shall speak more fully of virginity where we treat the cultivation of virtues.

§ III. On the Integral Parts of Temperance

445 The integral parts of temperance are: honorableness and shamefacedness. For as of every virtue, so also of temperance, there is a twofold office: to pursue its own object, in this case moral goodness in

preserving the individual and the species; and to flee the things contrary to this object. But in order that one acting temperately may perfectly carry out this twofold office, he must also have a twofold affection of soul: one by which he is inclined toward honorable and beautiful things, another by which he is horrified at disgraceful things. For the virtue of temperance must moderate the strongest appetite. And thus it is clear that temperance has two integral parts, one of which is called honorableness, the other shamefacedness. Therefore:

I. Honorableness is an affection of soul by which man is inclined toward honorable and beautiful things; and honorableness understood in this way contributes much so that temperance may flee disgraceful things, which are contrary to the beauty of moral goodness (St. Thomas, II-II, q. 145).

II. Shamefacedness is an affection of soul by which man is horrified at disgraceful things insofar as they are such. But because it belongs to temperance to preserve moral goodness in those acts by which man is like the animals, and which, when placed against right reason, are most disgraceful to man, it is clear that shamefacedness is a disposition of soul greatly cooperating toward the perfection of temperance.

§ IV. On the Potential Parts of Temperance

446 The potential parts of temperance are: meekness, clemency, and modesty. Of modesty, that is, the species are counted as humility, studiosity, modesty of conduct, eutrapely, and modesty of attire.

Point I. On Meekness

447 **I. Notion of Meekness.** Meekness is a moral virtue inclining man to moderate anger according to the prescription of reason illumined by faith. It is said **to moderate anger,** that is, the appetite for vengeance.

448 **II. Object of Meekness.** 1. The remote material object is constituted by all things from which the appetite for vengeance can break forth into act, for example words, deeds, or contraries which, by the aid of others, through one's own fault, or from elsewhere, happen to someone; the proximate object is the very movements of anger, insofar as they are, according to the rule of faith, either to be suppressed, or moderated, or aroused.

2. The remote formal object is the reason of debt of measuring the movements of anger according to the principle of faith; the proximate formal object is the special moral goodness shining forth in this measuring (St. Thomas, II-II, q. 157, aa. 1 and 2).

449 **III. Opposed Vices.** By excess there is opposed to meekness irascibility, by which someone indulges the movements of anger too much, whether as to object or as to manner (St. Thomas, II-II, q. 158, aa. 1-8); by defect, however, sluggishness, by which someone unduly is not angry, or is not angry enough (St. Thomas, II-II, q. 158, a. 8).

Point II. On Clemency

450 **I. Notion of Clemency.** Clemency is a moral virtue inclining a superior to mitigation, insofar as justice permits, in exacting punishments from his subject according to the prescription of reason illumined by faith.

451 **II. Object of Clemency.** 1. The remote material object is constituted by external punishments which can be imposed on a subject for transgression of law; but the proximate object is movements of

the appetite for showing vindicative power.

2. The remote formal object is the reason of debt of mitigating, from sweetness of affection, the punishments which can be imposed on a guilty subject; but the proximate formal object is the special moral goodness shining forth in this mitigation from sweetness of affection (St. Thomas, II-II, q. 157, aa. 1-3).

452 **III. Opposed Vices.** To clemency by excess is opposed cruelty, by which, from atrocity of soul, a greater punishment is exacted than right reason prescribes (St. Thomas, II-II, q. 159, a. 1); but by defect, excessive leniency, by which punishment is mitigated beyond the prescription of right reason.

Point III. On Modesty

453 Modesty, which as a subaltern species is divided into several lowest species, can be defined: a moral virtue inclining man to the moderation of those things whose restraint has moderate difficulty. And thus it is distinguished from temperance, meekness, and clemency, which restrain more difficult and more vehement passions (cf. St. Thomas, II-II, q. 160, a. 1).[1]

Now the things moderately difficult to restrain are: 1. movements of the soul toward some excellence, which humility moderates; 2. the desire of those things which pertain to knowledge, which studiosity moderates; 3. passions which are occupied around external movements of the body, both in serious matters and in playful matters, and which modesty of conduct and eutrapely moderate; 4. passions which regard the adornment of the body and the arrangement of external things, of which modesty of attire is the moderator (cf. St. Thomas, II-II, q. 160, a. 2).[2]

We must speak of each.

[1] Cf. Billuart, diss. 7, a. 4; Salmanticenses, *Arb. praed.*, n. 131 (p. 489).

[2] Cf. Billuart, diss. 7, a. 4; Salmanticenses, *Arb. praed.*, n. 132 (p. 489).

I. On Humility

454 **I. Notion of Humility.** Humility, which seems to be derived from *humus*, according to the mind of St. Thomas can be defined: a moral virtue inclining man, as one considering his own defect, to moderate the appetite for his own excellence, according to the prescription of reason illumined by faith (St. Thomas, II-II, q. 161, a. 6, corpus and ad 1).[1] It is said: **as one considering his own defect;** by these words is understood the consideration by which someone recognizes that he has nothing from himself which is excellent and worthy of honor, but that whatever perfection he possesses is in him from God. Humility imports this consideration presuppositively; formally, however, it is in the appetite, which it restrains lest it tend immoderately toward lofty things (St. Thomas, II-II, q. 161, a. 6), inclining man to this: that, led by the aforesaid consideration, he embrace the abjection befitting him; indeed, that he subject himself not only in all things to God, but also, according to that which is his own, to every neighbor, with respect to that which is of God in him.

[1] Cf. St. Bernard, *De gradibus humilitatis*, c. 1, n. 2, beginning (M.P.L. 182, col. 942); Salmanticenses, *Arb. praed.*, n. 133 (t. 6, p. 490); Billuart, diss. 7, a. 4, § 1.

455 **II. Object of Humility.** 1. The remote material object is constituted by man himself, insofar as he is worthy of abjection and humiliations are to be imposed upon him; the proximate object is the inclinations of the appetite for one's own excellence.

2. The remote formal object is the reason of debt proceeding from consideration of one's own defect, for moderating the appetite for one's own excellence; the proximate formal object is the special moral goodness shining forth in this moderation.

456 **III. Opposed Vices.** By excess there is opposed pride, which is an inordinate appetite for one's own excellence (St. Thomas, II-II, q. 162, aa. 1 and 2),[1] by which someone either estimates that he has good from himself; or, although he believes that he has received good from God, ascribes it to his own merits; or boasts that he has a good which he lacks; or desires to seem singularly to have what he has (St. Thomas, II-II, q. 162, a. 4).[2] Moreover, it must be observed that "pride is not the same as vain glory, but its cause; for pride inordinately seeks excellence, but vain glory seeks the manifestation of excellence" (St. Thomas, II-II, q. 162, a. 8, ad 4).[3] By defect there is opposed excessive self-abjection, by which someone desires vile things not befitting his state and condition.[4]

[1] Salmanticenses, *Arb. praed.*, n. 145 (p. 496).

[2] Cf. Salmanticenses, cited place, n. 146 (p. 496).

[3] On pride one should read St. Thomas, II-II, q. 162, entire; St. Alphonsus, *Theologia moralis*, book 5, n. 65 sqq.

[4] Cf. Salmanticenses, cited place, n. 145 (p. 496).

II. On Studiosity

457 **I. Notion of Studiosity.** Studiosity is a moral virtue inclining man to moderate the appetite for knowing, according to the prescription of reason illumined by faith.

458 **II. Object of Studiosity.** 1. The remote material object is constituted by all acts, or all studies, by which knowledge of things is acquired; the proximate object is the inclination itself for knowing. Since on the part of the body there exists in man an inclination to flee studies because of the labor joined to them, but on the part of the soul there is in him a vehement inclination for knowing, it belongs to this virtue both to urge on the inclination of the body and to restrain the desire of the soul.

Although the name studiosity rather designates the first office, nevertheless studiosity is not counted among the potential parts of fortitude, but is reckoned among the potential parts of temperance because of the second office; and this rightly and deservedly. For, as the Salmanticenses rightly observe with St. Thomas (II-II, q. 166, a. 2, ad 3): "the difficulty which is in moderating the appetite for study has more of itself toward virtue, as holding itself on the part of the soul, in which there is an inclination and propensity for knowing, than that which is in impelling, which comes from impediments holding themselves on the part of the body" (cf. St. Thomas, II-II, q. 166, a. 2, corpus).

2. The remote formal object is the reason of debt of urging on the sluggishness of the body with respect to studies and restraining the desire of the soul, according to the prescription of reason; the proximate formal object consists in the special moral goodness which shines forth in the said moderation.

459 **III. Opposed Vices.** By excess, curiosity is opposed to studiosity, which inclines one to satisfy the appetite for knowing too much, by applying oneself to useless or harmful studies (St. Thomas, II-II, q. 167, a. 1). By defect, negligence, inclining one to omit or to do slackly the studies of those things which one is bound to learn and know.[1]

[1] *Arb. praed.*, n. 152 (t. 6, p. 499). Cf. Salmanticenses, *Arb. praed.*, n. 153 (p. 499); Billuart, diss. 7, a. 4, § 3; St. Augustine, *Epistula* 118 (ed. G., t. 2, col. 490 sqq.), *Sermo* 355, c. 6, n. 6 (ibid., t. 5, col. 2041), and *Epistula* 218 (ibid., col. 1227

sqq.); St. Bernard, *Sermo* 36 on the *Canticle* (M.P.L. 183, col. 907 sqq.).

III. On Modesty of Conduct

460 **I. Notion of Modesty of Conduct.** Modesty of conduct is a moral virtue inclining man to moderate the external movements of the body, according to the prescription of reason illumined by faith.

461 **II. Object of Modesty of Conduct.** The remote material object is all external movements of the body; the proximate object is the passions which are occupied around these movements. From this it is clear that the true virtue of modesty of conduct does not consist only in external moderation, but requires that external moderation proceed from internal moderation of the passions (cf. St. Thomas, II-II, q. 168, a. 1).

2. The remote formal object is the reason of debt of moderating the external movements of the body; the proximate formal object is the special moral goodness which shines forth in moderation of the aforesaid movements and passions.[1]

[1] Cf. Salmanticenses, cited place, n. 154 (t. 6, pp. 499-500).

462 **III. Opposed Vices.** By excess there is opposed affectation, by which someone attends too much to the external movements of the body, beyond the measure of right reason; by defect, rusticity, by which someone does not attend enough to the same movements, against the prescription of right reason.

IV. On Eutrapely

463 **I. Notion of Eutrapely.** Eutrapely is a moral virtue inclining man to moderate actions and words in playful matters and jokes, according to the prescription of reason illumined by faith (St. Thomas, II-II, q. 168, a. 4).

464 **II. Object of Eutrapely.** 1. The remote material object is formed by playful actions and joking words; the proximate object is the passions which are occupied around these actions and words.

2. The remote formal object is the reason of debt of preserving the right measure in playful and joking things; the proximate formal object is the special moral goodness shining forth in preserving the aforesaid measure.

465 **III. Opposed Vices.** By excess, scurrility is opposed to eutrapely, by which someone uses playful things and jokes beyond the measure of right reason (cf. St. Thomas, II-II, q. 168, a. 3); by defect, moroseness, by which someone abstains from playful things and jokes against the prescription of right reason (cf. St. Thomas, II-II, q. 168, a. 4).[1]

[1] Cf. Salmanticenses, *Arb. praed.*, n. 157 (p. 502).

V. On Modesty of Attire

466 **I. Notion of Modesty of Attire.** Modesty of attire is defined: a moral virtue inclining man to preserve measure, according to the prescription of reason illumined by faith, in the adornment of the body and the arrangement of external things.

467 **II. Object of Modesty of Attire.** 1. The remote material object is external things which someone can use for the cultivation and adornment of the body, and for the necessities and conveniences of life;

the proximate object is the passions which are occupied around these things.

2. The remote formal object is the reason of debt of preserving in these things the measure of right reason, which prescribes that all these things be congruent and adapted to persons, places, times, and other circumstances (St. Thomas, II-II, q. 169, a. 1); the proximate formal object is the special moral goodness which shines forth in preserving the aforesaid measure.

468 **III. Opposed Vices.** By excess there is opposed luxury, inclining one to adornment of the body and arrangement of external things beyond the measure of right reason; by defect, negligence, by which someone in the adornment of the body and arrangement of external things remains below the measure owed to his condition (cf. St. Thomas, II-II, q. 169, a. 1).[1]

[1] Cf. Salmanticenses, cited place, n. 160 end (p. 503).

Dissertation II. On the Gifts of the Holy Spirit

We shall speak first of the gifts of the Holy Spirit in general; then of the same gifts in particular.

Part I. On the Gifts of the Holy Spirit in General

469 **I. Notion of a Gift.** The gifts of the Holy Spirit in general can be defined: infused habits by which man is made promptly movable by the Holy Spirit according to a special impulse, above the rule of reason. Therefore, just as acquired virtues are given so that man may be made promptly movable by natural reason, and infused virtues are given so that he may be made promptly movable by reason illumined by the supernatural light of faith, so also the seven gifts are given so that he may be made promptly movable by the impulse of the Holy Spirit. Their rule is not reason, whether natural or illumined by supernatural light, but the Holy Spirit Himself, directing the intellect and will in a special and higher way.

From these things it follows that the gifts of the Holy Spirit are not distinguished from the virtues in the sense that the former operate only around material objects distinct from the material objects of the virtues, and only serve for eliciting actions plainly heroic and wholly extraordinary, as some have thought; but in the sense that "the gifts exceed common perfection, not as to the genus of works, ... but as to the mode of operating, according as man is moved by a higher principle" (St. Thomas, I-II, q. 68, a. 2, ad 1).

If the contrary opinion were true, the gifts would have been given uselessly to most just men, since most would never need them. Nor does it appear in that opinion why the gifts were given as habits, because actual helps would certainly suffice for those extraordinary cases.[1]

[1] Cf. *Revue Thomiste* 1898, pp. 149-150; Pesch, n. 116; John of St. Thomas, on I-II, q. 68, disp. 18, a. 2, nn. 5-8 inclusive and nn. 17-20 inclusive (Lyons edition, 1663, t. 5, pp. 200-201 and 202-203).

470 **II. End of the Gifts.** From what has just been said, it is concluded that the gifts of the Holy Spirit serve for this: that man, whenever reason, whether natural or illumined by the supernatural light of faith, and therefore prudence, whether natural or supernatural, does not suffice for actions to be duly regulated, and therefore a special impulse of the Holy Spirit is required to enlighten the intellect and impel the will, may easily and promptly be moved by this impulse; and thus these gifts are for the assistance of the virtues, by perfecting that which, as the Angelic Doctor teaches, the virtues cannot perfect (I-II, q. 68, a. 8, sed contra). But such cases often occur in the life of all the just, subject as it is to so many difficulties (cf. St. Thomas, I-II, q. 68, a. 2; III Sent., dist. 34, q. 1, a. 1, sol., and ad 1-2; ibid., a. 3, sol., beginning).[1]

[1] For the whole matter one should read: St. Thomas, I-II, q. 68, entire; John of St. Thomas, on I-II, q. 68, disp. 18, aa. 1-2; Sylvius, on I-II, q. 68, aa. 1-2; Gotti, tr. 3, q. 4 (Venice edition, 1763, t. 2, p. 125 sqq.); *Revue Thomiste* 1898, pp. 139-157 inclusive and 111-117 inclusive; Tepe, *Institutiones theologiae moralis*, t. 2, tr. 5, nn. 412-432 inclusive; Saint-Jure, *L'Homme spirituel*, p. 1, c. 2, sect. 16 (Lyons edition, 1836, t. 1, p. 270 sqq.); Gaume, *Traite du S. Esprit*, t. 2, cc. 25-26; Scheeben; Heinrich; Gutberlet; Schneider.

471 **III. Number of the Gifts.** That there are seven gifts of the Holy Spirit is drawn from Isaiah 11:1-3, where, prophesying concerning the outpouring of these gifts upon Christ, he enumerates seven: namely the gift of wisdom, understanding, counsel, knowledge, piety, fortitude, and fear of the Lord.[1] But just as all graces and virtues flow from Christ the Head into His members, so likewise all the just receive these gifts from His fullness. To this Scriptural argument is added the sense of the Church, which in her liturgical prayers[2] and in the Encyclicals of her Pontiffs plainly declares the sevenfold number.[3]

[1] It is indeed true that in the Hebrew text piety and fear are expressed by the same words; but it must be noted that in Sacred Scripture the expression "fear of the Lord" usually has a broad meaning, which indicates all religion and piety, as well as observance toward God. Hence the Septuagint, and many Fathers and various interpreters, both ancient and more recent, translated the same Hebrew word by a different term.

[2] Roman Missal, Sequence on Pentecost.

[3] Encyclical *Divinum illud munus* of May 9, 1897 (*Acta Sanctae Sedis*, t. 29, p. 654).

472 **IV. Origin of the Gifts.** It is certain that the gifts of the Holy Spirit, like all supernatural virtues, are infused by God; for whatever supernatural gifts entirely exceed the natural faculties of man, and therefore they can also be supplied to us by God alone. But that they are infused by God together with sanctifying grace is clear from the fact that Christ is the exemplar of our justification, or because the just man according to his measure has that Spirit who rested upon Christ. Moreover, as we have just said, according to the prophet Isaiah the Spirit of the seven gifts rested upon Christ.

473 **V. Permanence of the Gifts.** Just as the gifts of the Holy Spirit are infused inseparably together with sanctifying grace, and this more probably because of their physical emanation from grace, so also they increase when grace increases in this life, and perish when this grace perishes. In relation to the other life, in the souls of the blessed all the gifts will remain as to their essence; but as to their operation, the gifts which regard the contemplative life, and whose principal object therefore is God, will there have the same acts, yet in a more perfect mode; but the gifts which regard the active life more, and whose object therefore coincides with the object of the moral virtues, will have other acts, and more perfect ones. In the souls of the damned there will be no gift, just as no virtue remains in them (I-II, q. 68, a. 6).

474 **VI. Excellence of the Gifts.** The gifts, compared with the theological virtues, are less than they in dignity. For through the theological virtues the soul is united to God; through the gifts it is disposed so that it may be promptly movable by the Holy Spirit. Moreover, the excellence of union with God surpasses the disposition by which man is made promptly movable by God. But the gifts surpass in their excellence the moral and intellectual virtues, "because," says St. Thomas, "the gifts perfect the powers of the soul in comparison with the Holy Spirit moving them; but the virtues perfect either reason itself, or the other powers in order to reason. Now it is manifest that what is movable must be disposed with greater perfection for a higher mover; hence the gifts are more perfect than the virtues" (I-II, q. 68, a. 8).

Part II. On the Gifts of the Holy Spirit in Particular

Of the seven gifts of the Holy Spirit, four pertain to the intellect: wisdom, understanding, knowledge, and counsel; the remaining three, piety, fortitude, and fear of the Lord, to the will. We note certain things here concerning each.

475 **I. The Gift of Wisdom** is an infused habit by which the intellect is so disposed that, under the special impulse of the Holy Spirit, from a certain connaturality with God it easily and promptly contemplates God, the highest cause, and judges of all things according to Him. This connaturality with God arises from the theological virtue of charity, which is in the will; hence the gift of wisdom has its cause in the will, but its essence in the intellect, whose act is to judge rightly (St. Thomas, II-II, q. 45, a. 2). It also corresponds to charity, and assists this virtue in its acts, so that it may love God more intimately for God's sake.

476 **II. The Gift of Understanding** is an infused habit by which the intellect is so disposed that, under the special impulse of the Holy Spirit, it is easily and promptly moved to penetrate both the credibility and the essence of the truths of faith. Therefore this gift corresponds to the theological virtue of faith; it assists faith, so that it may assent more firmly to revealed truth. But it differs from faith, which assents to the truth because of extrinsic testimony, and does so without penetration of the believed object itself (St. Thomas, II-II, q. 8, a. 2).

477 **III. The Gift of Knowledge** is an infused habit by which the intellect is so disposed that, under the special impulse of the Holy Spirit, it easily and promptly knows secondary causes, and judges of all things according to them. It also corresponds to the theological virtue of faith, since it belongs to this gift to judge whether created things are matters of faith or not, what in them is worthy of esteem, how natural truths agree with supernatural truths, and what is the force of the arguments by which dogmas are proved (St. Thomas, II-II, q. 9).

478 **IV. The Gift of Counsel** is an infused habit by which the intellect is so disposed that, under the special impulse of the Holy Spirit, it easily and promptly judges what must be done in the more difficult cases of life. This gift corresponds to the cardinal virtue of prudence, which is perfected and assisted insofar as it is ruled and moved by the Holy Spirit (St. Thomas, II-II, q. 52).

479 **V. The Gift of Piety** is an infused habit by which the will is so disposed that, under the special impulse of the Holy Spirit, it easily and promptly shows worship and submission to God as Father, and therefore honors the Saints and neighbors for God's sake as brothers. This gift corresponds to the cardinal virtue of justice and perfects it, since it moves man to perform works of justice because of a higher motive and with a more perfect affection of soul (St. Thomas, II-II, q. 121).

480 **VI. The Gift of Fortitude** is an infused habit by which the will is so disposed that, under the special impulse of the Holy Spirit, it easily and promptly attacks and sustains whatever difficult things with great confidence, and with security of escaping from whatever imminent dangers. It corresponds to the cardinal virtue of fortitude and perfects it in those things in which it would fail (St. Thomas, II-II, q. 139).

481 **VII. The Gift of Fear of the Lord** is an infused habit by which the will is so disposed that, under the special impulse of the Holy Spirit, it easily and promptly conceives a profound reverence toward God, as He is an excellent Father and one powerful to separate us from Himself because of offense, and

consequently an intimate fear of sin, as it is the offense of this Father and worthy of separation from Him. From this notion it is clear that the gift of fear of the Lord corresponds both to the theological virtue of hope and to the cardinal virtue of temperance: to hope, insofar as it moves one to filial fear by which we avoid sin, which separates us from the Father, and to filial confidence, by which we expect every good from the Father; to temperance, however, insofar as it restrains concupiscences, and this because of a motive more perfect than the motive of temperance (St. Thomas, II-II, q. 141).

Scholion. On the Beatitudes and Fruits

After the infused virtues and the gifts of the Holy Spirit have been treated, certain things remain to be noted concerning their special acts, which theologians have been accustomed to indicate by the name either of beatitudes or of fruits.

482 **I. Beatitudes.** 1. Since the infused virtues, and especially the gifts of the Holy Spirit, are infused into us for this end, that we may more easily arrive at supernatural beatitude, it follows that the excellent acts of perfect virtue, and especially of a perfect gift, conduce in a special way to this beatitude, and therefore especially foster the hope of the man eliciting them of arriving at it. Therefore, on account of this vivid hope, those acts as if inchoatively attribute to the one eliciting them the beatitude to which they conduct him. And therefore Christ already proclaims blessed those who elicit such acts on this earth, and the acts themselves are called beatitudes by a metonymy by which the name of the effect is attributed to the causes, that is, to the act. Hence the beatitudes can be defined, according also to the mind of St. Thomas: excellent acts of perfect virtue, and especially of a perfect gift, conducting in a special way to eternal beatitude. "Therefore it is required for the notion of beatitude," says the Angelic Doctor, "that it be something perfect and excellent; hence only perfect works are called beatitudes, and by reason of their perfection they are also attributed more to the gifts than to the virtues" (St. Thomas, I-II, q. 70, a. 2).

2. Our Savior enumerates eight beatitudes of this sort in the celebrated sermon on the mountain (in St. Matthew, chapter 5). St. Augustine[1] and St. Thomas attribute them to the several gifts as special acts in such a way that to wisdom as its act there corresponds the beatitude designated by the words: "Blessed are the peacemakers" (cf. St. Thomas, II-II, q. 45, a. 6); to understanding, "Blessed are the clean of heart" (cf. St. Thomas, II-II, q. 8, a. 7); to knowledge, "Blessed are they who mourn" (St. Thomas, II-II, q. 9, a. 4); to counsel, "Blessed are the merciful" (St. Thomas, II-II, q. 52, a. 4); to piety, "Blessed are the meek" (St. Thomas, II-II, q. 121, a. 2); to fortitude, "Blessed are they who hunger and thirst for justice" (St. Thomas, II-II, q. 139, a. 2); finally to fear, "Blessed are the poor in spirit" (St. Thomas, II-II, q. 19, a. 2); while the eighth beatitude in a certain way pertains to all the seven preceding (cf. St. Thomas, I-II, q. 69, a. 3, ad 5).

[1] Book 1, *De sermone Domini in monte*, c. 4, n. 11 (ed. G., t. 3, cols. 1496-1497); cf. ibid., cc. 1-6, nn. 3-15 (cols. 1493-1500).

483 **II. Fruits of the Holy Spirit.** 1. To understand the notion of fruit of the Holy Spirit, it must be observed with St. Thomas "that the name fruit has been transferred from bodily things to spiritual things. Now in bodily things, that is called fruit which is produced from a plant when it has come to perfection, and has a certain sweetness in itself. ... According to this, therefore, the name in spiritual things is applied to the fruit of man, as of a tree, namely that which is produced by him ... and thus human acts themselves are called fruits. For operation is the second act of the one operating, and it has delight if it is suitable to the one operating. Therefore if the operation of man proceeds from man

according to the faculty of his reason, it is said to be a fruit of reason. But if it proceeds from man according to a higher power, which is the power of the Holy Spirit, then the operation of man is said to be a fruit of the Holy Spirit, as of a certain divine seed" (St. Thomas, I-II, q. 70, a. 1). Moreover, "more is required for the notion of beatitude than for the notion of fruit. For for the notion of fruit it suffices that it be something having the character of what is last and delightful; but for the notion of beatitude it is further required that it be something perfect and excellent. Hence all beatitudes can be called fruits, but not conversely. For fruits are any virtuous works whatever in which man delights" (St. Thomas, ibid., a. 2; cf. ibid., obj. 1 and ad 1-2). From these things it is clear that the fruits of the Holy Spirit can be defined: acts of virtue or of a gift, which and insofar as they produce spiritual delight in the soul of the one eliciting them.

2. Among many fruits the Apostle expressly designates twelve: "But the fruit of the Spirit," he says, "is: charity, joy, peace, patience, benignity, goodness, longanimity, meekness, faith, modesty, continence, chastity."[1] But among these several indeed are indicated by the names of virtues, yet by metonymy; since "the names of virtues are sometimes taken for their acts ... and in this way the names of virtues are taken in the enumeration of the fruits" (St. Thomas, I-II, q. 70, a. 1, ad 3; cf. ibid., a. 3, ad 4, and the whole of q. 70).

[1] Gal. 5:22-23.

Book II. On the Exercise of the Christian Life, or on the Cultivation of the Virtues

After in general moral theology, that is, in the first book, we have discussed the general principles of the Christian life, now we must speak of the exercise of the Christian life, or the cultivation of the virtues, that is, of eliciting acts of the virtues. Now of the virtues, some are immediately, at least principally (on virtues, n. 352), occupied around God, as He is author and end of the supernatural order; others immediately regard the morally good good of an intermediate end (n. 367). The former are called theological, the latter moral. Therefore we must speak first of the cultivation of the theological virtues, then of the cultivation of the moral virtues.

Treatise I. On the Cultivation of the Theological Virtues

It is useful to set forth beforehand certain notions which recur repeatedly in the matters to be treated, namely concerning necessity of means and of precept, and concerning the modes of eliciting acts of the virtues.

484 **I. Necessity of Means.** 1. That is said to be necessary by necessity of means which both positively conduces to salvation, and as positively conducing is necessary for attaining salvation. It is said **positively conduces,** that is, by way of a cause, whether efficient or formal or disposing, etc.

2. What is necessary by necessity of means is distinguished in two ways, according as the necessity arises either from the nature of the thing or from the free ordination of God. The former is always absolute; thus, for example, the supernatural order being posited, sanctifying grace is absolutely necessary. The other is absolute or hypothetical, according as it has been freely established by God as unsuppleable or suppleable; suppleable, I say, through an extraordinary means instituted by God, which regards the ordinary means, that is, that which must be supplied, and obtains its effect dependently upon it. Thus, for example, baptism of water is the ordinary means of remitting original sin; in an adult this can be supplied through baptism of desire, that is, through an act of perfect contrition or charity. The sacrament of penance is the ordinary means of remitting sins committed after baptism; this can be supplied through perfect contrition or charity. In both cases the extraordinary means regards the ordinary means by desire, and to that extent also produces its effect dependently upon the ordinary means.

Corollary I. The absence of sin is not said to be necessary by necessity of means, because it does not positively conduce to salvation, but only involves the absence of a barrier or obstacle.

Corollary II. An act prescribed under grave obligation, although it positively conduces to salvation, is not called necessary by necessity of means, because insofar as it positively conduces to salvation, it is not necessary for attaining it.

Corollary III. From the fact that something is an ordinary means, it also follows that one who has used the extraordinary or supplying means is still bound, if he can, to use the ordinary or supplied means.

485 **II. Necessity of Precept.** That is said to be necessary by necessity of precept which is imposed by law.

Corollary. Everything which is necessary by necessity of means is also necessary by necessity of precept; but not conversely.

486 **III. Modes of Eliciting Acts of the Virtues.** Acts of the virtues can be elicited formally and virtually. They can be exercised formally either entirely explicitly, or in an act signified, or in a more confused mode, or in an act exercised. Thus, for example, an act of faith is elicited entirely explicitly if someone professes: I believe the presence of Christ in the Most Holy Eucharist. The same act is elicited in an act exercised by one who genuflects before the Most Holy Sacrament (St. Alphonsus, II, 7). They are elicited virtually if they are contained in the act of another virtue, as, for example, an act of sorrow for sin in an act of charity.

Dissertation I. On the Cultivation of Faith

(St. Thomas, II-II, qq. 1-16; St. Alphonsus, *Theologia moralis*, book II, nn. 1-19; *Homo Apostolicus*, tr. 4, nn. 1-15.)

487 Faith is a supernatural virtue "by which, with the grace of God inspiring and assisting, we believe that the things revealed by Him are true, not on account of the intrinsic truth of the things, seen by the natural light of reason, but on account of the authority of God Himself revealing, who can neither be deceived nor deceive."[1] (n. 354)

The material object of faith is truths revealed by God, whether explicitly or formally implicitly, but not truths revealed only virtually implicitly (n. 356).

The formal object of faith is the authority of God, arising from His truthfulness and wisdom (n. 356); all these things have been explained more fully in the places cited.

These things recalled to memory, we shall speak first of the necessity of faith, then of sins against faith, and finally of dangers of faith.

[1] Vatican Council, Dogmatic Constitution *De fide*, chapter 3.

Part I. On the Necessity of the Act of Faith

Section I. On Necessity of Means

488 The act of faith (actual faith), as is clear, cannot be necessary except for adults. But a distinction must be made between adults not yet justified and adults justified. Now:

I. The act of faith is necessary for salvation by necessity of means for adults not yet justified. And indeed, the act of faith is necessary for obtaining justification. But justification itself is necessary for salvation by necessity of means. Therefore the same must be affirmed of the act of faith.

The major is proved: 1. **From Sacred Scripture.** "But without faith it is impossible to please God. For he who comes to God must believe."[2] That St. Paul here speaks of actual faith is clear both from the word *believe* and from the whole context. That the Apostle speaks of supernatural faith is clear from verse 1, where he calls it "the substance of things to be hoped for, the argument of things that appear not." But that the words must be understood of all men of all times is clearer than the sun from the context from chapter 10:38-39 through chapter 11:1-40 inclusive, where he is wholly concerned to prove, by examples adduced, that all the saints from the beginning of the world were justified by faith, and likewise that all still must be justified by it. 2. **From Councils.** The Council of Trent says thus: "Without it [faith] justification has never happened to anyone."[3] That actual faith is to be understood you may deduce from the fact that the Council speaks of faith which, "conceiving from hearing, they are freely moved toward God, believing that the things divinely revealed and promised are true."[4] The Vatican Council teaches the same.[5] 3. **It is confirmed by reason.** For it is altogether fitting that, for the justification of an adult, it be required by necessity of means that he tend toward God as his supernatural ultimate end. But this cannot happen unless God is apprehended as the supernatural ultimate end; and this happens through faith.

Corollary. To the question how an adult not yet justified, who lacks a preacher, can elicit an act of faith, St. Thomas responds: "For if someone nourished in such a way[6] followed the guidance of natural reason in seeking good and fleeing evil, it must most certainly be held that God would either reveal to him by internal inspiration those things which are necessary to be believed, or would direct some preacher of the faith to him, as Peter to Cornelius" (*De veritate*, q. 14, a. 11, ad 1).

II. The act of faith is also in some way necessary for justified adults by necessity of means, namely to the extent that salvation cannot be obtained without supernatural prayer by which the grace necessary for fulfilling the precepts is obtained. Now for prayer of this sort an act of faith is necessarily required. Hence the act of faith is also necessary for justified adults in this sense by necessity of means, so that they may arrive at salvation.

Corollary I. For justification, the desire of faith does not suffice, but a formal act of faith is required, as is deduced from the obvious sense of the documents which we have alleged.

Corollary II. For justification an act of faith strictly so called is required; but faith broadly so called does not suffice, that is, as those few explain who think this faith to suffice,[7] faith which does not rest on the authority of God revealing, but on knowledge acquired from creatures, yet with supernatural help. The arguments adduced prove that true faith is required, of which sort faith broadly so called is not. There is added that the attacked opinion almost falls into proposition 23 condemned by Innocent

XI: "Faith broadly so called from the testimony of creatures or a similar motive suffices for justification."[8]

III. The act of faith, necessary by necessity of means, must be explicit as regards certain dogmas; namely:

1. Explicit faith in God existing and rewarding is certainly required. This is clear from Sacred Scripture: "For he who comes to God must believe that He is, and is a rewarder to those who seek Him."[9] Hence Innocent XI condemned proposition 22: "Only faith in one God seems necessary by necessity of means, but not explicit faith in a rewarder."[10]

In addition, explicit faith in God as rewarder in the supernatural order is more probably required; and according to many, also in God existing as author of the supernatural order. On this account the dogmatic theologians should be consulted.

2. It is disputed whether after the Gospel has been promulgated, explicit faith in the Most Holy Trinity and Christ the Redeemer is necessary by necessity of means. I said **after the Gospel has been promulgated;** for before that, that explicit faith in the aforesaid mysteries was not necessary is drawn from these passages of Sacred Scripture: "The mystery which had been hidden from ages and generations, but now is manifested to His saints";[11] "But before the faith came, we were kept enclosed under the law, unto that faith which was to be revealed."[12]

That after the Gospel has been promulgated explicit faith in those mysteries is necessary by necessity of means is taught by St. Thomas, as it seems (II-II, q. 2, aa. 7 and 8), and others. They rest first on these passages of Sacred Scripture: "But the justice of God, that is, our justification, by the faith of Jesus Christ, unto all and upon all who believe in Him; for there is no distinction."[13] "Now this is eternal life: that they may know Thee, the only true God, and Jesus Christ whom Thou hast sent."[14] Add the responses of the Holy Office.[15] Nevertheless, the contrary opinion also is probable, because the aforesaid doctrine is not necessarily deduced either from the nature of the thing, or from Sacred Scripture, or from the testimonies of the Fathers, or from the responses of the Sacred Congregations. Not from the nature of the thing, because in order that man tend toward God as his supernatural end, explicit faith in God existing and rewarding in the supernatural order suffices. But the texts of Sacred Scripture, the testimonies of the Holy Fathers, and the contrary responses are understood by the favorers of this opinion of implicit faith, or of necessity of precept, or of necessity considered according to common and ordinary providence (St. Alphonsus, II, 2).[16]

Corollary I. An adult (not perpetually insane) who certainly does not know God existing or rewarding, of himself cannot be baptized even in danger of death, because he certainly lacks faith, which in an adult is required for obtaining justification (under III). Thus theoretically; since practically either ignorance can be driven out or it will not be certain.

Corollary II. An adult (not perpetually insane) who does not know the mystery of the Most Holy Trinity and of Christ the Redeemer, of himself cannot be baptized or absolved, not even in extremis, unless he is first instructed.[17] But if, with extreme necessity pressing, instruction cannot be undertaken, Baptism and absolution should be conferred, provided the required intention is certainly, or at least with some probability, present.[18] In the former case Baptism should be administered absolutely, in the latter conditionally; but absolution should not be granted except conditionally, because even if the required intention were certainly present, nevertheless supernatural contrition

probably is lacking, when knowledge of the mysteries which probably must be believed by necessity of means is lacking.[19]

[1] Cf. Waffelaert, *Annotationes in tractatum de virtutibus theologicis*; Bouquillon, *De virtutibus theologicis*; Van der Moeren, *Tractatus de virtutibus theologicis*.

[2] Heb. 11:6. The same is taught at Heb. 10:38; Gal. 2:16; Mark 16:15 sq.

[3] Session 6, chapter 7.

[4] Session 6, chapter 6.

[5] Session 3, chapter 3.

[6] That is, in forests.

[7] Thus Gutberlet, *Dogmatische Theologie*, VIII, 493 sq.

[8] Denzinger-Bannwart, n. 1173.

[9] Heb. 11:6.

[10] Denzinger-Bannwart, n. 1172.

[11] Col. 1:26.

[12] Gal. 3:23.

[13] Rom. 3:22.

[14] John 17:3.

[15] The response of the Holy Office, May 3, 1703 (*Collectanea de Propaganda Fide*, n. 254, ad 2, and n. 256, ad 2), causes the greatest difficulty. Asked whether an adult in the article of death could be baptized under a promise of learning the truths of Faith if he recovered, it responded: "That the promise does not suffice; but that the missionary is bound to explain to an adult, even one dying, who is not altogether incapable, the mysteries of Faith which are necessary by necessity of means, such as the principal mysteries of the Trinity and Incarnation." This response Benedict XIV also reports in the Constitution *Postremo mense*, February 28, 1747, n. 41; finally the Holy Office, March 30, 1898 (*Collectanea de Propaganda Fide*, n. 1993), again appealed to it.

[16] Cf. note [16].

[17] Cf. the responses of the Holy Office cited in note [16].

[18] This doctrine is not opposed to the cited responses of the Holy Office, namely those of May 3, 1703, and March 30, 1898. These establish what generally must be done; this does not prevent an exception being admitted in an urgent case of necessity.

[19] Nor is proposition 64 condemned by Innocent XI an obstacle to our doctrine: "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" (Denzinger-Bannwart, n. 1214). For here the speech concerns culpable ignorance, which certainly excludes valid absolution until the penitent grieves over it (St. Alphonsus, II, 2).

Section II. On Necessity of Precept

Both the internal act and the external act, or profession of faith, are prescribed. Hence:

Chapter I. On the Precept of the Internal Act

489 **I. The internal act of faith,** that is, the act of believing God revealing, is necessary by necessity of precept. This is clear first from the fact that it is necessary by necessity of means, as we explained

above (n. 488). Then, one who does not admit revelation sufficiently proposed does supreme injury to the authority of God. Add these texts of Sacred Scripture: "He who does not believe shall be condemned."[1] - "And this is His commandment: that we believe in the name of His Son Jesus Christ."[2]

II. The internal act of faith, considered according to necessity of precept, must be explicit, not only as regards things to be believed by necessity of means, but also as regards other things which must be known either for thinking rightly, or for living rightly, or for duly using the helps to salvation.[3] Hence, by explicit faith there must be believed, besides those things to be believed by necessity of means: 1. the things contained in the Apostles' Creed; 2. the things contained in the Decalogue; 3. the most necessary Sacraments, namely Baptism, Penance, the Eucharist, and, according to many, Confirmation; the others, when someone is about to receive them soon; 4. probably the things contained in the Lord's Prayer, since it involves all the things which Christ taught us to ask for (St. Alphonsus, II, 3). Besides this, note:

1. Besides things to be believed, many other things must be known, such as the precepts of the Church and the duties of each one's proper state. Likewise, at least, it is altogether fitting to know the sign of the Cross, and to retain in memory the Lord's Prayer, the Angelic Salutation, and the Creed (cf. St. Alphonsus, II, 3).
2. As regards the mode of knowing those things which must be believed or known, generally knowledge as to substance suffices, or that which is contained in some concept, however confused and rough. I said **generally,** because some, considering their state and condition, must possess a more perfect knowledge.
3. One who certainly or probably is ignorant of things to be believed by necessity of means should, before he is absolved, be instructed in the manner in which this can conveniently be done here and now; nevertheless he should be warned that afterward he must try to acquire a more perfect and broader knowledge. One who is ignorant of things to be believed or known only by necessity of precept can be absolved, with the obligation imposed of afterward obtaining the required knowledge (St. Alphonsus, II, 3; *Praxis Confessarii*, n. 22).

III. The internal act of faith obliges sometimes by reason of the precept of faith itself, sometimes by reason of the precept of another virtue. Therefore note proposition 1 condemned by Alexander VII: "At no time in his life is a man bound to elicit an act of faith, hope, and charity, by force of the divine precepts pertaining to those virtues";[4] proposition 16 condemned by Innocent XI: "Faith is not considered to fall under a special precept and according to itself";[5] and proposition 17 condemned by the same: "It is enough to elicit an act of faith once in life."[6] Now the internal act of faith obliges:

1. **By reason of the precept of faith itself:**

a) When someone first has knowledge of revelation made. Hence the following are bound to elicit an act of faith: a) children educated among the faithful, who, having attained the use of reason, apprehend the truths of faith as revealed by God; b) non-Catholic adults to whom the true faith is proposed and becomes known as true (St. Alphonsus, II, 5).

b) Several times in life. Thus St. Alphonsus and many others against some. And indeed, the homage to be rendered to God seems to require that acts of the virtues which immediately regard God be elicited more often in life. Then it is gathered from proposition 17, condemned by Innocent XI and cited above. Finally, it seems to have to be deduced from the fact that, according to what will be said in n. 519, an

act of charity must be elicited several times in life. For since faith and charity have almost the same necessity, almost the same thing seems to have to be said of the obligation of each (St. Alphonsus, II, 5, 6, 7).

Objection. The precept of faith obliges indirectly, that is, by reason of another virtue, so often in life that Christ is not considered to have imposed it directly.

Response. That the precept of faith obliges indirectly so often does not prevent the homage to be rendered to God revealing also from requiring that an act of faith be elicited several times in life. Hence Christ is considered to have imposed an act of faith also on account of that motive, that is, directly.

c) In the article of death. Thus many, on account of the reasons adduced under b), which they judge must also be applied to the article of death.

d) When a new definition of faith is proposed, insofar as one who in this case did not elicit an act of faith would at least practically either deny an article of faith, or call it into doubt, or expose himself to the danger of doing so.

e) When someone has fallen into heresy or apostasy; in which case the injury done to the authority of God seems to carry with it the obligation of repairing it by an act of faith at least not long delayed.

f) When a temptation against faith presses, whether against faith in common or against a particular mystery, which someone judges he cannot conquer except by an elicited act of faith. Yet this will rarely have place; rather, ordinarily, it is preferable to fight temptations of this sort by turning away to other things (St. Alphonsus, II, 5; *Praxis Confessarii*, n. 238).

g) When an external profession of faith must be made (St. Alphonsus, cited place, n. 490).

2. **By reason of the precept of another virtue:**

a) When someone is bound to place an act of another virtue which cannot be placed without an act of faith (St. Alphonsus, II, 5).

b) When a temptation against another virtue presses, which someone seems to himself unable to overcome without an act of faith (St. Alphonsus, cited place).

c) When an act of virtue is freely placed which cannot be placed in the due manner without an act of faith, such as sacramental confession or the reception of the Holy Eucharist.

Corollary I. One who neglects an act of faith imposed by reason of another virtue sins against that other virtue, but not against faith.

Corollary II. A man living Christianly should not doubt that he has fulfilled the obligation of eliciting an act of faith from time to time, since so often, both by reason of faith itself and by reason of another virtue or good work, he elicits an act of faith, now in an act signified, now in an act exercised (St. Alphonsus, II, 7).

[1] Mark 16:16.

[2] 1 John 3:23.

[3] Waffelaert, *Annotationes in tractatum de virtutibus theologicis*, n. 178.

[4] Denzinger-Bannwart, n. 1101.

[5] Denzinger-Bannwart, n. 1166.

[6] Denzinger-Bannwart, n. 1167.

Chapter II. On the Precept of the External Act, or Profession of Faith

490 **I. The external act, or profession of faith, is sometimes prescribed.** This is clear: 1. **From Sacred Scripture.** "If thou confess with thy mouth the Lord Jesus, and believe in thy heart that God has raised Him from the dead, thou shalt be saved. For with the heart we believe unto justice, but with the mouth confession is made unto salvation."[1] 2. From the fact that the Church was instituted by her Author as an external, visible society of believers. But such a society carries with it that believers also profess the faith externally. 3. The majesty of God revealing requires this, for external adherence also is owed to Him. How greatly the obligation of sometimes professing the faith presses is clear, for example, from the fact that the Sacred Congregation de Propaganda Fide, on May 28, 1635, responded that "a Mohammedan who wishes, on account of danger to life, to be a hidden Christian and to remain such cannot be admitted to baptism, but must transfer himself to places where he can publicly profess the Christian religion."[2]

II. The external act, or profession of faith, generally obliges the faithful "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" (can. 1325, § 1). Specifically, it obliges:

1. **By reason of the precept of faith itself:**

a) When a baptized infant attains the use of reason, or an adult embraces the faith or returns to it after public departure.

b) Several times in life, as is gathered from the arguments adduced under I. Besides, a man who lives Christianly abundantly satisfies this obligation, since hundreds of times he places acts which contain a profession of faith at least in an act exercised.

c) When the honor of God as Author of faith must be defended (St. Thomas, II-II, q. 3, a. 2); this has place: 1. if someone is questioned by public authority. Hence proposition 18 was condemned by Innocent XI: "If someone is questioned by public power, I counsel that he frankly confess the faith as glorious to God and the faith; to be silent I do not condemn as sinful per se."[3] But "if a prince by a general law orders the faithful to disclose themselves, by wearing a sign, or presenting themselves, or otherwise, they are not bound, since no one is bound to speak the truth unless he has been specially asked" (St. Alphonsus, II, 14, 50), that is, the obligation of professing the faith presses only when someone is summoned before the law. Make exception if civil authority questions someone about the faith contrary to the prescription of law. Nor is the case present if someone is questioned for a merely political end, for example on the occasion of a census of the people. 2. If the faith is treated contemptuously and someone can conveniently defend it, for example by refuting objections that have been brought forward (St. Alphonsus, II, 11). 3. If, considering the circumstances, omission of profession would be taken for denial of the faith, as if, when several persons have been questioned about the faith and others are professing it, you were silent (St. Alphonsus, II, 14, 40); likewise if, when you were questioned about the faith, another, while you were silent, answered for you that you were not a Catholic. I said **considering the circumstances,** because per se there is no obligation of professing the faith if someone is questioned by a private person (St. Alphonsus, II, 13, 20).

d) When, unless someone professes the faith, there is grave danger that he will deny the faith.

e) When profession of faith has been prescribed by the Church. Now:

alpha) It must be made by an adult to be baptized[4] and, if an infant is to be baptized, by the sponsors;[5] likewise by priests in their ordination[6] and bishops in their consecration;[7] specifically, by a person past puberty who is to be baptized and who is converted from heresy or schism to the faith.[8]

beta) From can. 1406, those held to the obligation of making profession of faith, according to the formula[9] approved by the Apostolic See, are:

1. Before the president or his delegate, those who are present at an Ecumenical or particular Council or at a diocesan Synod with either consultative or deliberative vote; but the president 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 a delegate from the Apostolic See, those promoted to an episcopal see, even a nonresidential one, or to the governance of an abbey or prelature *nullius*, an Apostolic Vicariate, or an Apostolic Prefecture.
4. Before the cathedral Chapter, the Capitular Vicar.
5. Before the local Ordinary or his delegate and before the Chapter, those who have been promoted to a dignity or canonry.
6. Before the local Ordinary or his delegate and before the other consultors, those taken into the office of diocesan consultors.
7. Before the local Ordinary or his delegate, the Vicar General, parish priests, and those for whom provision has been made concerning any benefices, even manual benefices, having care of souls; the rector and professors of sacred theology, canon law, and philosophy in seminaries, 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, of whom in can. 1393; priests appointed for hearing 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 a University or Faculty, or his delegate, all professors in a canonically erected University or Faculty, at the beginning of each scholastic year or at least at the beginning of the office undertaken; likewise those who, after examination has been made, are endowed with academic degrees.
9. Before the Chapter or Superior who appointed them, or their delegate, Superiors in clerical religions (can. 1406, § 1).
10. Those who, after having left the prior office, benefice, or dignity, obtain another office or benefice or dignity, even of the same species, must again make profession of faith according to the norm of this canon (can. 1406, § 2), that is, can. 1406, § 1.

gamma) From the decree of the Holy Office,[10] the anti-modernist oath, prescribed by Pius X in the Motu Proprio *Sacrorum Antistitum*,[11] must be made, until the Apostolic See establishes otherwise on this matter, and indeed according to the formula attached to the Motu Proprio, which, with their name signed, they shall give to their Ordinary:

1. Clerics to be initiated into major orders; to each of them beforehand let there be handed a copy both of the profession of faith and of the formula for taking the oath, so that they may know them accurately in advance, with the sanction, as below, for violation of the oath added.
2. Priests appointed for hearing confessions and sacred preachers, before they are endowed with the faculty of exercising those offices.[12] These, however, are not bound when their faculties are prolonged or when they transfer to another diocese.
3. Parish priests, Canons, and Beneficiaries before entering into possession of the benefice.
4. Officials in episcopal curias and ecclesiastical tribunals, not excepting the Vicar General and judges.
5. Those chosen to deliver sermons during the time of Lent.
6. All officials in Roman Congregations or tribunals before the Cardinal Prefect or Secretary of the same Congregation or tribunal.
7. Moderators of religious families and Congregations before they enter office.
8. Doctors both of seminaries and of religious families, before they enter office.[13]

It is disputed whether those designated under 8 are bound to make the oath yearly. Now it seems it must be answered affirmatively; for the Holy Office declared[14] that the prescriptions regarding the anti-modernist oath must remain in their full force until the Apostolic See establishes otherwise on this matter. But, considering the prescriptions regarding the anti-modernist oath, the said oath was to be made yearly by the aforesaid Doctors.[15]

Objection 1. The oath is intended as a complement of the profession of faith; and therefore, once the yearly profession of faith has been removed, it should likewise be held as removed. But the profession of faith must be made only at the beginning of the office undertaken (can. 1406, § 1, 7).

Response. The argument adduced seems sufficiently to prove that the reason of complement in the case should not be urged so strongly; in other words, that the anti-modernist oath must be urged even independently of the profession of faith. Besides, there is a special reason for requiring the oath, namely the combating of modernism, and this reason persists and presses, even if the profession of faith is omitted.

Objection 2. The declaration of the Holy Office can regard only the Motu Proprio *Sacrorum Antistitum*, which does not prescribe a yearly oath; but not the declaration of the Sacred Consistorial Congregation, which extends the sense of the said Motu Proprio to each year.

Response. Apart from the fact that it is in no way clear that the Motu Proprio does not prescribe a yearly oath, the declaration of the Holy Office is considered to regard the Motu Proprio as it had in fact been in force. But in fact it had been in force according to the norm of the declaration of the Sacred Consistorial Congregation, whether that declaration is extensive or comprehensive.

Note 1. One does not satisfy the obligation of making profession of faith, established by can. 1406, if he makes it through a procurator or before a layman (can. 1407).

Note 2. Any custom against the canons just cited is reprobated (can. 1408), that is, canons 1406 and 1407.

Note 3. One who, contrary to the prescription of can. 1406, neglects to make profession of faith without a just impediment is to be warned, with a suitable term also fixed beforehand; when this has elapsed, if he is contumacious, he is to be punished even by deprivation of office, benefice, dignity, or function; nor meanwhile does he make his own the fruits of the benefice, office, dignity, or function (can. 2403).

2. **By reason of the precept of another virtue, profession of faith obliges:**

a) When by professing the faith someone would have hope of converting others to the faith, or by not professing it would be a scandal to others (St. Thomas, II-II, q. 3, a. 2, ad 3; St. Alphonsus, II, 11).

b) When by neglecting profession of faith someone would expose himself to grave danger of committing some sin other than one against faith itself; which will rarely have place.

[1] Rom. 10:9 sq.; cf. Matt. 10:32 sq.

[2] May 28, 1635 (*Collectanea*, n. 84); cf. Sacred Congregation de Propaganda Fide, June 26, 1790 (*Collectanea*, n. 602).

[3] Denzinger-Bannwart, n. 1168.

[4] Roman Ritual, title II, chapter 2, n. 32.

[5] Roman Ritual, title II, chapter 2, n. 17.

[6] Roman Pontifical, *On the Ordination of a Priest*.

[7] Roman Pontifical, *On the Consecration of a Bishop*.

[8] Roman Pontifical, *Order for Reconciling an Apostate, Schismatic, or Heretic*; cf. Instruction of the Holy Office to the Bishop of Philadelphia, July 20, 1859.

[9] This formula is found at the beginning of the Code.

[10] March 22, 1918 (*Acta Apostolicae Sedis* 1918, p. 136).

[11] September 1, 1910 (*Acta Apostolicae Sedis* 1910, p. 655).

[12] Thus the Sacred Consistorial Congregation, September 25, 1910 (*Acta Apostolicae Sedis* 1910, p. 740).

[13] Motu Proprio *Sacrorum Antistitum*, September 1, 1910 (*Acta Apostolicae Sedis* 1910, p. 655); Sacred Consistorial Congregation, September 25, 1910 (*Acta Apostolicae Sedis* 1910, p. 740).

[14] March 22, 1918 (*Acta Apostolicae Sedis* 1918, p. 136).

[15] Sacred Consistorial Congregation, September 25, 1910.

Part II. On Sins Against Faith

Section I. On Sins Against the Precept of the Internal Act

Besides omission of the internal act prescribed by reason of faith, the principal sins are infidelity and heresy, to which apostasy belongs. There are added sins which, although they do not destroy faith, nevertheless in some way are opposed to it. Schism, which "per se is opposed to the ecclesiastical unity of charity" (St. Thomas, II-II, q. 39, a. 1, ad 3), is discussed in n. 569.

491 **I. Infidelity.** 1. **Notion.** Infidelity is the lack of faith in a non-baptized man.

2. **Division.** Three kinds are distinguished, namely positive, privative, and negative. Positive infidelity is when an unbaptized person knows that God has spoken, and nevertheless denies or doubts that which God has manifested; privative infidelity is when an unbaptized person doubts that God has spoken, or suspects that revelation has taken place and neglects inquiry. Negative infidelity is when an unbaptized person does not doubt his religion or does not suspect that revelation has taken place (St. Thomas, II-II, q. 10, aa. 1 and 5; St. Alphonsus, II, 17).

By reason of the diverse errors there are enumerated: Paganism, Judaism, Mohammedanism, Atheism, Pantheism, Deism, Rationalism, etc. Yet those of the enumerated classes who have been baptized are rather heretics or apostates.

3. **Morality.** a) Positive and privative infidelity are grave sin from their whole genus. For reverence due to divine truthfulness requires that, if it is clear that it has spoken, we assent to it; if it is doubtful, we inquire whether and what it has taught, with this end, that if we have learned that it has spoken, we adhere to it. Yet privative infidelity by accident, that is, on account of the obligation of inquiring not being sufficiently perceived, can more easily be venial or even no sin. Negative infidelity is not sin, as is clear. Hence proposition 68 of Baius was rightly condemned: "Purely negative infidelity in those to whom Christ has not been preached is sin" (St. Alphonsus, II, 17).

b) Positive infidelity and heresy do not differ in species, as we shall explain at once. But it is disputed whether positive infidelity (and heresy) differ in species from privative infidelity. Many affirm this, because positive infidelity (and heresy) directly injure divine authority; privative infidelity only indirectly, insofar as it prevents me from knowing that God has spoken and from being able to subject myself to Him speaking; these seem to differ in species (St. Alphonsus, VII, 301).[1] The diverse physical species of infidelity (Paganism, Judaism, Mohammedanism, etc.) do not differ in moral species, although diverse species of irreligiosity can be attached to them.

[1] If someone neglects inquiry because he does not wish to submit himself to God revealing, there is privative infidelity, which does not differ in species from positive infidelity.

492 **II. Heresy.** 1. **Notion.** Heresy is the lack of faith in a baptized person; it is called apostasy if someone totally falls away from the faith. Apostasy does not differ in species from heresy, because they agree as to the formal object; namely, they reach God under the same aspect, or each is opposed to the truthfulness of God. As to the material object they differ insofar as apostasy rejects more revealed truths, or rather all revelation (St. Thomas, II-II, q. 12, a. 1, ad 3).

But heresy is usually considered as clothed with certain individuating circumstances; hence, in the ecclesiastical sense, "if anyone, retaining the name Christian, pertinaciously denies or doubts some one of the truths to be believed with divine and catholic faith, he is a heretic; if he totally withdraws from

the Christian faith, he is an apostate" (can. 1325, § 2). The customary definition of heresy agrees with these things: "A pertinacious error against divine and catholic faith." It is said:

a) "**An error against divine and catholic faith,**" that is, it is required that something be denied or called into doubt among those things "which are contained in the word of God, written or handed down, and are proposed by the Church, whether by solemn judgment or by ordinary and universal magisterium, as to be believed as divinely revealed" (can. 1322, § 1).

b) **A pertinacious error,** that is, it is required that someone deny or call into doubt something which he sufficiently knows both to have been revealed and to have been proposed as such to be believed (St. Thomas, I, q. 32, a. 4; St. Alphonsus, II, 19; VII, 300).

2. **Division.** Heresy is distinguished:

a) Into formal and material, according as it is culpable or inculpable.

b) Into internal and external, according as it is completed by an act of mind alone, or is expressed by words or signs.

Corollary I. The following is a heretic, attending only to specific malice and therefore abstracting from individuating circumstances, which do not change the species:

a) One who does not inquire into revelation, because he does not wish to submit himself to God revealing.

b) One who rejects or calls into doubt a doctrine which he sufficiently knows to have been revealed, even if only privately (St. Alphonsus, II, 19).

c) One who indeed admits a doctrine which he holds as revealed, but not on account of the authority of God revealing, rather on account of the mere view of reason.

d) One who rejects or calls into doubt a doctrine which the Church has proposed by definitive judgment, though not as revealed, will easily become a heretic, by denying or calling into doubt the revealed truth that the Church is infallible in proposing that doctrine.

Corollary II. The following is not a heretic:

a) One who does not inquire into revelation out of levity, out of weariness, or out of fear lest, when revelation has been found out, he be bound to change his opinion. The reason is that he does not deny or call into doubt what he knows to have been revealed; nevertheless he sins gravely[1] (St. Alphonsus, VII, 301).

b) One who denies the faith only externally (St. Alphonsus, II, 19, 1).

c) One who suspends judgment, for example "turning himself to other things lest he fatigue the mind, or so that he may apply himself to another thought." Otherwise it must be said if he suspends judgment because he doubts either whether an opinion which he holds as revealed is true, or whether the Church, in proposing something as revealed, teaches what is true; in the latter case he calls into doubt the revealed doctrine concerning the infallibility of the Church (St. Alphonsus, VII, 302; II, 19).

d) One who rejects or calls into doubt a theological conclusion deduced from a truth either revealed or proposed by the Church by definitive judgment; although he will easily become a heretic by rejecting or calling into doubt the revealed premise, or the doctrine that the Church is infallible.

3. **Morality.** a) Heresy and apostasy are grave sin from their whole genus. For reverence due to divine truthfulness altogether requires that we assent to it, if it is clear that it has spoken.

b) Heresy and apostasy do not differ in species from positive infidelity; for they agree with it in the formal object, because they reach God under the same aspect, namely by offending His truthfulness; and they differ from it only insofar as they are found in a baptized subject.

c) Nor, as is clear, do diverse sects (Lutheranism, Calvinism, etc.) differ in moral species, although diverse species of irreligiosity, customarily exercised in the different sects, can be added.

4. **Loss of faith.** a) Faith (the habit of faith) is not lost except through a formal sin against faith (n. 357).

b) It is another question whether someone can bid farewell to the Catholic Church without formal sin against faith. Now strictly speaking it seems this must be answered affirmatively; namely, it seems possible that someone gradually call into doubt or even reject the truth of the Catholic Church without calling into doubt or rejecting a truth which he sufficiently perceives to have been revealed. Nor is the Vatican Council (*De fide*, chapter 3) an obstacle, for it only teaches that no one has an objectively valid reason for calling the Catholic faith into doubt, and that at least material sin is contained in such a manner of acting.[2]

c) Again, it is another question whether someone can leave the Catholic Church without any grave sin, either preceding or contained in the very defection. Now it seems it must be said as follows: No one without grave sin will come to such a point that he calls into doubt or denies those things which must be believed by necessity of means; for God abandons no one unless He is abandoned.[3] Now one who without grave sin loses faith in those things which must be believed by necessity of means seems to have been abandoned by God without himself having abandoned God. As regards defection from the Catholic Church which does not include things to be believed by necessity of means, the matter is more doubtful.

d) But it can more easily happen that a Catholic without grave sin calls into doubt or even denies one or another point of the Catholic faith, namely:

alpha) Either by not noticing that an opinion admitted by him is opposed to the infallible doctrine of the Church, although he knows that it is reproved by priests, but not authoritatively.

beta) Or by persuading himself that he has reason to withdraw from the Church as regards those points, and that they are not rightly proposed by the Church as revealed: such persons do not notice that they are denying the infallibility of the Church, but rather suppose that the Church is erring in a matter which, in the opinion of the one erring, does not belong to the competence of the Church.

gamma) Or by persuading themselves that certain things are proposed by the Church as revealed which seem false to them and which they cannot believe.

The aforesaid persons regularly, at least for the sake of the common good, should not be left in good faith, nor should they be absolved unless they are willing to admit what the Church has proposed either as revealed by God or as indubitable.

[1] There are those who judge that this sin does not differ in species from heresy (p. 330).

[2] Vacant, *Etudes sur le Concile du Vatican*, II, p. 179.

[3] Van Noort, *De fide divina*, n. 280.

493 **III. Acceptance of propositions condemned by a note lower than heresy.** Besides the sins explained under I and II, which exclude faith, there are others by which believers who retain faith in some way sin against faith, for example if someone culpably is ignorant of things which according to the above notes must be known; likewise if someone maintains propositions condemned by a note lower than heresy; concerning these we must speak more fully.[1]

I set forth first can. 1324: "It is not enough to avoid heretical depravity, but it is also necessary diligently to flee those errors which more or less approach it; wherefore all must also observe the constitutions and decrees by which evil opinions of this sort have been proscribed and prohibited by the Holy See." And can. 2317: "Those who pertinaciously teach or defend, whether publicly or privately, a doctrine which has indeed been condemned by the Apostolic See or by a General Council, but not as formally heretical, are to be barred from the ministry of preaching the word of God or hearing sacramental confessions and from any office of teaching, without prejudice to other penalties which the sentence of condemnation may perhaps have established, or which the Ordinary, after warning, has judged necessary for repairing scandal."

1. **What are the lower notes?** Among these:

a) Some directly signify the falsity of a proposition. Thus: 1. **proximate to heresy** is that which denies what is proximate to faith, that is, what is commonly held as revealed, but not yet defined as such by the Church; 2. **erroneous** is that which denies what is theologically certain, that is, what, by mediation of another naturally evident truth, is certainly gathered from revealed doctrine; 3. **proximate to error** is that which denies what is most probably deduced from revealed doctrine; 4. **rash** is that which is defended against the common opinion without a solid argument.

b) Others directly indicate that some proposition is brought forward incautiously. Thus: 1. **savoring of heresy** or **suspected of heresy** is that which, after inspection of the words and various circumstances, gives occasion for suspecting that some other heresy is in the author; 2. **savoring of error** or **suspected of error** is that which gives occasion for suspecting that another erroneous proposition is admitted by the author; 3. **ill-sounding** is that by which matters pertaining to faith and morals are brought forward beside and against the received manner of speaking; 4. **offensive to pious ears** is that which states something that weakens the piety of the faithful, or expresses something in such a way that a similar effect follows.

c) Others directly designate some evil influence of a proposition. Thus: 1. **scandalous** is that which gives those hearing it occasion of spiritual ruin; 2. **contumelious** is that which is opposed to the honor due to another; it is called **blasphemous** if it inflicts injury upon God or the things of God as such; 3. **schismatic** is that which is opposed to the unity of the Church.

2. **To what extent must account be taken of the lower notes?** Account must be taken of them as follows:

a) If some note has been inflicted on some doctrine by the Church, that doctrine must be held as such, for example as scandalous, contumelious, etc. (can. 1324, 2317). Yet one who does not take account of the lower notes, although he sins, nevertheless is not thereby already a heretic. Sometimes, however, he will easily fall into heresy, for example if someone admits a proposition which is called erroneous; for one who denies what is certainly gathered from revealed doctrine by mediation of some naturally

evident truth will easily deny revealed doctrine itself. Besides this, those who externally do not take account of the lower notes must also be accused of scandal.

b) As regards doctrinal declarations issued either by the Supreme Pontiff, yet not by definitive judgment, or by a Congregation which can issue declarations of this sort, as, for example, the Holy Office, as regards these declarations, I say:

alpha) Some subjection is certainly required, as is clear from the Apostolic Letter of Pius IX to the Archbishop of Munich;[2] likewise from the decree of the Holy Office *Lamentabili*,[3] which Pius X confirmed by his Motu Proprio on November 18, 1907; finally, from those things which Pius X declares in the same Motu Proprio concerning the Biblical Commission: "We declare for the present and expressly command that all, every one, are bound in conscience by the duty of subjecting themselves to the judgments of the Pontifical Council on Biblical matters, pertaining to doctrine..., just as to the decrees of the Sacred Congregations pertaining to doctrine and approved by the Pontiff; nor can all those who impugn such judgments in words or writings avoid the mark both of withheld obedience and of rashness, or therefore be free from grave fault." Besides, it seems altogether consonant that the Church can in some way delegate to others the power of the magisterium, which is not merely doctrinal but authoritative. Now to this right and faculty there corresponds in subjects the obligation of taking account of the things which are taught by those to whom the aforesaid power has in fact in some way been delegated.

beta) External subjection is certainly required; for this at least must be gathered from the documents cited. Indeed, that it is required under grave obligation is clear both from the fact that a grave matter is involved, and from the cited words of the Motu Proprio of Pius X.

gamma) Authors quite commonly teach that even internal assent is required, and it is rightly deduced from the Letter of Pius IX and the obvious sense of the other documents. Nor should you object that the Church lacks the faculty of imposing merely internal acts. It cannot impose acts of this sort by its own authority, but it can do so by vicarious authority (n. 117). Firm assent, however, is not required, because definitive decrees are not in question; rather, an opinionative assent suffices, an assent which, moreover, the said decrees truly deserve. For first, the Sacred Congregations consist of men most versed in the matters which pertain to their province. Then those men in Rome have continual intercourse both with the Supreme Pontiff and with the whole episcopate, so that the sense of the universal magisterium becomes known to them more easily. Finally, it is difficult to deny that, especially upon those to whom the Supreme Pontiff has in some measure delegated his magisterium, something of the divine assistance promised to the Church redounds. Besides this, opinionative assent seems to be required under grave obligation, because the matter seems grave. Yet:

delta) It is licit, provided internal assent is furnished, to study further the matter which the decrees regard, even with the intention of inquiring whether they are true or not. This seems to follow from the nature of the thing, since the Roman Congregations cannot settle the question. But when the question has not been settled, it is licit to undertake further inquiry, and that even with the intention that the truth may be made clear. This is confirmed by the letters given by Cardinal Vaughan to Wilfrid Ward.[4]

epsilon) It is licit afterward, for a very grave cause, to withhold assent first given, indeed even to adhere to the contrary opinion; for example, as regards a learned man, if, after the matter has been

investigated further, he finds a new and grave reason; as regards the less learned, if other grave and God-fearing authors already withhold assent or adhere to the contrary opinion.

Now that reason for denying assent, indeed for adhering to the contrary opinion, will occur more easily if the matter concerns decrees of the Pontifical Council on Biblical matters than if it concerns decrees of other Congregations, in other words, if it concerns scriptural matter rather than dogmatic or moral matter. For in biblical matters, whose decision often depends on external arguments both critical and historical, new arguments are more easily found than in a moral or dogmatic matter, which is often decided by internal arguments alone. For the same reason it seems it must be said that an assent equally efficacious as that owed to decrees of other Congregations is not owed to decrees of the Pontifical Council on Biblical matters. For since it can happen more easily that new arguments are found, the fear of error is greater. Indeed I would not say that decrees of the Pontifical Council have less authority in themselves; but the condition on account of which it is licit to withhold assent will more easily exist; hence the fear of erring is greater.

zeta) Finally, it is not illicit to propose new arguments which have been found, certainly with due reverence.

[1] Cf. Waffelaert, *Annotationes in tractatum de virtutibus theologicis*, n. 229 sq.; besides, different authors explain several lower notes in different ways.

[2] December 21, 1863.

[3] July 3, 1907.

[4] Cf. *The Guardian*, June 4, 1897.

494 **Question 1. To what extent does one sin who professes Liberalism,** that is, the politico-religious system which teaches the full independence of the State from the Church?

Response 1. One who plainly professes Liberalism is a heretic, because revelation teaches at least some dependence of the State upon the Church.[1] The same, as is clear, must be said of one who adheres to a particular doctrine which is opposed to faith.

Response 2. One who admits a particular doctrine, not indeed reproved by the Church as heretical, but nevertheless definitively reproved, sins gravely. Of this sort is, for example, proposition 48 of the Syllabus of Pius IX: "That manner of instructing youth which is separated from the Catholic faith and from the power of the Church, and which looks only, or at least primarily, to the science of merely natural things and to the ends of earthly social life, can be approved by Catholic men."[2]

Response 3. One who gives his name to a group, for example an electoral group, of Liberals sins gravely, according to what is to be said in n. 509.

[1] Bull of Boniface VIII, *Unam Sanctam*, November 18, 1302; Encyclical of Pius IX, *Quanta cura*, December 8, 1864; Encyclical *Libertas*, June 20, 1888.

[2] Denzinger-Bannwart, n. 1748; cf. Encyclical of Pius XI *Divini illius Magistri*, December 31, 1929.

495 **Question 2. To what extent does one sin who professes Socialism?**

Response 1. One who adheres to the deepest principles of the socialists, namely materialism and atheism, is a heretic.

Response 2. One who rejects all private ownership sins gravely, because a doctrine of this sort cannot be reconciled with the doctrine of the Church.[1]

Response 3. One who admits the system of Socialism, even as it exists today, likewise sins gravely, since the said system is opposed to the doctrine of the Church. "Whether Socialism is considered as a doctrine - thus Pius XI[2] - or as a historical fact, or as 'action,' if it truly remains Socialism, even after it has conceded to truth and justice in those things of which we have spoken, it cannot be reconciled with the dogmas of the Catholic Church, since it imagines society itself as utterly alien from Christian truth."

"For, thus the Supreme Pontiff continues, according to Christian doctrine, man, furnished with a social nature, is placed on this earth so that, living in society and under authority ordained by God,[3] he may fully cultivate and develop all his faculties to the praise and glory of his Creator, and, by faithfully performing the duty of his art or other vocation, may obtain for himself happiness both temporal and eternal. But Socialism, being utterly ignorant and careless of this sublime end, both of man and of society, supposes that human association has been instituted for the sake of advantage alone.

"For from the fact that goods are produced more efficaciously by an apt division of works than by the divided efforts of individuals, the socialists infer that economic efficiency, of which only material objects are observed by their minds, must proceed socially by necessity. By this necessity, so they judge, men are constrained to devote and subject themselves wholly to society, as far as the production of goods is concerned. Indeed, to possess the widest possible supply of things which serve the conveniences of this life is counted so highly that the higher goods of man, not excepting liberty itself, must be placed after and even sacrificed to the demands of the most efficacious production of goods. But they suppose that this loss of human dignity, to be undergone in the 'socialized' process of production, will easily be compensated by the abundance of goods socially produced, which will be poured out to individuals, so that according to their own pleasure they may freely apply them to the conveniences and culture of life. Therefore society such as Socialism imagines it, on the one hand, neither can exist nor be conceived without violence that is plainly excessive; on the other hand, it indulges a liberty no less false, since true social authority is absent from it, seeing that this authority is not based on temporal and material conveniences, but descends from God alone, the Creator and ultimate end of all things."

Response 4. One who gives his name to a socialist group sins gravely, according to what is to be said in n. 509.

[1] Encyclical of Leo XIII *Quod apostolici muneris,* December 28, 1878; *Rerum novarum,* May 15, 1891; Encyclical of Pius XI *Quadragesimo anno,* May 15, 1931.

[2] Encyclical *Quadragesimo anno,* May 15, 1931 (*Acta Apostolicae Sedis* 1931, p. 215).

[3] Cf. Rom. 13:1.

Section II. On Sins Against the Precept of the External Act

The principal sins against the precept of the external act are: omission of the external act prescribed by reason of faith, or concealment of faith; denial of faith; and dissimulation of it without proportionate reason.

496 **I. Concealment of faith; concerning this note:** one converted or returned to the faith per se cannot conceal his conversion; by accident, on account of a grave cause, this is licit for a longer or shorter time, although on account of the honor publicly due to God revealing, to which there is easily added scandal that must be repaired, it is scarcely ever licit to conceal conversion for a long time.[1]

If someone placed in danger of death is converted and has a grave reason for concealing his conversion, let him profess the faith before at least two witnesses, who afterward should make the conversion known.[2]

[1] Cf. Sacred Congregation de Propaganda Fide, May 28, 1635 (*Collectanea*, n. 84); n. 490.

[2] Cf. Sacred Congregation de Propaganda Fide, June 26, 1790 (*Collectanea*, n. 602).

497 **II. Denial of faith is always illicit,** even in a case where it would be done only externally. This is clear both from Sacred Scripture (Matt. 10:33) and from the nature of the thing. Denial of faith made only externally is called simulation. Likewise, it is always illicit to be ashamed of the faith (Luke 9:26; St. Alphonsus, II, 12).

498 **III. Dissimulation of faith,** that is, an act by which someone signifies neither the true nor a false faith, but expressly hides the true one, is per se illicit; but from a sufficiently grave cause it becomes licit (St. Alphonsus, II, 12). Indeed, sometimes it obliges, namely if on the one hand the necessity of confessing the faith is absent, but on the other hand great harms are to be feared from manifestation of the faith.

Both denial and dissimulation can be done by words, signs, and deeds. Since often it is difficult to distinguish whether denial or dissimulation is had, let this be:

499 **IV. Criterion for distinguishing denial and dissimulation of faith.**

1. Things which of themselves or from the circumstances signify internal rejection of faith must be avoided as a denial of faith; of this sort are, for example, "burning incense or genuflection before an idol; likewise taking a heretical supper, etc." (St. Alphonsus, II, 15, 8).
2. Things which only indirectly, or by accident, signify internal rejection of faith contain dissimulation of faith, and therefore are licit from a proportionate cause; for example, the clothing and signs of the Turkish nation (St. Alphonsus, cited place, 9).
3. Things which neither of themselves nor from circumstances nor by accident signify internal rejection of faith contain neither denial nor dissimulation of faith, and therefore are per se licit, as if someone says: "I am not a priest"; by accident, because of a reason extrinsic to this precept, they can become illicit. These things noted, it is useful to apply the doctrine set forth to diverse cases.

500 **V. Applications.** In making applications we distinguish the diverse things by which both denial and dissimulation of faith can be done, namely words, signs more strictly taken, clothing, and deeds.

1. **Words.** One who is questioned about the faith, even by a private person, cannot respond in such a way that he must certainly be believed to deny the true faith. Hence he cannot respond, for example, that he is a Calvinist, or that he adheres to the faith of the kingdom, if the kingdom as such professes a false faith (St. Alphonsus, II, 13).
2. **Signs more strictly taken.** The distinctive signs of Freemasons (nods, movements of hands or fingers, a particular way of signing letters) contain profession of a false sect, since they are equivalent to words by which someone signifies that he belongs to a false sect.[1] Nor do the aforesaid signs seem to lose their signification from the fact that some who do not belong to the sect use them, for example so that they may be treated amicably; for these seem rather to lie than to make the signs lose their signification. Besides, those who use signs of this sort at least

proximately intend that they be taken, at least probably, for Freemasons; but to use such a means is illicit.

3. **Clothing.** Among clothing: 1. Some garments are distinctive of a people or nation, as the cap of the Turks. It is licit to use these from a just cause, because garments of this sort, although they may be worn in a region of unbelievers, nevertheless of themselves do not involve profession of any faith. 2. Other garments are distinctive of a sect. It is not licit to use these, because one who uses them, considering the circumstances, signifies that he belongs to that sect.[2] Many, however, permit the use of garments "which do not have a peculiar sign of professing error, but are only an indication of more elegant dress, as formerly the cloaks of preachers in Germany; or of a more eminent life among their own, as the robes of bonzes in Japan. The same must be said concerning signs which the Jews used, for example, a yellow ring on the cloak at Frankfurt, etc.; because these are merely political signs and distinctive of one class of men from another, and not properly professive of faith" (St. Alphonsus, II, 15, 9).

4. **Deeds.** a) The eating of meat on a day of abstinence does not contain profession of a false religion. But to eat out of shame is not licit. Likewise it is illicit if someone is provoked to eating in contempt of religion, unless there is a grave cause and the one provoked protests that he is not acting in contempt of religion, but because the Church for a grave cause does not urge the law (St. Alphonsus, II, 15, 10).

b) Active assistance[3] at the sacred rites of non-Catholics is illicit. The reason is that assistance of this sort either constitutes part of a worship that must be reproved or, as it is taken here, involves proximate cooperation in such worship. Hence can. 1258, § 1: It is not licit for the faithful in any way actively to assist or to have part in the sacred rites of non-Catholics. And can. 2316: Whoever in any way spontaneously and knowingly assists the propagation of heresy, or who communicates in divine things with heretics contrary to the prescription of can. 1258, is suspected of heresy. And so it is illicit, for example, to take a non-Catholic supper; to hear the Mass of a non-Catholic, even if on a feast of precept no other can be heard;[4] to chant psalms or play the organ in their assemblies;[5] to perform the office of sponsor in their baptisms;[6] etc. Besides, compare what is to be said about cooperation (n. 557).

c) Assistance at sermons and merely passive assistance[7] at sacred functions of non-Catholics contain at most material and remote cooperation, and therefore, considered under this respect, are licit for a just cause. But scandal is easily added and, if more frequent assistance is in question, danger of perversion. Hence the Holy Office[8] declared that "regularly it is not licit for Catholics to be present at the sermons (baptisms and marriages) of heretics or schismatics" (cf. can. 1258, § 2). If civil authority orders Catholics, for example soldiers, to assist at the sermons and rites of non-Catholics, practically there is a cause excusing, while precautions against danger of perversion must nevertheless be employed.

It is licit, scandal being excluded, to enter the church of schismatics and there privately, not as if acting together with them, to adore the Most Holy Sacrament.[9] Yet if this were done regularly, it would certainly provide scandal and occasion for religious indifferentism.

Besides this, the Sacred Congregation de Propaganda Fide,[10] to the doubt: "Whether it is licit for Catholics to adore the Most Holy Sacrament, carried by a schismatic parish priest in the public way, whether to a sick person or otherwise," responded: "Not only is it licit, but Catholics must adore the Most Holy Sacrament; nevertheless they must abstain from accompanying it."

Entry into the churches of non-Catholics in order to look at them involves nothing illicit.

d) **Passive presence at funerals and weddings of non-Catholics.** Passive or merely material presence can be tolerated, for the sake of civil office or honor, on account of a grave reason to be approved by the Bishop in a case of doubt, at the funerals, weddings, and similar solemnities of non-Catholics, provided danger of perversion and scandal is absent (can. 1258, § 2). It is said **passive presence;** hence if the wedding is entered into before a heretical minister as such, it is not licit to function as witness. Nor is it lawful to undertake the office of paranymph, if this office is as it were to offer the spouses to the heretical minister so that he may join them. It is said **provided danger of scandal is absent;** now in many regions scandal certainly would be present if there were question of cremating the body or of carrying out burial with the insignia of the Masonic sect.

e) **Selection of a non-Catholic sponsor.** The Holy Office said "that it is preferable that Baptism be conferred without a sponsor than with a non-Catholic."[11] Finally, can. 795, among other things, requires for validity that the sponsor in Baptism "be enrolled in no heretical or schismatic sect."

f) **Flight in time of persecution** is per se licit, because it involves neither denial nor dissimulation of faith, but only the use of the right to protect one's life. Practically:

alpha) It is illicit if, by your flight, the honor of God or the salvation of souls would suffer detriment; as if pastors of souls, that is, bishops and parish priests, were to flee.

beta) It is licit if your presence is indeed useful, but not necessary, and you cannot remain without grave inconvenience.

gamma) It obliges: 1. if by remaining you would harm rather than benefit the common good; 2. if by remaining you would expose yourself to danger of denying the faith (St. Alphonsus, II, 14, 6).

Note 1. For dissimulating the faith it is more easily licit to omit signs of Catholics than to use signs of non-Catholics.

Note 2. One who is converted to the faith is indeed bound, on the occasion of Baptism, to profess the faith; but if there are grave causes for dissimulating the faith for a time, and for that end for not observing certain precepts of the Church or even for passively assisting at rites of non-Catholics, this is licit (n. 498 sq.). Nevertheless it is preferable to explain the matter to the Ordinary, or even, if the dissimulation of faith will have to endure only for a short time, to defer Baptism. Yet the aforesaid should not per se be applied readily to one who has departed from the faith and desires to return to it, since he is also bound to repair scandal.

[1] According to some, these things are not to be extended to the signs by which Masons usually recognize one another; this does not seem equivalent to a profession of this sect, but is a means so that they may be treated amicably by members of the sect. But signs by which Masons usually recognize one another, if others do not use them, truly signify that someone belongs to the sect; this is and remains profession of the sect, although the said signs may be used as a means so that they may be treated amicably by members of the sect.

[2] Objection. Garments which are distinctive of a sect are not necessarily protestative of the sect. Now it is licit to use garments non-protestative of the sect, although distinctive, from a grave cause. Thus several authors. Response: Leaving aside the word *protestative*, I would say: one who uses garments distinctive of a sect signifies that he belongs to the sect; this is profession of the sect and denial of the true faith at least externally.

[3] Active assistance is had when the one assisting has a part in the sacred rites of non-Catholics (can. 1258, § 1).

[4] Holy Office, August 7, 1704 (*Collectanea*, n. 267).

[5] Sacred Congregation de Propaganda Fide, July 8, 1889 (*Collectanea*, n. 1713).

[6] The Holy Office, May 10, 1770 (*Collectanea*, n. 478), responded that "it is absolutely not licit, either by oneself or through others, to perform the office of sponsor in Baptisms which are administered by heretics to the children of heretics"; likewise June 30 and July 5, 1864 (*Collectanea*, n. 1257).

[7] Merely passive assistance is had if the one assisting, unlike one actively assisting, has no part in the sacred rites of non-Catholics (cf. can. 1258, § 1).

[8] May 10, 1770.

[9] Sacred Congregation de Propaganda Fide, December 15, 1764 (*Collectanea*, n. 458, ad 1).

[10] December 15, 1764 (*Collectanea*, n. 458, ad 4).

[11] May 3, 1893 (*Collectanea*, n. 1831).

Scholion. On Penalties Against Heretics, Apostates, and Schismatics

501 **I. Denunciation of delinquents.** The obligation of denouncing presses whenever someone is driven to this either by law or by a peculiar legitimate precept, or from the natural law itself on account of danger to faith or religion or another imminent public evil (can. 1935, § 2).

502 **II. Penalties of delinquents.** 1. All apostates from the Christian faith and all and each heretics or schismatics: 1. incur excommunication by the fact itself; 2. unless, having been warned, they come to their senses, they are to be deprived of benefice, dignity, pension, office, or other function, if they have any in the Church, are to be declared infamous, and clerics, after repeated warning, are to be deposed; 3. if they have given their name to a non-Catholic sect or have publicly adhered to it, they are infamous by the fact itself, and clerics who have publicly defected from the Catholic faith are by the fact itself and without any declaration deprived of office, and, after warning has been given in vain, are to be degraded (can. 2314, § 1). It is said:

a) **All, etc.;** but it is required that the delict also have been perpetrated externally.

b) **If they have publicly adhered to a non-Catholic sect.** Now public adherence is sometimes manifest, as if someone accepts some office there, or intervenes in the elections of ministers. If he only attends meetings, adherence is considered public after a more or less long time; but because of this difficulty a sentence declaring the crime is rather often required.

2. One suspected of heresy who, having been warned, does not remove the cause of suspicion, is to be prohibited from legitimate acts, and a cleric besides, after warning has been uselessly repeated, is to be suspended from divine things; but if within six full months from the penalty contracted the one suspected of heresy has not amended himself, let him be held as a heretic, liable to the penalties of heretics (can. 2315). It is said:

a) **One suspected of heresy.** Now those suspected of heresy are: 1. whoever in any way spontaneously and knowingly assists the propagation of heresy, or communicates in divine things with heretics contrary to the prescription of can. 1258 (can. 2316); 2. those who are joined in marriage with the explicit agreement that all or some of the offspring be educated outside the Catholic Church; those who knowingly presume to offer their children to non-Catholic ministers to be baptized; likewise parents or those holding the place of parents who knowingly hand over their children to be educated or instructed in a non-Catholic religion (can. 2319, 2, 3, 4); 3. one who has thrown away consecrated species or has taken them away or retained them for an evil end (can. 2320); 4. all and each, of

whatever status, grade, or condition, even if they were of royal, episcopal, or cardinalitial dignity, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a Universal Council (can. 2332); 5. one who, with hardened mind, has remained for a year in the censure of excommunication (can. 2340, § 1); 6. all, even those increased by episcopal dignity, who through simony knowingly promoted or were promoted to orders, or administered or received other Sacraments (can. 2371).

Can. 1258 declares: It is not licit for the faithful in any way actively to assist or to have part in the sacred rites of non-Catholics (§ 1). Passive or merely material presence can be tolerated, for the sake of civil office or honor, on account of a grave reason to be approved by the Bishop in a case of doubt, at the funerals, weddings, and similar solemnities of non-Catholics, provided danger of perversion and scandal is absent (§ 2).

b) **Who, having been warned;** and so one suspected of heresy per se contracts no penalty, but it is necessary that a warning which has remained in vain have come in addition.

503 **III. Absolution from penalties.** 1. Absolution from excommunication, to be imparted in the forum of conscience, is reserved in a special manner to the Apostolic See (can. 2314, § 2). The faculty of absolving any penitents whatsoever, except heretics deliberately disseminating heresy among the faithful, from any censures and ecclesiastical penalties whatsoever incurred on account of heresies externalized either when no one was hearing or noticing or before others, is usually granted by the Folio of the Sacred Penitentiary. Yet it cannot be exercised except in the act of sacramental confession and only for the forum of conscience, with secret abjuration previously made before the confessor. Besides, a salutary penance is to be imposed, with frequency of the sacraments and the obligation of repairing the scandals brought about.[1] For the forum of conscience no form of abjuration seems prescribed; hence, for example, these words of the Profession of Faith at the end suffice: "Heresies of whatever sort condemned by the Church, I likewise condemn and reject."

2. If the delict of apostasy, heresy, or schism has in any way been brought to the external forum of the local Ordinary, even by voluntary confession, the same Ordinary, but not the Vicar General without a special mandate, can absolve the one coming to his senses in the external forum by his ordinary authority, after abjuration has first been juridically carried out and after other things to be observed by law have been observed; but one thus absolved can afterward be absolved from the sin by any confessor in the forum of conscience. Abjuration, however, is held to have been juridically carried out when it is made before the local Ordinary himself or his delegate and at least two witnesses (can. 2314, § 2). As regards the form of abjuration, practically the Profession of Faith which is placed at the beginning of the Code suffices.

[1] Thus in the Folio.

Section III. On Dangers of Faith

504 The principal dangers of faith are:

I. Reading of impious writings; concerning this, see the treatise on the precepts of the Church, and on Penance, where occasions of sin are discussed.

505 **II. Marriages with non-Catholics,** concerning which see the treatise on Marriage.

506 **III. Attendance at non-Catholic schools;** concerning this, see the treatise on the fourth precept of the Decalogue.

507 **IV. Familiarity with non-Catholics;** concerning this, let these words of the Apostle be noted: "Avoid a heretical man...";[1] likewise: "Their speech spreads like a cancer";[2] likewise: "Avoid them. For such persons do not serve Christ our Lord, but their own belly; and by sweet speeches and blessings they seduce the hearts of the innocent."[3] To this also should be referred service among non-Catholics, concerning which see the treatise on states of life. Besides, the ecclesiastical laws which regarded association with Jews, and which in most regions had almost been abrogated by custom, are omitted in the new Code, and therefore, insofar as they were merely ecclesiastical, have been removed. Hence attention must be paid only to natural law.

[1] Titus 3:10.

[2] 2 Tim. 2:17.

[3] Rom. 16:17-18.

508 **V. Communication with non-Catholics in sacred and mixed matters.** Active communication (n. 500) is prohibited not only by reason of the danger of losing the faith, but also either as cooperation in evil, as if someone asks for a sacrament from a non-Catholic, or as profession of a false religion, as if someone participates in a non-Catholic rite, for example by singing psalms with non-Catholics, receiving a heretical supper, etc. (n. 500). It is licit to pray orthodox prayers privately with them.

Concerning passive communication, see what was said in n. 500.

509 **VI. Associations to be reproved.** "The faithful are worthy of praise if they give their names to associations erected or at least commended by the Church; but let them beware of secret, condemned, seditious, suspected associations, or associations which strive to withdraw themselves from the legitimate vigilance of the Church" (can. 684).

Corollary I. It is illicit to give one's name to anti-Catholic associations, whether religious or social, of which sort are, for example:

Masonic societies;[1] Carbonari;[2] Fenians;[3] Anarchists;[4] Communists, Nihilists, Internationalists, and Socialists;[5] theosophical societies;[6] biblical societies;[7] clerico-liberal societies;[8] a society erected for procuring the unity of Christianity;[9] workers' societies which are called Odd Fellows, Sons of Temperance, Knights of Pythias;[10] the Independent Order of Good Templars (*Guttempler-Orden*);[11] and societies which promote the cremation of human corpses.[12]

Corollary II. Per se it is also illicit to give one's name to social associations, whether indeed Christian but not specifically Catholic, or neutral. The reason is that social questions too must be solved with dependence on the Catholic Church, and not, as happens in the aforesaid associations, independently of her (n. 117). There is added that dangers to faith and morals are not so rarely attached to societies of this sort.

Corollary III. By reason of dangers, other associations or parties also can be prohibited by ecclesiastical authority, as, for example, *Action Française*.[13]

Corollary IV. As regards the gravity of the sin committed by one who gives his name to an association to be reproved, it must be said as follows:

1. One who, as is commonly done by those of whom we are speaking, internally admits some proposition reproved by the Church sins gravely.
2. One who internally does not admit any doctrine definitively proscribed by the Church nevertheless sins gravely:

a) If he gives his name to an anti-Catholic association, whether religious or social; both because at least externally he professes errors rejected by the Church, and because there are added cooperation, scandal, and often danger to faith, arising from the fact that he has given his name to a party which professes evil principles, pursues evil ends, and uses evil means.

b) If he gives his name to an association or party named and truly prohibited by ecclesiastical authority, because a prohibition of this sort is judged to have been made under grave obligation.

c) It is not clear that the same must per se be said of one who gives his name to a social association, whether Christian but not specifically Catholic, or neutral, but nevertheless not positively prohibited. In the case, a grave cause can excuse, unless scandal to be avoided because of the circumstances stands in the way.

[1] Can. 2335.

[2] Cf. Constitution of Pius VII *Ecclesiam*, September 25, 1821, and Leo XII, *Quo graviora*, March 13, 1825; cited canon.

[3] Cf. Holy Office, January 12, 1870; cited canon.

[4] Cited canon.

[5] Encyclical of Leo XIII *Quod apostolici muneris*, December 28, 1878; Encyclical of Pius XI *Quadragesimo anno*, May 15, 1931.

[6] Cf. Holy Office, July 18, 1919 (*Acta Apostolicae Sedis* 1919, p. 317).

[7] Constitution of Pius IX *Qui pluribus*, 1846.

[8] Syllabus, § 178; Encyclical of Pius IX *Quanta cura*, December 8, 1864; Encyclical of Leo XIII *Libertas*, June 20, 1888.

[9] Cf. Holy Office, September 16, 1864, November 8, 1865 (*Collectanea de Propaganda Fide*, nn. 1262, 1276).

[10] Holy Office, August 20, 1894.

[11] Holy Office, August 9, 1893 (*Collectanea*, n. 1845).

[12] Holy Office, May 19, 1886 (*Acta Sanctae Sedis*, t. 19, p. 46).

[13] Cf. *Acta Apostolicae Sedis* 1926, pp. 382, 517, 529; 1927, pp. 5, 157.

Scholion. On the Propagation of Faith

510 **I. Christ the Lord entrusted the deposit of faith to the Church,** so that she herself, with the Holy Spirit continually assisting, might guard revealed doctrine holily and expound it faithfully (can. 1322, § 1). This is clear from Sacred Scripture.[2]

II. The Church, independently of any civil power, has the right and duty of teaching the evangelical doctrine to all nations (can. 1322, § 2). This likewise is taught by Sacred Scripture.[3]

III. As regards the persons upon whom the aforesaid right and duty rests, the Code teaches: The office of preaching the Catholic faith is committed chiefly to the Roman Pontiff for the universal Church, and to Bishops for their dioceses (can. 1327, § 1). Bishops, however, are bound by the duty of preaching the Gospel personally by themselves, unless they are prevented by a legitimate impediment; and besides, in addition to parish priests, they must also take other suitable men as helpers for

carrying out this office of preaching salutarily (can. 1327, § 2). But to those who are not taken up by legitimate authority, public preaching is forbidden, according to these words of the Code: No one may exercise the ministry of preaching unless he has received a mission from a legitimate Superior, by a faculty particularly given, or by an office conferred, to which by the sacred canons the office of preaching is attached (can. 1328). I said **public preaching;** for private preaching belongs to all. Yet disputation properly so called is prohibited, for example, to those for whom it would be dangerous; sometimes it is prescribed, for instance if someone were equal to that duty and the honor of God or the salvation of neighbor required it. Yet can. 1325, § 3 must be attended to: "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 is urgent, of the local Ordinary."

IV. As regards preaching to non-Catholics specifically, note:

1. Local Ordinaries and parish priests should have non-Catholics dwelling in their dioceses and parishes commended to themselves in the Lord (can. 1350, § 1).
2. In other territories the entire care of missions among non-Catholics is reserved uniquely to the Apostolic See (can. 1350, § 2); and the Holy See exercises that care especially through the Sacred Congregation de Propaganda Fide, and, if Easterners are in question, through the Sacred Congregation for Orientals. But so that the said Congregations may be able to attain the end:

a) Religious institutes to which some mission has been entrusted should provide for it according to their strength.

b) Bishops, parish priests, and others, when opportunity is given, should foster an apostolic spirit in young men. "And you," thus Benedict XV in the Encyclical *Maximum illud*[4] addresses the Bishops, "will do a thing especially worthy of your love of religion, if both in the clergy and in the diocesan Seminary you carefully foster the seeds of apostleship which someone perhaps has shown to be present in himself. Nor should any appearance of right deceive you, or any human reason move you, as if what you have permitted to foreign Missions you seem to have detracted from the usefulness of your diocese. For in place of one whom you send away abroad, God will raise up for you at home several very useful priests."

c) Let all assist missionaries: 1. by prayers, "which prayers, if ever at other times, certainly cannot lack effect in this cause, than which none is more excellent, none more pleasing to God";[5] 2. by alms.[6]

Whether some priest in particular, on account of the spiritual necessity of nations, must come to their aid, see in the treatise on the cultivation of charity.

Question. To what extent can some authority compel unbelievers to hear or embrace the faith?

Response 1. The Church cannot compel unbelievers to hear the faith, since she lacks jurisdiction over them; the temporal prince of unbelievers can do this.

Response 2. No authority can directly compel unbelievers to embrace the faith, even sufficiently proposed, since conversion is a matter of persuasion and will, not of coercion (St. Thomas, II-II, q. 12, a. 1, ad 3). Yet they can be compelled indirectly, for example by hope of a good not owed or fear of an evil otherwise owed. Besides, the secular prince can compel unbelievers to bid farewell to errors and rites opposed to natural law; indeed the prince cannot tolerate the said errors and rites except on account of a most grave cause[7] (St. Thomas, II-II, q. 10, a. 11; St. Alphonsus, II, 18).

Response 3. The Church per se can compel heretics and apostates to return, and this by penalties both spiritual and temporal (St. Thomas, II-II, q. 10, a. 8); this power of compelling heretics and apostates, according to the determination of the Church, can also belong to secular princes, as protectors of the Church, and must be exercised by them insofar as the Church prescribes it.

[1] Cf. Aertnys-Damen, II, n. 315 bis.

[2] Matt. 28:19-20; John 14:16, 17, 26.

[3] Matt. 28:19; Mark 16:15.

[4] November 30, 1919 (*Acta Apostolicae Sedis* 1919, p. 452).

[5] Benedict XV, in the cited Encyclical.

[6] Benedict XV, in the cited Encyclical.

[7] Leo XIII, Encyclical *Immortale Dei*, November 1, 1885; Encyclical *Libertas*, June 20, 1888.

Dissertation II. On the Cultivation of Hope

(St. Thomas, II-II, qq. 20-21; St. Alphonsus, *Theologia moralis*, II, 20-21; *Homo Apostolicus*, tr. 4, nn. 6-8.)

511 Hope is a supernatural theological virtue inclining man to expect, with certain confidence, through the help of God, eternal beatitude and the means necessary for attaining it (St. Alphonsus, *Homo Apostolicus*, tr. 4, n. 6).

The primary material object is beatitude; the secondary material object is all the means which conduce to beatitude (*De virtutibus*, p. 402).

The formal object or motive of hope is divine help, or the assisting power of God.

These things recalled to memory, we shall speak first about the necessity of the act of hope, then about sins against hope.

Part I. On the Necessity of the Act of Hope

512 **I. Necessity of means.** The act of hope, as was said about the act of faith, cannot be necessary except for adults. Besides, a distinction must again be made between adults not yet justified and adults justified. Now:

1. **The act of hope is necessary for salvation by necessity of means for adults not justified.** For the said act is necessary by necessity of means for justification. But justification itself is necessary for salvation by necessity of means. Therefore the same thing must be affirmed about the act of hope.

The major is clear: 1. from the Council of Trent, which enumerates the act of hope among the dispositions necessary for the justification of adults;[1] and elsewhere, speaking of the necessity of contrition for obtaining pardon of sins, teaches that in this contrition it is required that it be "with confidence in the divine mercy."[2] 2. It is confirmed by reason. For it is altogether fitting that, for the justification of an adult or for obtaining the right of possessing God, it be required that he have expected God as the supernatural end to be possessed.

But theologians dispute whether in every justification whatsoever of adults the act of theological hope is necessary, or only according to the common law. Perhaps it is more aptly said that according to the common law no justification of an adult takes place without an explicit act of theological hope, although absolutely it can happen that a sinner is justified while eliciting no act of hope except one which is implicitly contained in an act of perfect charity or contrition.

2. **The act of hope is necessary for justified adults by necessity of means** insofar as salvation cannot be obtained without prayer by which grace for fulfilling the precepts is obtained. But prayer without hope receives nothing from the Lord, as is clear from the Epistle of St. James.[3]

Corollary. From what has been said, it is clear how deservedly the doctrine of the Quietists,[4] both carnal and spiritual, was proscribed by Innocent XI[5] and XII.[6]

[1] Session 6, chapter 6.

[2] Session 14, chapter 4.

[3] James 1:6.

[4] The Quietists, pseudo-mystics of the seventeenth century, taught that an act of hope, although honorable, is nevertheless useless and even harmful to perfect Christians, and therefore should never be elicited by them. Among them, some, who are called carnal Quietists, with Michael Molinos as leader, under pretext of preserving the soul's highest quiet, said that all acts of the other virtues too, together with acts of hope, were useless for the perfect; and, declaring themselves impeccable, fell into most grave sins. Others, who are called spiritual Quietists, thought that a Christian can attain a stable disposition, or a certain state of perfection, in which he would no longer ever act in view of eternal reward, indeed would acquiesce in eternal damnation. The principal supporter of this erroneous opinion was the most pious Fenelon, who nevertheless immediately rejected it in a wholly most humble and sincere manner when it had been condemned by the Supreme Pontiff.

[5] Denzinger-Bannwart, n. 1221 sq.

[6] Denzinger-Bannwart, n. 1327 sq.

513 **II. Necessity of precept** follows from the necessity of means explained. Besides, it is clear: 1. from Sacred Scripture;[1] 2. from these words of the Council of Trent: all must place and repose a most

firm hope in the help of God;[2] 3. from proposition 1 condemned by Alexander VII: "At no time in his life is a man bound to elicit an act of faith, hope, and charity by force of the divine precepts pertaining to those virtues";[3] 4. from the fact that each person is bound to expect the ultimate end for which he was created, that is, beatitude (St. Alphonsus, II, 20).

Now the act of hope obliges:

1. **By reason of the precept of hope itself:**

a) When someone first knows that eternal beatitude is his ultimate end (St. Alphonsus, II, 20).

b) Several times in life, and in the article of death, as was said of eliciting the act of faith several times in life and in the article of death (n. 489).

c) After an act of despair; in which case the injury done to the assisting power of God seems to carry with it the obligation of repairing it by an act of hope at least not long delayed.

d) When a grave temptation against hope presses, which someone judges he cannot conquer except by an elicited act of hope.

2. **By reason of the precept of another virtue:**

a) When an act of another virtue is prescribed, which cannot be placed without an act of hope (St. Alphonsus, II, 20).

b) When a temptation against another virtue presses, which someone seems to himself unable to conquer without an act of hope (St. Alphonsus, II, 20).

c) When an act of virtue is freely placed which cannot be placed in the due manner without an act of hope.

Corollaries I and II. Compare and apply the notes regarding faith (n. 489).

Corollary III. To the act of hoping there corresponds the act of fearing eternal damnation, which likewise obliges, as is clear both from Sacred Scripture,[4] and from the fact that each person must fear that which involves frustration of the ultimate end and will not certainly be avoided.[5]

[1] Cf. Ps. 61:9; Col. 1:23.

[2] Session 6, chapter 13.

[3] Denzinger-Bannwart, n. 1101.

[4] Luke 12:5.

[5] Council of Trent, session 6, chapters 12 and 13.

Part II. On Sins Against Hope

Besides omission of the act of hope prescribed by reason of the virtue of hope itself, sins against hope are despair by defect and presumption by excess.

514 **I. Despair.** 1. **Notion.** Despair is an act by which someone casts away expectation of eternal beatitude or of the means to it. It does not consist in an act of judgment by which someone judges eternal beatitude to be impossible, but in the fact that he refuses to pursue or expect it. Yet despair commonly is founded on a heretical judgment that beatitude is impossible; sometimes, however, on hatred of abomination, by which one does not wish to place his beatitude in God (St. Alphonsus, II, 20, 4). He too is guilty of despair who would prefer present goods to future ones and would wish to remain forever in this world; for indeed he truly casts away expectation of eternal beatitude (St. Alphonsus, II, 20, 1). Yet commonly a certain velleity rather than a true will of remaining in this world is had.

2. **Division.** Despair is distinguished into heretical and simple, according as despair proceeds from a heretical judgment or from another motive, for example from a sense of one's own weakness (St. Thomas, II-II, q. 20, a. 2).

3. **Morality.** Despair is a grave sin from its whole genus, since he inflicts grave injury on God who does not expect to possess Him and the helps necessary for attaining that end. Yet infidelity and hatred of God are graver; but "despair is more dangerous: because through hope we are called back from evils and are induced to pursue goods; and therefore when hope has been removed, men slide without restraint into vices, and are withdrawn from good labors" (St. Thomas, II-II, q. 20, a. 3).

4. **The causes of despair are:** 1. lust, by which someone becomes disgusted with spiritual goods; 2. sloth, which is a certain dejecting sadness of spirit, by which it happens that man flees the arduous good of beatitude; 3. defect of faith, by which someone does not acknowledge supernatural goods (St. Thomas, II-II, q. 20, a. 4).

5. **The principal remedies are:** 1. consideration of the mercy of God, of the greatest sinners reconciled with God, as were St. Paul, St. Augustine, and St. Mary Magdalene, and of the parables of the Gospel, for example of the prodigal son, the lost sheep, etc.; 2. prayer, especially devotion to the Most Sacred Heart of Jesus and to the Blessed Virgin Mary, salvation of the despairing (St. Alphonsus, *Praxis Confessarii*, nn. 240-244).

515 **II. Presumption.** 1. **Notion.** Presumption is the inordinate expectation either of eternal beatitude or of the means to it, or at least of divine help. Now the disorder can have place in five ways: 1. if someone, relying on his own powers alone, expects beatitude; this is the presumption of the Pelagians; 2. if someone, relying on divine aid alone, hopes, for example, if he expects remission of sins without penance, glory without merits; this is the presumption of Protestants (St. Thomas, II-II, q. 21, a. 4; St. Alphonsus, II, 21); 3. if someone expects supernatural goods apart from the order of divine Providence, for example if someone hopes for as much glory as the Blessed Virgin Mary enjoys, or expects divine help in grave danger without prayer; 4. if someone turns the motive of hope into a motive for sinning, in other words, if he sins or remains in sin because God is merciful; or increases sins because God will remit many sins just as easily as fewer in number. Otherwise it must be said if someone sins, remains in sin, or multiplies sins while concomitantly hoping that the sins will afterward be remitted; or because many sins are declared in confession just as easily as fewer in number. In this last case the

ease of confessing, but not hope of pardon, is the motive for sinning (St. Alphonsus, II, 21; St. Thomas, II-II, q. 21, a. 2, ad 3). One who sins because God is merciful is said to sin from hope of pardon; the other with hope of pardon. Now sinning from hope of pardon occurs very rarely. 5. If someone expects the help of God for illicit things.

2. **Morality.** a) Presumption committed in the first and second ways is a grave sin from its whole genus. The reason is that they inflict grave injury: the former mode against God as helper, whom it wholly neglects; the latter mode against the justice of God (St. Alphonsus, II, 20, 3).

b) Presumption perpetrated in the third way will commonly be only venial, because it does not inflict grave injury on God.

c) Presumption committed in the fourth way is grave from its genus, or is grave or light according as someone perpetrates a grave or light sin from hope of pardon. The reason is that he inflicts grave or light injury on God, according as he sins gravely or lightly from hope of pardon.

d) Presumption perpetrated in the fifth way is grave from its whole genus, since it inflicts grave injury on God as helper.

Finally note that presumption very often is joined with heresy, sometimes with blasphemy, as if someone hopes for the help of God for illicit things. Besides, "presumption is a sin, yet less than despair: since it is more proper to God to have mercy and to spare than to punish, on account of His infinite goodness: for the former belongs to God according to Himself; the latter according to our sins" (St. Thomas, II-II, q. 21, a. 2).

3. **The causes of presumption are especially pride and vainglory.** "There is a twofold presumption. One, indeed, which relies on one's own power, attempting namely something as possible to oneself which exceeds one's own power; and such presumption manifestly proceeds from vainglory: for from the fact that someone greatly desires glory, it follows that he attempts something beyond his powers; and things of this sort especially are new things, which have greater admiration: and therefore Gregory pointedly placed presumption of novelties as a daughter of vainglory. But the other is presumption which relies inordinately on divine mercy or power, through which someone hopes that he will obtain glory without merits or pardon without penance; and such presumption seems to arise directly from pride, as if he so esteems himself that God would not punish him even when sinning, or exclude him from glory" (St. Thomas, II-II, q. 21, a. 4).
4. **The remedies of presumption** are humility and meditation on the inscrutable judgments of God.

Presumption, if it is perpetrated in the first or second way, destroys the habit of hope; but not if it is committed in the third, fourth, or fifth way. The reason is that, perpetrated in the first and second way, it indirectly destroys the formal object of hope by destroying its foundation; perpetrated in the other ways, it does not destroy the formal object of hope (*De virtutibus*, n. 361).

Dissertation III. On the Cultivation of Charity

(St. Thomas, II-II, qq. 23-29; St. Alphonsus, *Theologia moralis*, II, 22-80; *Homo Apostolicus*, tr. 4, nn. 9-32.)

516 Charity is a supernatural theological virtue inclining man to love God on account of Himself, and ourselves and our neighbor on account of God (*De virtutibus*, n. 363).

The primary material object is God; the secondary object is ourselves and our neighbor (*De virtutibus*, n. 364).

The formal object or motive of charity is the supernatural divine goodness or perfection, lovable in itself and on account of itself (*De virtutibus*, n. 364).

These things recalled to memory, we shall speak first about the cultivation of charity generally, then, in different parts, about the cultivation of charity toward God, self, and neighbor specifically, and then about the order of charity.

Part I. On the Cultivation of Charity Generally

Two things here come to be explained, namely the necessity of means and the efficacy of the act of charity. I have said: the necessity of means, because the necessity of precept will rather be treated distinctly, that is, insofar as it regards God, oneself, and neighbor.

517 **I. Necessity of means.** There can be discussion only of adults; but again a distinction must be made between adults not yet justified and adults justified. Now:

1. **According to some, the act of charity is necessary by necessity of means for adults not yet justified who habitually enjoy the use of reason,** insofar as the infusion of grace in the aforesaid never takes place without an act of charity; not as if attrition did not suffice for justification, but, so they say, by the force of the sacrament itself received with attrition only, man is disposed to actual charity, and in the very instant of justification elicits a true act of charity.

"Sanctifying grace," says Hugon, "is infused together with habitual charity into the penitent man, not merely as into one dead, but in such a way that man receives it by a voluntary and free act, and freely consents to the friendship of God. But this actual and free acceptance of grace and consent to the friendship of God, what else is it than an act of charity consequent upon sanctifying and habitual grace itself in the genus of efficient cause, although it can be said to precede it by nature in the genus of material and dispositive cause?"[1]

According to others, the act of charity is not necessary by necessity of means for obtaining justification; but this can be acquired through the sacrament with attrition, without an act of charity. For besides the fact that they do not see that an act of charity is necessarily contained in the free acceptance of sanctifying grace, they reason thus: An adult who wished to be baptized, and was attrite, and is baptized while sleeping, obtains justification without eliciting an act of charity. Nor can they admit that an act of charity is virtually contained in the preceding act of attrition, because an inferior act cannot virtually contain a superior act; nor do they understand how a preceding act could, in justification itself, become an act of charity, especially if it is a question of the justification of one sleeping. Nor should it be objected that an act of charity is virtually contained in the preceding volition of Baptism and attrition; for an inferior act cannot virtually contain a superior act.

St. Thomas says thus: "The justification of the ungodly is brought about by God moving man to justice. For He Himself is the one who justifies the ungodly. But God moves all things according to the mode of each one.... and therefore in him who has the use of free choice, movement by God toward justice is not made without a movement of free choice: but He so infuses the gift of justifying grace that, together with this, He also moves free choice to accepting the gift of grace in those who are capable of this motion" (I-II, q. 113, a. 3). And elsewhere: "In those having the use of free choice... there does not happen to be an infusion of grace without an actual movement of free choice toward God and toward sin" (III, q. 87, a. 2). Yet it is not clear that St. Thomas understands an act of charity; all the more because the holy Doctor admits that one sleeping, who previously had the sacrament in intention, is justified through Baptism (I-II, q. 113, a. 3, ad 1).

2. **The act of charity is not necessary by necessity of means for justified adults.** For once justification has been posited, only the continuation of justification is required; for this it suffices that sin be avoided.

[1] *De sacramentis in speciali*, p. 407.

518 **II. Efficacy of the act of charity.** An act of charity or of perfect contrition suffices for justifying man, that is, when that act has been posited, God justifies in the same instant, or infuses sanctifying grace. This is clear: 1. from Sacred Scripture: "If anyone loves me, he will keep my word, and my Father will love him, and we will come to him and make our dwelling with him";[1] 2. from the Council of Trent, which "teaches moreover that, although it happens sometimes that this contrition is perfected by charity and reconciles man to God before this sacrament is actually received, nevertheless the reconciliation itself is not to be ascribed to that contrition without the desire of the sacrament, which is included in it";[2] 3. to this is added condemned Baius proposition 31: "Perfect and sincere charity, which is from a pure heart and a good conscience and unfeigned faith, can be in catechumens as well as penitents without remission of sins."[3]

Yet observe that an act of charity or of perfect contrition justifies not in the mode of efficient cause, or of meritorious cause *de condigno*, or of formal cause, but in the mode of material and dispositive cause, or in the mode of a dispositive cause meritorious *de congruo*, that is, one which, from the will of God, infallibly obtains the infusion of sanctifying grace.

[1] John 14:23; cf. 1 John 4:7 and 16; Luke 7:47.

[2] Session 14, chapter 4.

[3] Denzinger-Bannwart, n. 1031.

Part II. On the Cultivation of Charity Toward God

519 **I. The precept of charity.** 1. **The act of charity, actual charity, toward God, or the act by which we love God on account of Himself above all things, is necessary by necessity of precept.** This is clear: 1. from Sacred Scripture: "You shall love the Lord your God with your whole heart, and in your whole soul, and in your whole mind. This is the greatest and first commandment";[1] 2. by reason. For it is manifest that infinite goodness or perfection is to be loved, and this on account of itself and above all things. Now: 1. the precept of charity is a special precept, in other words, the formal act of charity is prescribed, so that, for example, mere observance of the precepts does not suffice; 2. it is not a precept of loving God intensively above all things, but it suffices that He be loved objectively or appreciatively above all things (St. Alphonsus, II, 22); 3. an act of charity can be elicited in various ways, for example by rejoicing over the divine goods considered in themselves, by wishing and promoting the external glory of God as a good for Him.

2. **An act of charity toward God obliges:**

1. **By reason of the precept of charity itself:**

a) "When man has attained sufficient knowledge of God as infinitely good" (St. Alphonsus, II, 23, 1; St. Thomas, I-II, q. 89, a. 6).

b) Several times in life; this is clear: 1. from propositions condemned by Innocent XI, namely 5: "Whether he sins mortally who would elicit an act of love of God only once in life? We do not dare to condemn";[2] 6: "It is probable that the precept of charity toward God does not oblige of itself even in each rigorously taken period of five years";[3] 7: "It obliges only when we are bound to be justified and we have no other way by which we can be justified."[4] 2. To this is added that the homage to be rendered to God seems to require that several times in life we elicit acts of virtues which immediately regard God. Here, however, an act of charity that is not wholly explicit seems to suffice, for example, perfect contrition, a good work performed for pleasing God, the petitions contained in the Lord's Prayer: "Hallowed be Thy name," etc. It is more difficult to determine how often the act of charity must be elicited. St. Alphonsus judges that one satisfies the grave obligation who elicits it each month (*Homo Apostolicus*, tr. 4, n. 14).

c) In the article of death, as was said of faith (n. 489) and hope (n. 513); if the precept did not then urge, it would never urge.

d) When someone has held God in hatred (n. 489).

e) When a temptation against charity presses, which someone judges he cannot overcome except by an elicited act of charity (St. Alphonsus, II, 23, 2).

2. **By reason of the precept of another virtue,** as was said of faith (n. 489) and hope (n. 513).

Note 1. Charity toward God, unlike charity toward neighbor, rarely brings with it the obligation of an external act, since the internal act is known to God and of itself involves homage. For the rest, compare and apply the notes regarding faith (n. 489).

Note 2. Benedict XIV exhorts bishops that in every parish church on Sundays and feast days the acts of faith, hope, and charity be read aloud to the people.[5]

[1] Matthew 22:37-38.

[2] Denzinger-Bannwart, n. 1155.

[3] Denzinger-Bannwart, n. 1156.

[4] Denzinger-Bannwart, n. 1157.

[5] Constitution *Etsi minime,* February 7, 1742.

520 **II. Sins against charity toward God** - besides omission of the act prescribed by reason of the precept of charity - are: hatred of God and sloth.

1. **Hatred of God.** Hatred taken generally is an act by which someone is badly affected toward someone.

Hatred is distinguished as twofold: hatred of abomination and hatred of enmity or malevolence, according as someone turns away from someone as an evil to himself, or wills evil to someone. Hatred of abomination is opposed to love of concupiscence; hatred of enmity to love of benevolence. Sadness over another's good belongs to hatred of enmity; likewise joy over his evil.

Hatred of abomination, to which every evil deliberate movement against someone is referred, is again twofold, namely of the person himself and of a quality, according as someone turns away from the person himself according to himself, or from an adhering quality of the person. These things noted, I say:

a) Hatred of abomination toward God is grave from its whole genus; for it is clear that he sins gravely who in whatever way whatsoever turns away from God.

b) Hatred of enmity toward God is grave from its whole genus, indeed even the gravest of all sins, because he who wishes evil to God most greatly injures the charity due to God.

2. **Sloth;** concerning this, see n. 327.

Part III. On the Cultivation of Charity Toward Self

First we must speak about the precept of charity toward self, then about sins opposed to charity toward self.

Section I. On the Precept of Charity Toward Self

521 **I. Existence of the precept.** The precept of charity toward self is clear from Sacred Scripture: "You shall love your neighbor as yourself."[1] Likewise it is clear from the intrinsic reason, which St. Thomas presents in these words: "We can speak of charity according to its proper account, namely insofar as it is man's friendship toward God principally, and consequently toward those things which are God's: among which is also the very man who has charity; and thus, among the other things which he loves out of charity as pertaining to God, he also loves himself out of charity" (II-II, q. 25, a. 4).

[1] Matthew 22:39.

522 **II. Act of the precept.** Charity toward self obliges to care for welfare both spiritual and bodily. But the duties of spiritual care coincide with the diverse duties to be fulfilled by man; hence we must speak only about care to be taken for temporal welfare. This obligation indeed is presented in these terms: Charity toward self prescribes self-preservation, that is, preservation of life, integrity of members, and health, and this at least by means ordinary for each one's state; there is no obligation of employing extraordinary means. We shall explain the individual points distinctly.

1. **Self-preservation, that is, of life, etc., is prescribed.** This is clear first from the fact that charity toward self prescribes that each one preserve that which constitutes himself according to his substance and as entire. Then it is drawn from the fact that life and members have been granted by God for use, namely that by means of them he may promote the honor of God, his own good, and the good of the community; this end is frustrated if they are not preserved.
2. **Self-preservation must be procured at least by means ordinary for each one's state.** This is immediately drawn from the preceding proposition. For there is, as we have said, an obligation of preserving life, etc. But he who does not use ordinary means does not preserve life, but neglects it.
3. **There is no obligation of employing extraordinary means.** For the life of an individual is not of such value that extraordinary things must be chosen for preserving it. Yet someone is bound, if he can, to use even extraordinary means if his life is necessary or very useful to the common good or to the family, and cannot be preserved without them (St. Alphonsus, III, 372).

Yet note that many means which formerly were extraordinary have already become ordinary, for example some surgical operations.

Corollary I. The obligation of applying ordinary means for preserving life carries with it the obligation of working to obtain the things necessary to oneself, if they cannot be obtained legitimately in another way.

Corollary II. No one of himself is bound: 1. to use medicine that is most costly; 2. to change residence or fatherland; 3. to suffer treatment joined with the greatest pains; 4. to undergo cutting off of members or a grave surgical operation whether dangerous, or - which nevertheless can commonly be forestalled - joined with the greatest pains. Likewise, quite probably, of himself one is not bound to a grave surgical operation which is neither dangerous nor joined with the greatest pains, but

nevertheless is regarded as gravely burdensome. Yet I think that it, namely if it is not dangerous and can be performed without very great pains, can be imposed by a superior. Finally, a virgin quite probably is not bound, for preserving life, to permit herself to be treated in the more secret parts by a man, if this would be a cause of great shame to her; yet she is bound to permit herself to be treated by another woman (St. Alphonsus, III, 372). To what extent a mother can be bound to a Caesarean section, as it is called, see in the treatise on Baptism.

Section II. On Sins Opposed to Charity Toward Self

523 The sins against charity toward self are:

I. Direct killing of oneself. This occurs when the self-killing act, as such, either is intended as an end or is assumed as a means by which another end is obtained.

1. **Direct killing of oneself is always prohibited under grave sin.** For first, an act of this sort is against natural inclination, "because naturally every thing loves itself; and to this it belongs that every thing naturally preserves itself in being, and resists corrupting things as much as it can" (St. Thomas, II-II, q. 64, a. 5). Then self-killing "is against charity, by which each one ought to love himself" (St. Thomas, ibid.). Then the killer "does injury to the community" (St. Thomas, ibid.), because each one, as part of the community, is ordered also to the good of the community. Moreover, it is illicit to destroy what is not yours, but God's alone; and such is life. Hence Sacred Scripture: "You shall not kill";[1] "I will kill and I will make to live";[2] "You are Lord, who have power of life and death."[3]

It is indeed reported that some Saints killed themselves; but these things can be explained either through the inspiration of God, who, as Lord of life and death, permitted it, or through good faith (cf. St. Thomas, II-II, q. 64, a. 5; St. Alphonsus, III, 366, 361).

2. It is disputed whether the killing of oneself, by which certainly one sins against charity toward self, also involves a sin against commutative justice; not indeed with respect to oneself - for justice and injustice are toward another - but with respect either to the community or to God, or to both. St. Alphonsus leaves the matter undecided (III, 366); St. Thomas indeed states: "It must be said that homicide is a sin, not only because it is contrary to justice, but also because it is contrary to charity, which one ought to have toward oneself: and on this side killing oneself is a sin by comparison with oneself; but by comparison with the community and with God, it has the character of sin also by opposition to justice" (II-II, q. 64, a. 5); but the holy Doctor can be understood of social or general justice, and perhaps he did not intend a sin distinct in species.

Question. Whether it is lawful for one condemned to death, by command or by positive permission of legitimate authority, to kill himself.

Response. More commonly it is denied, because punishment is an act of vindicative justice, which is essentially toward another. Yet St. Alphonsus (III, 369) and others hold it as quite probable that this is lawful, because nothing prevents the condemned man from acting as two persons, namely as the one executing the sentence and as the punished one. Therefore they hold as probable that vindicative justice is not essentially toward a physically different person. Hence practically it is lawful. Yet there is no obligation of satisfying a precept of this sort - and consequently the guilty person cannot be compelled to such an act - because the judge probably cannot impose it, and it is a matter that is

arduous (n. 146). "Yet they commonly concede that the guilty person can climb the ladder, fit his neck to the sword, etc.; since these actions tend only remotely toward death" (St. Alphonsus, ibid.).

[1] Exodus 20:13.

[2] Deuteronomy 32:39.

[3] Wisdom 16:13.

524 **II. Omission of self-preservation** - for example by abstaining from food or drink until you die - seems altogether illicit, namely as it is exercised practically. For it is altogether illicit to intend death as a means of obtaining something (n. 523). But he who abstains from food or drink intends, as that manner of acting practically obtains, death as a means of obtaining something. It must be said otherwise of one who abstains from food or drink so that another may have that by which he can escape death, because he intends the preservation of another's life, but merely permits his own death. Likewise it seems lawful to abstain from food and drink for a time for the end that you may be freed from prison, provided there is hope of fruit. For diminution of health and strength - equally as mutilation - is lawful if it is ordered to the good or better condition of the whole (n. 526). But this seems to have place in the proposed hypothesis, because it is better to live freely and weakly than in prison.

Question 1. Whether one condemned to perish by hunger can refuse food secretly offered.

Response. It seems one must answer affirmatively, because to one condemned to perish by hunger there seems to have been granted permission to abstain from offered food; which permission, according to the things explained above, is quite probably valid.

Question 2. Whether it is lawful to wish death for oneself.

Response 1. Affirmatively, provided however it is done with due resignation: 1. if death is wished from desire of possessing God or of no longer offending Him. Hence St. Paul: "Who will deliver me from the body of death?";[1] 2. if life seems more bitter than death to someone, according to that saying: "Death is better than a bitter life"[2] (St. Alphonsus, II, 30, 2).

Response 2. Negatively, if someone wishes death for himself from anger or for a slight reason, for example on account of small troubles.

[1] Romans 7:24.

[2] Ecclesiasticus 30:17.

525 **III. Indirect killing of oneself** occurs when the self-killing act, as such, is neither chosen as an end nor assumed as a means by which another end is obtained. Now indirect killing of oneself is of itself illicit; it becomes lawful if a proportionate cause is present. The former is clear from the fact that charity toward self of itself demands that I guard life at least by ordinary means, much less does it permit that I neglect it (n. 521). The latter is deduced from what has been said about an act with a double effect, one good, the other evil.

Corollary I. They sin gravely: 1. who by living intemperately notably accelerate death; 2. unskilled tightrope walkers, acrobats, and other performers who, induced by greed for profit alone or by empty glory, expose themselves to grave danger of life; the skilled do not expose themselves to such great danger and are more easily excused; this also holds concerning skilled persons who undertake courses by means of a flying machine.

Corollary II. They do not sin: 1. who, with danger of death but with hope of fruit, preach the Gospel, or with hope of usefulness in time of persecution do not flee; yet those things seem illicit on account of the sole desire of martyrdom. Likewise they do not sin who by vigils, fasts, etc., shorten life even by some years, or from a just cause undertake unhealthy labors or seek a region very harmful to health, even if it is foreseen that life must be lessened by some years; 2. who in a shipwreck yields a plank, even one already grasped, to another, with his own death even certainly permitted, or throws himself before a missile or blow to save the life of a ruler or friend, or takes the place of a friend unjustly condemned to death; nor is it illicit to throw oneself from a ship into the sea, lest all perish; 3. who ignites gunpowder to overturn an enemy fortification, or sinks a ship lest the enemy gain possession of it, even if he foresees that he himself will perish at the same time; yet the latter is illicit if it is done solely for preserving honor, although there are many prejudices which more easily excuse; 4. who, to avoid a more bitter death actually to be undergone or inflicted, casts himself into the danger, even certain danger, of a less bitter death, "for example, if someone throws himself through a window to escape a fire; especially if there is some hope of escaping death.... And Elbel permits this also to guilty persons detained in prison, for escaping a certain sentence of death, or even perpetual prison" (St. Alphonsus, III, 366, 367, 370-372). Likewise it is lawful for a virgin "to cast herself into certain danger of life, but not into certain death, for preserving chastity from an assailant" (St. Alphonsus, III, 372, question 2). For the rest, in the cases set forth, commonly either there is some hope of safety, or time for serious thought is lacking, and subjectively they are excused at least on account of a good intention.

Corollary III. Bullfights are not prohibited under grave sin; since, with attention to the skill of the fighters, grave danger is commonly absent. Yet they are prohibited under light sin, because, considering the nature of the act and a danger not altogether to be despised, there seems to be lacking a sufficient cause for conducting them. Horse and bicycle races are lawful, even though they are not without any danger.

526 **IV. Mutilation of oneself.** 1. **Notion.** Mutilation properly so called occurs when, with cutting off, an organic function or use of members is suppressed; hence under the name of mutilation there do not come, for example, circumcision, cutting off the extremity of the ear or nose; yet there are certain mutilations, even if less properly so called. Woundings are generally reduced to the latter. Now we shall present all mutilations and woundings in one treatment and under the one name of mutilation.

2. **Division.** Mutilation of oneself is distinguished, as killing of oneself, as direct and indirect. It is direct when the mutilating act, as such, is chosen as an end or assumed as a means by which another end is obtained; otherwise it is indirect.

3. **Morality.** a) Direct mutilation of oneself is lawful if it is ordered and necessary for the preservation or well-being of the whole body. Otherwise it is illicit; nevertheless mutilation improperly so called admits smallness of matter (St. Thomas, II-II, q. 65; St. Alphonsus, III, 373). It is said:

Alpha) It is lawful if it is ordered and necessary for the preservation or well-being of the whole body. The reason is that a mutilation done so that you may preserve the whole, insofar as otherwise it cannot be preserved or be well, for the Lord, and so that you may use the whole well, does not contain an act of one's own dominion, but an acknowledgment of divine dominion, and it consults the end for which the whole has been granted, namely its use. Hence it is lawful to amputate a member infected with gangrene, lest the whole body be infected. The same is lawful if danger of death threatens from an extrinsic necessary cause, for example if the hand is attached to a burning beam. The same seems

lawful if danger threatens from an extrinsic free cause, as if a tyrant says: I will kill you unless you cut off a member. For it does not appear why that should rather be permitted if danger threatens from an intrinsic cause than if it threatens from an extrinsic free cause. Yet it is not lawful to perform a lawful mutilation on another except by the consent of the one whose interest it concerns, or, if it is a question of one who lacks the use of reason, of the one under whom the person to be mutilated is subject.

Beta) Otherwise it is illicit; that is, it is illicit if it is not ordered to the good of the whole body, or indeed is ordered to it, at least by the agent, but is not necessary for obtaining that end. The reason is that mutilation of oneself in either hypothesis - that is, both in the case in which it is not ordered to the good of the whole body, and in the case in which it is indeed ordered to the said good, but is not necessary for that end, because the whole can be helped in another way - involves an act of dominion over a thing which belongs to God alone. Hence Aquinas: "A member is not to be cut off for bodily health except when the whole cannot be aided otherwise" (II-II, q. 65, a. 1, ad 3). And St. Alphonsus: "It is not lawful to mutilate oneself unless it is necessary for the preservation of the whole" (III, 373).

Gamma) Mutilation improperly so called admits smallness of matter; as if someone without cause extracted a tooth, or amputated a little piece of the ear, or slightly weakened the eyes, or underwent the operation which is called transfusion of blood. Indeed, an altogether slight amputation is lawful for a proportionate cause, even if it is not ordered to the well-being of the whole, but to another end, for example that notable gain may be acquired; likewise it is lawful for a virgin to disfigure herself so that she may repel an assailant from herself. Yet note again that the gravity of mutilation must also be judged from the gravity of the function by which the member functions. Hence the operation which in a man is called vasectomy, and in a woman oophorectomy or fallectomy, even though light in itself, must be counted among grave mutilations, because it deprives a human being of a grave function, namely the power of procreating offspring. The same seems to have to be said about amputation or severing of one gland, even if the other suffices for intercourse; namely, by almost the same right as that is admitted concerning the removal of one eye.

b) Indirect mutilation of oneself is of itself illicit, but becomes lawful on account of a proportionate cause, as was said about indirect killing of oneself (n. 525).

Corollary I. It is illicit to mutilate oneself: 1. for collecting alms, for exercising a profitable art, or for avoiding military service.

The reason is that in the said cases there is direct mutilation - since the mutilating act, as such, is assumed as a means by which another end is obtained - which is not ordered to the good of the whole body (St. Thomas, II-II, q. 65, a. 1, ad 3; St. Alphonsus, III, 373). For the same reason, 2. castration for preserving sweetness of voice and singing divine praises is illicit. To this is added that a manner of acting of this sort does not serve the common good, that is, the piety of the faithful, since the singing of castrati feminizes minds and ears (cf. St. Alphonsus, III, 374).

Corollary II. It is illicit to admit castration, vasectomy,[1] oophorectomy,[2] extirpation of the ovaries or procurement of their atrophy, for the end that conception and procreation of offspring may be prevented. For again there is direct mutilation - since the mutilating act, as such, that is, insofar as it is injurious to a genital organ, is assumed as a means by which another end is obtained - which is not ordered to the good of the whole body. To this is added that the acts set forth in the proposed hypothesis directly impede the good of the species; and this is always illicit, because the good of the species is ordered immediately to God alone, and therefore cannot be directly impeded on account of

any intermediate end. Nor do the aforesaid operations become lawful if they are done because danger to life threatens from conception, and therefore at least by the agent they are ordered to the preservation of the whole. For even in that case avoidance of conception is directly and proximately intended as a means, so that even such a manner of acting is directly and proximately opposed to the good of the species. To this is added that the intended end, that is, the good of the whole, can be obtained in another way, namely by abstaining from intercourse.

Nor are the assigned mutilations lawful if they are done for quieting temptations and preserving chastity, because again there is direct mutilation - since the mutilating act, as such, that is, insofar as it is injurious to a genital organ, is assumed as a means by which the said end is obtained - which is not ordered to the good of the whole body. To this is added that the said mutilations commonly do not conduce to the intended end: for the stimulus of the flesh remains. Finally, chastity can be preserved by other means. "Spiritual welfare," says St. Thomas, "can always be helped otherwise than by cutting off a member; because sin is subject to the will, and therefore in no case is it lawful to cut off a member for avoiding any sin whatsoever" (II-II, q. 65, a. 1, ad 3).

But the aforesaid mutilations seem lawful for forestalling sexual erethism arising from the fact that the genital organs are abnormally affected. The reason is that in the case, the mutilation is ordered to the well-being of the whole body, almost as the amputation of a member infected by disease.[3]

To what extent public authority can impose the said operations, see in the treatise on the Fifth Precept.

[1] Vasectomy is a surgical operation by which someone is rendered impotent for generating through the cutting of the organ which in a man carries seed to the penis.

[2] Oophorectomy is done through the cutting of the organ which in a woman carries ova to the womb.

[3] Cf. De Smet, *De sponsalibus et matrimonio*, n. 440, 441; Grosam in *Linzer Quartalschrift* 1910, pp. 59, 285, 497.

527 **V. Ecclesiastical penalties established for suicide and self-mutilation are:**

1. Those who have mutilated themselves or others, or have attempted to take life from themselves, are irregular from delict (can. 985, 5).
2. Those who have killed themselves by deliberate counsel are deprived of ecclesiastical burial (can. 1240, § 1, 3); to one excluded from ecclesiastical burial there must also be denied both any funeral Mass, even anniversary Mass, and other public funeral offices (can. 1241).
3. Those who have laid hands on themselves, if death has not followed, are to be barred from legitimate ecclesiastical acts, and if they are clerics, they are to be suspended for a time to be determined by the Ordinary, and removed from benefices or offices having care of souls annexed in the internal or external forum (can. 2350, § 2).
4. A lay person who has been lawfully condemned for the delict of grave mutilation or wounding or violence is to be considered excluded by the law itself from legitimate ecclesiastical acts and from any office, if he has any in the Church, with the obligation of repairing damages remaining firm (can. 2354, § 1).

Scholion. On the Use of Some Harmful Things

528 **I. The use of chloroform, ether, and other things by which the use of reason is removed, is of itself illicit, but lawful on account of a proportionate cause.** It is said:

1. **It is of itself illicit,** because it not only deprives one of the actual use of reason without any utility that will follow of itself, but also of the proximate faculty of using it for a sudden necessity, as was said about drunkenness (n. 320; St. Alphonsus, V, 73).

2. **It is lawful on account of a proportionate cause;** this follows from what has been said about an act with a double effect. But the avoiding of pains in a surgical operation constitutes a proportionate cause; likewise the forestalling of extraordinary pains of childbirth;[1] but the avoiding of ordinary pains does not seem to suffice.

Corollary. More probably, it is lawful for a dying person, by means for example of chloroform, to deprive himself of the use of reason, so that he may die without very acute pain. The things opposed by authors to this doctrine prove at most that a graver reason is required in the article of death than in the course of life. But the relief of very acute pains seems to involve a sufficient reason, although it is better to endure them patiently; indeed, the spread of a practice of this sort would give occasion to consequences to be disapproved. Yet it is supposed that the dying person is sufficiently prepared for death; nor is it lawful for another to deprive a dying person of the use of reason without his consent.

Objection 1. If ever, at such a time it is necessary that the faculty of meriting be preserved for man.

Response. Why would it not be lawful, on account of a graver cause, to deprive oneself of the faculty of meriting in the article of death, just as the same thing is permitted on account of a lesser cause in the course of life?

Objection 2. Privation of the use of reason would then be entirely equivalent to abbreviation of life.

Response. It would be equivalent to abbreviation of moral life, I concede; but that seems lawful on account of a graver cause, just as outside the article of death it is lawful, on account of a lesser cause, to take away something from moral life.

II. The infrequent use of morphine, opium, and cocaine in small quantity is not harmful, and therefore is lawfully employed for alleviating pains or driving away sleeplessness. But there is easily danger lest use pass over into abuse and habit (morphinomania), which produces the worst consequences and therefore must be put away with all one's strength. These things noted generally, receive these special points, especially from Antonelli.[2]

1. **The external causes which induce morphinomania can be:** 1. physicians who abuse morphine, either by administering too great a quantity or by too frequently prescribing injections for the calming of pains; 2. the sick themselves, who, after they have once known this solace of pains, ask the physician that they may be able to use morphine more often; and he, either because the disease is chronic, or to avoid troublesome complaints, or because the sick person is poor and is no longer able to pay for medical visits, not only permits it, but hands over the prescription into his hands, to be renewed at his discretion; 3. directors and attendants in hospitals, who, for procuring the quiet of the sick who are too talkative or too affected by pains, admit too many injections; 4. pharmacists who, either from excessive love of profit, or from fear lest those clients desert them, or for shamefully capturing the pleasures of women, sell morphinic solutions without caution; 5. writings which treat of the morphinic matter, examples, and persuasions of others. But once the passion has been contracted, it is altogether incredible how many means, how many pretexts, and how much cunning morphine addicts employ in practice for making injections as often as they wish, wherever they stay.

2. **The consequences that will follow from a habit contracted and continued are:** memory is weakened; the will grows sluggish and gradually lacks every force; whence it happens that the morphine addict is incapable of correcting himself and very quickly rushes into his own ruin; the individual character is changed; instability of spirit, irascibility, and impotence occur; the moral sense is diminished and can even be wholly lost; then the way is opened to crimes of every kind, for thefts and carnal crimes occur very frequently; women often forget modesty; like those affected by hysteria, morphine addicts continually lie so that their habit may remain hidden; they frequently suffer hallucinations and illusions in the same way as those who are affected by alcoholism; sexual excitations at first are increased, but generally for a short time; in those who labor under chronic morphinomania, they are absent; infants who are born from a morphinomanic mother sometimes die immediately because of the lack of morphine which they were drawing in the womb through the maternal placenta. Nor is this enough; since the nervous system is especially badly affected, sleeplessness occurs with headaches, tremors of the hands and tongue, and disturbances in the pronunciation of words. The heat of the body also is increased, about 38 degrees C., bringing on fever, which presents the same characters as malarial and typhoid fever.
3. **The sole and necessary remedy is placed in this,** that they be deprived of the faculty of procuring new morphine for themselves, and be subjected to diligent custody. It is better to send them to hospices established for this purpose. But if this can be obtained, within a few weeks they obtain restoration of health; nevertheless after the cure it must greatly be guarded against and feared lest they fall again into abuse, which indeed certainly occurs unless they are most vigilantly guarded in all things.

[1] For the infant - thus Aertnys-Damen, relying on the testimony of a specialist concerned only with giving narcosis - harmful consequences from the mother's narcosis are not to be feared, provided that the narcosis is not too deep and does not last too long; this also holds concerning the narcotic which is called *chloroforme a la reine* (*Theologia Moralis*, I, 259).

[2] *Medicina Pastoralis*, I, n. 354 sq.

Part IV. On the Cultivation of Charity Toward Neighbor

The precept of charity toward neighbor is proved by the same arguments by which the precept of charity toward self is proved (n. 521). This noted, we shall speak first about the diverse prescribed acts, then about sins against charity toward neighbor.

Section I. On Prescribed Acts

For the sake of completeness and order, we must first treat of prescribed acts generally, then of acts of helping one's neighbor specifically.

Chapter I. On Prescribed Acts Generally

529 Both internal acts - or those by which we are well affected toward our neighbor and will good to him and rejoice over his good - and external acts are distinguished. Now:

I. With regard to internal acts it suffices to note:

1. **Internal acts of charity toward neighbor are prescribed.** This is clear: 1. from Sacred Scripture, which, by prescribing love toward neighbor, in the obvious sense also regards internal acts;[1] 2. from propositions condemned by Innocent XI, namely 10: "We are not bound to love our neighbor by an internal and formal act";[2] and 11: "We can satisfy the precept of loving neighbor by external acts alone."[3]

2. **The internal act obliges:**

a) By reason of the precept pertaining to charity, almost as was said about charity toward God (n. 519). For the same reasons hold here with almost the same force, since the formal motive of charity toward neighbor is God Himself (n. 516). Practically, however, satisfaction is commonly made if the internal act is elicited as often as an external act is imposed.

b) By reason of a precept pertaining to another virtue, in practice there is rarely an obligation.

II. Besides internal acts, external acts are also prescribed, as will be clearer from the things to be said. Now from among external acts, some merely exhibit a sign of internal charity, such as greeting; others besides furnish aid or help to one's neighbor.

1. **With regard to mere signs of charity,** there is an obligation of exhibiting to all signs absolutely common; and to those specially joined to us, signs relatively common. The reason is that denial of the said signs would involve a signification of enmity. Now signs absolutely common are those which all are accustomed to exhibit to all, of which are counted: to answer one speaking, to return the greeting of one who greets, to sell goods to one asking. Those are called relatively common which persons joined by such a relation are accustomed to exhibit to each other. Thus, for example, blood relatives are accustomed to visit one another sometimes. Signs relatively common are judged special with respect to those who are not so closely joined (St. Thomas, II-II, q. 25, a. 9; St. Alphonsus, II, 28). To signs relatively common can be reduced the help of itself to be given to those who are in a certain condition, for example in grave necessity; these are relatively common helps. For the rest, in judging signs of charity, attention should be given to the condition of persons and the customs of various places.

2. We must speak specifically about acts of helping one's neighbor.

[1] Matthew 22:37-39.

[2] Denzinger-Bannwart, n. 1160.

[3] Denzinger-Bannwart, n. 1161.

Chapter II. On Acts of Helping One's Neighbor Specifically

530 The things which regard acts of helping one's neighbor cannot be set forth properly unless certain things are first noted.

I. First Preliminary Note. The necessity by which one's neighbor can need our help is distinguished as temporal and spiritual; each is threefold, namely extreme or quasi-extreme, grave, and common.

1. **Extreme or quasi-extreme necessity** is when the greatest evil threatens or has befallen someone, and it can scarcely, or scarcely at all, be averted without another's help. By the greatest evil are understood: damnation, death, grave mutilation, perpetual imprisonment. To the extreme necessity of an individual there is equated the grave necessity of a community (St. Alphonsus, II, 27, 31).
2. **Grave necessity** is when only grave evil threatens or has befallen someone, and it cannot be averted by him without grave difficulty. Grave evil is constituted by: loss of a justly acquired state or of a lucrative or honorable office, or grave loss of goods (St. Alphonsus, ibid.).
3. **Common necessity** is when the greatest or a great evil indeed threatens someone, but one which can be averted by him without grave difficulty; likewise when an evil threatens or has befallen someone which is not so great, or which, considering his condition, does not render life so very miserable (St. Alphonsus, II, 31; III, 520).

Poor persons commonly are in common temporal necessity; sinners in common spiritual necessity; since commonly they can be freed from sin and abstain from it without so grave a difficulty; yet compare n. 575†.

II. Second Preliminary Note. Temporal goods by which others can be helped can be distinguished into goods necessary for life, goods necessary for state, and superfluous goods.

1. **Goods necessary for life** are those which are required for preserving one's own life and the life of one's own people.
2. **Goods necessary for state** are those which are required according to each one's condition, both for the decent preservation of one's state and for providing for future necessities which commonly are wont to occur, for example those which are reserved for the time of old age, illness, and for educating and endowing children; likewise those things which look to moderately increasing one's state (St. Alphonsus, II, 31).
3. **Superfluous goods** are those which are necessary neither for life nor for state, in a word, those which can be left without serious inconvenience.

III. Third Preliminary Note. The act by which help is furnished to a neighbor is called beneficence; but insofar as it specifically averts evil from one's neighbor, it is usually called a work of mercy or almsgiving in the broader sense.

Beneficence and mercy are divided into corporal and spiritual. But works of mercy are enumerated as seven corporal and seven spiritual. "For seven corporal alms are set down," says St. Thomas, "namely: to feed the hungry, to give drink to the thirsty, to clothe the naked, to gather in the guest, to visit the sick, to ransom the captive, and to bury the dead.... Other seven spiritual alms are also set down; namely: to teach the ignorant, to counsel the doubtful, to console the sorrowful, to correct the sinner, to forgive the offender, to bear the burdensome and troublesome, and to pray for all" (II-II, q. 32, a. 2).

IV. Fourth Preliminary Note. The general rule regarding help to be furnished to one's neighbor is this: In order that there be an obligation of helping one's neighbor, there are required:

1. **The known necessity of the neighbor.** An obligation of inquiring into necessity does not exist of itself; however, it can arise from a special connection or from an office, for example that of a superior (St. Alphonsus, II, 31; III, 491, question 1).
2. **The faculty of helping, and this without relatively grave inconvenience.** That is, the graver the necessity is, the graver must be the inconvenience by which you are immune from the obligation of furnishing help.

These things having been noted, omitting works which have no difficulty, we shall treat distinctly of one temporal work of mercy, namely almsgiving taken more strictly, and of one spiritual work, namely fraternal correction, and finally we shall add a few things about some other works of spiritual mercy.

[1] Cf. Capellmann-Bergmann, *Pastoral-Medizin*, p. 74 sq.; Antonelli, *Medicina Pastoralis*, I, n. 354 sq.

Article I. On Almsgiving

531 **I. Notion.** Almsgiving strictly so called is a bodily benefit given to another in need from compassion. It is disputed whether it is an act of charity, or of mercy as a special virtue (cf. St. Thomas, II-II, q. 30, a. 3; q. 32, a. 1).

532 **II. The obligation of almsgiving** is clear both from Sacred Scripture,[1] and from this, "that since love of neighbor is in precept, it is necessary that all those things fall under precept without which love of neighbor is not preserved; but to love of neighbor it pertains that we not only will good to our neighbor, but also work it, according to that saying of 1 John 3:18: 'Let us not love in word, nor in tongue, but in deed, and in truth.' But in order that we will and work someone's good, it is required that we relieve his necessity; this is done through the largess of alms; and therefore the largess of alms is in precept" (St. Thomas, II-II, q. 32, a. 5).

[1] Cf. Matthew 25:41-46; Luke 11:41; 1 John 3:17; 1 Timothy 6:17, 18.

533 **III. Further determination of the obligation** must be established with attention both to the neighbor's need and to the faculty of helping him (St. Thomas, ibid.; St. Alphonsus, II, 31). Hence:

1. "No one is bound to give alms from goods necessary to himself for life, unless the poor person were such a person on whom the safety of the republic depended.... And the reason is clear from the order of charity" (St. Alphonsus, II, 31).
2. One who is in extreme or quasi-extreme necessity must be helped under grave obligation even from goods necessary to one's state; this should be understood thus, that the obligation is to help him with inconvenience or damage absolutely grave, but not with very grave inconvenience. Hence one is not bound, in order to help one in need of this sort, to suffer loss or grave detriment of state;

nor to procure for him things altogether extraordinary or very costly, such as migration into another more healthful region, or a great sum of money (St. Alphonsus, ibid.).

3. In grave necessity there certainly is an obligation of giving alms from superfluous goods; but it is disputed whether the obligation is grave. Now:

a) The obligation is clear from the things said under II.[1]

b) The grave obligation is drawn from Sacred Scripture; for words, for example 1 John 3:17,[2] by which privation of the charity of God is denounced against those who do not alleviate the necessity of their neighbor, are undeservedly restricted to extreme and rare necessity.

Corollary I. There is at least a light obligation of helping an individual man constituted in grave necessity "with moderate detriment of one's own state: because by a small inconvenience of his own he is bound to prevent a great inconvenience of his neighbor" (St. Alphonsus, ibid.).

Corollary II. If several are pressed at the same time by grave necessity, and there is no obligation of helping all, one can help one before the others, or several in part. But if one pressed by grave necessity concurs with those constituted in common necessity, the former seems to have to be preferred to the latter.

3. In common necessity likewise there is an obligation of helping from superfluous goods. Here, however, it is more sharply disputed whether the obligation is grave. With St. Alphonsus (II, 32), it seems one must answer affirmatively. For first, Sacred Scripture, which under grave obligation prescribes that the poor be helped, seems also to regard the poor as they commonly occur, that is, those constituted in common necessity. Then from alms refused in common necessity grave evils would threaten the community, namely several would fall into grave necessity. But the grave obligation which we defend should be understood thus: that a rich person would then only sin gravely if he proposed never, or scarcely ever, to give alms except to one constituted in grave necessity (St. Alphonsus, II, 32). In addition, there is a light obligation of occasionally dispensing something to the poor constituted in common necessity from goods in some way necessary to state; in other words, one who does not have superfluous goods, but nevertheless has goods suitable to state, sins venially if he for the most part sends away the poor constituted in common necessity without any help. Finally, the described obligation of helping the common poor persists, even if in some place there are public institutes erected for the poor and the public authority helps the poor; for by those the common necessity is not extinguished.

[1] Note also proposition 12 condemned by Innocent XI: "Scarcely among secular persons, even among kings, will you find what is superfluous to state; and thus scarcely anyone is bound to almsgiving, when he is bound only from what is superfluous to state" (Denzinger-Bannwart, n. 1162).

[2] "He who has had the substance of this world, and has seen his brother have necessity, and has closed his heart against him, how does the charity of God remain in him?"

534 **IV. Quantity of almsgiving.** 1. In extreme and in grave necessity, so much must be dispensed as is required for alleviating the necessity, yet with attention to the moral faculty of the one dispensing, according to what was said above (St. Alphonsus, II, 31).

2. With common necessity considered, the matter depends on many things, for example on the necessity of the poor and their number, on public institutes, on the faculty of the rich person, etc. St. Alphonsus, for the circumstances of his time, held as quite probable that, generally speaking,

"the rich satisfy the obligation by dispensing among the common poor the fiftieth part of their income, or two gold coins out of one hundred; but not in the same proportion if the riches greatly exceed" (II, 32).

What about the opinion of those who teach that all things superfluous to state must be spent for the support of the poor, or at least on pious works?

Response. We judge that that doctrine is not sufficiently proved, so that we hold the opinion of others as practically safe; all the more because the practice even of the God-fearing does not seem to agree with that doctrine.

Objection 1. Christ says in Luke: "Nevertheless, give what remains as alms: and behold, all things are clean for you."[1]

Response. It is not proved that by those words a precept is understood, and not merely a counsel, namely, that all things may be clean for someone.

Objection 2. Leo XIII states: "Man ought not to have external things as his own, but as common."[2] Therefore at least superfluous things must be spent on pious works.

Response. Leo XIII states this one thing: that external things are to be held as common in this sense, "namely that someone easily communicate them in the necessity of others"; and these words do not legitimate the conclusion of the adversaries. To this is added that the Supreme Pontiff adds: "But when what is sufficient for necessity and propriety has been given, it is a duty from what remains to favor those in need."

Objection 3. The division of goods or private dominion cannot be to the prejudice of the end of goods, which is that they serve the necessity and utility of men. Hence things truly superfluous to someone must be spent on the necessity of the poor.

Response. The division of goods also exists for the security of oneself and of one's own; and goods can also be used for honest delights, although they do not precisely pertain to the suitability of one's state. These things posited, it is not clear that superfluous goods cannot at least partly be retained, both for greater security regarding the future time, and for greater honest delights.

[1] Luke 11:41.

[2] Encyclical *Rerum novarum*, May 15, 1891.

535 **V. Mode of fulfilling the obligation.** 1. The thing which the poor person needs can be given as a loan for use or as a loan for consumption: 1. if the poor person needs only the use of the thing; 2. if indeed he needs dominion over the thing, but is not simply poor. It is otherwise if he needs dominion over the thing and is simply poor, that is, he possesses nothing either in fact or in hope from which he may repay. For, if ever, at least in that case the precept of almsgiving, that is, of gratuitous donation, ought to urge (St. Alphonsus, III, 520, question 5).[1]

2. Alms must be made from one's own goods, but not from another's, unless in extreme necessity, if then one's own are not at hand. Hence: 1. "It is not lawful for boys, children of families, male servants, female servants, or wives to give alms except slight alms, in which the will of parents and husbands is presumed. But for particular cases in which a wife can give, see in its own place.... 2. Tutors and curators, and those who have care of another's goods, can make moderate alms from the

goods which they administer: namely such as those persons themselves, whose goods they are, would be bound to make" (St. Alphonsus, II, 33).

3. The obligation, insofar as it arises especially from common necessity, can partly be satisfied by paying taxes, insofar as these are imposed for relieving the necessities of the poor. Indeed, the aforesaid obligation can almost be fulfilled by contributing a certain sum to a beneficent association. I have said partly and almost, because one who acted thus could nevertheless not be excused from every fault if he were to send away all who beg from door to door, and all the more if he were to send away all constituted in grave necessity.

Corollary I. Physicians and advocates must help the poor gratuitously, unless provision has been made for them through public expenses. But if special physicians or advocates have been named for the poor, it is lawful to refer the poor to them.

Corollary II. Often there is no obligation of giving alms to poor persons begging in public ways: "although from nakedness, disease, etc., they may seem to show signs of extreme necessity, rarely is one bound by precept to help, even from superfluous goods: both because that necessity is commonly exaggerated for moving spectators, and because they are presumed to be helped by others" (St. Alphonsus, II, 32). But alms should be denied to those who are in need from laziness and idleness.

[1] Hence the doctrine seems to have to be rejected which generally teaches that there is no obligation of giving alms if, by the thing being given as a loan for use or for consumption, or sold, sufficient provision is made for the neighbor's necessity.

Article II. On Fraternal Correction

536 **I. Notion.** "Fraternal correction is the admonition of a brother for the amendment of delicts by fraternal charity" (St. Thomas, *In IV Sent.*, dist. 19, q. 2, a. 1). The matter of fraternal correction is formal sins which are feared to be committed again, or those in which one's neighbor is feared to be dying or not going to do penance at the due time. Material sins are matter for instruction (n. 540); formal sins only to be committed, that is, not to be committed again, are matter for admonition (n. 541).

Fraternal correction differs from judicial and paternal correction. Judicial correction is that which is done by a superior as such; its primary end is the common good. Paternal correction is that which is done by a superior not as such, but because he is such, or because he is more suitable for correcting.

537 **II. The obligation sometimes to correct one's neighbor** is clear: 1. from Sacred Scripture: "Correct your neighbor, lest perhaps he did not say it: and if he did say it, lest perhaps he repeat it";[1] "If your brother has sinned against you, go and correct him";[2] 2. from reason, namely from the fact that, if I can conveniently do so, I ought to draw my neighbor away from evil, such as sin is.

The obligation is grave from its genus, and binds even subjects with respect to superiors. But it is an obligation of charity; for parents with respect to children, for spouses with respect to the other spouse, for superiors with respect to subjects and vice versa, an obligation of special charity; for children with respect to parents, an obligation of piety; for pastors of souls, an obligation of justice (St. Alphonsus, II, 40; III, 360).

[1] Ecclesiasticus 19:14.

[2] Matthew 18:15.

538 **III. The conditions of grave obligation are:**

1. That it be morally certain that a grave sin has been committed, because correction is something odious. Probability suffices exceptionally if it is a question of great danger and there is no fear of exasperating one's neighbor (St. Alphonsus, II, 38). Yet of itself only a Superior can and sometimes ought to inquire into the sins of others (St. Alphonsus, III, 360, doubt 20). By reason of charity, one must properly inquire into the necessity of one's neighbor when one prudently suspects it; but by reason of the common good, inquiry into another's life is prohibited, since this is apt to disturb public peace.
2. That correction seem necessary. Hence it can be omitted if the neighbor has amended himself, or will amend himself, quite certainly (St. Alphonsus, II, 39, 2).
3. That another more suitable or equally suitable person be lacking who will quite certainly correct the neighbor (St. Alphonsus, II, 39, 3).
4. That there be great hope of fruit, now or later (St. Alphonsus, II, 39, 4). Now, the greater the hope is, the more opportune time and place should be chosen; indeed, it is sometimes lawful to await repetition of the sin if hope of fruit is thereby increased.
5. That the correction can be made without relatively grave damage (St. Alphonsus, II, 39, 5), for example without damage to life, honor, goods, and sometimes friendship. Yet those who are bound from special charity, such as husband, wife, and parents, are excused with more difficulty; Superiors, with attention to their office, and those who are bound from justice, are excused with greatest difficulty, that is, only on account of very grave inconvenience. Moreover, even the gravest inconvenience does not excuse if someone is in extreme or quasi-extreme spiritual necessity.

Corollary I. Private persons are rarely bound under grave obligation to correction, either because some condition is lacking, or because there is an excusing cause, if not from the whole then at least from so much. But scrupulous persons commonly are immune from every obligation, both because they lack the necessary discretion, and because they would be pressed by continual anxiety if they judged themselves to be obligated.

Corollary II. Although even venial sins can be matter for correction, in practice there is almost no obligation among private persons, for there would be grave inconvenience, since one's whole life would be consumed in corrections, unless either the venial sins proximately dispose to mortal sin, or it can be done very easily; the latter sometimes has place if someone uses familiarity with the one being corrected. But for a superior by reason of office the obligation more easily falls, and sometimes even a grave obligation, for example if from uncorrected venial sins relaxation of regular discipline were imminent (St. Alphonsus, II, 34, 35).

539 **IV. Mode of correcting.** 1. "The order must be observed in correction which Christ prescribed, namely: first, that you correct privately; then before witnesses; then that you refer the matter to the prelate of the Church, or to a superior"[1] (St. Alphonsus, II, 41). The reason for this order is taken from the fact that, as far as can be done, one's neighbor's reputation must be considered. Denunciation here is understood as evangelical, that is, that which is made to a superior as judge, so that he may publicly judge and punish the guilty person for the sake of the common good.

2. The order prescribed of itself need not be observed: 1. when the sin is public; 2. when the sin tends to the damage of the community or of another innocent person and a private person cannot quite

certainly avert it; 3. when the first and second mode of correcting do not seem sufficiently secure, for example because a private person is less suited for making the correction; 4. when the one to be corrected has renounced his right, as has place among certain religious (St. Alphonsus, II, 41). Yet in this case, although the obligation of justice is lacking, charity nevertheless prescribes that the order be observed if private correction is judged quite certainly effective.

Corollary I. "If the crime of one's neighbor is pernicious to the republic or to the community, although it is hidden, it must be denounced immediately to the prelate, with no fraternal correction having been made first; as the Doctors commonly teach with St. Thomas" (St. Alphonsus, IV, 242). Note besides that in this case denunciation must be urged even with grave inconvenience to the penitent; apply this, for example, to corrupters in colleges, seminaries, and boarding-schools. If only damage to one or another is feared, denunciation cannot be urged with grave inconvenience, for example if the penitent cannot carry out the denunciation without confessing his own crime; yet it should be advised.

Corollary II. For it to be lawful to refer a hidden sin immediately to a superior as father, it suffices that this seem more expedient; and this commonly has place in religious communities. "The reason is clear, because the end of this precept of fraternal correction... is nothing other than charity toward the brother; but this end of charity is twofold, one principal, the other less principal. The principal end is that the brother be amended, and therefore correction is prescribed; the less principal end is that the reputation of the brother be preserved as much as can be done, and therefore the order of secret correction to be made first is prescribed. Therefore, when it is believed to be more expedient for the principal end, namely for the amendment of the brother, that correction be made immediately by the prelate, the less principal end ought to cease; and therefore the order of secret correction is rightly to be omitted" (St. Alphonsus, IV, 243; St. Thomas, *Quodlibet* 11, a. 13).

Corollary III. A superior to whom denunciation has been made as to a father should proceed thus:

1. "Before he proceeds to correction, he ought: a) to consider the character of the informer, whether and to what extent he is worthy of trust; b) patiently to hear the very person denounced, for defense is due to each one by natural right; c) commonly to beware lest the one denounced be able to recognize his informer, unless necessity demands otherwise.
2. For the sake of correction he will be able: a) to impose moderate penances on the delinquent, which neither induce infamy nor manifest the delict, if it is grave; b) to remove a subject from office or from place, if this can be done without infamy; c) to manifest the delict to one or several consultors, if he judges this necessary for applying the remedy with greater fruit and security; d) to reprehend him gravely before two or three witnesses, for his greater confusion and commotion; e) to designate a faithful companion who may investigate the actions of the guilty person and report them to the Prelate, if the Prelate, after correction has been made, judges vigilance necessary; for this end he will be able to indicate some suspicion to the same companion concerning the brother entrusted to him; and other things of this sort. None of these things exceed the limits of paternal correction."

[1] Matthew 18:15-17.

Article III. On Certain Other Works of Spiritual Mercy

Somewhat akin to fraternal correction are: 1. instruction of one who through ignorance is about to transgress a grave law; 2. admonition of one who is in danger of sinning formally.

540 **I. The instruction of which we speak obliges:**

1. **Of itself**, if there is question of divine law, whether natural or positive: namely on account of the reverence due to a law of this kind. If there is question of human law, it quite probably does not oblige, because it is not sufficiently certain that the reverence due to such a law demands this (St. Alphonsus, II, 36).
2. **As it were by accident**, instruction, even if there is question of human law, can oblige: 1. on account of the harm of the one ignorant, as if he is ignorant of things to be known by necessity of means; if there is danger lest he contract a bad custom; if he is ignorant of a prohibition of civil law, and therefore is about to expose himself to the danger of a penalty; 2. on account of common harm or the harm of a third party, as if someone through ignorance were detaining another's property; 3. on account of scandal, as if an unknowing priest were to enter a brothel.
3. Superiors, confessors, parish priests, parents, and teachers are of themselves always bound to instruction, "because upon them it specially falls to teach subjects" (St. Alphonsus, II, 36).

Note, however, that a proportionate cause excuses from the obligations set out.

541 **II. Admonition**, as is clear, must of itself be made if one's neighbor is in grave danger of sinning formally; moreover apply to this matter what has been said about correction.

III. Finally, concerning the spiritual works of mercy, it helps to note these things:

1. Since the Church herself, especially through religious Orders and Congregations, endeavors to provide for the propagation of the faith, no one in particular is bound to go to the regions of unbelievers, unless legitimate authority imposes this upon him. Moreover, all should contribute to the intended end by alms or at least by prayers (St. Alphonsus, II, 27).
2. It is difficult to determine accurately how far the dead must be helped; but it is certain that the faithful who fulfill their Christian duties satisfy the obligation: for so often they are present at the Sacrifice of the Mass and at public prayers, which are made for the dead or even for them.[1]

[1] Aertnys-Damen, I, n. 372, question 30.

Section II. On Sins Against Charity Toward Neighbor

Chapter I. On Internal Sins

Internal sins - besides omission of an internal act by reason of the precept of charity itself - are hatred and envy.

542 **I. What hatred is and into how many kinds it is distinguished**, see n. 520. But the morality of hatred toward one's neighbor is outlined in these points:

1. Hatred of abomination of the person is a grave sin, since it excludes one's neighbor from common charity. Hatred of abomination of a quality is good, evil, or (at least from the object) indifferent, according as the quality which someone turns away from is good or evil or indifferent (St. Alphonsus, II, 30; cf. St. Thomas, II-II, q. 34, a. 3).
2. Hatred of enmity is a sin grave from its genus, that is, grave or light according as it regards a grave or light evil, or deprivation of a grave or light good (St. Alphonsus, II, 30).

From hatred of enmity must be distinguished the act by which someone in an ordered way wishes evil to his neighbor; namely insofar as it yields to the good of the one wishing, or of the neighbor, or of a third party, or of the community. Hence it is lawful, for example, to desire temporal evil for one's neighbor, so that he may be amended from sins; likewise the penalty of a delict, insofar as it restores the violated order and turns the delinquent and others away from transgressions; likewise "to wish death for a heresiarch or a disturber of public peace, on account of the common good, and of many; according to that saying in Galatians 5:12: Would that... they be cut off. Likewise, to be saddened over the fact that dignities are conferred on the unworthy; or over the health of him who from it takes an occasion of sinning" (St. Alphonsus, II, 30; St. Thomas, II-II, q. 108, a. 1). Yet it is required that the evil of one's neighbor deservedly be postponed to the good that will follow. Hence there were condemned by Innocent XI, proposition 13: "If you do it with due moderation, you can, without mortal sin, be saddened over the life of someone, and rejoice over his natural death, and seek and desire it by an inefficacious affection: not indeed from displeasure with the person, but on account of some temporal advantage";[1] likewise proposition 14: "It is lawful by an absolute desire to wish the death of one's father; not indeed as the evil of the father, but as the good of the one wishing, because, namely, a rich inheritance will come to him";[2] likewise proposition 15: "It is lawful for a son to rejoice over the parricide of a parent, perpetrated by himself in drunkenness, on account of the immense riches obtained from the inheritance."[3]

Note 1. It is probable that "in confession it is enough if you say that you wished grave evil for your neighbor; nor is there need to explain the species of evil, for example death, infamy, etc., because all are comprehended under one aspect of evil" (St. Alphonsus, II, 30). The opposite must be said of a purpose of inflicting diverse evils (St. Alphonsus, loc. cit., n. 297).

Note 2. Penitents rather often confuse illicit hatred with hatred of abomination of a quality, or even hatred with a certain natural and involuntary antipathy.

[1] Denzinger-Bannwart, n. 1163.

[2] Denzinger-Bannwart, n. 1164.

[3] Denzinger-Bannwart, n. 1165.

543 **II. Envy;** about this see what has been said in n. 313.

Scholion. On the Manner of Acting with Enemies

544 **I. First there is an obligation not to have an enemy in hatred**, that is, neither to abhor his person nor to wish evil to him (n. 542).

II. Then there is an obligation of showing to an enemy the common signs of charity (that is, signs absolutely common to all; signs relatively common to those joined by a special relation), unless a particular reason advises the contrary or a just cause excuses. A particular reason advises the contrary, for example, if from this amendment of the enemy is hoped for, if it is feared lest the enemy interpret the signs of charity badly, or lest a new quarrel arise; especially a father and a superior, for the just punishment and amendment of a delinquent inferior, especially a contumacious one, will prudently deny for a time the usual signs of charity (St. Alphonsus, II, 28). The chief among excusing causes is the signification of just sorrow from a grave injury received.

Corollary. When both a reason which advises the contrary and an excusing cause are lacking, denial of common signs is a grave sin: 1. if it is done from gravely evil hatred (n. 542); 2. if there is an external signification gravely offensive to the enemy. But so that judgment may be made about it, one must see from what sort of cause it proceeds, whether from a grave or from a light quarrel - if from a grave one, it more easily becomes gravely offensive; likewise whether the signs of charity are denied for a longer or a shorter time, when the occasion of showing them occurs frequently; likewise whether the enemy notices and bears it more or less painfully. Hence, if the occasion, for example of conversation, frequently recurs - as among domestic persons and religious - denial of such a sign of charity prolonged for more time than a week would commonly constitute a grave sin (St. Alphonsus, II, 28, question); understand, however, mere conversation or address, not denial of familiar conversation.

III. Of itself there is no obligation of showing special signs of charity. Hence of itself you are not bound to "greet an enemy, address him, visit him when sick, console him when sad, receive him with hospitality, or act familiarly with him, etc.; because these are special signs of love" (St. Alphonsus, II, 28, 1).

By accident special signs must be shown: 1. if the enemy, after asking pardon, greets you in a friendly way, addresses you, etc.; in which case denial of similar signs would signify hatred; 2. if you have been accustomed to show special signs to someone, and scandal would arise from their being denied; yet this should not easily be imputed, because from special signs being denied it is undeservedly concluded to hatred; 3. if there is serious hope that the enemy, once the special sign has been offered, will put aside hatred; 4. if, after the circumstances have been considered, denial of the special sign would become a sign of hatred, as if you were to greet everyone you met, or invite all relatives on some occasion, except the enemy (St. Alphonsus, II, 28). If the enemy is in grave spiritual or temporal necessity, certainly of itself he must be helped; but that act with respect to persons who are in such necessity does not have the character of a special sign, but of a relatively common one (n. 529); this also in some way holds for the third case indicated above.

IV. Nor is there an obligation of remitting reparation of the violated right, that is, of the harm inflicted in the good of honor or reputation. Besides, for that end, if it is necessary, it is lawful to institute a judicial action. Likewise it is lawful from zeal for justice to seek from the judge the punishment of an enemy. In practice, however, that zeal for justice will hardly be immune from vengeance: "for, as St. Alphonsus says, I have never been able to persuade myself that persons of this kind, who sometimes come loaded with sins, love the common good and justice so much (not indeed in relation to other delinquents, but only in relation to their own offender) that they are cleansed from every stain of vengeance; whence in them, the Doctors say, it is very easy for their love toward justice to be a colored pretext for covering their desire of their own vengeance" (*Hom. Ap.*, tr. 4, n. 17).

V. Concerning reconciliation, note these things:

1. One who alone has offended is bound to begin reconciliation. Yet commonly there is no obligation, for the sake of reconciliation, of formally or explicitly asking pardon. Except if the one offended is a superior, father, or mother, and the offense was grave. Yet even in this hypothesis the confessor should for the most part proceed by persuading rather than by admonishing about a true obligation.

If each one has offended and the offenses are equal, the one who offended first is bound to begin reconciliation; if they are unequal, the one who offended more gravely. So much theoretically; for in

practice the confessor should urge both to begin reconciliation, for example by greeting the enemy; all the more because for the most part each one judges himself to have been more gravely offended.

2. The one offended is bound, when the enemy asks pardon, "not only to forgive inwardly, but also to show external signs of forgiveness" (St. Alphonsus, II, 29, 3); yet he is not bound to do this immediately, especially if the injury was grave, "because it seems above human weakness to compel the injured person to make reconciliation at once, when the disturbance has not yet been calmed. Hence an opportune time must be awaited; and meanwhile it will suffice that the one offended put aside hatred" (St. Alphonsus, loc. cit.).

"He does not truly forgive an offense who says: I do not wish to wish evil to my offender, but neither am I able to will well to him; or who asserts that he forgives, yet adds that he will never speak a word to him. But if someone says that indeed he forgives from the heart, but that it will never happen that he forgets the injury received, one must see in what way he will not be able to forget: whether only as regards memory, and involuntary movements of rancor, or also as regards malevolence. The first must be judged to be the case if he is prepared to show the due signs of charity."

3. Even after reconciliation has been completed, there is no obligation of restoring the familiarity which had previously been freely contracted.

Chapter II. On External Sins

545 External sins against charity toward neighbor - besides omission of due external acts - are especially scandal and cooperation in evil. These, if they are taken strictly, differ according to authors to this extent: scandal in some way determines another to sin; cooperation, however, concurs in the sin of another already determined to sin. Yet rather often it happens that both concur in one action, so that, for judging the morality of the action, attention must be paid to the character both of scandal and of cooperation.

Article I. On Scandal

546 **I. Notion.** Scandal is a work which gives one's neighbor an occasion of spiritual ruin, and is placed without sufficient cause. It is said:

1. **A work** (or omission of a work), whether evil, as drunkenness; or bearing before itself the appearance of evil, as if, having been dispensed, you eat meat on a day of abstinence before those who are ignorant of the dispensation; or altogether right, as if you pray before impious persons who for that reason are about to break forth into blasphemies.[1]

2. **Which gives occasion.** Hence it is not required that the work influence the spiritual ruin of one's neighbor in the manner of a cause; but it suffices that someone without sufficient cause place or omit an act, from which, once placed or omitted, the neighbor will take an occasion of sinning.

3. **Of spiritual ruin**, that is, of formal sin. And so it is not enough that the work placed gives an occasion only of material sin, of just indignation, of astonishment, or even of defamation of the one scandalizing; yet these often bring sins with them, for example of unjust anger, detraction, calumny, etc. Nor is scandal properly so called had - although one can sin against charity - when someone draws his neighbor back from a more perfect act or from a good not prescribed.

4. **And is placed without sufficient cause;** this must be added because for a proportionate cause it is lawful to place a work which will give an occasion of the spiritual ruin of one's neighbor: in which case the work placed is not called scandal; these things will be explained more fully in n. 550.

[1] Cf. Waffelaert, *Dissertations morales*, 1st series, *L'espece morale du scandale*.

547 **II. Division.** Scandal is distinguished:[1]

1. **By reason of intention**, into direct and indirect, according as the sin of one's neighbor is intended or (without sufficient cause) merely permitted. Direct scandal is subdivided into diabolical and simply intended, according as the sin of one's neighbor is intended formally as sin - or insofar as it is the evil of one's neighbor or an offense of God - or under another aspect, that is, insofar as it serves the advantage or pleasure of the one scandalizing.
2. **By reason of efficacy**, into causal and occasional. It is causal when the one scandalizing (morally) causes the spiritual ruin of one's neighbor, for example by persuading, by commanding sin. It is occasional when the one scandalizing merely gives the neighbor an opportunity of sinning; this can happen both by a positive act, as by blaspheming, and by omission of an act, as by neglecting the precepts of the Church (n. 551).

It is disputed whether example should be reckoned with causal or occasional scandal. Now example of itself is not a (moral) cause of the sin of one's neighbor, because of itself it does not involve the character of counsel (St. Alphonsus, II, 44, 40); by accident, namely with the circumstances considered, it can take on a character of this kind; as if you know that others are waiting to see what you are going to do, with the intention that they may follow your example.

Note. A work which gives an occasion of the spiritual ruin of one's neighbor is customarily called active scandal; but the spiritual ruin itself, or the sin of the neighbor, is passive scandal. The latter is called scandal of the weak, if it follows from active scandal on account of the ignorance or frailty of the neighbor; if it follows on account of mere malice, it is called pharisaical.

[1] Some distinguish scandal otherwise, or at least take the distinct species in a different sense. Other divisions seem superfluous and to entangle the matter uselessly.

548 **III. Morality;** concerning this, the quality and quantity, or gravity, of the malice which is present in scandal must be explained.

1. **The quality of the malice.** a) Every scandal, that is, both causal and occasional, is opposed to charity. For charity forbids that I become for my neighbor the cause or (without sufficient reason) the occasion of evil, a fortiori of such an evil as spiritual ruin is (St. Thomas, II-II, q. 43, a. 2; St. Alphonsus, II, 45).

b) Scandal besides is opposed to the virtue for the violation of which it gives an occasion, as follows:

a) This must be affirmed of causal scandal; for it is clear that he who (morally) causes another's evil act is guilty of the malice of the act.

b) The same seems, against many, to have to be said of occasional scandal; for one who cooperates in an evil act, in whatever way this happens, seems of himself guilty of the malice in which he cooperates. But occasional scandal involves some cooperation in another's evil act, insofar, namely, as it gives an occasion to it (St. Alphonsus, II, 45). If the intention of seducing another is added, all affirm it.

c) The sin of occasional scandal, opposed to the virtue violated by one's neighbor, seems to differ in species from the sin of the neighbor himself. For it is one thing to violate a virtue indirectly, another directly; but occasional scandal is indirectly opposed to the obligation of the virtue, while the sin of the neighbor is directly opposed to it. Yet they are of the same higher species or of the same genus. But causal scandal does not differ in species from the sin of the neighbor, because both are directly opposed to the obligation of the virtue.

Note. Although he is guilty of injustice who is only an occasion - not a cause - for another of stealing, nevertheless he is not bound to restitution, because an onerous obligation, such as restitution is, does not arise except from the fact that I have been the cause of injustice, or at least, as many admit, have given the occasion with that intention that another inflict harm on one's neighbor; these things will be explained more fully in the treatise on justice.

2. **The gravity of the malice.** a) Scandal, insofar as it is opposed to charity, is a grave sin from its genus. This is clear from Sacred Scripture: "Woe to that man through whom scandal comes."[1] Likewise from what has been said about the violation of charity in general (n. 282). It is only a light sin: 1. if the act placed influences the sin of one's neighbor only lightly; 2. if an occasion of light sin is given; and this holds even if the light ruin of the neighbor is intended (St. Alphonsus, II, 44, 20). Yet if the light sin is intended precisely as an offense of God, there is an affection toward God that is gravely evil.

b) Scandal, insofar as it is opposed to the virtue for the violation of which it gives an occasion, is generally grave or light according as the act of the one scandalized is gravely or lightly evil. I have said generally, because a light influence of itself involves only a light sin.

Corollary I. An act can contain light or no malice from its nature and grave malice by reason of scandal; as if a priest were to walk about manifestly half-drunk. Likewise an act grave in itself can contain only a light malice of scandal, as if someone were to sin before those who are moved only lightly thereby.

Corollary II. He seems guilty of grave scandal who gives an occasion of grave sin: 1. to him who is already actually prepared for such a sin, as if someone consents to one seducing him;[2] 2. to him who is habitually prepared for such a sin or for any sin of the same species, as if someone seeks intercourse from a prostitute or divination from a diviner. The reason is that he gives an occasion for an increase of grave malice, which seems grave; namely, "through the external work something of malice is added; because then the malice of the will itself is increased. For which reason, although, speaking speculatively, the opinion of the Thomists is more probable, in practice we nevertheless say that, from things commonly occurring, the malice of the will is always increased through the external act, on account of its greater complacency, effort, duration, etc." (St. Alphonsus, II, 47). There is added, with respect to him who is habitually prepared to sin, that here and now he again sins actually and commits another sin numerically. Thus St. Alphonsus and others, against others who judge that in the cases posited the spiritual ruin of one's neighbor is not notably increased.

Corollary III. One who induces his neighbor to sin is not bound to confess the circumstance of induction, since it is only an aggravating circumstance within the same species; in other words, both the one inducing and - according to what has been said under Corollary II - more probably even the one consenting are guilty of grave scandal; yet the scandal of the one inducing is graver (St. Alphonsus, II, 46).

[1] Matthew 18:7.

[2] The sin of the one consenting is rather referred to cooperation (n. 545).

549 **IV. Causes excusing from scandal, or rather causes for giving occasion to passive scandal**, that is, to the spiritual ruin of one's neighbor.

1. An occasion cannot be given to passive scandal without cause; but it can be given for a proportionate cause. It is said:

a) **An occasion cannot be given to passive scandal without cause.** For charity of itself requires that I hinder my neighbor's evil, much less does it permit that I give him an occasion of it.

b) **But it can be given for a proportionate cause**, because charity does not oblige with a proportionate inconvenience. Now a graver cause is required:

1. The more the action has the appearance of evil; likewise it is more easily lawful to place an act altogether right than one which is evil in appearance or in reality.
2. The graver the sin is which will follow.
3. The more certainly it will follow.
4. The more numerous those are who will suffer scandal (St. Alphonsus, II, 49).

If the act to be placed has only the appearance of evil, or gives an occasion of sin on account of the neighbor's ignorance alone, the appearance of evil or the ignorance, if it can conveniently be done, should be removed, for example by admonishing the neighbor about the lawfulness of the act. If afterwards he is nevertheless scandalized, the scandal for the most part can be regarded as pharisaical.

2. Sometimes an occasion must be given to passive scandal, namely if someone, in order to avoid scandal, would have to omit what is necessary by necessity of means, or do what is intrinsically evil, or omit what, all things considered, urges more gravely (St. Alphonsus, II, 51).

550 **V. General resolutions.** 1. Works prescribed by positive law must not be omitted or deferred on account of pharisaical scandal.

On account of scandal of the weak there certainly is no obligation if someone or some persons are foreseen only in confusion as going to suffer scandal. If a determinate person is foreseen as going to be scandalized, likewise the obligation is lacking if, in order that scandal be prevented, the precept would have to be neglected frequently, or if in a particular case a special reason occurs for fulfilling the precept. If the precept would neither have to be neglected more frequently, nor would a special reason for fulfilling it here and now be present, the matter is disputed; but St. Alphonsus holds as sufficiently probable that not even then is there an obligation, although in that case neglect of the precept is advised (II, 51). Yet if the precept, for example the hearing of Mass, can equally conveniently be deferred or fulfilled elsewhere, this - namely the deferral of hearing Mass or the hearing of Mass elsewhere - must be done, but only under light obligation, if there is question of pharisaical scandal.

2. Works of mere counsel must not be omitted on account of pharisaical scandal; more easily, but under light obligation only, they should sometimes be deferred.

On account of scandal of the weak there is not - as we have said about precepts - an obligation of omitting or deferring them, if the scandal is foreseen only in confusion; if the scandal of a determinate person is foreseen, likewise there is no obligation if, for preventing scandal, the counsel would have to

be neglected or deferred more frequently, or if a special reason for fulfilling the counsel here and now, for example for receiving Communion, were at hand. Outside these cases there is an obligation (St. Alphonsus, II, 50).

3. Indifferent works which do not contain the appearance of evil, of themselves must be omitted or deferred somewhat more often than good works, if however there is question of the scandal of a determinate person. Some apply almost the same to acts only venially evil, for example to women's adornment that is not notably dishonorable; but such things by reason of scandal must of themselves simply be omitted under light obligation: moreover those who would introduce such a custom would easily sin gravely (n. 550).
4. Temporal goods must not be given up on account of pharisaical scandal (St. Thomas, II-II, q. 43, a. 8; St. Alphonsus, II, 52). Hence someone is not bound to pay more than is fair to a workman who is going to blaspheme; nor should a parish priest remit stole fees on account of detractions that will follow.

For avoiding scandal of the weak, likewise there is no obligation of undergoing a grave loss of goods; the opposite must be said of a light loss (St. Alphonsus, loc. cit.).

551 **VI. Particular resolutions.** The following are guilty of grave scandal:

1. Those who have a custom of blaspheming.
2. Those who speak very filthy things, especially if this happens before younger persons or persons of a different sex. A milder judgment must be made about immodest jokes among married persons and ruder persons (St. Alphonsus, III, 426).
3. Those who compose, print, circulate, or sing truly filthy songs.
4. Those who compose, print, etc., notably filthy or impious plays; likewise actors and actresses and others who cooperate in such plays (St. Alphonsus, III, 428); likewise dancers of scenic dances in which, on account of the dancers' dress, obscene manners of dancing, or lascivious gestures, the greatest turpitude appears.
5. Those who sculpt, paint, or represent by photograph very filthy statues or images; likewise those who represent obscene things by the help of a lifelike instrument, such as a stereoscope, cinematograph, or bioscope; likewise those who expose things of this kind in gardens, a workshop, a house, to the sight of all (St. Alphonsus, II, 56; *Hom. Ap.*, tr. 4, n. 8); likewise makers and sellers of women's clothing or adornment who publicly expose models adorned in such a way that they are gravely offensive.
6. Those who compose, publish, print, circulate books, newspapers, or other writings notably opposed to religion or good morals; likewise booksellers, or any others, who sell books or newspapers of this kind to anyone, or procure them to be read, and thus spread the poison of souls; likewise those who in libraries erected for lending books expose poisonous works for the use of all; likewise those who introduce into schools a pernicious method of teaching or dangerous little books; likewise those who hand over to children books which, although not evil in themselves, treat of matter whose knowledge for them, on account of their natural innocence and sensitivity, is thought to be gravely offensive.[1]

7. Husbands who retain at home a maidservant suspected by the wife not without reason; likewise wives who, by admitting their pretty lovers to familiar conversations, are an offense to their husbands and to others, as experience teaches; likewise clerics who, by visiting or not dismissing a person suspected by the people, give an occasion of sins of detraction, calumny, and contempt of the clerical state, at least if the suspicion of the people is founded on the morals of the person retained or on known excessive familiarity.[2]
8. Parents and other superiors who blaspheme before their children or commit other grave sins, or neglect grave duties of a Christian person; likewise those who, without grave cause and without precautions having been applied, send them to dangerous schools or permit them other occasions and dangers, such as solitary conversations with lovers and betrothed persons.
9. Daughters and maidservants of tavern-keepers who behave rather loosely before everyone, commonly permitting kisses and embraces.
10. Women and girls who use truly dishonorable dress. But this - since indeed the question is very current - let us explain more fully. Now:

a) Dress, with our matter considered, can be distinguished as threefold: honorable, indecent, and dishonorable or lascivious.

Honorable dress is that which, with the circumstances of places considered, in no way or scarcely excites to lust; as if nothing or only a small part of the breast is bared, and the garments are lowered at least below the knees.

Indecent dress is that which, with the circumstances of places considered, lightly or moderately excites to lust; as if the whole upper part of the breast, or a notable part of it, is bared, or the garments reach only to the knees.

Dishonorable dress is that which, with the circumstances of places considered, gravely provokes to lust; as if the breasts are wholly or partly bared, or are covered only with a transparent covering, or the garments do not even reach to the knees,[3] or are fitted to the body in such a way that almost the entire form of the body is displayed.

b) Not only those who use dishonorable dress, but also those who introduce indecent dress, are guilty of grave scandal, if from a custom of this kind introduced the spiritual ruin of many is imminent.

c) Women, in church or outside church, while they assist at sacred rites, should be with the head covered and modestly dressed, especially when they approach the Lord's table (can. 1262, § 2); these things should be extended to Catholic gatherings, whether religious or social.

d) Dress not only dishonorable, but even indecent, must be earnestly restrained and uprooted by preachers and confessors, as far as this can be done. This also holds with respect to boys and girls, who thus lose natural modesty; and this must be urged all the more because indecent and dishonorable dress is today promoted by deliberate effort.

Corollary I. It is lawful for women and girls, provided propriety or honorableness is preserved, to dress themselves and adorn themselves in an elegant manner, whether so that they may please their husband more, or, if there is question of girls of marriageable age, so that they may arrive at an honorable marriage, or so that they may present themselves fittingly according to their condition. If

they act thus from vanity, they sin lightly; if with that intention that they provoke men or young men to lust, they sin gravely (St. Thomas, II-II, q. 169, a. 2; St. Alphonsus, II, 54, 55; III, 425).

Corollary II. If someone uses the clothing of the other sex, "of itself it is not a grave sin... and sometimes none, if a just cause is present, for example for hiding oneself. But it could be grave from the circumstances of danger of lust or scandal" (St. Alphonsus, II, 52; St. Thomas, II-II, q. 169, a. 2, ad 3). These things you may also apply to the use of masks.

11. Finally, those introducing a manner of acting, for example women's adornment, as has already been noted, or amusements, which although they are not truly dishonorable, are nevertheless going to become for many an occasion of grave sins, are guilty of grave scandal (St. Alphonsus, II, 55).

[1] Konings, *Theol. Mor.*, n. 295.

[2] Konings, loc. cit.

[3] I do not speak of girls of lesser age, although this custom too cannot be approved.

552 **VII. Special resolutions.** 1. It is lawful for a just cause and for a good end deliberately to permit or not remove, indeed even by an indifferent act deliberately to place, an occasion of sinning; since it is right for a just cause to permit an evil effect (St. Thomas, *Supplement*, q. 62, a. 3, ad 4; St. Alphonsus, II, 58). Hence, for example, "it is lawful for a master not to remove from sons or servants an occasion of stealing, when nevertheless he knows them to be inclined and prepared to steal, so that, having thus been detected, they may be punished and come to their senses" (St. Alphonsus, II, 58). Yet it is not lawful to intend the sin of one's neighbor; hence it is illicit to give an occasion of sinning for this sole or primary end, that the delinquent be punished; it is lawful for this end, that the one punished be amended, or that a test of the subject's probity be taken, for example by exposing money or leaving a key in a chest.

2. It is lawful, on account of a cause of necessity or notable utility, to seek something from someone who can provide it without sin, although it is foreseen that he will provide it with sin, for example a loan from a usurer, an oath from one about to swear falsely (if you suppose that a private person can have a grave cause for seeking it), a sacrament from a sinful priest. The reason is that in the hypothesis posited, the sin follows upon your petition for a lawful thing from the malice of the neighbor alone, so that it is not caused by you, but only an occasion is given to him; this is right to do for a proportionate cause. Now this is more easily lawful the more either the other is prepared for such a sin, or you have a right to the work sought (St. Thomas, II-II, q. 78, a. 4; St. Alphonsus, II, 47, 49, 77, 79, 80). If someone is prepared for any such sin whatsoever, according to many any reasonable cause suffices that I seek from another an action which he can provide without sin, although he is not going to provide it without sin. But since in this case there seems to be question of grave scandal (n. 548), the aforesaid opinion seems to have to be rejected (St. Alphonsus, II, 47).

3. It is more probable that it is lawful to persuade one determined to a graver sin to a lesser evil, or that he commit a lesser rather than a greater sin; for example, that he merely mutilate someone rather than kill him, steal less rather than more, steal from a rich man rather than from a poor man. And this holds even if the lesser evil is not a sin of the same genus, and is included in the greater neither formally nor virtually. Hence it is lawful, for example, to persuade someone determined to homicide that he rather commit adultery. The reason is that in this case, strictly speaking, not evil but the lessening of evil - which is good - is being advised (St. Alphonsus, II, 57).

Yet it is disputed whether it is lawful to persuade someone that he violate the strict right of a determinate third party, rather than commit another graver sin; for example, that he steal rather from Peter the rich man than from another poor man, that he rather violate the maidservant than the wife of Paul, etc. Now with St. Alphonsus (III, 565) and others,[1] it seems this must be denied. For it is not lawful for me to violate the right of one person in order to avert harm from another. But he who persuades someone to violate the right of a third party, himself also violates the right of the third party. Make an exception with St. Alphonsus (loc. cit.) if the former would be cast by the loss into extreme necessity: in which case, by persuading someone that he steal rather, for example, from Peter the rich man, I would not violate this man's right.

It is asked whether it ought to be clear from words or circumstances that the lesser evil is being advised as lesser, or as impeding the greater. It seems this must be affirmed, because otherwise the persuader, although he intends the lessening of evil, nevertheless in reality advises, not that the other lessen the sin, but that he sin.

[1] Lugo, *De iust.*, disp. 19, n. 54; Sanchez, *De Matr.*, l. 7, disp. 11, n. 24 sq.; Lehmkuhl, *Theol. Mor.*, n. 799; Sweens, *Inst. theol. de virt. card. iust.*, n. 325.

553 **VIII. Reparation of scandal.** 1. There is an obligation of repairing scandal, or: 1. of destroying the further influence of the scandal given, if this is feared; 2. of procuring the amendment of the one scandalized. This obligation indeed is greater in the one scandalizing, that is, in the author of the harm, than in others who have not given an occasion of spiritual ruin.

2. The obligation of repairing scandal is an obligation of charity if someone by example alone or persuasion gave an occasion of sin; if he did this by fear or fraud, an obligation of justice is added (St. Alphonsus, III, 662).

3. The mode by which scandal can and must be repaired will depend on the character of the scandal given, on the mode in which it was given, whether publicly or privately, and finally on the qualities of the one scandalizing and the one scandalized. Moreover, scandal given publicly must be repaired publicly. Hence:

a) One who gave scandal to others through wicked counsels still effective must, as far as he can, render them ineffective by diligent revocation, to be made known to the same persons either by himself or through another.

b) A father of a family who scandalized the household is ordinarily bound, in order to repair the scandal, if it is still judged effective, to manifest to the same household his displeasure over his evil example, and to exhort them paternally not to follow it in the future.

c) One who by false doctrine seduced others in matters of faith or morals is bound to revoke the error, even if the one seduced did not sin formally; because he still inflicted a grave injury, to which great harm is not rarely attached.

d) An evil author who has corrupted many by heretical, impious, or obscene books is bound by a public writing and other opportune means, insofar as he morally can, to retract his depraved writings and to impede their further diffusion.

e) A public concubinarian, after first abandoning his filthy commerce, should publicly approach the sacraments.

f) Ordinary scandals for the most part are sufficiently removed by that general reparation which is contained in the very cessation from scandal, in the offering of good example, in prayer for the one scandalized, and similar things.[2]

[1] Aertnys-Damen, *Theol. Mor.*, I, n. 344.

[2] Konings, *Theol. Mor.*, n. 301.

Article II. On Cooperation

§ I. Principles

554 **I. Notion.** Cooperation in sin, by the force of the word, is concurrence in the sin of another, whether of one already determined to sin or not yet determined. Here, however, it is taken chiefly for concurrence in the sin to which another is already determined; but concurrence in the sin of another not yet determined to sin we have called scandal[1] (n. 545).

[1] Nevertheless, occasionally we shall use the words scandal and cooperation interchangeably.

555 **II. Division.** Cooperation is distinguished as twofold, formal and material.

1. Formal cooperation is cooperation in the evil will of another; therefore it contains approval of the sin, and has place: 1. when someone cooperates with this intention, that the other sin, proceed more securely or more intensely, etc.; 2. when he places an action which either of itself or from the circumstances involves approval of the sin: of itself, as if you confirm the mind of the one sinning; from the circumstances, as if you spontaneously help another (St. Alphonsus, II, 63).
2. Material cooperation is cooperation in the execution of another's evil will. It is had when someone indeed concurs in the sin of another, but neither proceeds with the intention that the other sin, sin more securely, etc., nor places an action which of itself or from the circumstances involves approval of the sin (St. Alphonsus, loc. cit.).

Material cooperation is distinguished as twofold, immediate and mediate. Immediate cooperation is that by which someone participates in the depraved action or executes it with another, as if together with a thief you carry off the goods of a neighbor. Mediate cooperation is that by which someone supplies the means of executing the depraved action, as if you hand a key to a thief, by which he can open a house.

Mediate cooperation again is twofold, proximate and remote, according as the means supplied coheres more or less with the depraved action.

556 **III. Morality;** concerning this it must be investigated how far cooperation is a sin, what kind of sin it is, and how great a sin it is.

1. **How far is it a sin?** Sacred Scripture teaches that cooperation in evil is of itself a sin. Thus, for example: "Cleanse me, O Lord, from hidden things, and spare your servant from those of others";[1] likewise: "Impose hands quickly on no one, nor communicate in the sins of others."[2] The reason to be stated presently is added, where there is question specifically of formal and material cooperation. Namely:

a) Formal cooperation is always illicit; for it contains approval, at least external approval, of the sin (St. Alphonsus, II, 63).

b) Immediate material cooperation likewise is always illicit if there is question of an action intrinsically and absolutely evil; hence it is not lawful together with another, for example, to discharge a gun at someone. If there is question of another action, for example of carrying off another's property together with a thief, immediate cooperation can sometimes become lawful, as will be explained later.

c) Mediate material cooperation is illicit of itself; by accident it can become lawful (St. Alphonsus, loc. cit.). I have said:

a) **Mediate material cooperation is illicit of itself;** for it is opposed to charity, which of itself requires that we hinder the evil of our neighbor, much less does it permit that we cooperate in it (St. Alphonsus, loc. cit.). Whether it is also opposed to the virtue in whose violation someone cooperates, we shall see later. With regard to illicitness, it is pleasing to add these words of canon 2209: "Not only the one commanding, who is the principal author of the delict, but also those who induce to the consummation of the delict or concur in this in any way, contract, other things being equal, no less imputability than the executor of the delict himself, if the delict would not have been committed without their work (§ 3). But if their concurrence only rendered easier the delict which would have been committed even without their concurrence, it carries with it lesser imputability (§ 4)."

Objection 1. The act by which someone cooperates in evil - for example the placing of a ladder which a thief will use for stealing - is an indifferent act, so that it is enough that it be placed for an honorable end.

Response. The act by which someone cooperates in evil is, or rather can be, indifferent if considered in itself or according to itself, I concede; it is indifferent insofar as here and now it is cooperative in evil, I deny.

Objection 2. Material cooperation, strictly speaking, is not cooperation in evil, and therefore cannot be called evil. It is not cooperation in evil, because it is only cooperation in the external act. But the external act of itself does not increase malice.

Response. Material cooperation, as is asserted in the objection, is cooperation in the external act. But even the external act comes under the name of sin, and in reality is a moral evil. Cooperation in moral evil, however, is an act illicit of itself. There is added that the external act by accident increases the malice of the will (n. 548). But cooperation in an act which, even if only by accident, will increase the malice of the agent, is illicit of itself.

Objection 3. St. Thomas permits that someone borrow money from a usurer; likewise that one who has fallen among robbers manifest the goods which he has, although by acting thus he materially cooperates in the sin of the usurer and of the robbers. Therefore according to the opinion of St. Thomas material cooperation is indifferent of itself.

Response. St. Thomas permits the aforesaid acts of themselves, I deny; he permits them by accident, or if the evil to be avoided or the good to be obtained makes them honorable, I concede. And indeed the holy Doctor speaks thus: "In no way is it lawful to induce someone to lend at usury; yet it is lawful to receive a loan under usury from him who is prepared to do this and exercises usury, on account of some good which is the relief of one's own necessity or that of another: just as it is lawful for him who has fallen among robbers to manifest the goods which he has, which the robbers sin by snatching away, in order that he may not be killed, after the example of the ten men who said to Ishmael: Do not kill us, because we have treasures in the field, as is said in Jeremiah 41" (II-II, q. 78, a. 4). And in the

same place, ad 3: "It must be said that if someone were to entrust his money to a usurer not having other means from which he might exercise usury, or were to entrust it with this intention, that he might thence profit more copiously through usury, he would give matter for sinning; whence he himself also would be a participant in the fault. But if someone entrusts his money to a usurer otherwise having means from which he may exercise usury, so that it may be preserved more safely, he does not sin, but uses a sinful man for good."

b) **Mediate material cooperation can become lawful by accident;** namely it is lawful if the action by which someone cooperates is not evil according to itself, and there is a cause which makes honorable the influence upon another's sin and the consequences annexed to it. The reason is that charity does not oblige with proportionate inconvenience (St. Alphonsus, II, 63). Now a graver cause is required:

1. The graver the sin is in which someone cooperates.
2. The more that sin yields to the spiritual or temporal harm, or both, of others.
3. The nearer the concurrence is to the sin of another and the consequences annexed to it.
4. The more probably the sin would not follow without the cooperation.
5. The more certainly, once cooperation is admitted, it will follow.
6. The less right the one cooperating has to place the act.
7. The more he is bound to hinder the sin (St. Alphonsus, II, 59).

It is said - and this one point needs proof - **the nearer the concurrence is to the sin.** For the obligation of avoiding concurrence or remote cooperation, which easily has place, carries with it a greater burden than the obligation of avoiding proximate cooperation, which does not occur so easily; so that, if there is question of remote cooperation, a lighter reason seems required, but if there is question of proximate cooperation, a graver reason seems required. In practice the following rules can be established:

First Rule. Cooperation, both proximate and remote, is lawful if by cooperating you will avert a greater evil than is going to follow from the cooperation being omitted.

Second Rule. Proximate cooperation in grave sin is lawful for a grave cause, provided it is neither necessary nor yields to the harm of a third party; for a graver cause, if it is necessary or yields to the harm of a third party: in each case fear of equal harm to oneself is required. If it yields to common harm, it is excused for no private cause, but only for averting greater common harm.

Third Rule. Remote cooperation in grave sin is lawful for a just cause, provided it is neither necessary nor yields to the harm of a third party. If it yields to common harm, make a distinction: if it is necessary, it is not lawful except for averting greater common harm; if it is not necessary, a grave cause seems to suffice.

Fourth Rule. That your cooperation is not necessary, this alone never involves a cause on account of which it is lawful to cooperate; in other words, that someone without you is going to place the evil act is not a reason why you can help him in placing the act: for by acting thus the act and its consequences are also imputed to you in some measure.

2. **What kind of sin is it?** Every illicit cooperation is opposed to charity; for this of itself demands that we hinder the evil of our neighbor, much less cooperate in it. Besides, formal cooperation is

opposed to the virtue in whose violation someone cooperates; for it involves approval and therefore the very malice of the said violation. The same seems to have to be said of material cooperation, namely on account of the same reasons which were brought forward for occasional and merely permissive scandal (n. 548).

3. **How great a sin is it?** Cooperation is a grave sin from its genus; namely:

a) Formal cooperation is a grave or light sin according as it influences a grave or light sin.

b) Material cooperation:

a) It is a grave sin: 1. if it is proximate and regards a grave sin either of a single man or of many; 2. if indeed it is remote, but necessary, and regards the sins of many.

b) It is a light sin: 1. if it regards a light sin; 2. if it is remote and regards the sin of a single man; 3. if it is remote and not necessary, even if it regards the sins of many.

[1] Psalm 18:13, 14.

[2] 1 Timothy 5:22.

§ II. Applications

Point I. Diverse Cooperations, Considered according to the Diversity of the Evil in which One Concurs

557 **I. Cooperation in non-Catholic worship.** 1. To contribute money for building temples of non-Catholics is lawful "only in order to free oneself and one's own temples from that inconvenient and scandalous simultaneity with Protestants."[1] It is more easily lawful, yet only for a grave cause, to contribute money for constructing institutions, for example schools, orphanages, whose primary end is social rather than religious. Yet care should be taken lest the subsidies given be regarded as favor furnished to a false sect; and this, indeed, with respect to deputies who vote for subsidies of this kind, is already sufficiently clear, so that a special protestation is not required. Finally, even Catholic deputies, with the necessary conditions posited, can vote for subsidies for temples, schools, etc., of non-Catholics, because the cooperation is only material, and the common good demands that they be able to cooperate.

2. To construct temples and altars of idols; likewise to make idols and sell them to idolaters, according to declarations of the Sacred Congregations, is never lawful.[2] The reason seems to be that they contain (material) cooperation in a work so injurious to God that no cause excuses. Yet it is lawful to doubt whether the aforesaid things must be urged in such a way that, for example, for masons and other subordinate workmen they would not become lawful even for a most grave cause. Moreover it is lawful to make and sell idols if they are sought, for example, to be displayed in museums, gardens, etc.

3. To build temples of Muslims, Jews, and heretics is not lawful except for a grave cause; for a graver cause if there is question of a sect which does not yet have temples in that place, but especially if there is question of a recently arisen sect. Moreover, subordinate workmen are more easily excused than architects and contractors.[3] The same must be said of the manufacture, sale, and placing of implements (for example, organs) serving for the use of heretics; likewise of building the houses of

Freemasons or of other impious societies, for example of Socialists; likewise of constructing theaters which commonly will serve for evil use (St. Alphonsus, II, 72).

4. To ring bells in a non-Catholic temple seems lawful from a very grave cause; since by its nature it seems to be a sign or announcement of some thing rather than a true invitation. Yet a very grave cause is required, because it is easily regarded as an invitation, and therefore the character of scandal is found in an act of this kind in a higher degree.

5. To play the organ, likewise to direct singing in a non-Catholic religious function, is always prohibited, because it is a part and ornament of a perverse rite. With regard to the playing of the organ there is added a response of the Holy Office approved by Leo XIII.[4] The same seems to have to be said of directing singing and playing the organ outside the rite, but performed in order toward it, because preparation for a perverse rite seems to imbibe the malice of that rite.

6. To call a minister of a false religion for a sick non-Catholic who asks for that minister is illicit.[5] Yet it is lawful, in order to call him, to use a person belonging to the same sect.[6] Besides, for a grave cause it is lawful merely to notify the non-Catholic minister that there is a dying person who desires his visit. Now, with respect to Catholic hospitals, commonly a sufficiently abundant cause is present, since from denial of a service of this kind greater evils would easily threaten, such as hatred of the Catholic Religion and the interception of the faculty of furnishing many good things. Moreover, as far as possible, care must be taken that provision be made for the eternal salvation of the dying person, especially by eliciting with him, after the other acts necessary by necessity of means, an act of perfect contrition.

7. For a non-Catholic minister who is going to perform his rite, to prepare a table, and in the rite itself to hand over utensils, bread, and wine, is material cooperation, yet nearer than that of which there was discussion under 6. But since in this case the minister is more prepared for acting, it is lawful for a grave cause. Yet, insofar as it can be done, care must be taken that service not be furnished immediately in the rite itself.

[1] Sacred Penitentiary, 1822, in Konings, *Theol. Mor.*, n. 313.

[2] C. C. de Prop. Fid., December 7, 1626; Holy Office, January 8, 1851 (*Collect.*, nn. 29 and 1055).

[3] S. C. de Prop. Fide, November 21, 1837 (*Collect.*, n. 862); Holy Office, July 7, 1864, responded that subordinate workers are not to be disturbed, provided scandal is absent and it is not done in contempt of religion (*Collect.*, n. 1257).

[4] June 19, 1889.

[5] Holy Office, December 14, 1898 (*Collect.*, n. 2030), compared with Holy Office, March 15, 1848 (*Collect.*, n. 2030, note 2).

[6] Holy Office, December 14, 1898, compared with Holy Office, February 5, 1872 (*Collect.*, n. 2030, note 3).

558 **II. Cooperation in bad books, newspapers, etc.** 1. It is illicit to compose, publish, and undertake for printing bad writings, because those acting thus harm the common good most gravely. There is added the fact that those who compose act in this way, while others easily proceed in this way with the intention that the bad writings be bought and worn out by use; in which case they must be charged with formal cooperation (n. 555).

2. It is lawful for a grave cause to perform those things which are remotely related to printing or reading, such as procuring paper and other implements, preparing paper, arranging printed sheets or books, carrying bought books to buyers. This follows from what has been said about remote

cooperation in common harm (n. 556). For a very grave cause those things are lawful which are less remotely related to printing and reading, such as arranging type or inking it, placing paper underneath, turning the press, correcting printed sheets. Yet if there is question of a printing shop specially erected to attack good morals or religion, for example by communistic, socialistic writings, etc., by reason of scandal it will scarcely ever be right to remain in it. Moreover, everyone should strive that provision for support be made in another way.

3. It is illicit to circulate bad writings by commending them, because there is formal cooperation. Nor is it of itself lawful to expose them publicly or announce them, for example in shops, in newspapers, at railway stations. Yet these things of themselves involve mere pronouncement (notification), not invitation, and therefore of themselves contain material cooperation only; and this, even with common estimation considered, is sufficiently probable. From intention, indeed, commonly approval and invitation are had; but if one proceeds in the name of another, that is, of the one commanding, abstraction can be made from a depraved intention. This being posited, on the part of the agent there remains only material cooperation, which seems to be excused for a very grave cause. Yet one should strive that as soon as possible he obtain a livelihood in another way.

4. With respect to the sale of bad writings, first note these things from the Code: "The prohibition of books[1] brings this about, that a book without due permission can neither be published, nor read, nor retained, nor sold, nor translated into another language, nor communicated with others in any way" (can. 1398, § 1). Sellers of books should not sell, lend, or retain books treating professedly of obscene matters; they should not have other prohibited books for sale unless they have obtained due permission from the Apostolic See, nor should they sell them to anyone unless they can prudently judge that they are legitimately sought by the buyer (can. 1404). With these things noted, I say:

a) Owners of bad bookstores not only most gravely violate public honorableness and most gravely harm the common good, but also, since they proceed with this intention, that others buy and wear out by use what has been bought, are guilty of formal cooperation (n. 555). I have said owners of bad bookstores; since a somewhat milder judgment must be made concerning lower assistants: for on the one hand they are more easily immune from that depraved intention; on the other hand the acts placed by them do not necessarily involve approval of sin - neither of themselves, as is clear, nor from the circumstances, because it can be believed that they intend only the support of life. Hence they can be immune from formal cooperation (n. 555), and therefore can be excused for a proportionate cause. Yet, with scandal and the danger to which the faith and morals of the assistants are often exposed considered, a proportionate cause will be present only with difficulty. Moreover, one must always strive that livelihood be provided in another way.

b) With respect to others - for example, to owners of bookstores which cannot be called bad, and their assistants - this must be said: to sell bad writings is of itself illicit, unless there is question of those to whom it is sufficiently clear that reading is lawful; to commend the purchase of bad writings is simply illicit, unless again there is discussion of those who enjoy permission to read them.

5. To write, from time to time, some article for a bad newspaper is lawful for a reasonable and just cause. Yet attention must be paid to can. 1386.[2]

6. To subscribe to a bad newspaper is lawful for a grave cause, for example if someone needs it for conducting business.

7. To announce in a bad newspaper one's things to be sold is lawful for a middling cause. Yet work must be done so that announcements of this kind do not become necessary, and that they be made in good rather than bad newspapers.

8. To display bad papers in one's inns or houses is illicit; nor is it lawful from the fact that those gathering there seek them, otherwise being about to go elsewhere. Yet if such a paper is asked for on account of announced matters necessary to know, it is lawful to display it in a separate place. Further, on account of notable loss of profit otherwise to be feared, it is lawful to display those newspapers which only now and then contain something dangerous.

Moreover, what is to be said about the prior censorship of books and their prohibition and about penalties should be compared.

[1] "The things prescribed under this title concerning books are to be applied to publications, newspapers, periodicals, and any other published writings, unless something else is clear" (can. 1384, § 2).

[2] Canon 1386 states: 1. Concerning secular clerics: "Secular clerics are forbidden without the consent of their Ordinaries, and religious without the permission of their major Superior and the Ordinary of the place, to publish books, even those which treat of profane matters, and to write in newspapers, sheets, or periodical pamphlets, or to moderate the same" (§ 1). 2. Concerning Catholic lay persons: "In newspapers, sheets, or periodical pamphlets which are accustomed to attack the Catholic religion or good morals, not even Catholic lay persons should write anything, unless a just and reasonable cause advises it, approved by the Ordinary of the place" (§ 2).

559 **III. Cooperation in dangerous amusements.** 1. To perform plays or dances notably dishonorable is gravely illicit, and no excusing cause seems able to be admitted. The same must be said of plays notably contrary to religion (cf. St. Alphonsus, III, 428). A somewhat milder judgment seems to have to be made about musicians.

2. To concur in introducing plays of this kind, if the concurrence is necessary, cannot be excused. Nor in practice will an excusing cause be present, even if the concurrence is not necessary. But to favor plays or dances of this kind by applause is formal cooperation.

3. To introduce amusements which indeed are not in themselves dishonorable, but are dangerous to very many, is of itself a grave sin (n. 551).

560 **IV. To sell or rent a house to prostitutes** is lawful "in cities in which this has been permitted for the sake of avoiding a greater evil; especially if other tenants are lacking: unless, however, the prostitutes would gravely harm honest neighbors, or on account of the location would give a greater occasion of sins" (St. Alphonsus, II, 70). The same must be said of renting a house to a tavern-keeper who permits dishonorable dances, or intends to introduce or alone sustain honorable ones.

To sell or rent a house to a man or group who will abuse it to public harm, for example to a Masonic, socialistic, spiritistic group, etc., is not lawful if other suitable buildings cannot be found. Otherwise it is lawful for a grave cause, unless however the character of scandal requires a graver cause.

561 **V. To cast an illicit work upon another**, that is, to agree that another perform a prohibited work in your place, is formal cooperation. Yet it is lawful to agree that another take your place, for example that in your place he exercise the office of judge, for example if, with the law considered, an unjust sentence would have to be rendered.

562 **VI. To paint the image of a person for someone whom he knows to be affected toward that person with filthy love** is not lawful except for a cause of grave necessity. But to paint truly obscene

images, since they can scarcely serve any other end than sin, is almost simply illicit. To buy images of this kind already painted for a master can be permitted for avoiding notable harm.

563 **VII. To make notably dishonorable feminine adornment** is not lawful except for a grave cause; if there is question of adornment only slightly dishonorable, a lesser cause suffices.

[1] Cf. Waffelaert, *Dissertations morales*, 1st series, *La cooperation au mal*; Sleumer, *Die Mitwirkung zur fremden Suende*; Bender, in *Ned. Kath. Stemmen*, 1929, p. 137 sq. and 165 sq.

Point II. Different Cooperations, Considered according to the Different Condition of Those Cooperating

564 **I. Cooperation of servants.** 1. For servants, for a middling cause, such as service commonly brings with it, those things are lawful which are remotely related to the sins of masters; of this kind are: to prepare forbidden foods, at the command of the master to count out money to be given at unjust interest and enter it in the book, at the command of a master who is about to go out to commit adultery to saddle the horse, to adorn a mistress who is a prostitute, to open the door to the master's concubine when she comes and to prepare the bed for her (cf. St. Alphonsus, II, 64, 66, 67).

2. For servants, for a grave cause, that is, because of fear of notable loss, those things are lawful which are proximately related to the master's sin. Of this kind are: to serve forbidden foods,[1] to conduct the master to a concubine and conversely (St. Alphonsus, II, 64, 68, 69). The same must be said of drivers conveying someone to a brothel (St. Alphonsus, II, 75); nevertheless in practice it will commonly be lawful for these persons to provide service to all indiscriminately, since it would have to be feared that they would turn many away from themselves if they involved themselves in the reasons of travelers. Besides, if they are under the service of others, they would soon be dismissed.

3. It is sharply disputed whether, for a grave cause, it is lawful for a servant to carry gifts, or to write or carry shamefully amorous letters, to a person shamefully loved by the master. But with St. Alphonsus (II, 65, 67) it seems that this must be denied, because he who does such things not only cooperates in the sin of the master and of the mistress, but also, as one acting in the name of the master, seems to complete and consummate the act or sin by which the master fosters the shameful love both of himself and of the mistress; and this is intrinsically evil. "And I judge that this must be said even... in doubt whether the letters contain amorous things; because, since shameful love is established, it is morally believed that they contain shameful things" (St. Alphonsus, II, 67).

4. Finally, note thesis 51 condemned by Innocent XI: "A servant who, with shoulders placed under him, knowingly helps his master climb through windows to deflower a virgin, and many times serves him by carrying a ladder, opening the door, or cooperating in some similar thing, does not sin mortally if he does this from fear of notable loss, for example lest he be treated badly by his master, lest he be looked upon with stern eyes, lest he be expelled from the house."[2] Since in this case there is question of harm to a third party, nothing excuses except fear of equal harm, which in this case falls upon fear of death or similar gravest harm (St. Alphonsus, II, 66).

[1] Sacred Congregation de Propaganda Fide, June 26, 1820 (*Collectanea*, n. 747).

[2] Denzinger-Bannwart, n. 1201.

565 **II. Cooperation of workmen and merchants.** 1. It is lawful to make and sell indifferent things, even under the sole title of ordinary profit; and this holds even if you know that many will abuse them.

Nor is there an obligation of inquiring into the intention of buyers. If in a particular case abuse is rightly feared, a cause proportionately grave is required, and it must be graver if harm to be inflicted on a third party is feared. Hence in practice it will scarcely ever be lawful, for example, to sell weapons which evidently are sought for killing, or a drug which is judged to be bought for procuring abortion (St. Alphonsus, II, 66, with note f., 71, 76; III, 571, 697).

2. Things to which a great danger of abuse is attached, such as poisons, it is not lawful to sell unless there is sufficient certainty about a right intention (St. Alphonsus, II, 72).

3. Things which can serve almost only for sin - such as instruments destined for preventing conception, obscene images - are to be judged thus with respect to making and selling: owners of factories and shops, as was said about owners of bad bookstores, not only most gravely harm public decency and the common good, but also proceed with the intention that others buy and, having bought, use them up; and for this reason they are guilty of formal cooperation (n. 558). But concerning lower ministers, what we said about lower ministers of bad bookstores in the cited number must be said.

4. With respect to the advertising and display of bad things, apply what was said about the publication (n. 558) and display (n. cited) of bad writings.

566 **III. Cooperation of innkeepers.** 1. For a grave cause it is lawful to give drink to those about to become drunk. A grave cause - besides fear of a grave quarrel or blasphemies - would be a decrease of patrons and notable loss of profit otherwise going to follow; yet this will scarcely have place (St. Alphonsus, II, 69). In addition, because of public laws against drunkenness, they are more difficultly excused today.

2. For the same cause it is lawful to serve meats to those asking for them; likewise to prepare a meal with meats, if it is foreseen that many will ask for meats, provided however that an opportunity of doing so is supplied to those who wish to observe the law. Besides, through dispensations now in force almost everywhere, in practice the difficulty has been removed.

3. Where it is customary, they can permit decent dances; but not indecent ones, nor introduce (or alone maintain) decent ones.

4. They cannot designate secret rooms for sinning; nor grant a place if they know that it is being sought for sinning.

5. On the display of bad newspapers see n. 558.

Article III. On Certain Other Sins Against Charity Toward Neighbor

Besides the sins explained, there are opposed to charity the acts of withdrawing someone from a more perfect thing, discord, which is in the heart, contention, which is in the mouth, schism, quarrel, duel, war, and sedition, which pertain to work (St. Thomas, II-II, q. 37-42). Concerning quarrel, duel, war, and sedition, it will be said more opportunely elsewhere.

567 **I. Hindering the more perfect thing.** He who withdraws someone from a more perfect thing is not guilty of scandal except reductively. Nevertheless he sins against charity, and indeed gravely, if without just cause he withdraws someone from a great good, for example from entering religion; he sins still more, and indeed against justice, if he does this by force or fraud (St. Alphonsus, IV, 77).

568 **II. Discord** is a dissent of wills concerning a good which we ought to will from charity. It is a grave sin from its genus, that is, grave or light according as it concerns a good necessarily or not necessarily to be pursued (St. Thomas, II-II, q. 37, a. 1).

569 **III. Contention** is discord in words or altercation among several persons, disordered from the fact that truth is attacked or defended in an undue manner. Contention which occurs by attacking truth is a grave sin from its genus, that is, grave or light according as a truth of very great or lesser importance is attacked. Contention which occurs by defending truth in an undue manner is of itself a venial sin; nevertheless a species of grave sin can be joined to it (St. Thomas, II-II, q. 38, a. 1).

570 **IV. Schism.** 1. **Notion.** Schism is a sin by which someone separates himself from the unity of the Church, or "refuses to be subject to the Supreme Pontiff, or refuses to communicate with the members of the Church subject to him" (can. 1325, § 2). But "the unity of the Church is considered in two things, namely in the connection of the members of the Church with one another, or communion; and again in the ordering of all the members of the Church to one head" (St. Thomas, II-II, q. 39, a. 1). Hence - for evil is from any defect whatever - "schismatics are called: 1. those who refuse to be subject to the Supreme Pontiff; and 2. those who refuse to communicate with the members of the Church subject to him" (St. Thomas, loc. cit.), that is, as Cajetan explains in this place, those who refuse to operate as part of the Catholic Church, namely to teach or be taught, to govern or be governed, to sanctify or be sanctified; for they break the unity of faith, or of obedience, or of worship.

Corollary. Every heretic is schismatic; but not conversely, although schism regularly does not occur without heresy (St. Thomas, loc. cit.). He who separates himself from his own bishop alone is not by that very fact yet a schismatic; nevertheless he who is separated in an undue manner from a bishop or particular Church will easily withdraw from the Pope and the Church.

2. **Morality.** Schism is a grave sin, because through it someone "intends to separate himself from the unity which charity makes" (St. Thomas, loc. cit.), charity, I say, which not only unites persons among themselves, but also the whole Church in unity of spirit. Nevertheless infidelity is a graver sin than schism: for "that sin which is contrary to a greater good is, from its genus, graver; as a sin against God is graver than a sin against neighbor. But it is manifest that infidelity is a sin against God himself, according as in himself he is the first truth on which faith rests; while schism is against ecclesiastical unity, which is a certain participated good, and less than God himself is; whence it is manifest that the sin of infidelity from its genus is graver than the sin of schism" (St. Thomas, II-II, q. 39, a. 2). Nevertheless, as we have said, a sin against faith is usually joined to schism.

Part V. On Order in the Cultivation of Charity

Preliminary Note. One can be loved before another in three ways: 1. intensively, when the will is borne toward one with a greater or more intense effort than toward another; 2. objectively, when we will a greater good to one than to another; 3. appreciatively, when you judge one to be worthier of love than another, so that you would rather lose the friendship of the other than of the former.

With these things noted beforehand, we shall speak first of the order of charity between God and creature, then of the order of charity between ourselves and our neighbor, and finally of the order of charity among our neighbors.

Section I. On the Order of Charity Between God and Creature

571 **I. God is to be loved above all things with charity objectively supreme.** For charity commands that we will to each one the good which he has. But God has infinite goodness. Then, a greater extrinsic good, that is, greater glory, is to be desired for God or the Creator than for any creature whatever (St. Alphonsus, II, 22).

II. God is to be loved above all things with charity appreciatively supreme. This is clear: 1. from Sacred Scripture: "You shall love the Lord your God with your whole heart, and with your whole soul, and with your whole mind. This is the greatest and first commandment";[1] 2. from reason. And indeed infinite goodness, such as the goodness of God is, must be judged worthier of love than the lower and participated goodness of a creature, and therefore the former must be preferred to the latter (St. Alphonsus, II, 22; cf. St. Thomas, II-II, q. 27, a. 3).

III. Although it is fitting to love God with charity intensively supreme, nevertheless there is no obligation; nor is a certain degree of intensity required. The reason is that intensity does not so much correspond to the dignity of the object as to the subjective disposition and the more vivid apprehension of the one loving (St. Alphonsus, II, 22; VI, 442).

[1] Matt. 22:37-38.

Section II. On the Order of Charity Between Ourselves and Our Neighbors

572 **I. If on each side there is question of spiritual goods, each person is bound to prefer himself to his neighbor, as follows:**

1. Each person is bound to prefer himself to others with respect to those things necessary for the last end.
2. It is not lawful to commit even a venial sin in order to promote the temporal or spiritual good of one's neighbor, or to prevent his temporal or spiritual evil; both because the true evil of one's own soul must be avoided before all things, and because evils are not to be done that good things may come (St. Alphonsus, II, 26, 2).
3. Nevertheless sometimes it is lawful, indeed there is even an obligation, to omit an act good in itself or better, or even to expose oneself to danger of sinning, in order to succor the spiritual or even temporal necessity of one's neighbor (St. Alphonsus, II, 26, 1; VI, 453).

II. If there is question of one's own spiritual and temporal goods, hold these things:

1. If the spiritual necessity of one's neighbor is extreme or quasi-extreme, he must be succored with the loss of any temporal good whatever, even of life[2] (St. Thomas, II-II, q. 26, a. 5, ad 3; q. 44, a. 8, ad 2; St. Alphonsus, II, q. 27).

Corollary. Someone is bound, even with danger to life, to baptize an infant if no one else is present who would do it (St. Alphonsus, II, 27, 3). Likewise, to confer Extreme Unction on a dying Catholic person deprived of his senses, who is probably judged to be in the state of mortal sin and probably is attrite. Likewise, to absolve a dying person "if he is habitual in sins, and is so uneducated that he does not know how to elicit an act of contrition" (St. Alphonsus, II, 27, dic. 2). Many deny this, because no one is so uneducated that he cannot, with the help of grace, elicit an act of contrition. This indeed is true theoretically, but in practice it seems that one must stand with the opinion of St. Alphonsus and others, because, as death approaches, it seems more difficult, and for the man of whom we are speaking most difficult, to elicit an act of contrition. But those who voluntarily expose themselves to danger of damnation, for example by hanging themselves or by attacking an innocent person, must not be succored with danger to life, unless they grieve over the sin, or are judged so uneducated that they do not know how to elicit an act of contrition, or afterward are deprived of their senses.

2. If it is grave, one must assist with a middling inconvenience; but with a grave one if there is an obligation of piety, as in children with respect to parents; or of special charity, as in parents with respect to children, in spouses with respect to the partner, in superiors with respect to subjects and conversely; with a most grave one, if there is an obligation of justice, as in pastors of souls; likewise, if there is question of a grave and common spiritual necessity. Hence, for example, when plague is raging, even a priest to whom the care of souls has not been committed is bound, if another is lacking, to administer the necessary sacraments with danger to life (St. Alphonsus, II, 27, 39, 40).

III. If on each side there is question of temporal goods, in other words, of the temporal necessity of one's neighbor, see what was said on almsgiving (n. 533).

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[1] Cf. Van Roey, *De virtute caritatis*, p. 321 sq.

[2] Cf. 1 John 3:16.

Section III. On the Order of Charity Among Neighbors

573 If I cannot succor all whom of themselves I would be bound to succor, this order must be observed:

I. With respect to the act of complacency, after God the holier persons are to be preferred to others, because they participate more in the divine goodness (St. Thomas, II-II, q. 26, a. 6; St. Alphonsus, II, 27).

II. With respect to internal affection, likewise a certain order must be observed. "The reason is that, since the principle of love is God and the one loving himself, it is necessary that according to greater nearness to either of those principles there be a greater affection of love" (St. Thomas, II-II, q. 26, a. 6).

III. With respect to effects, or with respect to beneficence, these things hold:

1. Necessity is commonly to be preferred to connection; greater necessity to lesser necessity. The reason is that the obligation of succoring is sought primarily from necessity.

2. Once equal necessity is posited, likewise a certain order must be observed according to these words of St. Thomas already cited above: "Since the principle of love is God and the one loving himself, it is necessary that according to greater nearness to either of those principles there be a greater affection of love" (II-II, q. 26, a. 6), and - in conformity with the whole article, I would add - a greater effect (St. Alphonsus, II, 27). Therefore:

a) Those connected with us are to be preferred to strangers.[1]

b) Those connected with us in a different species of connection are to be helped thus:

a) Outside necessity: 1. with respect to common services, there come those connected: a) spiritually, b) carnally, c) civilly; 2. with respect to goods proper to some species of connection, those connected in that species are to be preferred to others; and men also seem to act thus, for they call relatives to weddings (St. Thomas, II-II, q. 26, a. 8).

b) In extreme or grave necessity, whether temporal or spiritual, those connected carnally are to be preferred to those connected otherwise. The reason is that carnal connection is prior to the others, firmer, and more founded upon benefits. Yet if the carnal connection is remote, the obligation of preferring it is only light, or even - namely if another connection is intimate - none (St. Alphonsus, III, 946).

c) Among those connected in the same species but in a different degree of connection, those more closely connected are commonly to be preferred to those less closely connected. Hence, for example, those connected carnally in different degree are to be helped in this order:

a) Outside necessity there come: 1. spouse, 2. children, 3. father, 4. mother, 5. brothers and sisters, 6. the remaining relatives. In this necessity the spouse and children are to be preferred to parents, because of themselves parents ought to provide for children, not conversely.

b) In extreme or grave necessity there come: 1. father, 2. mother, 3. spouse, 4. children, 5. brothers and sisters, 6. the remaining relatives (St. Alphonsus, II, 27; VI, 939, dub. 2; *Homo Apostolicus*, tr. 4, n. 15). - In extreme or grave necessity parents are to be preferred to spouse and children, because life is owed to the former.

Note. To the title of charity or piety, which we had before our eyes in the foregoing, other titles can be added, for example of gratitude, which can bring it about that the order can or must be inverted. Other extraordinary circumstances can bring about the same thing; thus, for example, a stranger who is necessary to the common good must, in extreme necessity, be preferred to a relative.

Inversion of the order is then only a grave sin when there is question both of extreme or grave necessity, and the inversion is notable with respect to neglect of the order, for example if, of two persons placed in extreme or grave necessity, a stranger is preferred to one connected with us, or one more remotely connected is preferred to one closely connected, for example a cousin to parents or children.

[1] Connection is distinguished as threefold: carnal, which arises from the bond of blood, and to it belong the goods of life and family; spiritual, which arises from the bond of religion, and to it belong spiritual goods; civil, which arises from a civil bond, and to it belong civil goods. Civil connection consists in multiple species, for example among citizens, soldiers, etc.

Treatise II. On the Cultivation of the Moral Virtues

Although, theory alone considered, in this dissertation the acts of the individual virtues would have had to be set forth, nevertheless, the matter having been considered again, we judge that we must withdraw from that plan - even though already put into execution - and rather discuss the precepts of the Decalogue, the precepts of the Church, and the precepts or duties of states. Now we think thus first because, on the one hand, the cultivation of the moral virtues, insofar as it needs special treatment for the care of souls, is presented by the treatment of the said precepts, at least if the acts to be exercised are explained no less than the sins to be avoided; on the other hand, this method conduces much more to the end chiefly intended, that is, to the formation of good confessors. There is added that several matters seem to have to be set forth in one treatment, which nevertheless pertain to different virtues and therefore, if the other method were admitted, would have to be treated separately. Thus, for example, the duties of parents and children: the former pertain to charity, the others partly to piety, partly to observance; thus the duties of states of life, which are so diverse and manifold that they must be referred to almost all the virtues; and so forth. Add that the method employed by us corresponds especially well to catechetical instruction,[1] and to the method of confessing born from it. Finally it seems not to be passed over that the Decalogue was promulgated by the Lord himself and proposed to the human race as the fundamental law; hence for this reason also one should not so easily withdraw from precisely its exposition. Yet let each abound in his own sense.

With these things premised, we shall speak first of the precepts of the Decalogue, then of the precepts of the Church, and finally of the precepts or duties of states of life.

[1] Also the *Catechismus Catholicus*, edited in 1930 by Cardinal Gasparri.

Dissertation I. On the Precepts of the Decalogue

574 **I. The precepts of the Decalogue are:**

1. "I am the Lord your God... You shall not have strange gods before me."[1]
2. "You shall not take the name of the Lord your God in vain."[2]
3. "Remember that you sanctify the Sabbath day... you shall not do any servile work on it."[3]
4. "Honor your father and your mother."[4]
5. "You shall not kill."[5]
6. "You shall not commit adultery."[6]
7. "You shall not steal."[7]
8. "You shall not speak false testimony against your neighbor."[8]
9. "You shall not covet your neighbor's wife."[9]
10. "You shall not covet your neighbor's house, nor his servant, nor his maidservant, nor his ox, nor his ass, nor anything that is his."[10]

II. The order or connection of the precepts of the Decalogue is this:

1. First are placed the precepts which order man to God; then those which order him to other neighbors.

"As the precepts of human law," thus St. Thomas, "order man to a certain human community, so the precepts of divine law order man to a certain community or republic of men under God. But in order that someone may dwell well in any community, two things are required: the first of these is that he be well disposed toward him who presides over the community; but the other is that man be well disposed toward the other associates and co-participants of the community. Therefore it is necessary that in divine law there first be given certain precepts ordering man to God, and then certain other precepts ordering man to other neighbors living together under God" (I-II, q. 100, a. 5).

2. The precepts which order man to God are distinguished as three, namely of fidelity, reverence, and service, according to the threefold obligation which is owed to the Prince of the community.

"But to a prince," St. Thomas continues thus, "man owes three things: first fidelity, secondly reverence, thirdly service. Fidelity to a lord consists in this, that he not transfer the honor of principality to another; and with respect to this the first precept is taken, when it is said: You shall not have strange gods. But reverence toward a lord requires that nothing injurious be committed against him; and with respect to this the second precept is taken, which is: You shall not take the name of the Lord your God in vain. But service is owed to a lord in recompense for the benefits which subjects receive from him; and to this pertains the third precept concerning the sanctification of the Sabbath in memory of the creation of things" (loc. cit.).

3. The precepts which order man to neighbor are distinguished as seven, according to these words of St. Thomas:

"But toward neighbors someone is well disposed both specially and generally: specially, indeed, with respect to those to whom he is a debtor, so that he may render to them what is owed; and with respect to this the precept concerning honoring parents is taken. But generally, with respect to all, so that harm be inflicted on no one either by deed, or by mouth, or by heart. By deed, indeed, harm is inflicted on a neighbor sometimes in his own person, with respect to the consistency of the person; and this is prohibited by the saying: You shall not kill; but sometimes in the person connected with him, with respect to the propagation of offspring; and this is prohibited when it is said: You shall not commit adultery; but sometimes in the thing possessed, which is ordered to both; and with respect to this it is said: You shall not steal. But harm of the mouth is prohibited when it is said: You shall not speak false testimony against your neighbor. But harm of the heart is prohibited when it is said: You shall not covet" (loc. cit.).

[1] Exod. 20:2-3.

[2] Exod. 20:7.

[3] Exod. 20:8, 10; Lev. 23:3.

[4] Exod. 20:12.

[5] Exod. 20:13.

[6] Exod. 20:14.

[7] Exod. 20:15.

[8] Exod. 20:16.

[9] Exod. 20:17.

[10] Exod. 20:17.

Part I. On the First Precept of the Decalogue

The first three precepts of the Decalogue, as we have said, order man to God, insofar, namely, as they assign the worship or honor to be shown to God. Moreover, the first precept treats of the worship which is paid to God by acts; the second, of the worship which is shown to him by words; the third prescribes public worship, to be paid through the special sanctification of certain days.

But before we treat the individual points, it is helpful to premise certain things concerning worship taken generally.

575 **I. Notion of worship.** Worship is the testimony of another's excellence and of one's own submission.

576 **II. Division of worship.** Worship taken generally is divided into civil and religious or sacred worship. Civil worship is that which is paid to men because of their natural excellence. Religious worship is that which is shown either to God because of his infinite excellence, or to angels or the blessed because of their supernatural excellence. We speak of religious worship, which is divided:

1. Into the worship of latria, hyperdulia, and dulia, according as it is offered to God, the Blessed Virgin Mary, or other heavenly citizens. The worship of latria pertains to religion (n. 385), the worship of hyperdulia and dulia to observance (n. 400).
2. Into absolute and relative worship. Absolute worship is that by which God and the heavenly citizens are honored in themselves; relative worship is that by which relics and images are honored with a view to the person to whom they are referred.
3. Into public and private worship. Worship is called public if it is offered in the name of the Church by persons legitimately deputed for this, and through acts which by institution of the Church are to be shown to God, the Saints, and the Blessed only; otherwise, private (can. 1256).

With these things noted, we shall speak first of the acts of worship prescribed by the first precept, then of the vices opposed to it, with a scholion added on the worship of heavenly citizens, images, and relics.

Section I. On the Prescribed Acts

By the first precept are prescribed: devotion, prayer, adoration, sacrifice, oblation, and the worthy handling of the sacraments. We pass over sacrifice and oblation, concerning which in the treatise on the Most Holy Eucharist; likewise the worthy handling of the sacraments, concerning which in the treatises on the different sacraments. Therefore there remain to be treated: devotion, prayer, and adoration.

Chapter I. On Devotion

577 **I. Notion of devotion.** Devotion, as St. Thomas teaches, "is so called from devoting; whence those are called devoted who in a certain way devote themselves to God, so that they subject themselves totally to him... Whence devotion seems to be nothing other than a certain will of promptly giving oneself over to those things which pertain to the service of God" (II-II, q. 82, a. 1). Therefore devotion consists in a certain act of the will by which we offer ourselves promptly for divine worship. Moreover:

1. **Devotion is an act of religion.** For "it pertains to the same virtue to will to do something, and to have a prompt will for doing it, because the object of each act is the same... But it is manifest that to perform those things which pertain to divine worship or service properly pertains to religion... Whence it also pertains to it to have a prompt will for executing such things: which is to be devoted; and thus it is clear that devotion is an act of religion" (St. Thomas, II-II, q. 82, a. 2; St. Alphonsus, *Op. asc.*, 6, p. 491; 10, p. 501).
2. **Devotion is distinguished both from an act of charity and from an act in the special matter of divine worship:** from an act of charity, because by an act of devotion man does not give himself over into union with God, but into God's service; from an act in the special matter of divine worship, because this act concerns means and has its name from its matter, while the act of devotion concerns the whole worship of God and promptness in showing it.

The devotion explained is called substantial and spiritual, so that it may be distinguished from a certain accidental and sensible devotion. For sensible devotion of itself is neither virtuous nor vicious, since independently of free will it can take its origin from causes either natural or supernatural. But it is called devotion by metonymy, because often, especially if it is given by God, it is a cause helping toward the act of substantial devotion (St. Alphonsus, *Op. asc.*, 2, p. 493 and 6, p. 491 sq.).

578 **II. Causes of devotion.** "The extrinsic and principal cause is God" (St. Thomas, II-II, q. 82, a. 3). The intrinsic cause is contemplation both of the divine goodness[1] and of his benefits, and of one's own need; the former consideration arouses love, which is the proximate cause of devotion; the latter excludes presumption, by which someone is hindered from subjecting himself to God, while he relies upon his own power (St. Thomas, II-II, q. 82, a. 3).

[1] "Those things which are of divinity are, according to themselves, most arousing of love, and consequently of devotion: because God is to be loved above all things; but from the weakness of the human mind it is that, just as it needs leading by the hand for the knowledge of divine things, so also for love it needs certain sensible things known to us; among which the principal thing is the humanity of Christ, according to what is said in the Preface: That while visibly we know God through this, we may be carried away into the love of invisible things; and therefore those things which pertain to Christ's humanity, after the manner of a certain leading by the hand, especially arouse devotion, although devotion principally consists concerning those things which are of divinity" (St. Thomas, II-II, q. 82, a. 3, ad 2).

579 **III. Effect of devotion.** Of itself and principally, devotion produces spiritual gladness of mind; consequently and by accident, however, sadness.

"Devotion," thus St. Thomas, "proceeds principally indeed from consideration of the divine goodness, because that consideration pertains as it were to the term of the motion of the will giving itself over to God; and from this consideration of itself indeed follows delight... I remembered God, and was delighted; but by accident this consideration causes sadness in those who do not yet fully enjoy God. But secondarily devotion is caused... from consideration of one's own defects; for this consideration pertains to the term from which man withdraws by the motion of a devout will, namely so that he may not exist in himself, but subject himself to God. But this consideration stands conversely to the first; for of itself indeed it is apt to cause sadness, by thinking again upon one's own defects; but by accident it causes gladness, namely because of hope of divine assistance. And thus it is clear that delight (or gladness) follows upon devotion first and of itself; but secondarily and by accident, sadness, which is according to God" (II-II, q. 82, a. 4).

[1] Cf. Suarez, *De virtute et statu religionis*; Dignant, *De virtute religionis* (*Theologia Brugensis*); Bouquillon, *De virtute religionis*; Wirthmueller, *Die Tugend der Religion*; Vermeersch, *De virtutibus religionis et pietatis*.

[2] Cf. St. Francis de Sales, *Introduction to the Devout Life*.

Chapter II. On Prayer

580 Prayer can be defined with St. John Chrysostom: a conversation with God. Prayer is distinguished into meditative prayer, or meditation, and deprecative prayer. We shall speak of each separately.

Article I. On Meditative Prayer

581 Meditative prayer is when someone piously thinks about divine things. It is divided into speculative meditation, or simple meditation, and affective meditation, according as either the consideration of the mind or the affection of the will prevails.

Meditative prayer is called contemplation when man meditates on divine things by a simple intuition of truth and without discourse. Contemplation is called passive when the soul, aided by grace, in contemplating behaves passively, that is, when God himself infuses into the soul the species to be formed, which happens chiefly through the gifts of the Holy Spirit. In this passive contemplation properly seems to consist the mystical union of the soul with God (cf. St. Alphonsus, *Prax. Conf.*, n. 126 sq.).

Mystical union admits different degrees, which several reduce to four: simple union, full or perfect union, the union of ecstasy, and the union of marriage. Simple union consists in such a union with God as still admits wanderings of the mind; full union, in such a union as no longer admits wanderings of the mind, although the external senses and the motion of the body are not yet suspended. The union of ecstasy consists in such a union with God as not only does not admit wanderings, but also holds the external senses and the motion of the body suspended. The spiritual or consummated union of marriage consists in such a union with God by which the soul seems, as it were, to have been transformed into God, or in the fact that the soul senses that it has a participation in the acts of the divine nature (cf. St. Alphonsus, loc. cit.).

Authors dispute whether or not the soul, by a long exercise of active contemplation, can arrive at the lower degree of passive contemplation or mystical union; in other words, whether or not mystical contemplation is the normal evolution of the supernatural life.[1]

[1] Cf. Garrigou-Lagrange, *Perfection chretienne et Contemplation*, I, pp. 1-45; Maumigny-Richstaetter, *Katholische Mystik*, pp. 40-44; Van den Tempel, *Wetenschap der Heiligen*, chapters 10 and 11; Tanquerey, *Precis de Theologie ascetique et mystique*, 4th ed., p. 973.

Article II. On Deprecative Prayer

582 **I. Notion.** Deprecative prayer is defined by St. Thomas as: a petition of fitting things from God (II-II, q. 83, a. 1; St. Alphonsus, *Theol. Mor.*, III, pref.). It is said:

1. **Petition,** that is, the manifestation of our will; and indeed with a trusting desire of obtaining something, so that it is not simply a narration, but truly a motive cause.
2. **Of fitting things,** that is, of those things which can honestly be sought from God.

3. **From God;** for deprecation, as an act of the virtue of religion, is directed primarily to God, to be fulfilled by him himself.

583 **II. Division.** Deprecative prayer is divided:

1. Into internal and external prayer, according as we do not use, or do use, the external voice. External prayer, however, does not necessarily exclude application of the mind. It is disputed whether or not the sole use of words (with the intention, however, of obtaining something from God having been had and not retracted) suffices for prayer; in other words, whether or not internal attention[1] at least virtually persevering pertains to the essence of prayer. Several affirm, because when internal attention at least virtually persevering is lacking, there is mere battology. Others deny, relying on these reasons. First, it does not appear that a true petition is lacking if someone, though voluntarily distracted, from the intention of obtaining something utters words which have and retain a precatory sense. Then, if internal attention pertained to the essence of prayer, even involuntary distraction would stand in its way.

"They say," says St. Alphonsus, "that he who spontaneously distracts himself actually revokes the first attention and therefore does not satisfy, since he no longer prays; but he who is involuntarily distracted remains virtually attentive, and therefore prays and satisfies. I, however, confess my weakness: I have never been able to understand how attention can virtually remain in one who is distracted, even involuntarily. Indeed I understand well that intention, since it pertains to the will, when once it has been had and is not retracted, virtually perseveres in the effect or in the means undertaken, because these means proceed from that intention. But I do not understand how someone can be said to be virtually attentive to prayer, who has his mind occupied elsewhere. It will rightly be said that this one, involuntarily distracted after the intention of attending has been had and not retracted, wishes to attend; but it cannot be said that he attends when he is wholly wandering elsewhere. For just as it is repugnant to say that someone virtually understands what he reads when he does not actually understand, even if he had had the intention of understanding, so it is repugnant to say that one virtually attends who does not actually attend" (IV, 177). The first opinion seems more probable to St. Alphonsus, at least because of extrinsic authority (loc. cit.). Nevertheless the other is also held by him as sufficiently probable (III, 669).

2. Into private prayer, which is made by a man as a private person, in a private name; and public prayer, which is made by a legitimate minister of the Church, in the name of the Church. Thus a priest, alone in a desert praying the breviary, pours forth public prayers. On the contrary, if the same priest in the Basilica of St. Peter, in the midst of a gathering of men, silently prays the rosary, he pours forth private prayers.

3. Into continued prayer, which is made through more extended delays; and ejaculatory prayer, which we, in a certain way, dart forth very briefly and rapidly. This last prayer, frequently repeated, is very useful: both because often time is lacking for pouring forth continued prayers; and because attention, which is necessary for prayer, is more easily lost through more extended prayer; and because it is a very efficacious means for repelling temptations, and for preserving the intimate union of the soul with God.[2]

[1] Attention is distinguished as twofold, internal and external. Internal attention consists in the application of the mind to that which is being done. External attention consists in the fact that someone excludes external works with which

internal intention cannot be combined. Internal attention is threefold, namely superficial, literal, and spiritual, according as one attends to pronouncing the words well, to the sense of the words, or to other divine things.

[2] Let St. Augustine, Epist. 130, ch. 10, nn. 19-20, be read (ed. G., t. 2, col. 584).

584 **III. Object.** St. Thomas declares: "It is lawful to pray for that which it is lawful to desire" (II-II, q. 83, a. 6); these words agree plainly with the general rule stated in the Roman Catechism: "But whatever can rightly be wished, it is lawful to ask,... as those most abundant promises of the Lord testify: Whatever you wish, you shall ask, and it shall be done for you. For he promises that he will grant all things."[1] Therefore, just as within the order of divine Providence it is absolutely lawful to desire those goods by which we are beatified and by which we merit beatitude, so it is also lawful to ask the same things absolutely. But other goods we can neither lawfully desire nor ask except conditionally, namely insofar as they are helps by which we are aided to tend toward beatitude. Temporal evils, under the aspect of good, for an honorable and proportionate end, both for oneself and for others, can be the conditional object of prayer (St. Thomas, II-II, q. 83, a. 5; St. Alphonsus, *De Magno orat. Medio*, part I, ch. 3, n. 5 sq.).

[1] Roman Catechism, part IV, ch. IV, q. 1.

585 **IV. Morality.** 1. Prayer is an act of religion, and indeed of latria; this is clear from the fact that he who prays professes the power of God and his goodness (St. Thomas, II-II, q. 83, a. 3). If prayer is directed to the Saints, it is an act of hyperdulia if it is referred to the Blessed Virgin Mary, and of dulia if it is referred to other Saints (n. 400).

2. Prayer is necessary by necessity of means and of precept. But here by the name of prayer is understood formal, supernatural, and indeed deprecative prayer, whether mental or vocal. I say: a) formal, so that prayer included in every good work is excluded, insofar as every honorable work has an impetratory force; b) supernatural, because it is a means and work ordered to supernatural salvation; c) deprecative, so that it may be indicated that meditative prayer does not suffice; d) whether mental or vocal, since either one suffices. Therefore:

a) Prayer, as it has just been explained, is necessary by necessity of ordinary means, so that such prayer is the ordinary means by which an adult obtains eternal salvation. This is proved first from Sacred Scripture, which continually urges us to prayer, and indeed to this end, that we may be able to work our salvation;[1] there is added the authority of the holy Fathers and Doctors, who call prayer a necessary means for obtaining grace; and grace is necessary by necessity of means.

St. Augustine: "God wills to give, but only to the one asking."[2] And elsewhere: "It is established that God has prepared some things to give even to those not praying, as the beginning of faith; other things only to those praying, as perseverance unto the end."[3] St. Thomas: "Everyone is bound to prayer from the very fact that he is bound to procure spiritual goods for himself, which are given only divinely; whence they cannot be procured in any other way except by being asked from him" (in IV Sent., d. 15, q. 4, a. 1, ad 3). St. Alphonsus, that strenuous defender of the importance of prayer, writes: "Without me you can do nothing... But that help of grace, according to ordinary Providence, God does not grant except to those praying, according to the celebrated sentence of Gennadius: We believe that no one comes to salvation unless God invites him; that no one invited works out his salvation unless God helps him; that no one merits help except one praying. Therefore, posited on the one hand that we can do nothing without the help of grace, and on the other that that help is for the most part not granted

by God except to those praying, who does not see it to follow that prayer is altogether necessary for us unto salvation?" (*De Magno orationis Medio*, part I, ch. 1, pp. 635-636).

b) The necessity of precept follows from the necessity of means, and is declared countless times in Sacred Scripture.[4] Besides, note:

a) With respect to the time of fulfilling the precept of prayer, it must be said that it obliges sometimes of itself, sometimes by accident.

It obliges of itself: 1. at the beginning of moral life; 2. more frequently in life; 3. at the point of death, almost as was said about the theological virtues, because almost the same reason can be urged (n. 489).

It obliges by accident: 1. when a temptation presses which can scarcely be overcome otherwise; 2. when a great benefit somehow necessary for salvation (for example, the choice of a state of life) must be obtained from God; 3. when a community is placed in grave danger (St. Alphonsus, III, pref.; *Inst. Catech.*, part 1, ch. 1, n. 32; *De Magno or. Medio*, part I, ch. 3, § 4, n. 36).

According to St. Alphonsus and others, he sins gravely who neglects prayer for a notable time, say for two months, because it seems grave to omit for so long the most ordinary means of obtaining necessary graces (*Inst. Catech.*, p. 1, ch. 1, § 4). But prayer made when it obliges by accident should also be counted.

Finally there is not of itself an obligation of praying morning and evening; nevertheless that practice is very greatly to be inculcated, all the more because often (by accident, namely) it will not be omitted without venial sin. These things also hold concerning prayers before and after the more principal meals.

b) With respect to the persons to be invoked, first note that the doctrine which teaches that the invocation of the Saints is good and useful is proximate to faith from the Council of Trent.[5] But there is also an obligation of invoking them according to these words of St. Thomas:

"An order has been divinely instituted in things, according to Dionysius, so that through intermediates the lowest things may be led back to God. Whence, since the saints who are in the homeland are nearest to God, the order of divine law requires this: that we who, remaining in the body, are pilgrims from the Lord, be led back into him through the saints as intermediates. And this indeed happens when through them the divine Goodness diffuses its effect. And because our return into God ought to correspond to the procession of his good things to us, just as through the mediation of the suffrages of the saints the benefits of God come down upon us, so it is fitting that we be led back into God in order that we may again receive his benefits through the mediation of the saints; and thence it is that we establish them as intercessors for us with God, and as mediators, when we ask from them that they pray for us" (Sent., lib. IV, dist. 45, q. 2, a. 2). "But these things," adds St. Alphonsus, "if they must be affirmed of the Saints, will hold more strongly when we speak of the intercession of the divine Mother" (*De Magno or. Medio*, part 1, ch. 1, n. 26), since she has been constituted mediatrix of all graces. - There is no obligation of invoking souls detained in purgatory.

c) With respect to the persons for whom one must pray, a distinction must be made between private and public prayer. In private prayer one must pray for all wayfarers, because the precept of charity extends so widely; hence for oneself, for all the living, and for souls in purgatory (St. Thomas, II-II, q. 83, a. 7; IV Sent., dist. 21, q. 1, a. 1, sol. 2; St. Alphonsus, *De Magno or. Medio*, part 1, ch. 1, n. 17 sq.);

but not for the damned, as is clear, nor for the blessed, who have attained the term. But in order that there be an obligation of praying for a determinate person, a special reason of necessity, familiarity, or office must intervene. - In public prayer one must not pray for the excommunicated; priests can privately and with scandal removed apply Mass for them; but if they are to be avoided, only for their conversion (can. 2262).

[1] 1 Pet. 4:7; Matt. 26:41; Jas. 4:2.

[2] M.P.L. 37, col. 1324.

[3] M.P.L. 45, col. 1017.

[4] Luke 18:1; 1 Thess. 5:18; Col. 4:2.

[5] Sess. 25, decree on the invocation of the Saints.

586 **V. Efficacy.** By the efficacy of prayer is understood that force of prayer which is proper to it as prayer, not as a good work; this force of impetrating is founded not on the dignity of the prayer, nor on the merit of the work, but on the sole promise of God. Moreover prayer duly made is of infallible efficacy when someone prays for himself. This is clear from innumerable texts of Sacred Scripture.[1]

It is disputed whether the same must be said when someone prays for another living person who is well disposed. But it seems that this must be affirmed, because the texts of Sacred Scripture are universal. There is added that Sacred Letters continually urge prayer for others; by this they seem to suggest that even prayer of this kind is of itself certainly going to be heard (St. Alphonsus, *Op. asc.*, 3, pp. 59, 60, 63). Prayer for souls in purgatory[2] more probably infallibly profits some soul; nevertheless, not infallibly that soul for which in particular it is poured forth, although for the most part it will at least profit that soul somewhat.

[1] Jer. 33:3; Ps. 49:15; Matt. 7:7, 11; Luke 11:10; Matt. 18:19; Mark 11:24; John 14:14; 15:7; 16:23.

[2] Cf. St. Bellarmine, *De purgatorio*, lib. 2, ch. 16.

587 **VI. Conditions.** In order that prayer have the efficacy described, it is required that someone ask: 1. for a thing useful to salvation according to divine providence;[3] 2. with humility;[4] 3. with confidence;[5] 4. perseveringly[6] (St. Thomas, II-II, q. 83, a. 2, ad 2 and a. 15, ad 2; St. Alphonsus, *De Magno or. Medio*, part 1, ch. 3).

Nevertheless prayer poured forth without these due conditions is not always altogether useless, because even if it does not require an infallible effect from the fidelity of God, nevertheless often it obtains grace from God's mercy; as, for example, a sinner pouring forth a tepid prayer often through it receives grace for praying more fervently (St. Alphonsus, in Trent, sess. 6, n. 143).

Finally I note with St. Thomas: "If someone from set purpose wanders in mind during prayer, this is a sin, and impedes the fruit of prayer" (II-II, q. 83, a. 13, ad 3); namely, it is a venial sin because of a certain irreverence toward God. "But wandering of the mind which occurs apart from set purpose does not take away the fruit of prayer" (St. Thomas, loc. cit.).

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[1] Cf. John of St. Thomas, in II-II, q. 83; Monsabre, *La Priere*; Sertillanges, *La Priere*; Tillmann, *Das Gebet*; Massoulie, *Traite de la veritable Oraison*.

[2] Cf. Jansen, *Het smeekgebed*; Schmid, *Die Wirksamheit des Bittgebetes*.

[3] 1 John 5:14.

[4] Luke 18:14; Jas. 4:6.

[5] Mark 11:24; Jas. 1:6-7.

[6] Luke 11:8-9.

Chapter III. On Adoration

588 (St. Thomas, II-II, q. 84.)

Adoration is spoken of in three ways, namely: 1. for any veneration whatever shown to someone because of the excellence of dignity, whether he is God, an angel, or a man; 2. for every act of religion, whether internal or external, by which divine worship is shown to God; 3. for a certain distinct act of religion, as it is taken here. And it is an external act by which we show reverence to God through gestures of the body, for example by genuflecting, prostrating ourselves, and the like. But in order that it be a true act of religion, showing due worship to God, an internal act must be joined to it; nevertheless the name of adoration is not given to that internal act except insofar as it is included in the external act (St. Thomas, II-II, q. 84, aa. 1 and 2).

Section II. On Opposed Vices

589 By the first precept of the Decalogue there are forbidden: 1. superstition; 2. irreligiosity, insofar as it is contained in acts. Insofar as it is contained in words, for example blasphemy, it is opposed to the second precept.

"Superstition," says St. Thomas, "is a vice opposed to religion according to excess; not because it shows more in divine worship than true religion does, but because it shows divine worship either to one to whom it ought not, or in a way in which it ought not" (II-II, q. 92, a. 1). Irreligiosity is opposed to religion as by defect, and it has place when someone treats God or sacred things contemptuously or irreverently (St. Thomas, II-II, q. 97, pref.; St. Alphonsus, III, pref.).

Chapter I. On Superstition

590 Superstition is vicious religious worship. Now this vicious worship can regard both God and a creature. "For divine worship can be shown either to him to whom it ought to be shown, namely the true God, yet in an undue manner; and this is the first species of superstition: or to one to whom it ought not to be shown, namely to any creature whatever; and this is another genus of superstition, which is divided into many species" (St. Thomas, II-II, q. 92, a. 2; St. Alphonsus, III, 2).

Article I. On Vicious Worship of God

591 **I.** Vicious worship of God is either false or superfluous.

1. It is false when someone worships God by signifying something false. This is done: 1. by one "who now offers worship to God through the ceremonies of the old law, for example circumcision, the immolation of the lamb, etc.," because these signify that Christ is still to come and has not yet come; 2. by a layman who worships God as though he were a public minister of the Church, for example by sacrificing, absolving, etc.; 3. by one who on his own authority proposes that certain things be done as though they had been ordained by the Church for the worship of God; 4. by one who proposes false relics, or pretends that he has had these or those revelations, whether to make

profit or to increase devotion; 5. by one who, in order to move the people, pretends that some miracle or history is found in Sacred Scripture, etc." (St. Alphonsus, III, 3).

2. Superfluous worship according to St. Thomas occurs when in the worship of God something is done which either is in itself empty or ridiculous, or is apart from the institution of God or of the Church, or is opposed to common custom. "If," says the holy Doctor, "there is something which, so far as it is of itself, does not pertain to the glory of God, nor to this, that the mind of man be borne toward God, or that the disordered concupiscences of the flesh be restrained; or even if it is apart from the institution of God and of the Church, or against common custom, which according to Augustine is to be held as law, all this must be accounted superfluous" (II-II, q. 93, a. 2).

Hence St. Alphonsus: "Superstition of superfluous worship is, for example: 1. the ceremony of hearing Mass before sunrise, with a certain number, arrangement, or order of candles, or of a priest who is called John, or who has the stature of Christ, etc.; because this worship is in itself empty and useless for arousing the spirit; 2. to fast on Sunday when you do not fast on other days; 3. likewise in Mass, contrary to the rubric, to form more crosses, to say alleluia more times, to say the Gloria or Creed contrary to the rubrics, or to remove or add other ceremonies, even if they are done out of devotion; for this devotion must be corrected. Because these things are apart from the custom of the Church" (St. Alphonsus, III, 4).

II. False worship commonly involves grave sin, because it commonly contains grave irreverence (St. Alphonsus, III, 3). I said commonly, because sometimes smallness of matter is admitted, as if someone on one or another occasion were to narrate a fictitious miracle.

Superfluous worship is for the most part evil only venially; for since it exceeds only in the mode, it commonly does not contain grave irreverence toward God. It can, however, be gravely evil, for example by reason of scandal, or of a grave ecclesiastical precept violated, or of the baseness of the act, as if a lascivious song were inserted into the divine offices (St. Alphonsus, III, 4).

Article II. On Vicious Worship of a Creature

Idolatry and superstitious observance render vicious worship to a creature.

§ I. On Idolatry

592 **I. Notion.** Idolatry occurs when divine honor is shown to a creature, for example to a demon. It is the same by what sign the honor is shown, whether by sacrifice or genuflection, etc., provided that the sign placed signifies divine honor either from the intention of the agent or from common estimation (St. Alphonsus, III, 12).

593 **II. Division.** Idolatry is twofold, formal and material or simulated, according as it is committed with the intention of adoring, or without that intention, as if someone out of fear adores an idol. Formal idolatry is perfect or imperfect according as one intending adoration holds the creature for God, or does not hold it for God, but for example adores it out of hatred toward God.

594 **III. Morality.** 1. Idolatry is a most grave sin, because it bestows divine honor on a creature and thus, "so far as is in itself, makes another God in the world, diminishing the divine sovereignty" (St. Thomas, II-II, q. 94, a. 3).

2. Idolatry differs in species from superstitious observance, insofar as the former involves a sin of infidelity or heresy, or at least is opposed to the profession of faith (St. Alphonsus, III, 13).

§ II. On Superstitious Observance

Point I. On Superstitious Observance in General

595 **I. Notion.** Superstitious observance occurs when someone does not indeed show divine worship to the demon, but nevertheless "assumes the help of demons for doing or knowing something" (St. Thomas, II-II, q. 95, a. 2). Moreover, the help of demons can be invoked and assumed both explicitly and implicitly.

Explicit invocation, besides by other modes, also has place when someone uses a means or sign concerning which he has come to an agreement with the demon; or has in any way entered into a pact with the demon, so that he may be helped by him. Implicit invocation has place when someone, in order to obtain something, uses a means which neither of itself nor from divine or ecclesiastical institution is apt for producing the effect, so that, if the effect follows, it must be ascribed to the devil (St. Alphonsus, III, 6, 14).

596 **II. Signs for discerning superstitious observance** are: 1. "The insufficiency of the cause applied for the effect; namely if it has neither natural power, nor is there legitimate evidence of a supernatural power; 2. the addition of a false or vain circumstance; as, for example, if a scourging must be done at a certain hour, number, hand, or with a silken scourge; if unknown names are used, or foreign characters, false or apocryphal words, for example that Christ had fevers or spasm, etc. Likewise if force is placed in the mode of writing, for example the Gospel of St. John, by a virgin, at sunrise, etc." (St. Alphonsus, III, 16; St. Thomas, II-II, q. 96, a. 2, ad 1); 3. a certain expectation of the effect.

597 **III. Morality.** 1. Superstitious observance of itself is a grave sin. For first, Sacred Scripture declares that divination, which is a mode of superstitious observance, is an abomination to God;[1] and this must also be applied to the other modes of superstitious observance, since they do not differ in species, as we shall note soon. Then, an act which involves no other than hostile commerce with a person who has been forever reprobated and condemned by almighty God, such an act, I say, inflicts grave injury on God. But such an act is contained in superstitious observance, as is clear from the notion handed down (St. Alphonsus, III, 5).

I said that superstitious observance of itself is gravely evil; for implicit invocation not at all rarely is not gravely sinful, namely: 1. because of ignorance, since many do not notice that the means are inept; 2. because of the absence, and indeed the manifest absence, of a serious intention, as if someone even externally acts only for the sake of a joke; 3. because of defect of deliberation, as if someone, disturbed by fear of a grave evil, uses an inept means; 4. because of defect of faith given to the event (St. Alphonsus, III, 7, 15).

2. Explicit and implicit invocation of the demon do not seem to differ in species, because the same account belongs to the explicit and the implicit. The same must be said a fortiori of the diverse modes among themselves both of explicit and of implicit invocation. Yet commonly in confession it must be expressed "whether an express or tacit invocation or pact intervened... because express invocation often has other sins joined to it, namely heresy, adoration of the demon, etc." (St. Alphonsus, III, 6).

3. In doubt whether an effect can be ascribed to a natural cause, it is lawful to use the means, at least if a protestation against diabolical intervention is first made. For since the powers of natural causes are wonderful and very often unknown even to the learned, there is no reason for presuming diabolical intervention. This being posited, no irreverence toward God is found in our manner of proceeding (St. Alphonsus, III, 20).[2]

But in doubt whether the effect must be ascribed to God or to the demon, it is not lawful to use the means, both because in the case the effect "is judged rather to come from the demon than from God" (St. Alphonsus, loc. cit.), who does not work such things except exceptionally; and because commonly there will be, for we suppose that the effect is intended as to be produced by God and not by the demon, a temptation of God, namely an inordinate petition or expectation of a miracle (n. 608).

[1] Deut. 18:10-12.

[2] Cf. Holy Office, July 26, 1899 (*Collectanea de Propaganda Fide,* n. 2061).

598 **IV. Penalties.** One who has practiced superstition or has perpetrated sacrilege is to be punished by the Ordinary according to the gravity of the fault, without prejudice to the penalties established by law against certain superstitious acts or sacrileges (can. 2325).

Point II. On Superstitious Observances in Particular

599 The species of superstitious observance are distinguished as divination and vain observance. Yet these differ only by reason of the material object, not by reason of the formal object, or specifically; for under the moral aspect it is the same whether knowledge (divination) or some other thing (vain observance) is acquired by the help of the demon.

600 **I. Divination** is superstitious observance which seeks knowledge of a future or hidden thing.

"It is called an oracle if it is done through idols; necromancy especially if through an apparent raising of the dead, for necromancy generally also comprehends other species of divination; oneiromancy if it is done through dreams; prestidigitation if through fictitious figures; haruspicy if through signs in the entrails of animals; geomancy if through a figure in the earth; hydromancy through a figure in water; aeromancy in the air; pyromancy in fire; astrology if it is done through the positions and movements of the stars; auspice through signs of birds; augury through signs of animals; omen if it is done through chance, for example through the meeting of a funeral, etc.; sortilege if it is done by lot, for example by opening a book, throwing dice" (St. Alphonsus, III, 6; St. Thomas, II-II, q. 95, a. 3).

Corollary I. The use of lots must be judged as follows:

1. Divisory lots, that is, those instituted for dividing things or composing disputes, are of themselves lawful, because they contain nothing except an aleatory contract (St. Alphonsus, III, 11).

2. Consultory lots, that is, those instituted for consulting God in a doubt about what must be done, "are lawful when the necessity and honesty of the cause demands it, and no more suitable mode of overcoming the doubt appears, provided they are done after prayer has been offered with due reverence, and judgment is expected from God alone; as, for example, if someone stuck at a fork in the road cannot otherwise determine himself concerning the way; or if they are done by divine instinct or command, as happened in the election of Saul" (St. Alphonsus, loc. cit.; cf. 1 Sam. 10:20-21). In the cases set forth, an act of ordered trust in God is found.

3. Divinatory lots are those which, outside the cases comprehended under 2, are instituted for obtaining knowledge of a hidden thing, as if someone were to draw from the casting and arrangement of dice who is going to obtain victory. Such lots, since they are inept for obtaining knowledge of this kind, are superstitious (St. Alphonsus, loc. cit.).

Corollary II. Consultation of soothsayers, that is, of those who manifest hidden or future things from cards or other things, is a grave sin: 1. if it is done seriously, even if only externally; 2. if the soothsayer acts seriously, even if only externally. For in this hypothesis the one consulting formally cooperates in a gravely evil act (St. Alphonsus, III, 10). But more often, for example during Carnival time, these things are not done seriously.

Corollary III. The use of a divining rod or of another instrument for detecting metals or waters is lawful, because the means seems apt for the intended end. The same must be said of telepathy, as it is called, that is, of the art of exploring the thoughts of others or other hidden things;[1] for it is by no means evident that the said art exceeds the powers of human nature (n. 597).

Corollary IV. One who gives some credence to a dream, and conducts himself according to it, is free from superstitious observance: 1. if it is at least permissible to suspect that the dream is from God; 2. if it is not evident that such a thing cannot be explained naturally, for example through telepathy. For the efficacy of natural powers is wonderful. How many effects are now ascribed to those powers which formerly were held certainly to be diabolical. Nevertheless, note in general that dreams themselves rarely come either from God or from the demon, but almost always from nature. "When God sends dreams, at the same time he also makes the man certain or nearly certain that they are sent by himself" (St. Alphonsus, III, 9).

[1] Cf. J. Zeehandelaar, *Over de mogelijkheid van Telepathie*.

601 **II. Vain observance.** By this term is signified superstitious observance which seeks any effects whatever, except knowledge of a hidden or future thing. It is called magic insofar as it seeks wonderful effects; malefice insofar as it seeks effects harmful to another, for example by inspiring a base love in someone, inflicting disease, etc. But it is clear that malefice is opposed not only to religion, but also to justice (St. Alphonsus, III, 23).

Corollary I. Vain observance is: 1. "To wear amulets, bindings, and packets marked with false characters, against wounds or sudden death, so that they cannot be harmed, or so that blood may not flow, or for procuring invisibility, impenetrability, love, fortune, harms, and malefices" (St. Alphonsus, III, 17); 2. "to hold certain days as lucky and others as unlucky, and therefore to omit business" (St. Alphonsus, loc. cit.), etc.

Corollary II. Vain observance is not: 1. to wear relics, scapulars, pious medals; 2. in honor of some mystery to perform devotions which they call novenas, or to pour forth prayers in a certain number; 3. to observe the moon or times more suitable for gathering herbs and cutting trees (St. Alphonsus, loc. cit.).

Corollary III. Somnambulism, that is, the art by which someone, after magnetic sleep has first been induced, becomes capable of indicating diseases and assigning remedies, as it is ordinarily practiced, is lawful. For somnambulists commonly make a diagnosis of a sick person who is present; or indeed of one who is absent, but after touching either some thing, for example hair, belonging to the sick person, or at least the image of the sick person. But these things very probably do not exceed the powers of

nature. I said as it is ordinarily practiced, because things can be added which are spiritistic; in which case apply what we shall say about spiritism.[3]

Corollary IV. Salvatorism, as it is called, consists in this, that someone, by pouring forth certain prayers or by the sign of the cross, quickly cures diseases or wounds. Moreover, in practice it is lawful, provided the healer does not use an inept means, nor add anything inept, nor cling to determined words as though every power were to be attributed to the words themselves. The reason is that, if the conditions set forth are observed, it can be presumed that the effect can be ascribed to the grace of healings or to a special hearing of prayers; at least it is not sufficiently evident that the effect must be attributed to the demon (St. Alphonsus, III, 18).

Corollary V. To set a table or boards in motion in a circle, with fingers placed upon them, is of itself lawful, because the effect seems to be ascribed to a natural cause. By accident it can be unlawful because of the danger of passing over to the practice of spiritism. It is also unlawful to use a rotating board which writes a response, for acquiring knowledge of a hidden or future thing.

Corollary VI. Religious worship of ancestors, such as is found among many barbarians, so that by their help evils may be averted or goods acquired, this worship, I say, must be reduced to commerce with the devil and therefore is superstitious. For the inhabitants of heaven do not involve themselves in this worship. But the damned, neither of themselves nor commonly from divine providence, can provide for men; and, besides, commerce with the damned is equated with commerce with the demon.

Corollary VII. It is lawful to remove a malefice inflicted on someone, either by destroying the sign by which, once it has been placed, the demon harms; or by placing a contrary sign by which the demon, in view of his pact, is compelled to abstain from inflicting evil. It is also lawful to ask the worker of malefice to remove the malefice, if he can accomplish this by a lawful means. But if it is feared that he will use an unlawful means, for example a new malefice, that may be permitted. If it cannot be removed by a lawful means, recourse can be had to means of a higher order, for example to exorcism (St. Alphonsus, III, 24 sq.); the latter is always preferable, because recourse to the worker of malefice is very dangerous.

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[1] Cf. St. Thomas, II-II, qq. 92-96; St. Alphonsus, *Theologia Moralis*, lib. III, nn. 1-28; *Homo Apostolicus*, tr. 4, nn. 34-37.

[2] Cf. F. Walter, *Aberglaube und Seelsorge*.

[3] Cf. Holy Office, August 4, 1856 (*Collectanea*, n. 1128).

Scholion I. On Hypnotism

602 **I. Notion.** Hypnotism, taken actively, is the art of producing artificial sleep or a state similar to sleep, in which the faculties of the hypnotized person, the faculties, I say, of the sensitive part of the soul, are subject to the direction of the hypnotizer. Taken passively, it is the sleep itself or the state similar to sleep.

603 **II. Morality.** 1. Hypnotism, that is, both the exercise of it and recourse to it, as it is ordinarily practiced, is free from superstition. For it is sufficiently evident that the phenomena of hypnotism, as they commonly occur, are natural. So say almost all who have examined this matter more deeply. And indeed the aforesaid phenomena are similar or nearly similar to those which even outside hypnosis are sometimes detected in certain sick persons, sleeping persons, somnambulists, hallucinating persons, and delirious persons, etc. Moreover, the fact that the hypnotized person afterward does the things

which were suggested or imposed upon him in the hypnotic state is easily explained. Namely, when the appointed time has arrived, the suggestion is aroused and the same state of hypnosis is induced wholly or partly, and thus it happens that he now fulfills the command imposed at the time of the former hypnosis.

I said as it is ordinarily practiced, because certain things are said sometimes to occur which, if they have place, seem to exceed natural powers; for example, distinctly to utter continuous words never heard in an unknown language. But the things which cannot be attributed to natural powers must certainly be ascribed to the demon, since God, the Angels, or the Saints do not involve themselves in foolish things of this kind.

2. Hypnotism, although free from superstition, is nevertheless unlawful without a grave cause; it becomes lawful for a grave cause, provided due precautions are applied. The reason for the former is that the hypnotized person, because the use of reason and free will has been removed or at least diminished, is plainly, or at least more than is fitting, subjected to the will of another. The reason for the latter is that there is an act not evil in itself, which equally immediately produces a good effect, that is, the capacity of receiving wholesome impressions or suggestions, and an evil effect; indeed the evil effect seems of such a kind that it would be lawful, even through its mediation, to obtain the good effect (n. 60). Moreover:

a) Grave causes are, for example, a disease to be cured when another harmless and equally secure means for curing it is lacking; the advancement of science; a depraved habit, or even scruples, to be put away. It is not lawful to use hypnotism for extorting the confession of a thing; cf. the duties of judges. Moreover, in order that it be lawful to cast someone into hypnosis, the consent of the person to be hypnotized is required; otherwise injustice is committed, namely because of the induced privation or diminution of the use of reason and free will.

b) The precautions to be used consist in this, that one approach a skilled and upright physician, who namely will not abuse his power. It is most strongly to be advised that a witness be present. But the physician should carefully weigh "whether the evils which are cured by hypnotism are greater than those which will naturally follow it. For it is established that through hypnotism the common system of the nerves suffers an anomalous and of itself harmful affection; this does not prevent a certain morbid condition of the nerves from being able to be removed by hypnotism, though with detriment to another part to arise."[1]

Note. Animal magnetism or Mesmerism, Braidism (from their inventors Mesmer and Braid), and hypnotism do not differ formally, or at least under the moral aspect; so it suffices to have spoken about hypnotism.

[1] Lehmkuhl, I, 502.

Scholion II. On Spiritism

604 **I. Notion.** Spiritism is the art, whether true or pretended, of evoking spirits and communicating with them. The evocation and communication ordinarily does not take place except through a medium, as it is called; and indeed this medium at the time of the communication is held in hypnosis induced by the spiritistic leader. As to the phenomena which are reported to have happened in spiritistic gatherings, it is certain that very many are frauds and are to be ascribed to the dexterity of the trickster or medium. Yet certain things seem to have taken place which seem to require diabolical intervention.

605 **II. Morality.** Spiritism, or the act of evoking spirits and communicating with them, involves, or must be reduced to, commerce with the devil, and therefore is superstitious. The antecedent is clear from the fact that angels and holy souls do not respond to foolish evocations of this kind. But the souls of the damned, neither of themselves nor commonly from divine providence, can communicate with men; and besides, commerce with the damned is equated with commerce with the demon. Nor is it sufficient for one evoking a spirit to protest against diabolical commerce, since the fact is contrary to the protestation.[1] There are added the testimonies of Sacred Scripture,[2] of the Councils,[3] of the Supreme Pontiffs,[4] and of the Holy Office.[567]

Corollary I. It is gravely unlawful to attend spiritistic gatherings, whether one attends with a spiritistic intention, that is, from a desire of seeing, hearing, or consulting spirits, or without that intention. For in the former case there is the same sin as in the act of evoking spirits. In the latter case there underlies grave scandal, and not at all rarely danger to faith, etc. Moreover, the Holy Office prohibited attendance, even merely passive attendance,[6] and finally, to the doubt: "Whether it is lawful through a Medium, as they call it, or without a Medium, hypnotism having been used or not, to attend any spiritistic locutions or manifestations whatever, even those presenting an appearance of honesty or piety, whether by interrogating souls or spirits, or by hearing responses, or only by looking on, even with a tacit or express protestation that one wishes to have no part with malignant spirits"; to that doubt, I say, it responded: "In the negative in all cases."[7] But if someone judges that he has a grave reason for departing from this norm, for example a learned man who wishes to attend a spiritistic gathering for the sake of study, he will usefully consult the Ordinary before carrying out his proposal.

Corollary II. With explicit evocation of spirits always excluded, it is not unlawful for a just cause to attend, even actively, gatherings, especially private ones, which have the appearance of spiritistic gatherings to this extent, that wonderful things are produced there, such as the rotation of a table, etc., provided nevertheless it is probable that all things are to be ascribed to a natural cause (n. 597). Apply these things also to ouija boards, as they are called. Nevertheless it is preferable to turn the faithful away from gatherings and experiments of this kind, because a passage to spiritistic things is to be feared.

Corollary III. What has been said about the morality of spiritism must also be applied to occultism. These seem to differ to this extent, that spiritism openly professes the evocation of spirits and teaches that responses are obtained and wonderful things are done by evoked spirits; occultism insists more on pseudo-scientific explanations. But under the moral aspect there is scarcely any difference.

[1] Cf. Holy Office, April 1, 1898 (*Collectanea*, n. 1994).

[2] Deut. 18:9.

[3] Cf. *Decretum Gratiani*, Causa III, q. 5, c. 9; Causa XXVI, q. 5, cc. 1 and 2; 5-10; likewise *Decretals*, V, 21, cc. 1-3.

[4] John XXII, *Super illius specula*, 1326; Gregory XV, *Omnipotentis*, 1623, etc.

[5] August 4, 1876 (*Collectanea*, n. 1128).

[6] April 1, 1898 (*Collectanea*, n. 1994).

[7] April 24, 1917 (*Acta Apostolicae Sedis*, 1917, p. 268).

Chapter II. On Irreligiosity

606 The sins of irreligiosity committed by acts are: the temptation of God, sacrilege, and simony.

Article I. On the Temptation of God

(St. Thomas, II-II, q. 97; St. Alphonsus, *Theologia Moralis*, lib. III, nn. 29-32; *Homo Apostolicus*, tr. 4, n. 38.)

607 **I. Notion.** The temptation of God is an act by which someone makes trial of God, for example by asking for a miracle in order to test whether God is omnipotent.

608 **II. Division.** The temptation of God is distinguished into properly so called and less properly so called.

Properly so called occurs when someone, doubting or distrusting some perfection of God, asks something from God or does something for this end, that he may test whether God possesses that perfection. Less properly so called has place when someone, without doubt about some divine perfection, either a) inordinately asks (or expects) a manifestation of the divine will or perfection, resting in it; as if someone asks for a miracle so that he may be a witness of an extraordinary fact of this kind; or b) inordinately or rashly asks (or expects) something from God, yet not in order to test some divine perfection, nor to obtain a manifestation of the divine will or perfection as such; as if a sick person, neglecting medicines, asks for health (cf. St. Thomas, II-II, q. 97; St. Alphonsus, III, 29).[1]

[1] Others distinguish the temptation of God into formal and interpretative. They call it formal when someone explicitly intends to test some divine perfection. They call it interpretative when someone, although he does not explicitly intend that, nevertheless proceeds in such a way that the act must be reduced to an exploration of a divine perfection. Yet not all agree in explaining these things.

609 **III. Morality.** The malice of the temptation of God consists in an injurious manner of treating God. Namely, one deals with God as though he were a performer who, without reason, manifests his perfections and wills, or as though, when the ordinary means of obtaining something from him have been neglected, he nevertheless bestows it. Moreover:

1. The temptation of God properly so called is a grave sin from its whole genus. For it is grave irreverence to ask or expect something from God with the mind of testing his perfection. There is added a sin against faith (St. Alphonsus, III, 30).
2. The temptation of God less properly so called is a grave sin from its genus, that is, grave or light according as someone inordinately asks or expects a miraculous or non-miraculous effect of the divine will or perfection (St. Alphonsus, loc. cit.). The former had place in ordeals, as they are called, which consisted in this: that in a criminal case a request was made of God that he declare the accused either innocent or guilty through a trial of fire or water or through similar experiments. The latter would happen if someone seized by a lighter illness, neglecting every means, asked health from God. Besides, the temptation of God, objectively mortal, not at all rarely is venial because of inconsideration, simplicity, etc. (St. Alphonsus, III, 30).

Corollary. "One sins who absolutely asks from God, or offers, a miracle for the conversion of heretics, since the testimonies of our faith suffice... But if at some time there is a very firm hope of conversion, then a miracle will be able to be asked from God under the condition, if it pleases him" (St. Alphonsus, III, 31).

Article II. On Sacrilege

(St. Thomas, II-II, q. 99; St. Alphonsus, *Theologia Moralis*, lib. III, nn. 33-48; *Homo Apostolicus*, tr. 4, n. 39.)

§ I. On Sacrilege in General

610 **I. Notion.** Sacrilege is the violation of a sacred thing insofar as it is sacred. It is said:

1. **Violation;** in what ways this can have place will be said immediately.
2. **Of a sacred thing;** but the word thing is taken broadly for anyone or anything that is sacred.
3. **Insofar as it is sacred.** Namely, not every violation or irreverent treatment of a thing which is sacred is sacrilege, but only when a sacred thing is violated in that in which it is sacred, or when "one acts directly against its holiness" (St. Thomas, II-II, q. 99, a. 3, ad 3). For this reason it must be carefully noted to what a thing has been sanctified, and whether action is taken against that. Thus, for example, a religious through a solemn vow of chastity has been sanctified for cleanness of the flesh, and therefore he will be sacrilegious if he fornicates; otherwise if he detracts, lies, perjures himself, etc., because he has not been sanctified for these things[1] (St. Alphonsus, III, 33).

[1] Cf. Cajetan, in II-II, q. 99, a. 3.

611 **II. Division.** Sacrilege is distinguished as threefold: "personal, by which a person is violated; local, by which a place is violated; and real, by which other things are violated" (St. Alphonsus, III, 33).

612 **III. Morality.** The malice of sacrilege consists in this, that irreverence toward a sacred thing redounds upon God himself (St. Thomas, II-II, q. 99, a. 1). But it is a special sin distinct from other sins opposed to religion. For "wherever a special account of deformity is found, there it is necessary that there be a special sin, because the species of anything is chiefly considered according to its formal account...; but in sacrilege there is found a special account of deformity, namely that a sacred thing is violated by some irreverence; and therefore it is a special sin" (St. Thomas, II-II, q. 99, a. 2). Moreover:

1. Sacrileges for the most part are gravely evil; nevertheless some admit smallness of matter, as for example sacrilegious theft.
2. The sacrileges enumerated above, according to authors, differ in species, because they violate holiness formally diverse. Namely, formal holiness inheres in persons; but holiness in a qualified sense inheres in places and things; in places, indeed, insofar as they contain holy things; in things, insofar as they are referred to the sanctification of man. Moreover, these things are explained otherwise by others (St. Alphonsus, III, 33; cf. St. Thomas, II-II, q. 99, a. 3), and especially if there is speech about places and things, they are truly difficult to understand. Who, for example, will have clearly perceived the specific difference of sacrilege in the violation of a sacred place, in the taking away of an ecclesiastical good, in the act of perverting the words of Sacred Scripture, etc., etc.? Yet I hesitate to depart from the opinion which seems common.
3. The species enumerated above seem to be the lowest, so that each does not have diverse species under itself. The reason is that the diverse modes by which a person, place, or thing is violated violate one and the same holiness of the person, place, or thing, and therefore agree according to the formal account of sacrilege (St. Thomas, II-II, q. 99, a. 3, ad 3; St. Alphonsus, III, 34). Hence

one who, for example, violently treats a cleric commits a sacrilege of the same species as one who lies with a person bound by a public vow of chastity.

4. With respect to the greater or lesser malice of individual sacrileges, I note:

a) Personal sacrilege of itself is graver than local sacrilege, because the holiness of a place is ordered to the holiness of the person who shows worship to God in a sacred place; concerning real sacrilege, the same cannot generally be said.

b) In the individual species there are diverse grades according to the diversity of persons, places, and sacred things. But among sacred things are contained the sacraments, sacred vessels, images, relics, ornaments, and ecclesiastical goods (St. Thomas, II-II, q. 99, a. 3).

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[1] Cf. Antonelli, *Medicina pastoralis*, II, c. 2; Coconnier, *L'hypnotisme franc*; Gutberlet, *Der Kampf um die Seele*, eighth lecture; Schutz, *Der Hypnotismus*; *N. K. Stemmen*, 1906, p. 218.

[2] Cf. Holy Office, August 4, 1856 (*Collectanea*, n. 1128); July 26, 1899 (*Collectanea*, n. 2061).

[3] Cf. Antonelli, *Medicina pastoralis*, I, n. 227 sq.; Schneider, *Der neuere Geisterglaube*; Surbled in *Ami du Clerge*, 1901, p. 470; *Ned. Kath. Stemmen*, 1906, p. 337; 1916, p. 343 sq.; 1917, p. 143 sq.; Roure, *Le merveilleux spirite*.

§ II. On Sacrileges in Particular

Point I. On Personal Sacrilege

613 **I.** A person becomes sacred from the fact that he is deputed by public authority to divine worship. Such are clerics and those who share their privileges, namely male and female religious and their novices (can. 614, 490), pious associates living in common, of whom title XVII of the Code treats (can. 680), and likewise one who has emitted a public vow, whether solemn or simple, of chastity.

614 **II. Personal sacrilege is committed:**

1. By violating the privileges of clerics, which are the privilege of the canon, of the forum, of personal immunity, and of competent benefice (cf. can. 119-123). But the violation of the said privileges contains sacrilege, not because the person under the aspect of the privilege is deputed to divine worship, but because a right is granted to him from a motive of religion; and this is something sacred, annexed to the person, so that the person is violated if the right is violated.
2. By luxuriously violating a sacred person, one's own or another's, whether by reason of a vow of chastity emitted, or by reason of major Order received. It is said:

a) **A sacred person by reason of a vow of chastity emitted.** Now a person certainly becomes sacred through a public vow of chastity, whether solemn or simple. Canon 132 indeed speaks only of the obligation of chastity annexed to major Orders; but it is commonly extended to all public vows of chastity, or in other words also to the vow of chastity of religious. There is dispute concerning a private vow of chastity (cf. St. Thomas, II-II, q. 99, a. 3, ad 3; in IV Sent., dist. 38, q. 1, a. 3, quaestiunc. 2, ad 1; St. Alphonsus, III, 47). Some affirm and judge that a peculiar holiness belongs to the body by the very fact that through a vow of chastity it is dedicated to God. Others deny this, because in their opinion a person, in order to become sacred, must be deputed by public authority to divine worship. In this opinion the violation of a public and a private vow differ in species, because in the former there is true sacrilege, in the latter another sin against religion, so that it would not suffice to confess that one was bound by a vow. Yet carnal sacrilege does not differ in species according as it was committed by a

person bound by a solemn vow or by a person bound by a simple public vow, for example a religious of simple vows. Finally, the violation of a vow other than chastity does not involve sacrilege (St. Alphonsus, III, 47).

b) **A sacred person by reason of major Order received** (can. 132, § 1). Major Order received suffices, even if someone in receiving major Order had excluded the vow of chastity.

c) **By luxuriously violating.** Moreover, both an internal and an external act of lust violates one's own person; only an external act violates another person.

Corollary. Personal carnal sacrilege is perpetrated by: 1. a sacred person[1] who sins against chastity; 2. every person who commits lust with a sacred person; if each is sacred, each is guilty of a twofold sacrilege; 3. a sacred person who, from an affection of lust, gives another person an occasion of sinning against chastity. It must be said sufficiently probably otherwise if he proceeds from another motive. The reason is that an absolute affection of lust is specially repugnant to the holiness of the person, but not, sufficiently probably, an affection in a qualified sense, such as is involved in an act by which a sacred person, from a motive other than lust, gives someone an occasion of violating chastity (St. Alphonsus, III, 457).

One who is at the same time a priest and a religious can indeed be called a sacred person by a twofold title; nevertheless, by sinning against chastity he commits only one personal carnal sacrilege, because the communicated holiness is not distinguished as twofold (St. Alphonsus, III, 455).

[1] Understand here and in what follows a sacred person, whether by reason of a vow of chastity or by reason of major Order received.

Point II. On Local Sacrilege

615 **I.** Sacred places are those which are deputed to divine worship or to the burial of the faithful by the consecration or blessing which the approved liturgical books prescribe for this (can. 1154). Moreover:

1. To this belong: 1. churches; 2. public oratories; 3. semi-public oratories blessed in the manner of churches; 4. cemeteries. But a sacred place, at least insofar as there is question of local sacrilege, should be taken strictly, that is, with the atrium, tower, sacristy and other annexed rooms, roof, upper part of the inner vault, and crypt beneath the pavement excluded.
2. To this do not belong: 1. semi-public oratories which have not been blessed in the manner of churches; 2. private or domestic oratories.

616 **II. Local sacrilege is committed:**

1. By violating a church, public oratory, or cemetery in such a way that they need reconciliation. But the violation of which we speak is done through the acts to be enumerated below, provided they are certain, notorious, and placed in the sacred place itself (can. 1172, § 1). They must be notorious, that is, either publicly perpetrated or afterwards made public. It does not suffice that they be known to a few, say three or four, even if they can be juridically proved (VI, 364). They must be placed in the sacred place itself, strictly taken. But the acts, according to the cited canon, are:

a) Homicide mortally evil. Here, however, with respect to place, note that it suffices, but is also required, that the crime be committed against a man existing in the sacred place. Therefore it does not suffice that the killer, existing in the sacred place, kill someone standing outside the sacred place; but it

does suffice that one standing outside the sacred place kill another existing in the sacred place. Yet it is not required that death itself follow in the sacred place (St. Alphonsus, VI, 364).

b) A notable and gravely culpable shedding of blood. Here, however, as was said about homicide, it again suffices, but is also required, that the crime be perpetrated against a man standing in the church (St. Alphonsus, VI, 365).

c) An impious or sordid use, for example if heretical worship is exercised in the sacred place, or if it is turned into a stable (St. Alphonsus, III, 37).

d) Burial either of an infidel or of an excommunicated person after a declaratory or condemnatory sentence, with the exception, according to many, of catechumens and of an infant whose parents, or at least one of them, is a member of the faithful (St. Alphonsus, VI, 366).

Note. When a church has been violated, the cemetery is not therefore judged violated, even if contiguous, and conversely (can. 1172, § 2).[1]

2. By violating the right of asylum, which belongs to a church (can. 1179) and to a public oratory (can. 1191, § 1). The right of asylum consists in this, that accused persons who have fled to a church or public oratory are not to be removed from it, unless necessity urges, without the consent of the Ordinary, or at least of the rector of the church or public oratory (cited canon).

3. By breaking into or setting fire to a church, public oratory, or semi-public oratory blessed in the manner of churches.

4. By stealing from a church, public oratory, or semi-public oratory blessed in the manner of churches, a thing which has been entrusted to its custody or loaned for its use (St. Alphonsus, III, 39).

5. By exercising in a church, public oratory, or semi-public oratory blessed in the manner of churches, profane acts which are repugnant to the holiness of the place (cf. can. 1178). Such are banquets, profane games, trading, and fairs (cf. cited canon); likewise walking about during the divine offices, which nevertheless do not easily become mortal (St. Alphonsus, III, 36, 37; cf. St. Thomas, on 1 Cor., ch. 11, lect. 4).

6. By committing in a church, public oratory, or semi-public oratory blessed in the manner of churches, sinful acts which are gravely repugnant to the holiness of the place; such are, for example, a notable and gravely culpable shedding of blood, even if hidden; likewise acts of lust, concerning which more fully in the treatise on chastity.[2]

Note 1. All external sins are affected with some malice of sacrilege, but commonly only a slight one. But internal sins do not violate the holiness of a place, because they do not affect the place; nevertheless he is guilty of sacrilege who desires an external sacrilegious work, or who delights in a work of this kind as sacrilegious (St. Alphonsus, III, 43).

Note 2. The Sacred Consistorial Congregation decreed that any projections and cinematographic representations whatever are altogether to be prohibited in churches.[3]

[1] The reconciliation of a violated sacred place is discussed in the treatise on the Holy Eucharist. Others judge that local sacrilege is committed only through those acts which require the reconciliation of the place. But since other acts also are highly repugnant to the holiness of the place, the said opinion seems little to be approved.

[2] Cf. our little work *De virtute castitatis et de vitiis oppositis*, p. 32 sq.

[3] December 10, 1912 (*Acta Apostolicae Sedis*, 1912, p. 724).

Point III. On Real Sacrilege

617 **I.** A sacred thing is one which is ordered to divine worship, whether of itself, as the sacraments, or by the Church. But the Church orders a thing to divine worship by consecration, as sacred vessels; by constitutive blessing, as sacred vestments; or by mere destination, which occurs with goods that belong to the dominion of the Church or of a pious place (St. Alphonsus, III, 40).

618 **II. Real sacrilege is committed:**

1. By unworthily treating things sacred by their nature, or consecrated or blessed things. To this are referred: 1. invalid or unworthy administration and reception of the sacraments; 2. profanation of relics (cf. can. 1289, § 2), altars, images of the Saints, sacred oils, etc.; 3. illicit touching of the Holy Eucharist, of sacred vessels, etc. (cf. treatise on the Holy Eucharist and can. 1306); 4. abuse of Sacred Scripture, by twisting its words to an impious or obscene sense (St. Alphonsus, III, 40).
2. By applying to a profane use things sacred by their nature, or consecrated things, or things blessed by a constitutive blessing (St. Alphonsus, loc. cit.; cf. can. 1150). This nevertheless seems lawful if they have lost their consecration or blessing; canon 1305 explains when this occurs.
3. By stealing sacred things, for example relics or ecclesiastical goods, provided these already belong to the dominion of the Church; otherwise if they are only owed but have not yet been handed over (St. Alphonsus, III, 42, 45, 532).
4. By exchanging a spiritual thing for a temporal price. This is real sacrilege, which is called simony; but it will be treated specifically.

Corollary. The circumstance of time induces a grave sin of sacrilege only insofar as the action, from the sense of the faithful and of the Church, involves an extraordinary repugnance with the mystery which is celebrated at some time, as if someone on Good Friday were to institute solemn banquets furnished with meats (St. Alphonsus, III, 46, 273).

Scholion. On Penalties Against Sacrilegious Persons

619 Canon 2325 establishes generally: "One who has perpetrated sacrilege is to be punished by the Ordinary according to the gravity of the fault, without prejudice to the penalties established by law against certain sacrileges." These must now be discussed.

I. Penalties against personal sacrilege are:

1. One who, contrary to the prescription of canon 120, has dared to drag before a lay judge one of the Cardinals of the Holy Roman Church, or Legates of the Apostolic See, or major officials of the Roman Curia for affairs pertaining to their office, or his own Ordinary, contracts by the fact itself an excommunication reserved to the Apostolic See in a special manner; if he drags another Bishop, even merely titular, or an Abbot or Prelate nullius, or one of the supreme superiors of religions of pontifical right, he contracts by the fact itself an excommunication simply reserved to the Apostolic See; finally, if, without having obtained permission from the Ordinary of the place, he drags another person enjoying the privilege of the forum before a lay judge, a cleric indeed incurs by the fact itself suspension from office reserved to the Ordinary, while a layman is to be punished by his own Ordinary with fitting penalties according to the gravity of the fault (can. 2341).

2. One who has laid violent hands on the person of the Roman Pontiff contracts an excommunication latae sententiae reserved to the Apostolic See in a most special manner, and is by the fact itself to be avoided. One who lays violent hands on the person of a Patriarch, Archbishop, or Bishop, even only titular, incurs an excommunication latae sententiae reserved to the Apostolic See in a special manner. One who lays violent hands on the person of other clerics or of religious of either sex contracts by the fact itself an excommunication reserved to his own Ordinary, who besides may punish him with other penalties, if the matter requires, according to his prudent judgment (can. 2343).

3. Clerics constituted in sacred orders, or regulars or nuns after a solemn vow of chastity, and likewise all those presuming to contract marriage, even only civilly, with any of the aforesaid persons, incur an excommunication latae sententiae simply reserved to the Apostolic See. Professed members of perpetual simple vows, both in Orders and in religious Congregations, and likewise all those presuming to contract marriage, even only civilly, with any of the aforesaid persons, contract an excommunication latae sententiae reserved to the Ordinary (can. 2388; cf. can. 2359).

II. Penalties against local sacrilege are:

1. Violators of a church or cemetery, of whom in canons 1172 and 1207 (n. 616), are to be punished by the Ordinary according to the gravity of the delict with an interdict from entering a church and other fitting penalties (can. 2329).

2. Those who have dared to command or compel that ecclesiastical burial be given to infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, contrary to the prescription of canon 1240, § 1, contract an excommunication latae sententiae reserved to no one. But those spontaneously giving burial to the same persons contract an interdict from entering a church reserved to the Ordinary (can. 2339).

III. Penalties against real sacrilege are:

1. One who has thrown away consecrated species, or has carried them off or retained them for an evil end, is suspected of heresy; he incurs an excommunication latae sententiae reserved in a most special manner to the Apostolic See; he is by the fact itself infamous, and if a cleric he is furthermore to be deposed (can. 2320).

2. One not promoted to the sacerdotal order, if he has simulated the celebration of Mass or heard a sacramental confession, contracts by the fact itself an excommunication reserved in a special manner to the Apostolic See; and besides, a layman indeed is to be deprived of a pension or office, if he has one in the Church, and is to be punished with other penalties according to the gravity of the fault; but a cleric is to be deposed (can. 2322; cf. can. 2366 and 2367).

3. Those who, by themselves or through others, usurp or detain goods or rights belonging to the Roman Church are subject to an excommunication latae sententiae reserved in a special manner to the Apostolic See; and if they are clerics, they are besides to be deprived of dignities, benefices, offices, and pensions, and declared incapable of the same (can. 2345). One who has presumed, by himself or through others, to convert and usurp for his own uses other ecclesiastical goods of any kind, or to impede the fruits or revenues of those goods from being received by those to whom they belong by law, is subject to excommunication until he has restored the goods themselves completely, removed the aforesaid impediment, and then obtained absolution from the Apostolic

See. But if he has been patron of the same church or goods, he exists by that very fact deprived also of the right of patronage. Moreover a cleric committing this delict or consenting to it is besides to be deprived of any benefices, is to be rendered incapable of any others, and, even after full satisfaction and absolution, is to be suspended from the execution of his orders at the discretion of his Ordinary (can. 2346).

4. But if the Apostolic beneplacitum required for alienating ecclesiastical goods according to the norm of canons 534, § 1 and 1532 has knowingly been omitted, all who are guilty in any way, whether by giving, by receiving, or by offering consent, incur besides an excommunication latae sententiae reserved to no one (can. 2347, 3°).

Article III. On Simony

620 **I. Notion.** Simony is named from Simon Magus, who attempted to buy spiritual gifts with money.[1] But simony is an exchange either forbidden of itself, that is, because of the equating of a spiritual thing with a temporal thing, or prohibited by the Church because of the danger of irreverence toward spiritual things. These points will become clearer from what is to be said.

[1] Acts 8:18.

621 **II. Division.** Simony is distinguished into simony of divine law and simony of ecclesiastical law.

1. Simony of divine law, as we have already indicated, is an exchange with a temporal price either of a thing intrinsically spiritual and not annexed to a temporal thing; or of a thing intrinsically spiritual and annexed to a temporal thing; or of a temporal thing so annexed to a spiritual thing that the temporal thing can in no way exist without the spiritual thing (cf. can. 727, § 1). It is said:

a) **Exchange;** by this word is understood every onerous contract, whether express or tacit, that is, so placed that the other understands that a temporal thing is given under the obligation of receiving a spiritual thing (can. 728; St. Alphonsus, III, 49). If the intention of obliging another is indeed present but wholly hidden, there is a simoniacal mind, which is also called mental simony (St. Alphonsus, III, 49). "Any natural obligation whatever, such as of gratitude or reciprocal return, does not suffice" (St. Alphonsus, loc. cit.), because it does not follow the will of the giver but the action itself. It must be said otherwise if gratitude itself is brought into the pact (St. Alphonsus, III, 53). Moreover, a voluntary and deliberate or free exchange is required; hence canon 727, § 1 speaks of the deliberate will of buying or selling, etc.

b) **With a temporal price;** which can be constituted by: 1. a gift from the hand, as money and every thing comparable with money; 2. a gift from the tongue, namely praise, recommendation, intercession; 3. a gift from service, namely servitude and other temporal services (St. Alphonsus, III, 49).

c) **Either of a thing intrinsically spiritual and not annexed to a temporal thing,** as the sacraments, ecclesiastical jurisdiction (St. Alphonsus, loc. cit.).

d) **Or of a thing intrinsically spiritual and annexed to a temporal thing,** as the consecration of a chalice, indulgences annexed to rosaries or other things (St. Alphonsus, loc. cit.).

e) **Or of a temporal thing so annexed to a spiritual thing that the temporal thing can in no way exist without the spiritual thing.**

A temporal thing can be annexed to a spiritual thing: 1. consequently, "as depending on spiritual things" (St. Thomas, II-II, q. 100, a. 4), "as the revenues of benefices, which are given on account of a spiritual office" (St. Alphonsus, III, 49); 2. concomitantly and intrinsically, as the labor necessarily expended for Mass; 3. concomitantly but extrinsically, as the celebration of Mass in chant, in a distant place; 4. antecedently, as a vessel to which consecration is added. Now a temporal thing is so annexed to a spiritual thing that it can in no way exist without the spiritual thing when it is annexed to it consequently or concomitantly and intrinsically. It is otherwise when it is annexed to it concomitantly but extrinsically, or antecedently, as is sufficiently clear from the examples brought forward (St. Alphonsus, loc. cit.).

2. Simony of ecclesiastical law consists in an exchange which is not repugnant to divine law, but which is prohibited by the Church because of the danger of irreverence toward spiritual things, and therefore from the same motive as simony of divine law, that is, from a motive of religion. To this belong forbidden exchanges: 1. of a spiritual thing with a spiritual thing; 2. of a temporal thing with a temporal thing; 3. of a temporal thing annexed to a spiritual thing with a temporal thing annexed to a spiritual thing; 4. of a temporal thing with a temporal thing annexed to a spiritual thing in such a way that the temporal thing can exist without the spiritual thing (cf. can. 727, § 2; St. Alphonsus, loc. cit.).

622 **III. Morality.** The malice, and indeed special malice, of simony consists in the injury which it inflicts upon the dignity of that sacred thing by which it excels every temporal thing, even the most precious (St. Thomas, II-II, q. 100, a. 1; St. Alphonsus, III, 49). Moreover:

1. Simony of divine law is a grave sin from its whole genus, because the exchange of a spiritual thing, since it is far more excellent than every temporal thing, with a temporal price necessarily inflicts grave injury upon the spiritual thing. Hence St. Peter says to Simon Magus: "May your money be with you unto perdition, because you have thought that the gift of God could be possessed with money"[1] (St. Alphonsus, loc. cit.).

2. Simony of ecclesiastical law is a grave sin from its genus, that is, grave or light according as the Church prohibits, under grave or under light obligation, an act not simoniacal by its nature (St. Alphonsus, III, n. 50).

[1] Acts 8:20.

623 **Corollary I. The following is free from simony:**

1. On the occasion of sacred functions, to receive something by way of stipend or under the title of support. The reason is that the wage so received is not a price properly so called, since it is not measured by the value of the function performed but by necessary support.[1] Hence Christ says: "The laborer is worthy of his hire."[2] And the Apostle: "Do you not know that those who work in the sanctuary eat the things that are of the sanctuary, and that those who serve the altar share with the altar? So also the Lord ordained that those who announce the Gospel should live from the Gospel"[3] (can. 730; St. Thomas, II-II, q. 100, aa. 2 and 3; St. Alphonsus, III, 55).

From what has been said it follows: 1. that a stipend can also be received by one who has otherwise that from which he may live. For from that fact the stipend does not put on the account of price. Therefore the Apostle says: "Who ever serves as a soldier at his own charges? Who plants a vineyard and does not eat of its fruit? Who feeds a flock and does not drink of the milk of the flock?"[4] (can.

1473; St. Alphonsus, loc. cit.). 2. That it is lawful to demand a stipend or to bargain about it, because one who acts thus does not bargain about a price. 3. Nor is he guilty of simony who performs sacred functions principally with a view to the stipend, because he does not act with a view to a wage as price; nevertheless he sins venially, because he inverts the order by ordering spiritual things to temporal things (St. Alphonsus, III, 55). Similarly, the usage of the Roman Curia of demanding a sum of money on the occasion of granting a favor is free from simony. The reason is that the money is not demanded under the title of price, but, for example, under the title of sustaining the burdens of the Pontificate, compensation for the expenses of expedition, compensation in the commutation of vows, penalty in dispensation from culpable irregularity or from an impediment because of crime, etc. (St. Alphonsus, III, 96).

2. To hand over instruction in a sacred matter for a temporal price, if the instruction does not tend solely to a spiritual good, but also to a temporal good of the instructed person, for example to cultivation of mind or honor. Such are instruction in catechesis or theology, and doctrinal counsel. It is otherwise if it is ordered solely to a spiritual good, as spiritual counsel (St. Alphonsus, III, 94; cf. St. Thomas, II-II, q. 100, a. 3, ad 3).

3. To give a temporal thing for a temporal thing which is antecedently annexed to a spiritual thing, for example for a consecrated chalice, provided the price is not increased because of the annexed spiritual thing (can. 730).

4. To give or promise a temporal thing under the hope, even manifested, of receiving a spiritual thing, or with the end, even manifested, that you may receive a spiritual thing; and conversely. The reason is that there is no true agreement.

Hence it is lawful, for example, to give money to a poor man so that he may pray for you. But if an explicit or implicit pact intervenes, there is simony. An implicit pact intervenes when the giver has the intention of obliging the recipient, and that intention is manifested by a circumstance; as if some poor man gives something temporal of sufficiently great importance under the hope of receiving a spiritual thing: this circumstance is suited to insinuate in the mind of the one receiving a strict obligation, if the receiver can return nothing except a spiritual thing. If there is a hidden intention of obliging the recipient, at least a simoniacal mind is present (St. Alphonsus, III, 49, 51, 53; cf. St. Thomas, II-II, q. 100, a. 3, ad 2). The same holds if a temporal thing is given or promised to another so that he may perform a spiritual thing for his own advantage, for example a gift to a young man if he frequents the sacraments (St. Alphonsus, III, 59; cf. St. Thomas, II-II, q. 100, a. 3, ad 4). Others judge that in the case there is not simony even when the giver intends to impose a strict obligation on the other. The reason alleged is that the recipient is not obliged to hand over anything to the giver, but only to take counsel for himself; and this does not seem simoniacal to them.

5. To sell the right of burial in a more honorable place; for a temporal thing is sold (St. Alphonsus, III, 71).

[1] Namely, to him who labors for the advantage of another, from the natural law itself there is owed the wage by which he may be sustained, and this even if he does not need the wage.

[2] Luke 10:7.

[3] 1 Cor. 9:13-14.

[4] 1 Cor. 9:7.

624 **Corollary II. Simony of divine law is:**

1. To increase the price of things because of their consecration, blessing, or because of the indulgences annexed to them (can. 730, 1539, § 1).

2. To obtain for oneself the conferral of a benefice by a temporal price.

It is disputed whether the same can be said of one who by a temporal price obtains for himself presentation or intercession before a superior. Moreover, it seems it must be affirmed, because one who buys the aforesaid things by money prepares for himself a way to obtain a spiritual thing, and therefore, morally speaking, by a temporal price obtains for himself or attempts to obtain the benefice itself.[1] It is nevertheless lawful to free oneself by a temporal thing from unjust vexation, for example by money given to bring it about that someone desist from calumnies by which he accuses him before the Bishop. For liberation from vexation is something temporal (St. Alphonsus, III, 99, 100; cf. St. Thomas, II-II, q. 100, a. 2, ad 5). Similarly, when another priest is lacking and a grave cause is present, it seems lawful to give money to a priest who otherwise is unwilling to administer a sacrament, provided nevertheless no strict pact is entered into; because a donation can be intended and the sin of the priest permitted (St. Alphonsus, III, 103, q. 5°).

3. To receive or demand temporal compensation for the conferral of a benefice. According to what was said under 2, the same seems to be said of one who receives or demands temporal compensation for procuring a benefice.

[1] A presentation of this kind, if it is not simony of divine law, must at least be called simony of ecclesiastical law (cf. can. 1465, § 2).

625 **Corollary III. Simony at least of ecclesiastical law is:**

1. To impose deductions from fruits, compensations, and payments to be made by a cleric in the act of provision of a benefice, which fall to the collator, patron, or others (can. 1441).[1]

2. To admit the resignation of a benefice for the advantage of others or under some condition which touches the very provision of the benefice or the distribution of revenues (cf. can. 1486).

3. To compensate unequal benefices to be exchanged by the reservation of fruits or the payment of money or of any thing estimable by price (cf. can. 1488, § 1).

4. To exchange a benefice contrary to the prescription of canon 1487 or 1488, § 2.

5. In place of stipends collected or received, to hand over goods with profit to him to whom the Masses to be said are entrusted (cf. can. 827).

6. To transmit stipends collected or received while retaining a part of the stipend for the labor expended (cf. can. 840). It is lawful to retain only that which is necessary for the expenses of administration and transmission.

[1] The Pontifical Commission responded that recourse must be had in individual cases, if the Bishop wishes, in the conferral of non-reserved parishes, to impose for one time only a moderate tax in favor of the seminary, even if the parish in question is liable to the tax to be paid to this Institute (October 16, 1919, *Acta Apostolicae Sedis*, 1919, p. 476, ad I b).

626 **Corollary IV. It is doubtful, or at least disputed, whether it is simony:**

1. On the occasion of a spiritual thing performed, to ask either for a prohibited temporal stipend or emolument, or for a temporal stipend or emolument above the established tax (cf. can. 463, 552, §

2; 695; 723, 5°; 736; 879, 2; 1056; 1181; 1235; 1303; 1507). Now simony seems to be lacking, both of divine law and of ecclesiastical law.

a) Simony of divine law seems to be lacking. Several maintain the contrary, because when a just title, either of the stipend or of the excess of the stipend, is lacking, what remains is that these are demanded as the price of the spiritual thing performed. But it seems it must be said that in the former case a prohibited stipend is demanded, and in the latter case a stipend greater than is just, rather than the price of a spiritual thing. In a word: there is not necessarily a comparison of a spiritual thing with a temporal thing.

b) Simony of ecclesiastical law seems to be lacking, because neither a spiritual thing with a spiritual thing, nor a temporal thing with a temporal thing, nor a temporal thing annexed to a spiritual thing with a temporal thing annexed to a spiritual thing, is exchanged. Nevertheless the cleric would sin and would be held to restitution (cf. can. 463, § 2).

2. On the occasion of a spiritual thing performed, to demand compensation greater than is just for extrinsic labor. Moreover, simony seems to be lacking. Several defend the contrary, because when a just title of the excess compensation is lacking, the said excess is demanded as the price of the sacred ministry. But rather a price greater than is just of a temporal thing is demanded, than the price of a spiritual thing.

3. To sell rosaries or other things enriched with indulgences; likewise to expose for public sale blessed or consecrated sacred furnishings. Some hold the aforesaid things as simony of ecclesiastical law, even if the price is not increased because of the annexed spiritual thing. They judge thus because they hold these things as prohibited. But the prohibition is not proved, although the indulgences cease when rosaries or other things are sold (can. 924, § 2), and sacred furnishings exposed for public sale lose their blessing or consecration (can. 1305, § 1, 2°).

4. Finally, it is disputed to what extent simony can be committed on the occasion of entrance into religion. Now it is lawful to give or accept something: 1. under the title of a spontaneous alms; 2. under the title of dowry in monasteries of nuns, even wealthy ones; likewise in religions of sisters of simple vows, according to the norm of the constitutions (can. 547); 3. under the title of support for the time of postulancy and novitiate, provided this is provided for by the constitutions or by express agreement (can. 570, § 1). The same is lawful for the remaining time if the monastery is needy; for on the one hand authors formerly commonly held that as lawful (St. Thomas, II-II, q. 100, a. 3, ad 4; St. Alphonsus, III, 91), and on the other hand it is scarcely admitted that the new law, if it excludes the remaining time, must be so pressed that it must also be extended to the stated hypothesis. But if the monastery is wealthy, it is disputed both whether or not it is simony to give or accept something under the title of support, and whether it is simony of divine law or of ecclesiastical law. Now it does not seem to be simony of divine law, but certainly seems to be simony of ecclesiastical law. I said:

a) It does not seem to be simony of divine law, because neither a spiritual thing is bought, nor is a temporal thing so annexed to a spiritual thing that it can in no way exist without the spiritual thing. A spiritual thing is not bought, as is clear; for support is bought, which is a temporal thing. A temporal thing so annexed to a spiritual thing that it can in no way exist without the spiritual thing is not bought; for the right to support can manifestly exist without profession, that is, without the spiritual thing. Note also that it is doubtful whether religious profession carries with it a strict right to support.

b) It seems to be simony of ecclesiastical law; for the Code, both by expressly speaking of the time of postulancy and novitiate, and by adding that even for that time nothing can be exacted unless the constitutions or an express agreement provide for it, seems to exclude, or to hold as excluded, the time that will follow profession. But if it is excluded, it is certainly excluded because of the danger of irreverence toward a spiritual thing, namely profession, and therefore, in view of canon 727, § 2, there is simony of ecclesiastical law.

627 **IV. Effects of simony.** 1. A simoniacal contract and, if simony is committed concerning benefices, offices, and dignities, the subsequent provision lack all force, even if the simony was committed by a third person, even without the knowledge of the one provided, provided this was not done in fraud of that provided person or while he contradicted it. Therefore:

a) Before any sentence of a judge, a thing simoniacally given and accepted, if it is capable of restitution and the reverence due to a spiritual thing does not stand in the way, must be restored, and the benefice, office, or dignity must be resigned.[1]

b) One simoniacally provided does not make the fruits his own; but if he has received them in good faith, it is permitted to the prudence of the judge or Ordinary to remit to him the fruits received, in whole or in part.

2. A resignation of an ecclesiastical office made simoniacally is invalid by the law itself (can. 185).

3. Benefices which have been invalidly conferred because of the vice of simony are reserved to the Apostolic See, even while vacant (can. 1435, § 1, 3°).

4. A benefice conferred simoniacally is not obtained through the prescription by which other invalidly received benefices are obtained (can. 1446).

5. A presentation infected by the stain of simony is by the law itself invalid, and also renders invalid any institution perhaps following it (can. 1465, § 2).

6. The right of patronage is extinguished if the patron has attempted to transfer the right of patronage simoniacally to another (can. 1470, § 1, 6°).

7. A criminal action against simony can be brought for ten years (can. 1703, 3°).

[1] The election of the Supreme Pontiff, even if performed simoniacally, is valid, namely so that pretexts for impugning the validity may be forestalled (Constitution of Pius X, *Vacante sede apostolica*, n. 79).

628 **V. Established penalties.** 1. Those perpetrating the delict of simony in any ecclesiastical offices, benefices, or dignities:

a) Incur an excommunication latae sententiae simply reserved to the Apostolic See.

b) By the fact itself remain deprived forever of the right of electing, presenting, and nominating, if they have any such right.

c) If they are clerics, they are besides to be suspended (can. 2392).

2. All, even those endowed with episcopal dignity, who through simony have knowingly promoted or been promoted to orders, or have administered or received other sacraments, are suspected of heresy; clerics besides incur suspension reserved to the Apostolic See (can. 2371).

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[1] Cf. Wernz, *Ius Decretalium*, VI, tit. 15; Vermeersch-Creusen, *Epitome Iuris Canonici*, II, nn. 4-13.

Scholion. On the Worship of the Heavenly Citizens, Images, and Relics

629 **I. Worship of the heavenly citizens.** 1. To the Blessed Virgin Mary is due the worship of hyperdulia; to others reigning in heaven with Christ, the worship of dulia (can. 1255, § 1; n. 400).

2. With public worship it is lawful to venerate only those servants of God who have been numbered among the Saints or Blessed by the authority of the Church (can. 1277, § 1).

3. Saints can be worshiped everywhere and by any act of that kind, that is, of dulia; but the Blessed cannot be worshiped except in the place and manner which the Roman Pontiff has granted (can. 1277, § 2). To servants of God equivalently beatified[1] the same acts of public worship can be granted by which those formally beatified have customarily been honored (can. 2135).

4. Laudably also, with the things to be observed having been observed, Saints of nations, dioceses, provinces, confraternities, religious families, and other places and moral persons are chosen and, with the confirmation of the Apostolic See acceding, are constituted Patrons; not so the Blessed, without a special indult of the same Apostolic See (can. 1278).

Note 1. When a decree has been published by which, in the name of the Supreme Pontiff, it is authentically declared that all the virtues of a Servant of God have been well proved in a heroic degree, or that martyrdom has been well proved, once that decree has been published, I say, the Servant of God can be called venerable. Yet this title imports no permission of public worship (can. 2115).

Note 2. It is prohibited for a Servant of God, whose cause has only been introduced, to be adorned with the title venerable; and postulators should beware lest, on the occasion of the introduction of the cause, anything be done in honor of the Servant of God which smacks of public worship (can. 2084, § 2).

[1] Those servants of God are called equivalently beatified whose cause of beatification has proceeded by the extraordinary way of an excepted case or of worship. By this extraordinary way one proceeds when it is intended to be proved that some Servant of God is in possession of public and ecclesiastical worship (can. 2000, §§ 1 and 2). Such a process is admitted for those servants of God who after the pontificate of Alexander III and before the time fixed by the constitution of Urban VIII *Coelestis Hierusalem* in 1634, that is, before the year 1534, had worship by tolerance (can. 2135). When the process has been duly completed according to the norm of law (can. 2125-2134) and the worship confirmed by decree of the Roman Pontiff, the Servant of God is to be held as equivalently beatified (can. 2134). Aertnys-Damen, I, n. 44, note.

630 **II. Worship of images.** To sacred images also "... veneration and worship, relative to the person to whom... the images are referred, is due" (can. 1255, § 2). Nevertheless:

1. It is lawful for no one to place or to take care that any unusual image be placed in churches, even exempt ones, or in other sacred places, unless it has been approved by the Ordinary of the place (can. 1279, § 1). Note: 1. that there is question only of unusual images; 2. that only this is prohibited, that unusual images be exposed in a sacred place unless they have been approved by the Ordinary of the place. With respect to the Ordinary of the place it is established: the Ordinary is not to approve sacred images to be publicly exposed for the veneration of the faithful which do not agree with the approved usage of the Church (can. 1279, § 2). Nor is he ever to permit images of false dogma, or images which do not present due decency and propriety, or which offer to the unlearned an occasion of dangerous error, to be displayed in churches or other sacred places (can. 1279, § 3).

2. If images exposed to public veneration are solemnly blessed, this blessing is reserved to the Ordinary, who nevertheless can entrust it to any priest (can. 1279, § 4). It is said, to the Ordinary; hence this blessing also belongs, for example, to a major superior in his exempt church.

3. Precious images, that is, those outstanding by antiquity, art, or worship, exposed for the veneration of the faithful in churches or public oratories, if at any time they need repair, are never to be restored without written consent given by the Ordinary, who, before granting permission, is to consult prudent and expert men (can. 1280).

4. Notable precious images, and likewise other images which in some church are honored with great veneration of the people, cannot validly be alienated nor permanently transferred to another church without the permission of the Apostolic See (can. 1281, § 4).

Note. Unless ecclesiastical censorship has preceded, sacred images to be printed in any way are not to be published, even by laymen, whether they have prayers attached or are published without them (can. 1385, § 1, 3°). But by the law itself there are prohibited images printed in any way whatever of Our Lord Jesus Christ, of the Blessed Virgin Mary, of the Angels and Saints, or of other Servants of God, which are foreign to the mind and decrees of the Church (can. 1399, 12°).

631 **III. Worship of relics.** To sacred relics also "... veneration and worship, relative to the person to whom they are referred, is due" (can. 1255, § 2). Moreover, observe:

1. **With respect to the manner of worshiping:** a) Only those relics can be honored with public worship in churches, even exempt ones, which are known to be genuine by an authentic document of some Cardinal of the Holy Roman Church, or of the Ordinary of the place, or of another ecclesiastical man to whom the faculty of authenticating has been granted by apostolic indult. The Vicar General cannot, without a special mandate, declare relics authentic (can. 1283). In addition:

a) Ordinaries of places should prudently remove from the worship of the faithful any relic which they know certainly is not authentic (can. 1284).

b) Sacred relics whose documents of authenticity have perished because of civil disturbances or any other case are not to be exposed to public veneration unless the judgment of the Ordinary of the place, but not of the Vicar General without a special mandate, precedes. Yet ancient relics are to be retained in that veneration in which they have been until now, unless in some particular case it is established by certain arguments that they are false or spurious (can. 1285).

c) Ordinaries of places should not permit questions about the authenticity of sacred relics to be agitated, especially in sacred sermons, books, periodicals, or reviews destined for fostering piety, from mere conjectures, from merely probable arguments, or from prejudiced opinions, especially in words savoring of mockery or contempt (can. 1286).

2. **With respect to custody:** a) Notable relics[1] of Saints or Blessed cannot be kept in homes or private oratories without the express permission of the Ordinary of the place. Non-notable relics can, with due honor, also be kept in private houses and piously carried by the faithful (can. 1282).

b) Rectors of churches, and others whom it concerns, should diligently watch lest sacred relics be profaned in any way, or perish through human neglect, or be kept less decently (can. 1289, § 2).

3. **With respect to exposition.** When relics are exposed, they must be in closed and sealed cases or capsules. Relics of the most holy Cross are never to be displayed for public veneration in the same

case with relics of the Saints, but must have their own separate case. Relics of the Blessed, without a special indult, are not to be carried around in processions, nor exposed in churches, except where their office and Mass are celebrated by concession of the Apostolic See (can. 1287).

4. **With respect to alienation:** a) Notable relics, and likewise other relics which in some church are honored with great veneration of the people, cannot validly be alienated nor permanently transferred to another church without the permission of the Apostolic See (can. 1281, § 1).

b) Relics of the most holy Cross which a Bishop perhaps carries in his pectoral cross pass, after his death, to the cathedral church, to be transmitted to the successor Bishop; and if the deceased presided over several dioceses, they pass to the cathedral church of the diocese in whose territory he died, or, if he died outside the diocese, to the one from which he last departed (can. 1288).

c) It is unlawful to sell sacred relics. Therefore Ordinaries of places, vicars forane, pastors, and others having care of souls should diligently take care lest sacred relics, especially those of the most holy Cross, be sold, particularly on the occasion of inheritances or the alienation of a mass of goods, or pass into the hands of non-Catholics (can. 1289, § 1). This nevertheless does not prohibit a thing which neither belongs to the body of a Saint nor has been legitimately destined for public worship from being sold, not as a relic, but as more or less worthy of price, for example an autograph.

Note. One who fabricates false relics, or knowingly sells, distributes, or exposes them to the public veneration of the faithful, contracts by the fact itself an excommunication reserved to the Ordinary (can. 2326).

[1] Notable relics of Saints or Blessed are the body, head, arm, forearm, heart, tongue, hand, leg, or that part of the body in which the martyr suffered, provided it is whole and not small (can. 1281, § 2).

Part II. On the Second Precept of the Decalogue

This precept regards the honor to be shown to God through words. But by words he is especially honored through praise, a vow, an oath, and adjuration. Hence we shall treat first of praise, then of the vow, then of the oath, and finally of adjuration.

Section I. On Praise

(St. Thomas, II-II, q. 91; St. Alphonsus, *Theologia Moralis*, lib. III, nn. 121-132; *Homo Apostolicus*, tr. 5, nn. 1-11.)

632 Praise is an honorable utterance of the excellence of God. But concerning praise, what we said about adoration holds, namely that in order for it to be a true act of religion, there must be joined to it an internal act by which we honor the excellence of God with mind and heart, and which is customarily called praise of the mind or praise of the heart.

We shall speak first, very briefly, about the usefulness and modes of praising, then about the sin chiefly opposed to it, that is, blasphemy.

Chapter I. On the Usefulness and Modes of Praising God

633 **I.** Praise is useful not only because through it we worship God with both soul and body, but also because through it we stir up ourselves and our neighbor to greater devotion.

"We use words," says St. Thomas, "in one way toward God, and in another way toward man. For toward man we use words in order to express to him the concept of our heart, which he cannot know except through our words; and therefore we use oral praise toward man so that it may become known either to him or to others that we have a good opinion of the one praised; so that through this we may both provoke the one praised to better things, and lead others, among whom he is praised, to a good opinion and reverence and imitation of him. But toward God we use words, not indeed so that we may manifest our concepts to him, who is the inspector of hearts, but so that we may lead ourselves and others hearing us to reverence for him. And therefore oral praise is necessary, not indeed on account of God, but on account of the one praising himself, whose affection is aroused toward God from his praise" (II-II, q. 91, a. 1).

II. Praise can be made both by speech and by song.

On the usefulness of song, St. Thomas says: "Vocal praise is necessary for this, that man's affection may be stirred toward God, and therefore whatever things can be useful for this are fittingly assumed into divine praises. But it is manifest that according to the diverse melodies of sounds, the souls of men are disposed in diverse ways, as is clear through the Philosopher in VIII *Politics* (chs. 5, 6, and 7), and through Boethius in the prologue of music (or book I, ch. 1); and therefore it was salutarily instituted that song be assumed into divine praises, so that the souls of the weak may be more stirred to devotion. Hence Augustine says in X *Confessions* (ch. 33): 'I am led to approve the custom of singing in the Church, so that through the pleasures of the ears the weaker soul may rise up into the affection of piety'" (II-II, q. 91, a. 2).

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[1] Cf. Suarez, *De virtute et statu religionis*; Bouquillon, *De virtute religionis*; Dignant, *De virtute religionis* (*Theologia Brugensis*); Vermeersch, *De virtute religionis et pietatis*; Wirthmuller, *Die Tugend der Religion*.

Chapter II. On the Sin Chiefly Opposed to Praise, or on Blasphemy

634 **I. Notion.** Blasphemy is customarily defined: contumelious speech against God. It is said:

1. **Speech,** that is, the signification of contempt or disparagement of God; in this signification the malice of blasphemy is essentially situated. Under the name of speech come thoughts, internal or mental speech;[1] words and writing, verbal speech; actions or gestures and deeds, real speech, as if someone from anger against God should gnash his teeth. All these can be significative of contempt of God (St. Alphonsus, III, 125).
2. **Contumelious;** namely, speech signifying contempt or disparagement of God is required. Moreover, for subjective malice it is not required that someone proceed from a formal intention of inflicting contumely; it suffices that he know and sufficiently advert that the speech is contumelious, and nevertheless admit it (St. Alphonsus, III, 124).
3. **Against God;** namely, speech, in order to be blasphemous, must signify contempt of God or dishonor God, and this either immediately or mediately in creatures. When the latter occurs we shall soon explain. Moreover, God is dishonored both by denying what belongs to him; and by attributing to a creature something which is proper to God alone; and by treating God in the manner of one showing indignation, mocking, or provoking (St. Thomas, II-II, q. 13, a. 1; St. Alphonsus, III, 121).

Blasphemy differs: 1. from the vain usurpation of the divine name, which indeed is opposed to the reverence due to God, but does not signify contempt of God; 2. from sacrilege, which indeed imports unworthy treatment of a sacred thing, person, or place, but does not necessarily signify contempt of the sacred and consequently of God, as if someone steals a sacred thing. In the case in which sacrilege also signified contempt of the sacred, the malice of blasphemy would accede, as if a sacred thing were treated contumeliously.

For discerning whether speech is contumelious against God, attention should be paid to: 1. the force of the words; 2. the manner of uttering them and the circumstances. Namely, it can happen that words or other signs which of themselves do not involve contumely become contumelious if they are uttered, for example, from anger against God or from the mind of provoking him; 3. common estimation, whether in some region or in a particular place. Namely, although common estimation, whether in some region or in a particular place, commonly corresponds to the sense which words have according to etymology and native signification, nevertheless it can happen that common estimation attributes to words a contumelious sense which of themselves they do not have, and conversely. Hence there can also be expressions which in one place have the sense of blasphemy, but not in another. Besides, note that blasphemous words do not lose their sense, and therefore constitute true blasphemy, even if they are uttered fictitiously. But words lose a blasphemous sense if they are spoken narratively or for the sake of instruction. The context can so change the sense of the expression that it ceases to be contumelious, and only some or even no irreverence toward God is left (St. Alphonsus, III, 124).

"In doubt whether some expression is or is not blasphemy, it is by no means to be taken as blasphemy" (St. Alphonsus, III, 129). Similarly, an expression which has a twofold sense, one blasphemous and the other not blasphemous, should of itself and in practice not be held for blasphemy.

[1] It is called by St. Thomas blasphemy of the heart (II-II, q. 13, a. 1).

635 **II. Division.** Blasphemy is distinguished:

1. Into direct or immediate, and indirect or mediate, according as God is dishonored immediately in himself or mediately in creatures. This latter occurs when contumely is done to creatures which have a special relation to God. Therefore it has place:

a) When contumely is done to creatures which of themselves express order toward God, and are considered of themselves in that way, as Angels, Saints, and sacred things. They can, however, be considered abstractively, not as Saints, but as certain men who were on earth; as "if you call Saints Crispin and Crispinian cobblers, John and Paul eunuchs" (St. Alphonsus, III, 125). In this case there is not blasphemy, but there is sin against dulia: lightly, if from jest; gravely, "if you say these things contemptuously or from hatred or indignation against the Saints" (St. Alphonsus, loc. cit.). There is not blasphemy because in the case the contumely does not redound upon God; there is sin against dulia because one cannot effectively abstract from the dignity intrinsic to the Saints.

b) When contumely is done to creatures which are, as it were, spontaneously considered with relation to God, although one can more easily abstract from that relation. Such are the soul,[1] heaven, and the whole world.

c) When contumely is done to creatures with explicit consideration of their relation to God; as if things are cursed as commanded by God, or with the word of God added, for example, "Cursed be God's rain." In the cases set forth, contumely toward the creature necessarily redounds upon God himself (St. Alphonsus, III, 129).

2. Into simple, heretical, and imprecatory, according as it contains merely contumely against God, or also either denies a truth revealed by God, or wishes evil to God or to things which, either of themselves or from positive consideration, are related to God.

3. Into directly and indirectly intended, according as someone formally wishes to dishonor God, or blasphemes without that formal intention. But it is clear that this intention is not required for the sin; for the willing of the object whose malice is known suffices.

[1] But not the dead, unless by the intention of those cursing the contumely is directed toward holy souls detained in purgatory; which does not have place. I said not the dead, because the word dead does not of itself explicitly express souls, but deceased men; hence to curse the dead is not blasphemy (St. Alphonsus, III, 130).

636 **III. Morality.** 1. Blasphemy is a grave sin from its whole genus, so that it can become only venial because of imperfection of the act or defect of advertence. For it is clear that blasphemy always contains grave irreverence toward God. With respect to defect of advertence, observe:

a) A defect of this kind often excuses those who both are not accustomed to blaspheme, or at least have retracted the habit of blaspheming, and utter blasphemy from a sudden movement. The same must be said of those who, not adverting to a blasphemous sense, pronounce formulas of impatience such as: "God has forgotten me"; "God has undeservedly inflicted these things on me" (St. Alphonsus, III, 129).

b) The habit of blaspheming more often does not prevent someone from sufficiently adverting to the evil. There is added that a habitual blasphemer who does not try to amend himself is culpable in the cause.

2. Immediate and mediate blasphemy do not seem to differ in species. For the contumely which is immediately inflicted on God and that which redounds upon him, such as mediate blasphemy, seem to be of the same moral deformity.

3. Although all blasphemies as such are of the same species, nevertheless often a circumstance accedes which adds a new species; as if someone blasphemes from hatred toward God, or utters heresy. Indeed there are those who judge that every blasphemy, even non-heretical blasphemy, is opposed to the profession of faith; this, however, is not evident (cf. St. Thomas, II-II, q. 13, a. 1).

4. Finally, it is disputed whether contumely against the Saints contains, besides blasphemy, also a sin against hyperdulia or dulia. Moreover, St. Alphonsus and other authors, against others, hold the negative opinion as sufficiently probable, because "those who blaspheme the Saints, speaking commonly, more truly intend to affect them with injury, not on account of their precise and proper excellence, but insofar as they are mediately referred to God" (St. Alphonsus, III, 132).[1]

[1] If someone, however, were to inflict contumely on the Saints both as such and not as such, or insofar as they were men on earth, there would be both blasphemy and a sin against dulia (n. 635).

637 **IV. Diverse expressions.** 1. Corrupted expressions remain blasphemous as follows:

a) If the corruption is only grammatical, so that according to common estimation the sense is not changed, they remain blasphemous.

b) If the corruption is substantial, so that according to common estimation the sense is truly changed, they do not remain blasphemous.

Hence even if it were admitted that the Dutch expression *God verdoem me*, or *God verdom me*, is blasphemous, nevertheless, for example, *pot verdom me*, *God doorie* would not be blasphemies; nor, even if *Sacre nom de Dieu*, *Mille noms de Dieu* were held for blasphemy, would *Sacre nom*, *Mille noms* be blasphemies; nor is *Mort-bleu* blasphemy.

c) If the corruption is equivocal, for example *Farni* (*je renie*) *Dieu*, blasphemy is in practice judged to be absent, unless common estimation attributes a blasphemous sense to the corrupted expression.

2. It is blasphemy: 1. to say: "Whether God wills or does not will, I shall do this." "Cursed be God." "May God perish." "Would that God did not exist." 2. With contempt or indignation against God to name the divine attributes, for example: "Bah! the goodness of God! Bah! the justice of God!" To this belongs the blasphemy of the Jews: "Hail, King of the Jews," and that of Julian the Apostate: "You have conquered, Galilean!" 3. To say: "May the Sacraments destroy you," since they were given by God not for destroying, but solely for saving man. It is not blasphemy if someone from anger or indignation, not against God but against a man or beast of burden, merely utters sacred words: "Death of God!" "A thousand Gods!" "A thousand sacraments!" "Sacrament!"[1]

3. There was dispute about the French expression *Sacre nom de Dieu*, to which this one is equated: *Sacre Dieu*. Moreover, the word *sacre*, when the native signification of the word is considered, signifies holy rather than execrable. But from usage and common estimation, when it was uttered in anger, it was accepted in a bad sense. But in the year 1912 the Belgian Bishops tried to restore the native signification; and it is permissible to suspect that this has succeeded or will gradually succeed. A fortiori, at least in practice, the equivocally corrupted expressions *Sacre die*, *Sacre diu*, or *dic* cannot be held for blasphemy.[2]

4. What about the expression *Deus damnet me*?[3] This indeed involves a grave imprecation, and therefore, if it were done seriously, it would be a grave sin. Moreover, it certainly is blasphemous if it is uttered by provoking God. Otherwise it is disputed. Cornelisse,[4] Derksen, and others affirm. Aertnys,[5] Lehmkuhl,[6] Brahm,[7] Forstmann,[8] and others deny, and the Belgian Bishops embraced this

opinion in letters in the year 1903. Moreover, this more benign opinion is sufficiently probable to us, because the arguments hitherto brought forward by the adversaries seem devoid of force, or can be sufficiently weakened.

Argument 1. The expression *Deus damnet me* is referred to the soul. But a curse of the soul is mediate blasphemy, which namely redounds upon God.

Response. I deny that the said expression is referred to the soul explicitly or by express intention. But mediate blasphemy occurs only when the soul is expressed or expressly intended (St. Alphonsus, III, 129, 130; n. 635).

Argument 2. The expression of which we speak contains a petition for a thing which is not fitting to God.

Response. It belongs to God both to save and to damn. Nevertheless it would be blasphemy to say: "May God damn me while innocent."

Argument 3. To wish or to ask for one's own damnation by the force of the words expresses contempt or disparagement of eternal beatitude. And this disparagement redounds upon God himself as Author, Giver, indeed Object of our beatitude. Therefore there is mediate blasphemy.

Response. I deny the major, because the wish or petition of damnation can arise from another motive than from contempt, for example from anger against oneself. Hence from the fact that damnation is wished or asked for, contempt of beatitude is not signified; and yet this is required for blasphemy.

Argument 4. To wish or ask for one's own damnation by the force of the words expresses contempt or disparagement of God insofar as he is terrible; and this is blasphemy.

Response. I deny the major, because the wish or petition of damnation can proceed also from another motive than from disparagement of God insofar as he is terrible, for example, as we said, from anger against oneself. Hence from the fact that damnation is wished or asked for, disparagement of God insofar as he is terrible is not signified.

[1] In German: *Tausend Sacrament*.

[2] Cf. *Collectanea Mechliniensia*, 1912, p. 192.

[3] In Dutch: *God verdom me*.

[4] *Theologia Moralis*, I, 312.

[5] *Sententiae a R. Adm. P. Aertnys non ita pridem reiectae religiosa defensio*.

[6] Cited work.

[7] *Casus Conscientiae*, I, 218 and 236 note.

[8] Cited work; *Theologia moralis specialis*, n. 95.

638 **V. Things to be noted.** 1. The confessor should take pains to know what expressions in the place of confession are held as certainly blasphemous.[1]

2. One accustomed to blasphemies should be counseled that after uttering a blasphemy he immediately be sorry and impose upon himself a light penance, for example by saying: *Glory be to the Father*, etc. Sometimes it can be advised that instead of blasphemy the penitent use corrupted words or other words sounding sharply, yet signifying nothing evil.

[1] The Dutch word *vloeken* is used to signify both blasphemies and curses and abusive words against men and beasts of burden. Hence the confessor should inquire what the penitent intends. The Dutch formulas *God verdoeme* or *God verdomme* are joined by the people in the greater part of Holland to the sense: "May God damn me," which, as we have proved, probably is not blasphemous. In some parts they do not understand what they are saying, or think that with these words they are cursing God; and this is certainly grave blasphemy. Therefore if the confessor fears that the penitent admits the false sense, he should teach him the true sense. Otherwise he should say that to ask one's own damnation from God, if done seriously, is a mortal sin; otherwise only light; nevertheless, an evil custom of this kind is to be rooted out.

Section II. On the Vow

(St. Thomas, II-II, q. 88; St. Alphonsus, *Theologia Moralis*, lib. III, nn. 194-262; *Homo Apostolicus*, tr. 5, nn. 21-50.)

We shall speak first about the notion, division, and morality of a vow, then about the requisites for a vow, then about the obligation, and finally about the cessation of a vow. Having set these things forth, in a scholion we shall speak of reserved vows in particular.

Chapter I. On the Notion, Division, and Morality of a Vow

639 **I. Notion.** A vow strictly so called is a deliberate and free promise made to God concerning a possible and better good (can. 1307, § 1). It is said:

1. **Promise,** that is, the giving of faith, from which an obligation of faith arises. Therefore a vow differs from a mere proposal or will of doing something; indeed, a promise of doing something can be composed with the proposal of not doing it.
2. **Deliberate and free;** these will be explained more opportunely soon.
3. **Made to God;** a promise made to the Saints, if it rests in them, is not a vow strictly so called or an act of latria, but of dulia or hyperdulia. Nevertheless the promises which are said to be made to the Saints, as it seems, are commonly vows strictly so called, because for the most part they are made to God alone in honor of a Saint, or at least are primarily referred to God (St. Alphonsus, III, 194; cf. St. Thomas, II-II, q. 88, a. 5, ad 3).
4. **Concerning a possible and better good;** these also will soon be clarified.

640 **II. Division.** A vow is divided:

1. Into public and private. A public vow is one which is accepted in the name of the Church by a legitimate ecclesiastical Superior; otherwise it is private.
2. Into solemn and simple. A solemn vow is one which has been recognized by the Church as such; otherwise it is simple.
3. Into reserved and non-reserved. A reserved vow is one whose dispensation only the Apostolic See can grant; otherwise it is non-reserved.
4. Into personal, real, and mixed, according as an action of the one vowing, or some thing, or both together, for example alms to be distributed by the one vowing, is promised.
5. Into explicit and implicit, according as it is emitted in proper terms, or is contained in another act or vow, or is judged annexed to it.
6. Into perpetual and temporary.

7. Into absolute and conditional, according as someone obliges himself absolutely, or dependently on some condition: either a condition suspensive of the obligation, as if someone vows entrance into Religion if he recovers health; or resolutory, as if someone vows entrance into Religion unless his sister enters marriage (St. Alphonsus, III, 195).

641 **III. Morality.** A vow is an honorable act. This is established against Wyclif; likewise against Luther and Calvin, who hold as honorable only vows concerning things already otherwise prescribed; finally against those who at least disapprove religious vows.[3] But the honorableness of a vow is clear: 1. from Sacred Scripture, which commends the making of vows both expressly[4] and by narrating the examples of holy persons;[5] 2. from the fact that a vow, by inducing an obligation, confirms the will in good.

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[1] Cf. Waffelaert, *Confessarius rite institutus ad impugnandam blasphemiam*; Aertnys, *De imprecatione "Deus damnet"*; Brahm, *Dissertatio de formula: G. v. d., Deus damnet me*.

[2] Cf. Kirchberg, *De voti natura, obligatione, honestate*.

[3] Letter of Leo XIII, *Testem benevolentiae*, January 22, 1899.

[4] Ps. 75:12.

[5] Gen. 28:20; Acts 18:18.

Chapter II. On the Requisites for a Vow

642 **I. Requisites on the part of the one vowing.** There are required a will to bind oneself, sufficient knowledge of the thing promised or of the object of the vow, and perfect liberty.

1. **A will to bind oneself,** at least implicit; for this belongs to the essence of a vow. When the aforesaid will is lacking, there is a mere proposal (St. Thomas, *In IV Sent.*, dist. 38, q. 1, a. 1, sol. 1, ad 2; St. Alphonsus, III, 201).

Corollary I. One who is ignorant of the obligation of a vow vows invalidly, because he lacks the will to bind himself; for the will is not borne toward what is unknown. Except one who wills to vow as others are accustomed to do, even if he merely is ignorant that an obligation arises; for he has an implicit will to bind himself (St. Alphonsus, cited place).

Corollary II. One who wills to vow, but positively excludes the obligation, does not vow; for although the obligation itself is the effect of a vow, nevertheless he who positively excludes the obligation does not have the mind, not even implicitly, of binding himself (St. Alphonsus, cited place).

2. **Sufficient knowledge of the thing promised or of the object of the vow;** namely, distinct knowledge is not required, but vague knowledge suffices; yet this, if distinct knowledge is lacking, is required per se. I said:

a) **Distinct knowledge is not required, but vague knowledge suffices.** The reason is that vague knowledge suffices for the one vowing to consent to the object, that is, to those things by which the object is constituted. Hence, for example, a vow of chastity is valid when the one vowing knows that by this vow carnal pleasures are renounced, although he is ignorant of precisely what these pleasures consist in; likewise even if he is ignorant of the "mysteries of life," as they are called.

b) **Vague knowledge, if distinct knowledge is lacking, is required per se;** for, when this too is lacking, the one vowing does not consent to the object, since it is in no way known. It is said *per se*,

because even vague knowledge does not seem to be required if the one vowing expressly intends to vow what others vow; for then he implicitly consents to the object. Hence one who, for example, in vowing chastity, expressly intends to vow what is vowed by others seems to vow validly, even if he is ignorant, for example, that by a vow of chastity carnal pleasures are renounced. But a defect even of vague knowledge seems almost hypothetical.

Corollary I. Error obstructs validity if it concerns the substantial elements of the thing promised, that is, whether its substance,[1] or the final cause,[2] or a circumstance which notably changes the substance.[3] The reason is that, while error concerning substantial elements remains, consent to the substance is lacking. That a circumstance which notably changes the thing also must be referred to the substantial elements follows from the fact that in this case, according to common estimation, there is a substance or thing morally diverse (St. Alphonsus, III, 198).

Corollary II. Error does not obstruct validity if it concerns either circumstances of lesser moment,[4] or the impulsive cause.[5] The reason is that consent to the substance of the thing promised is not lacking. And this holds even if the error gave occasion to the vow;[6] for the question is not what someone would have done, but what he did. But the fact that, once the error was removed, he would not have consented, does not prevent the fact that he consented (St. Alphonsus, III, 198).

Corollary III. Religious vows, no less than other vows, are void because of error concerning substantial elements, because the reason given above, being drawn from the nature of the thing, must hold here too. Nevertheless, in practice, the said vows will scarcely be void except because of error concerning the very substance of the vows, because, when that error is lacking, error generally will not be such as to constitute a morally diverse object.

3. **Perfect liberty,** that is, such as is required for sinning gravely; for only an act fully human or fully deliberated suffices for undertaking an obligation (St. Alphonsus, III, 196). Hence vows are invalid when made before the age of discretion, or by one semi-insane, semi-drunk, semi-asleep, or arising from fear which so disturbs the use of reason that full deliberation is impeded. But vows emitted in fervor of devotion are valid, and generally also those which are emitted from sudden passion or levity of mind, because sufficient deliberation generally is present.

Fear which does not impede full deliberation influences a vow in this way:

a) The following do not obstruct validity: 1. grave fear (a fortiori light fear) struck from within, that is, by a cause that is not free; hence a vow emitted in danger of shipwreck is valid; 2. grave fear (a fortiori light fear) justly struck. The reason is that in each case, on the one hand, full deliberation is supposed, and on the other hand no injury has been done to the one vowing, so that no reason exists why the vow would be invalid; 3. grave fear (a fortiori light fear) unjustly struck, but not for extorting a vow, does not obstruct validity; hence a vow emitted so that God may rescue you from the hands of robbers is valid. The reason is that, in relation to the vow, no injury is inflicted on you (St. Alphonsus, III, 197).

b) At least by canon law, grave fear struck from without, unjustly, and for extorting a vow, obstructs validity (can. 1307, § 2). It is disputed whether such fear also by natural law impedes the validity of a vow. Some affirm, and they extend this also to light fear, because God does not accept a vow of this kind, lest He give force to unjust compulsion. Others deny, because, in their opinion, a sufficiently

solid reason cannot be alleged why God would not accept a fully deliberated act (cf. St. Alphonsus, cited place).

[1] For example, someone vows a thing of his own which he judges to be glass, when it is a gem.

[2] Someone vows a Mass for the health of his father, when he is dead.

[3] Someone vows a pilgrimage which he judges to be three leagues, when it is six leagues.

[4] Someone vows a pilgrimage which he judges to be three leagues; but it is three and a half leagues.

[5] Someone vows alms to be given to poor Peter, whom he judges to be religious, when he is irreligious.

[6] Suppose that in the cases set forth under 4 and 5, had the error been absent, he would not have vowed the pilgrimage or the alms.

643 **II. Requisites on the part of the thing promised.** The thing promised must be possible, morally good, and better than its contradictory.

1. **Let it be possible,** and indeed physically and morally. For there can be no obligation to physically impossible things; but an obligation of morally impossible things, since it would tend to detriment, is not accepted by God. If the thing promised is partly possible, partly impossible, the vow is valid for the possible part, if the matter both is divisible by its nature, and by the intention of the one vowing has been promised dividedly. If in the matter of a vow one thing is principal and another accessory, the vow is valid as to the possible principal thing, although the accessory is impossible; but not the converse (St. Alphonsus, III, 202).
2. **Let it be morally good,** because God is offended by an evil thing and is not worshiped by an indifferent thing; hence a promise of things of this kind is not accepted by God. An indifferent thing indeed can be done in an honorable manner; but the thing, not the manner, is supposed to be vowed. Otherwise one must speak if an act indifferent in itself becomes good because of a circumstance; in that case, as clothed with that circumstance, it can be vowed.
3. **Let it be better than its contradictory;** and this either in itself, or with the circumstances considered, because a promise of abstaining from a thing by which God is worshiped more is not accepted by Him.

Corollary I. A vow of not sinning at all, whether perpetually or for a notable time, is null. For that is impossible without a special privilege of God.[1] But a vow of avoiding all mortal sins is valid; likewise a vow of employing special care to avoid all sins; likewise - but only in a person of solid virtue - a vow of avoiding either all fully deliberated venial sins, or a certain species of venial sins not so difficult to avoid, for example a vow of not stealing. Otherwise one must speak concerning a certain species of venial sins which scarcely can be avoided, as are, for example, idle thoughts (St. Alphonsus, III, 203). A vow of always doing what is held to be more perfect is valid in a person of very great virtue, insofar as it is understood of fully deliberated acts.

Corollary II. A vow of not marrying, or of chastity, is generally valid. I said generally, because it is disputed whether it is valid if it is pronounced in the world by one for whom, because of peculiar frailty, a peculiar danger of incontinence is imminent. Some deny, because marriage seems better, all things considered. More commonly it is affirmed, because, since other means of preserving continence are available, celibacy is better and remains so. A vow of a thing prescribed, since it is morally good, is valid, and effects that a transgression is also opposed to religion (St. Alphonsus, III, 213). A vow emitted against the precept of a superior is valid if the superior only forbade vowing; in that case the

act of vowing is evil, but the object which is vowed is good, as is supposed. Otherwise one must speak if a thing forbidden by the superior is vowed.

A vow made concerning a good work, but for an evil end:

a) It is valid if only the act of vowing is elicited for an evil end, for example if someone publicly vows alms in order to gain vainglory (St. Alphonsus, III, n. 206).

b) It is not valid if a good work is vowed as to be directed to an evil end alone, or from a mere affection for an evil thing, for example alms to be given for vain glory alone, or only for seducing someone to sin. The reason is that the thing promised, as it is intended - that is, as a means of attaining an evil end - is evil. If a good work is vowed as also to be directed to a good end, the vow is valid, and the thing promised seems to have to be performed for the good end alone, because the thing promised, as it is intended, is also good (St. Alphonsus, cited place).

A vow made concerning a good work, but for an indifferent end (for example if someone vows fasting in order to save expenses): such a vow is not valid if a good work is vowed as to be directed to an indifferent end alone; if a good work is vowed as also to be directed to a good end, the vow seems to be valid, as was said concerning a good work to be directed to an evil end and to a good end.

A vow emitted from affection for a good thing, even if joined with an evil cause or condition, seems to be valid, because the thing promised, as it is intended - that is, as a means of obtaining a good or licit thing - is good; for example if you vow alms so that you may not be caught in a crime (St. Alphonsus, III, 206).

Corollary III. A vow of marrying is not valid per se, because the opposite is better; it is valid per accidens: 1. if someone is otherwise bound to marriage; 2. one who, because of a particular danger of incontinence, emitted the said vow, more probably is bound by the vow, but only conditionally, namely unless he wishes to use other means; 3. likewise, per se, a vow of marrying a poor girl is valid if one is going to marry someone (St. Alphonsus, III, 207, 209; VI, 75). Likewise, a vow of passing to a laxer Religion is invalid. Likewise, a vow not to vow is invalid, because to vow is better; nevertheless a vow of not vowing without the counsel of the confessor is valid. He who has emitted this vow and nevertheless, without consulting the confessor, vows, acts validly but illicitly; besides, in that case, more probably he would also vow invalidly if the one vowing had intended from the beginning that vows emitted without the counsel of the confessor would be null, and without attending to this intention emitted a vow (St. Alphonsus, III, 210).

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[1] Council of Trent, sess. 6, can. 23.

Chapter III. On the Obligation of a Vow

644 **I. The existence of the obligation** is clear from Sacred Scripture: "If you have vowed anything to God, do not delay to pay it; for an unfaithful and foolish promise displeases Him; but whatever you have vowed, pay."[1] And indeed the reverence due to God requires that we fulfill the things which we have promised Him.

[1] Eccl. 5:3.

645 **II. The subject of the obligation** is only the one vowing, so that no one can be bound directly by force of a vow emitted by another (can. 1310, § 1). I said **directly,** because the obligation of a real vow,

and of a mixed vow insofar as it is real, passes to heirs through inheritance, as we shall explain shortly. I said **by force of a vow emitted by another,** because if a community has emitted a vow, successors are not bound by force of the vow, but can be bound by reason of a pact, statute, or custom (St. Alphonsus, III, 213, 214, 216, 217).

646 **III. The object of the obligation,** or the matter to which the obligation extends, depends on the intention of the one vowing; this is especially to be deduced from the words pronounced or comprehended in the mind, with attention also to common estimation and the norm for interpreting ecclesiastical law in similar matter (St. Alphonsus, III, 222, 180).

Corollary. One who has vowed to recite the Rosary satisfies by reciting a third part, unless something else is clear from the mind of the one vowing. For so the word Rosary is commonly taken. One who has vowed to fast for a month is not bound on Sundays. One who has vowed to fast on each Friday or Saturday, if on such a day, for example, the Nativity of the Lord falls (cf. can. 1252, § 4), is not bound to fast. One who has vowed to hear Mass for a month is not bound on Sundays and feast days to two Masses. Except, as to individual cases, if a contrary mind is evident (St. Alphonsus, III, 224). One who has emitted an indeterminate vow: if it is indeterminate as to time - as if someone has vowed to recite the Rosary daily - is bound perpetually, unless another mind is clear; if it is indeterminate as to the quality or quantity of the thing, he can define it at will, provided the thing defined is not such that it should be judged rather to mock God than to satisfy the vow (St. Alphonsus, III, 221).

647 **IV. The quality of the obligation.** The obligation of a vow, that is, of a promise made to God, is an obligation of religion as to genus (can. 1307, § 1), and of fidelity toward God as to species. Namely, the reverence due to God, as we noted under I, requires that we perform the things promised to Him. But here note the difference between fidelity due to men and that by which we are bound toward God. Fidelity is owed to men lest they be deceived; but to God, lest there be derogation from the reverence due to Him. Moreover, all violations of vows are of the same species; hence if another malice is added, for example, "if someone having a vow of chastity fornicated, he can confess separately the violation of the vow" (St. Alphonsus, III, 224).

648 **V. The quantity of the obligation.** The obligation of a vow generally is grave from its genus, that is, grave or light according as it concerns grave or light matter. I said **generally,** because the one vowing can emit a vow, which is like a law, under light obligation,[1] just as a legislator can impose a grave thing under light obligation (n. 149); nevertheless, the one vowing is presumed not to have done this. A matter light in every respect cannot be vowed under grave obligation (n. 149; St. Alphonsus, III, 211, 213). Moreover:

1. Matter is judged grave which, considering the thing and the circumstances, would be prescribed by the Church under grave obligation. If it is a question of a thing to be given, that matter is held grave which, if a reason of justice intervened, would have to be given under grave obligation. Yet the said norms should be understood so that greater matter is required if someone were to vow a series of objects or a great quantity to be bestowed. Hence, for example, one who promises to hear 20 Masses does not seem to sin gravely by neglecting one or another.
2. If someone has vowed something to be repeated often, which is not grave (as if someone vows that he will bestow a franc on the poor every week), there cannot be grave matter unless several matters coalesce. But several matters coalesce if the one vowing intended them after the manner of one thing, as in the example set forth; otherwise if he intended them separately. But if the intention of

the one vowing is doubtful, several matters are presumed to have been intended after the manner of one thing if it is a question of a real vow; otherwise if it is a question of a personal vow.

[1] Except if it is a question of public vows, which, when emitted under light obligation, are rejected by the Church and therefore are not accepted by God.

649 **VI. Fulfillment of the obligation;** concerning this it must be seen when and how a vow ought to be fulfilled.

1. **The time for fulfilling a vow.** a) If the time is determined, this must be observed. If a vow has not been fulfilled at the determined time, the obligation ceases or does not cease according as the time was attached for ending the obligation, or for urging its execution. Moreover, the time is judged attached for ending the obligation if it has been determined by reason of the time itself, as if someone emits a vow of fasting on the Vigil of some Saint. Nor then, if an impediment is foreseen, is there an obligation of anticipating it (St. Alphonsus, III, 220). It is judged attached for urging the execution of the obligation if it has been determined by reason of the vow to be fulfilled, as if someone emits a vow of fasting next Thursday, without regard to any special character of that day. In that case the vow must afterward be fulfilled if it was not fulfilled at the appointed time; indeed, generally there is an obligation of anticipating it if it is foreseen that the vow can be fulfilled neither at the appointed time nor afterward.[1] In doubt whether the time has been determined for ending the obligation or for urging its execution, the former is presumed in personal vows, the latter in real vows (St. Alphonsus, III, cited place); nevertheless the circumstances should be attended to. One who emitted a vow of doing this or that within a determined time, for example of receiving Communion within this month, if after the time has begun he foresees an impediment, certainly is bound to fulfill the vow now.

b) If the time is not determined, the vow ordinarily must be fulfilled as soon as it can be fulfilled morally. This is clear from Sacred Scripture,[2] and from the fact that a vow has the character of a debt. I said **ordinarily,** because sometimes one might rightly say that the obligation of fulfilling the vow as soon as morally possible is not undertaken by the one vowing, but that the matter can be taken more broadly. Moreover, delay, unless there is a just cause, is a grave sin: 1. when it is done with grave danger of omission or of inability to fulfill the vow; 2. when the delay is notable, and it concerns a vow in which delay involves diminution of the proximate matter, as happens, for example, in a vow of entering Religion; in this vow a delay beyond half a year is held by St. Alphonsus (III, 221) to be mortal. It is disputed whether one sins gravely if the delay is notable, say for two or three years, and it concerns a vow in which the delay does not involve diminution of the matter promised, as happens, for example, in a vow of making a pilgrimage, etc. But with St. Alphonsus (*Homo Apostolicus*, tr. 5, n. 33) it seems it must be affirmed, because so great a delay of execution against the will of the creditor, that is, God, seems to contain grave disorder. Deuteronomy seems to favor this.[3]

2. **The manner of fulfilling a vow.** a) A personal vow must be fulfilled by the one vowing himself. Hence it cannot be fulfilled through another; nor, if the one vowing cannot fulfill it, must another be substituted by him (St. Alphonsus, III, 217).

b) "Real vows are to be discharged from one's own property; hence one who cannot do so from his own property is not bound to beg from another. But if he can do so from his own property, and yet another, whether asked or spontaneously, wishes to discharge it for him, this is valid.... Indeed, he sufficiently satisfies a vow or oath of alms who, after learning of it, ratifies alms given by another for that purpose

while he himself was unaware of it; because then the vow is already fulfilled with the consent of the one vowing" (St. Alphonsus, III, 217). The obligation of a real vow passes to heirs, and likewise the obligation of a mixed vow for the part by which it is real (can. 1310, § 2). It is disputed, however, of what nature the obligation of the heir is. But the real obligations of the testator seem indirectly to affect his goods themselves, so that the said obligations, whether of justice, or of fidelity, or of religion, or of a manifold title, pass to the heirs by the same title by which the testator was bound by them.

c) A mixed vow, as to the personal and real part respectively, must be fulfilled as was said under a and b. But if the obligation of the vow ceases insofar as it is personal, for that reason its obligation does not cease insofar as it is real, unless the real part was promised only accessorily.

[1] Sometimes, however, from the circumstances the intention of the one vowing not to bind himself before the attached time can be gathered.

[2] Deut. 23:21.

[3] Deut. 23:21.

650 **VII. The obligation of certain vows in particular.** 1. A vow under a suspensive condition - for example, "I vow entrance into Religion, if my father consents" - obliges in this way: the one vowing is bound:

a) Once the condition has been fulfilled, to execute the vow. Nevertheless he is not bound until the condition has been fulfilled specifically, not merely equivalently. For example, "you vowed Religion if your sister married; it does not suffice if she dies" (St. Alphonsus, III, 219); except if another intention of the one vowing is sufficiently clear.

b) Not to render himself unable to execute the vow.

c) Not maliciously to impede the condition from being fulfilled. But one who impedes that does not act maliciously if it is a question of a condition which depends on the will of the one vowing. Hence if someone vowed to enter religion if within a year he had not entered marriage, he can enter marriage, and thus impede the condition from being fulfilled. "Likewise, you vowed chastity; if you fall from frailty, you do not sin with respect to the vow; otherwise, if you sin deliberately in order to be freed from the vow" (St. Alphonsus, III, 218). One who impedes the condition from being fulfilled is bound to remove the malicious influence if the condition still can be fulfilled; if it can no longer be fulfilled, he is not bound to execute the vow, unless it is evident that the intention of the one vowing extended more broadly (St. Alphonsus, cited place).

2. A penal vow - for example, "I vow Religion if I shall have perpetrated such a sin again" - after the sin has been committed does not oblige if fully deliberated consent was lacking.

3. A vow concerning the deed of another is understood thus: that the one vowing ought prudently to take care that the other perform it (St. Alphonsus, III, 216).

Corollary I. In strict doubt whether someone has vowed, or has taken up a mere proposal, he is not bound by the obligation of a vow (n. 228). In doubt whether a prepubescent person, otherwise normal, could omit a vow with sufficient deliberation, the faculty is presumed if he has completed the seventh year; otherwise, if he has not completed the seventh year (cf. can. 88, § 3).

Corollary II. One who has performed the thing promised while unmindful of the vow more probably has satisfied the vow, because everyone is judged to have the habitual will of satisfying a debt before

what is not a debt. Otherwise one must speak of him who, mindful of the vow, intends not to satisfy it (St. Alphonsus, III, 224, at the end).

Corollary III. In strict doubt whether the act by which the vow is fulfilled has been placed, there is an obligation of observing it; otherwise if it is doubted whether the act placed suffices for fulfilling the vow (n. 231).

Chapter IV. On the Cessation of a Vow

651 A vow can cease both through intrinsic causes and through an extrinsic cause, that is, through an authority intervening. Cessation which occurs through intrinsic causes is customarily called simple cessation. But authority can intervene through irritation, suspension, dispensation, and commutation (can. 1311). We shall speak of each.

Article I. On Simple Cessation

The causes of simple cessation are: 1. lapse of time attached for ending the obligation; 2. substantial change of the matter promised; 3. defect of the condition on which the vow depends; 4. defect of the final cause (can. 1311).

652 **I. Lapse of time,** namely time attached for ending the obligation. When time ought to be judged attached in this way, see n. 649.

653 **II. Substantial change of the matter promised.** This has place if the matter becomes evil, indifferent, or less good than its omission. Likewise if the matter is notably changed because of a supervening and unforeseen circumstance. The reason is that the intention of the one vowing is judged to be interpreted in this way; indeed, not without foundation is notable change said to constitute a morally diverse object (St. Alphonsus, III, 226). Hence one who has vowed, for example, to build a church, is not bound by the vow if and as long as, because of damage following in the state of his fortune, the execution of the vow is rendered difficult. Except from the rule stated: 1. if it is a question of public vows, which are: religious vows, solemn as well as simple, perpetual as well as temporary, substantial as well as those which are annexed to them; likewise a vow annexed to Sacred Order; 2. if the discussion concerns a supervening difficulty which the matter of the vow carries with it by its nature, or which follows from the changed disposition or will of the one vowing. The reason is that in the former case, since the common good demands it, every supervening circumstance is judged to have been comprehended in the vow; in the latter case, the circumstance of grave supervening difficulty, since the very nature of the thing carries it with it, is judged to be contained in the vow. Hence, for example, a vow of chastity, even one emitted in the world, does not cease because of a difficulty afterward arising, even if it was unforeseen (St. Alphonsus, IV, 50). Besides, note:

1. If the matter of the vow has become unsuitable or impossible in part, the obligation also ceases as to the other part if the matter of the vow is either indivisible by nature, or was intended undividedly by the one vowing; but it persists if the matter of the vow both is divisible by its nature and was intended dividedly by the one vowing. Hence one who vowed 100 Masses and can offer only 50 is bound to these. If in the matter of the vow principal and accessory can be distinguished, when the principal falls, the accessory falls, but not conversely.

2. One who has emitted a disjunctive vow - for example, "I vow that I will undertake a pilgrimage or cause 10 Masses to be celebrated" - in the case in which one part has become unsuitable or impossible, is bound in this way:

a) If before election one part becomes unsuitable or impossible, the one vowing is per se immune from every obligation. For the circumstance that the one vowing now cannot choose is not judged to have been comprehended in the vow. Except: 1. if with sufficient certainty he intended one or the other part absolutely, that is, whatever might happen; 2. if the other part became unsuitable or impossible through the fault of the one vowing (St. Alphonsus, III, 224).

b) If after election the part not elected becomes unsuitable or impossible, the one vowing is bound to perform the part elected, because in that case the election seems to have to be regarded as validly determinative of the prior vow (St. Alphonsus, cited place).

c) If the part elected, not yet put into execution, becomes unsuitable or impossible, the one vowing per se is bound to nothing, according to what was said under a).

Corollary. One who has chosen one part can sufficiently probably commute it with the other part, because the election is not judged to have been intended in such a way that the one vowing deprived himself of the faculty of choosing the other part (St. Alphonsus, cited place).

654 **III. Defect of the condition,** namely the condition on which the vow depends; for example, if someone vows a pilgrimage if this or that should succeed: when the thing does not succeed, the vow collapses.

655 **IV. Defect or cessation of the final cause,** that is, of the cause for which the vow was emitted uniquely or principally, and without which it would not have been emitted; as if someone vowed a pilgrimage for obtaining his father's health, and the father dies before the vow is fulfilled.

Article II. On Irritation

656 **I. Notion.** Irritation is the annulment of a vow, validly emitted, made by one who has dominative power over the will of the one vowing. Irritation is customarily distinguished as twofold, direct and indirect; but indirect irritation is rather called suspension, which is also more conformable to the Code of Canon Law (cf. can. 1312, § 2).

657 **II. The existence of the power of irritating vows** is clear both from the tradition and practice of the Church, and from can. 1312, § 1.

658 **III. The source of the power.** The power of irritating vows seems to be founded either in dominative power alone, or in dominative power completed or perfected by positive law.[1] According to the former opinion, dominative power of itself imports the power of irritating vows; according to the other, the power of irritating vows is indeed suggested, as to the power of parents, by the weakness of children; as to the power of religious superiors, by the fact that the subjection of the religious is most especially ordered to the direction of those things which can contribute to perfection, such as vows. From the things said, I say, the power of irritating is indeed suggested, but nevertheless it is not present in dominative power unless in some way it is completed or perfected by positive law (cf. St. Alphonsus, III, 227). Whatever the case, in fact dominative power certainly has annexed to it the power of irritating, as will be clear from what must now be said.

[1] Some derive the power of irritating vows from positive law alone; others judge that, at least in some cases, it must be strengthened and more accurately circumscribed by positive law (cf. Damen, cited work, pp. 11-12).

659 **IV. The subject of the power of irritating vows** is all those who enjoy dominative power over the will of the one vowing (can. 1312, § 1). If the power of the superior, for example of the father with respect to a pubescent child, has not wholly ceased, the faculty of irritating vows emitted in the time of subjection persists, provided the one vowing, after the time of subjection, has not confirmed the vow with knowledge of the infirmity of the vow. Otherwise one must speak if the power of the superior, for example of a regular Prelate, has been wholly extinguished, or some religious is now no longer subject to him (St. Alphonsus, III, 238).

To whom specifically the power of irritating vows belongs, see in the corollary.

660 **V. The extent of the power.** The power of irritating extends to all vows of subjects emitted in the time of subjection, even to those which are reserved as to dispensation; likewise to those which are to be executed after the time of subjection has passed; likewise to those which the lord himself has approved. Indeed, he cannot even abdicate the faculty annexed to dominative power, namely that of irritating vows. It was disputed whether the power extended to vows concerning internal acts; but much more commonly it was affirmed, and can. 1312, § 1 does not except them (St. Alphonsus, III, 227).

661 **VI. The use of the power.** Irritation made without cause is valid; however, it is lightly illicit, insofar as the progress of the subject is irrationally impeded. Moreover, any just or reasonable cause suffices (can. 1312, § 1; St. Alphonsus, III, 228).

662 **VII. The effect of irritation** is that the vow is entirely extinguished, so that in no case does the obligation afterward revive (can. 1312, § 1).

Corollary. The following can irritate vows:

1. A father can irritate vows emitted by prepubescent children, provided that when they become pubescent they have not confirmed them while aware of the infirmity of the prior vow. If, unaware of the infirmity, they confirm them, strictly speaking they only renew the vow as it was; but it was infirm or irritatable. The aforesaid power also belongs to him who, either by law (as a tutor), or by the father's disposition, is substituted in his place. The reason is that, because of the weakness of prepubescents, power over their will, that is, dominative power, must be judged to belong to the father and to the others enumerated. But dominative power, by can. 1312, § 1, has annexed to it the power of irritating vows (St. Alphonsus, III, 229, 238; cf. St. Thomas, II-II, q. 88, a. 9).

It is disputed whether a father can irritate vows emitted by pubescent minors. Now the matter seems wholly doubtful, because the father's dominative power over pubescent minors is not proved. Nor is can. 89, which declares: "A minor person remains subject to the power of parents or guardians in the exercise of his rights, except in those things in which the law holds minors exempt from power"; nor is the cited canon, I say, judged to settle the question or theoretical controversy whether or not the father enjoys dominative power over pubescent minors.

Corollary. In doubt whether a vow was emitted before or after puberty, the power of irritating is doubtful, because it is doubtful whether the vow was emitted at a time when it was certainly subject to irritation.

2. The mother seems able to do the same as the father, provided he does not contradict, or with dependence on the father. The reason is that dominative power seems to belong to the mother as much as to the father, because she is the principle of the child no less than the father. Once dominative power is admitted, the power of irritating vows also must be admitted (St. Thomas, opusc. 17, cap. 13, vers. *Decimo*; St. Alphonsus, *Homo Apostolicus*, tr. 5, n. 36).

3. The husband seems to have the power of irritating the vows of the wife, because he seems to enjoy dominative power over her; for such power of itself is very expedient for the good of conjugal society, that is, for fostering dependence and intense love, for restraining the wife's impulses of mind, and for favoring the peace of the family. But dominative power carries with it the power of irritating vows (cf. St. Thomas, II-II, q. 88, a. 8, ad 3; St. Alphonsus, III, 324).[1]

4. Superiors of religious, both exempt and non-exempt, both solemnly and simply professed, and likewise Superioresses, can directly irritate vows emitted by subjects during the time in which they were subject to themselves or to other Superiors, for example to a predecessor (can. 501, § 1). The power does not extend: 1. to substantial religious vows, for since these are constitutive of subjection, they are emitted independently of this subjection, and therefore cannot be called infirm or irritatable; 2. to vows annexed to the substantial vows, because since they are emitted together with the substantial vows, they likewise are judged to have been made independently of subjection. They also except the vow of passing to a stricter Religion[2] (St. Alphonsus, III, 233; IV, 53, 54).

What has been said about Superiors of religious should also be applied: 1. to the Pope with respect to professed male and female religious (cf. can. 499, § 1); 2. to Chapters of religious according to the norm of the constitutions and common law (cf. can. 501, § 1); 3. to the Bishop, if it is a question of a religion of diocesan right.

A Superior cannot irritate the vows of novices unless, according to the things said under I, he truly supplies the place of a parent, and it is a question of a vow which a parent could irritate (St. Alphonsus, IV, 55). Nor does the faculty of irritating the vows of novices or other faithful belong to the Supreme Pontiff, because he lacks dominative power over them.

Question. Whether the Church supplies probable power of irritating vows.

Response. We judge that it must be denied. For the power of irritating vows supposes dominative power; if this is present, the Church certainly completes it; if it is not present, it cannot be completed.

Corollary. Those who enjoy the power of irritating vows can also in advance render subjects incapable of vowing, either in some matter or universally, so that vows from that time are null from the beginning (St. Alphonsus, III, 228).

[1] Cf. Num. 30:7-13; Eph. 5:24.

[2] Cap. 18, *de Reg.*

Article III. On Suspension

663 **I. Notion.** Suspension of a vow is relaxation of the obligation of a vow for a time, made by one who has power over the matter of the vow. By authors it is commonly called indirect irritation.

664 **II. What the subject of the power is** is clear from the notion, and is handed down in these words of can. 1312, § 2: "He who has power not indeed over the will of the one vowing, but over the

matter of the vow, can suspend the obligation of the vow for so long as the fulfillment of the vow would bring prejudice to himself."

665 **III. The extent of the power.** The faculty of suspending vows extends to all vows which, and insofar as, prejudice the power or right of the one about to suspend; even to those which were emitted at a time when the aforesaid power or right did not yet have force, for example, if it is a question of novices, to vows emitted before the novitiate. Likewise the faculty extends to vows which the superior approved, unless by approving them he renounced the right to which the vow was prejudicial (St. Alphonsus, III, 242).

666 **IV. The use of the power.** As was said of irritation, so also suspension made without cause is valid; for everyone validly enforces his own right. It is, however, lightly illicit, insofar as another's progress is impeded without sufficient cause.

667 **V. The effect of suspension** is relaxation for a time of the obligation of the vow; namely, when the right of the one suspending ceases, it revives, unless in the meantime it has ceased from another cause (can. 1312, § 2).

Corollary. The following can suspend vows - besides those who can irritate them:

1. A father or the one acting in his place in administering the goods of children can suspend the real vows of pubescent children as long as they lack the right of administering their own goods; likewise their personal vows, insofar as they prejudice domestic governance. The same power belongs to the mother as to personal vows; likewise as to real vows, if she herself is tutor or curatrix (St. Alphonsus, III, 229, 230).
2. A husband can suspend the vows of the wife insofar as they prejudice the use of marriage, the education of offspring, or domestic governance; likewise the wife can suspend the vows of the husband which prejudice her rights (St. Alphonsus, III, 234, 235).

Corollary. If spouses by mutual consent have emitted a vow of chastity, and in such a way that each has ceded his or her own right, the husband can directly irritate the vow of the wife; but the wife, once freed from the vow, can indirectly irritate the vow of the husband (cf. St. Alphonsus, III, 239).

4. The Pope can suspend the vows of all the faithful, and the Bishop the vows of diocesan subjects, insofar as they are adverse to the ecclesiastical governance belonging to him.
5. Religious Superiors and Superioresses can suspend the vows of novices which prejudice probation and religious discipline (St. Alphonsus, IV, 55).

Note. Vows emitted before religious profession are suspended for as long as the one vowing remains in religion (can. 1315).

Article IV. On Dispensation

668 **I. Notion.** Dispensation of a vow is "the absolute condonation of the obligation of a vow, made in the name of God" (St. Alphonsus, III, 250). It is said **made in the name of God,** because the Church, in dispensing in vows, does not condone her own right, but God's; this she cannot do except in the name of God. The difference between irritation and dispensation consists especially in this, that one irritating acts in his own name, whereas one dispensing acts as taking the place of God and therefore as using vicarious power.

669 **II. The existence of the power.** That the Church can dispense in vows is clear from the tradition and perpetual practice of the Church. It is supported by these words of Christ: "Whatever you shall loose upon earth shall be loosed also in heaven";[1] likewise by reason, insofar as it is permissible to judge that a power so useful and almost necessary was granted by Christ to His Church.

[1] Matt. 16:19.

670 **III. The extent of the power.** The faculty of dispensing in vows, which belongs to the Church, extends to all vows, solemn as well as simple, public as well as private. Exceptions are those which were emitted for the benefit of a third party, as follows:

1. If the promise made to God, or the vow, is principally intended, the promise made to man follows the condition of the vow, and with the vow dissolved the promise falls.
2. If the promise made to man is principally intended, the vow follows the condition of the promise, and cannot be remitted unless the third party acquiesces. Likewise, if each promise is equally principally intended, the vow cannot be remitted without the consent of the third party. Except in each case if it is a question of the right of a third party which is subject to the supreme administration of the Supreme Pontiff, and therefore can be remitted by him even without the consent of the third party; as if a vow was emitted in favor of a religious institute (St. Alphonsus, II, 255; *Homo Apostolicus*, tr. 5, nn. 19, 41).

671 **IV. The subject of the power** is the Supreme Pontiff and those to whom the Church has communicated it. Moreover:

1. The Pope can dispense all the faithful from all vows to which, according to what was said under III, the power of dispensing, such as it is in the Church, extends.
2. From can. 1313, non-reserved vows can be dispensed for a just cause, provided the dispensation does not harm a right acquired by others:

a) The local Ordinary, as regards all his subjects and also travelers. Thus can. 1313, 1°: understand subjects wherever they dwell; travelers and those without domicile actually staying in his territory (can. 94, § 2; 201, § 3).

b) The Superior of an exempt clerical religion, as regards professed members, novices, or others living day and night in the religious house for the sake of service, education, hospitality, or infirm health.

c) Those to whom the Apostolic See has delegated the power of dispensing. Now regular confessors probably can, by delegated power, dispense in all vows and oaths of the faithful in which Bishops can do this by ordinary power, and indeed both within and outside confession. They probably enjoy this power by force of a privilege which, under the old law, probably belonged to them, and which probably has not been revoked. Hence at least the Church supplies (cf. St. Alphonsus, III, 256, 257).

Note 1. If the forum for which the power was given has not been expressed, the power is understood to have been granted for both forums (can. 202, § 3).

Note 2. Since dispensation is an act of voluntary jurisdiction, one who has the power of dispensing or commuting can use it even for himself (can. 201, § 3). Nevertheless no one can irritate his own vow.

672 **V. The use of the power.** 1. Dispensation in vows, in order to be valid, requires a just cause (can. 1313). The reason is that it contains the remission of another's right, that is, God's, who cannot be

judged to have granted the faculty of remitting His right without cause (St. Alphonsus, III, 250). Dispensation given without cause is not valid, even if it was given in good faith; but dispensation granted with a just cause is valid, even if it was granted in bad faith (St. Alphonsus, III, 251).

2. Just causes are judged to be: 1. the common good, for example of the Church, the republic, or the family, or the greater progress of the one vowing; 2. danger of transgression, or at least notable difficulty, even if foreseen, or vexation by scruples in observing the vow; 3. lesser deliberation in vowing, as if the vow was emitted with too much facility, from fear, from anger, from sorrow, or in the time of prepuberty (St. Alphonsus, III, 250, 252, 253; cf. St. Thomas, *In IV Sent.*, dist. 38, q. 1, a. 4, sol. 1, corp.).[2]
3. If the cause does not suffice, some commutation should be added. The same should be done in doubt whether the cause suffices; but the subject, once the matter has been sincerely set forth, should acquiesce in the one dispensing. Likewise, when a doubt has arisen after the dispensation was given, one can acquiesce in the dispensation; both because "then there is a presumption for the validity of the dispensation; and because... it would be a thing too exposed to scruples if men, after obtaining a dispensation, were bound to inquire about its validity" (St. Alphonsus, III, 251, 254).

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[1] Cf. Damen, *De irritatione et suspensione votorum*.

[2] Cf. Innocent III, cap. *Magnae, de voto*, etc.

Article V. On Commutation

673 **I. Notion.** Commutation is the substitution of another honorable work, in place of that which had been promised by vow, under the same obligation (St. Alphonsus, III, 243). It can be made into something lesser, into something equal, and into something better.

674 **II. Required power.** Commutation into something lesser requires ecclesiastical power. For it is a partial remission of a divine debt; but remission of a divine debt belongs to the Church alone. Commutation into a better or equal good can be made by the one vowing himself (can. 1314); equality, however, should be taken morally, not mathematically (St. Alphonsus, III, 247).

675 **III. The subject of the power** is those who have the power of dispensing in vows (cited canon), according to the saying: He to whom the greater is permitted is surely permitted the lesser. Nevertheless it is not repugnant that only the power of commuting be granted, with the power of dispensing excluded.

676 **IV. Use of the power.** Commutation into something better does not require a cause. But commutation into something equal or lesser, in order to be made licitly, requires some cause, though a lesser one than dispensation; likewise commutation into something equal requires a lesser cause than commutation into something lesser. For it to be made into something equal or almost equal, a greater inclination toward it suffices (St. Alphonsus, III, 245).

Commutation into something lesser without a just cause is not only illicit, but also is not valid at least in this sense: insofar as it does not free completely from the debt; hence, supposing its validity, the defect certainly must be supplied. I said **supposing its validity,** because it is controverted whether or not it is valid in such a way that it suffices to supply the defect. Some affirm, because such a substitution among men is not judged invalid; therefore neither with respect to God, with whom

matters are treated even more mildly. Others deny, because a partial dispensation, such as commutation into something lesser is, requires a just cause no less than full dispensation (St. Alphonsus, III, 245).

677 **V. The effect of commutation.** 1. After commutation has been made, it remains free to the one vowing to return to the prior matter, unless the commutation was made into a better good and the one vowing has bound himself to it by a new vow. The reason is that commutation has the character of a favor, which the one vowing is not bound to use, according to the saying: that which is granted for someone's favor is not to be turned back to his disadvantage[1] (St. Alphonsus, III, 248).

2. If the substituted matter becomes impossible, the one vowing is not bound to return to the prior matter if the commutation was made by ecclesiastical authority. The reason is that the prior obligation has been removed. Otherwise one must speak if the one vowing himself commuted his vow (St. Alphonsus, III, 249).

3. If a reserved vow has been commuted, the substituted matter does not seem reserved, because reservation regards only the matters designated by law.

[1] Reg. Iur. 61 in VI.

Scholion. On Reserved Vows

678 **I. Notion of reservation.** The reservation of a vow consists in this: that the power of dispensing and commuting, not of irritating, certain vows is reserved to the Supreme Pontiff, so that no one enjoys the said power unless he has received a special faculty.

679 **II. Reserved vows.** Private vows reserved to the Apostolic See are only the vow of perfect and perpetual chastity and the vow of entering a Religion of solemn vows, when these have been emitted absolutely and after the completion of the eighteenth year of age (can. 1309). Nevertheless, only the substance of the vow is reserved, not the time, for example, of entering Religion, or the circumstance, for example, of a stricter Religion; nor is the matter into which a reserved vow has legitimately been commuted reserved (St. Alphonsus, III, 258).

Besides the private vows just enumerated, public vows are also reserved to the Roman Pontiff. Such are: 1. the vow of chastity emitted in receiving the subdiaconate; 2. religious vows, solemn as well as simple, perpetual as well as temporary, emitted in a Religion approved by the Holy See.

680 **III. Conditions of reservation.** Reservation, since it is odious, is to be interpreted strictly. Hence for a vow to be reserved, it must be a true vow, absolute, not disjunctive, perfect as to act, obligation, and matter.

1. **True,** that is, a promise made to God. Therefore a promise made either to a man, or to a Saint while stopping at him, is not reserved; nor is an oath, unless it is confirmed by a vow (St. Alphonsus, III, 259).

2. **Absolute,** as can. 1309 expressly states. Hence it must not have been emitted under a condition concerning a future contingent thing;[1] nor is a vow of this kind reserved after the condition has been fulfilled, because it was not emitted absolutely, which canon 1309 requires. Hence a vow emitted in this way is not reserved: "I vow Religion, if I shall have sinned again"; or: "if I shall have been rescued from danger." Otherwise, however, one must speak "if someone has vowed Religion with a condition, for example, if his mother dies, because then the vow is rather absolute; although

it does not oblige to execution while the mother is alive; for the particle *if* not rarely is equivalent to the particle *when*" (St. Alphonsus, cited place).

3. **Not disjunctive,** namely, in such a way that someone binds himself to reserved matter or to non-reserved matter; as if someone says: "I vow Religion or the reception of sacred order." Nor after the election of matter reserved in itself does the chosen part become reserved, unless someone confirms it by a new vow. The reason is that the one vowing, by choosing one part, does not deprive himself of the liberty of choosing the other (St. Alphonsus, III, 224, 258). Otherwise, however, one must speak if the vow indeed is disjunctive, but each part is reserved.

4. **Perfect as to act, obligation, and matter.** It is said perfect:

a) As to the act; hence a vow emitted from fear, even light fear, unjustly struck, is not reserved (St. Alphonsus, III, 258).

b) As to the obligation; therefore a vow emitted under light obligation is not reserved (St. Alphonsus, cited place).

c) As to the matter, that is, what is vowed must be perfectly that which is assigned as reserved.

Hence the following are not reserved: 1. a vow of not marrying, since not marrying is not the same as preserving perfect chastity; 2. a vow of conjugal chastity, or 3. of virginity, if it is taken for integrity of the flesh alone, because perfect chastity extends further than conjugal chastity and virginity so taken;[2] 4. a temporary vow of chastity; 5. a vow emitted by a married person, because it cannot be a vow of entire chastity; except if the spouse either has lost the right of asking the debt, for example by adultery, or has renounced it; likewise if each spouse by mutual consent has emitted a vow of chastity and has explicitly or implicitly renounced the right to the debt (St. Alphonsus, VI, 986); 6. a vow of receiving Sacred Order, since it is not a vow of chastity, but a vow of embracing a state which has a vow of chastity annexed to it; 7. a vow of entering a Religion of simple vows. Moreover, "if someone has vowed to enter a monastery, or if a girl has vowed to become a nun, and has not expressly thought of an order strictly so called, from present-day circumstances it must be judged that that vow is not reserved, since there are so many religious congregations or Orders in the broader sense, by entering which the one vowing must be judged to have fulfilled the vow."[3]

[1] Vows under a condition concerning the past or the present are immediately absolute or null, according as the condition exists or does not exist. Vows under a condition concerning a necessary future thing are immediately absolute (St. Alphonsus, cited place).

[2] A vow of virginity also, according to the mind of those vowing, often contains a vow of perfect chastity.

[3] Lehmkuhl, *Theologia Moralis*, I, n. 627.

681 **IV. Cessation of a reserved vow.** First compare and apply what we have said about the cessation of a vow taken generally (n. 651). But as to the dispensation and commutation of a reserved vow, certain special things must be noted.

1. **Dispensation.** a) Bishops and those who have episcopal jurisdiction can dispense, but only insofar as it is necessary, "if access to the Pope is not easy and there is danger of grave harm in delay" (St. Alphonsus, cited place; VI, 987). I said **insofar as it is necessary;** "hence if it suffices that the vow be suspended, it cannot be dispensed. Likewise, if someone is dispensed from a vow of chastity with the restriction that he marry a certain woman to repair her honor, he cannot marry another" (St. Alphonsus, III, 258).

b) Regular confessors probably can do the same as Bishops, namely by a privilege which probably persists (cf. St. Alphonsus, III, 258; VI, 987, 1128), so that at least the Church supplies. Dispensation, however, can be granted even outside confession.

2. **Commutation.** Insofar as those mentioned under 1 can dispense in reserved vows, to that extent they can also commute them.

Warning. The people should be advised not to emit vows without consulting the confessor. But the confessor should not permit vows so easily, especially a vow of chastity, above all of perpetual chastity, because ecclesiastical authority is not accustomed to dispense in this vow, when it has been maturely emitted, unless a very great commutation has been attached. If that vow seems fitting, let a temporary vow be permitted the first time, or several times, from one feast of the Blessed Virgin to another, and so at last, after much and serious testing, a perpetual vow[1] (cf. St. Alphonsus, *Praxis Confessarii*, n. 93).

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[1] Lehmkuhl, *Theologia Moralis*, I, n. 631.

Section III. On the Oath

(St. Thomas, II-II, q. 89; St. Alphonsus, *Theologia Moralis*, bk. III, nn. 133-193; *Homo Apostolicus*, tr. 5, nn. 12-20.)

We shall speak first of the oath generally, then of the promissory oath specifically; we shall add a scholion on the fictitious oath.

Chapter 1. On the Oath Generally

682 **I. Notion.** An oath is the invocation of God, or of the divine Name, to give assurance concerning some matter. It is called:

1. **An invocation.** Therefore it is not enough that someone merely assert, for example, that he speaks before God, or that God knows or testifies to the truth of the matter affirmed by him. If, however, the aforesaid things are uttered not only enunciatively, but invocatively, as the Apostle did,[1] there is a true oath.

2. **Of God;** not of a man; nor of an Angel or Saint, if one stops at their testimony. But we swear by God alone, because He, as very truth and very veracity, can neither be deceived nor deceive, and therefore He is able to procure full credibility for what is said.

3. **To give assurance concerning some matter,** that is, either concerning the truth of one's assertion, or concerning one's own future action. To give assurance concerning the truth of an assertion, God is invoked as witness of the assertion; and there is an assertory oath. To give assurance concerning one's own future action, God is invoked as witness of the present will to do something, and as patron of the future execution; and there is a promissory oath. I said: **that God is invoked as witness,** namely so that by His testimony He may confirm what is asserted, not however that He should perform this here and now, but at the time and in the manner which shall have pleased Him, at least "when He will bring to light the hidden things of darkness and will make manifest the counsels of hearts"[2] (cf. St. Thomas, II-II, q. 89, a. 1; St. Alphonsus, III, 133).

Corollary I. For the essence of an oath there is required the intention or will of invoking the authority of God, so that it is not enough to use only words which signify invocation. For human acts do not

operate beyond the will of the agent; wherefore, if the intention or will of invoking God is absent, there is not a true invocation of God, but only the external signification of invocation (St. Alphonsus, III, 133).

Corollary II. For the essence of an oath, according to many, a merely internal invocation suffices. Whatever the case may be, certainly an oath of this kind, merely mental, must be called incomplete, insofar as such an invocation is not apt to give assurance (before men) concerning some matter. In order that this be obtained, the invocation of God must be externally expressed. But as to the said expression, or as to the formulas of an oath, note:

a) It is the same: 1. whether the expression is made by words or by gesture or deed, as if, when asked whether you swear, you nod your head; or you touch the book of the Gospels offered for swearing; or you subscribe to an oath-formula; 2. whether the expression is determined to an invocation of God of itself or from the circumstances (St. Alphonsus, III, 134, 136).

b) Among expressions or formulas, some of themselves are certainly oath-formulas, others are ambiguous, and others are not oath-formulas. Certainly oath-formulas are, for example: "I call God to witness"; "let God be witness for me"; "I swear by God," etc.

Ambiguous are: "I swear"; "I speak before God"; "God is witness for me," etc. To judge whether or not they involve an oath, the circumstances and the intention of the speaker should be inspected. Thus if someone responds to a request for an oath, "I swear," the oath subsists.

Not oath-formulas are, for example: "in truth"; "by my faith"; "by my honor"; "it is as true as God is," etc. (St. Alphonsus, III, 134-138, 143). Nor are formulas oath-formulas which, because of circumstances, lose the signification of an invocation, as if they are uttered in a school or in a theater, for the sake of teaching or representation.

[1] Gal. 1:20: "Behold, before God, that I do not lie."

[2] 1 Cor. 4:5.

683 **II. Division.** An oath is divided chiefly:

1. Into **explicit** and **implicit,** according as God is invoked directly or indirectly, namely through creatures in which His attributes specially shine forth. Such are, for example, the Saints, heaven, the Church, the sacraments, the Cross, the soul; such are not, for example, trees, a beard, etc.
2. Into **assertory** and **promissory,** according as God is invoked to give assurance concerning the truth of an assertion, or concerning one's own future action.
3. Into **execratory** and **non-execratory.** An execratory oath is one by which God is also invoked as avenger of perjury or of broken faith, if these take place.[1]
4. Into **solemn** and **simple,** according as it is emitted with a special ceremony or without it (St. Alphonsus, III, 140, 141).

[1] The sense of the formula "So may God help me and these holy Gospels of God" is: If what I swear is true, may God help me; may He not help me, if it is false.

684 **III. Morality.** An oath, with the due conditions observed, is an honorable act, and one of religion. It is an honorable act, as is clear from Sacred Scripture, which approves the oath both directly,[1] and indirectly by exhibiting oaths emitted under divine inspiration.[2] It is an act of religion, because it

honors the authority of God, who is invoked to give assurance concerning some matter (St. Thomas, II-II, q. 89, a. 2; St. Alphonsus, III, 144).[3]

[1] Deut. 6:13; 10:20; Ps. 15:1, 5, etc.

[2] Rom. 1:9; 2 Cor. 1:23; Gal. 1:20, etc.

[3] **Objection.** Christ in Matt. 5:33 says: "You have heard that it was said to the ancients: You shall not swear falsely, but you shall render your oaths to the Lord. But I say to you: do not swear at all, neither by heaven... nor by earth... But let your speech be: yes, yes; no, no; and whatever is more abundant than these is from evil." The same is in St. James 5:12. **Response** with St. Augustine: "The Apostle himself swore in his letters, and thus showed how what was said should be understood, I say to you, do not swear at all, namely lest by swearing one come to facility in swearing, from facility to custom, and so from custom fall into perjury. And therefore he is not found to have sworn except while writing, where more cautious consideration does not have a headlong tongue. And this indeed is from evil, as it was said, whatever is more is from evil: not however from his own evil, but from the weakness of those to whom he was striving to give assurance even in this way" (*De mendacio*, c. 15).

685 **IV. Required conditions.** For the liceity of an oath three things are required: truth, judgment, and justice (can. 1316, § 1; St. Thomas, II-II, q. 89, a. 3).[2]

1. **Truth;** by which here is understood the certainty of the one swearing concerning the truth of his own assertion. In court, strict moral certainty is required; for this is intended by the judge. Outside court, moral certainty taken somewhat more broadly suffices (St. Alphonsus, VI, 148). Moreover:

a) **Defect of truth** is a grave sin from its whole genus; since he inflicts a grave injury upon God who invokes Him as witness of an assertion which he holds as certainly or probably false. There is added proposition 24, condemned by Innocent XI: "To call God as witness of a slight lie is not such great irreverence that on account of it He would wish, or could, damn a man."[3] A sin committed in this way is called perjury.

b) **An oath emitted with a mental restriction:**

a) It is illicit, indeed perjury, if the restriction is purely mental. For a restriction of this kind involves a lie, so that in the given case God is invoked as witness of a matter which is held as false. There is added proposition 26, condemned by Innocent XI: "If someone, either alone or before others, whether questioned or of his own accord, whether for the sake of recreation or for any other end, swears that he has not done something which he truly has done, understanding within himself something else which he has not done, or even another way than that in which he did it, or any other true addition, he really does not lie and is not perjured";[4] cf. also proposition 27.[5]

b) It is licit, provided a just cause is present, if the restriction is not purely mental, because a lie is absent, and therefore God is not invoked as witness of what is false. For the same reason it is only venial to swear in this way without a just cause. But it is prohibited under grave obligation to swear, even with a restriction not purely mental: 1. in court, where someone is legitimately questioned; 2. in contracts (St. Alphonsus, III, 151, 152).

2. **Judgment** requires that one not swear without necessity or utility. Namely, although an oath is an act of virtue, that is, of religion, nevertheless that act is not the primary end of an oath; the primary end is the confirmation of truth for man's utility; hence for the liceity of an oath necessity or utility is required.

Defect of judgment of itself is only venial, because grave irreverence does not appear in it (St. Alphonsus, III, 144, 145).

3. **Justice** requires: 1. in an assertory oath, that the assertion itself be licit; 2. in a promissory oath, that what is proposed or promised be honorable. Hence, for example, justice is lacking in an oath by which someone confirms a sinful detraction, or by which he swears that he is going to commit an injustice (St. Alphonsus, III, 146).

Defect of justice is a grave or light sin according as the assertion, proposal, or promise which is confirmed by oath is gravely or lightly illicit. Hence:

a) He sins gravely who by an assertory oath confirms a gravely evil assertion, and thus promotes a grave evil effect; as if someone were to confirm by oath a gravely injurious detraction: thus, namely, he would promote grave infamy of his neighbor. The reason is that it is grave irreverence to abuse divine authority in order to promote a grave evil effect. Otherwise, it is quite probably only a light sin, namely, if someone were to confirm by oath a lightly evil assertion, or were to confirm an assertion indeed gravely evil - for example, boasting about a sin committed - but by the oath would bring about this one thing, that others would be made more certain about the assertion, without a grave evil effect being promoted from it (St. Alphonsus, III, 146).

b) Likewise he sins gravely who deliberately uses an oath (whether assertory or promissory) as a means to grave sin; as if someone were to swear that the master is absent, in order to induce someone to a grave injustice. But to use an oath as a means to a light sin quite probably does not of itself exceed the venial.

c) Moreover, he sins gravely who emits a promissory oath concerning a gravely illicit matter; if concerning a lightly illicit matter, it is disputed whether it is a grave or a light sin. St. Alphonsus (III, 146) deservedly holds as more probable that it is a grave sin, because grave irreverence seems to be present in the fact that God is constituted patron of a future action, even though only lightly evil. An oath against the evangelical counsels is held by the holy Doctor to be venial (St. Alphonsus, cited place).

d) Finally, the custom of swearing without due attention to truth or justice is gravely sinful, because he who acts in this way exposes himself to the grave danger of oaths destitute of truth and justice. There is added, as to the custom of easily emitting promissory oaths, the danger of not fulfilling them (St. Alphonsus, III, 145).

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[1] Cf. Gopfert, *Der Eid*.

[2] Jer. 4:2.

[3] Denzinger-Bannwart, n. 1174.

[4] Denzinger-Bannwart, n. 1176.

[5] Denzinger-Bannwart, n. 1177.

Chapter II. On the Promissory Oath Specifically

686 **I. Notion.** A promissory oath, as we have said (n. 682), is the invocation of God to give assurance concerning one's own future action. In an oath of this kind, as likewise we have already noted, God is invoked: 1. as witness of the present will to place the action; 2. quite probably as patron of the future execution, that is, God is invoked so that He may give authority and force to the proposal or promise; "which," Suarez says, "I explain by a human example. For men are often accustomed to promise, or to

make a compromise, or to enter betrothals, before a king or another man of great authority, not so that he should properly be a surety undergoing an obligation, nor even so that he should be witness of the future execution, but so that he may furnish authority to the contract, and so that the contracting parties may understand that they will do injury to him if they do not fulfill the promises."[1] These things also are held by St. Alphonsus as sufficiently founded (III, 173).

Others judge that God in a promissory oath is invoked as witness of future truth, and they appeal to the natural meaning of the words by which the said oath is expressed. Suarez tries to weaken this opinion with these words: "With respect to a future fact He cannot be brought in as witness, for testimony is not given concerning a thing not yet done. And although future things are present to God, nevertheless, insofar as divine testimony is invoked through an oath, there is not asked from God, so to speak, testimony concerning a future thing as it is present to Him, but as it is in the word of the one promising. But in this way testimony does not fall upon that word except insofar as it is capable of truth when it is spoken; therefore, with respect to a future fact, as to be confirmed by that word, God is not invoked as witness, but as surety, to whose honor and authority it pertains that he who has sworn should effectively accomplish what he has asserted or promised."[2]

According to others, God is invoked as surety (properly so called), that is, in such a way that He, as it were, promises or proposes together with the one swearing. But that is not proved, so that God, as regards practice or obligation, can be held as only patron of the future execution (n. 689). Nor is a surety properly so called understood by Suarez, as is clear from the words cited.

As to the opinion of St. Thomas, II-II, q. 89, aa. 1, 7, and 9 should be compared.

[1] *De iuramento*, bk. 3, c. 16, n. 10.

[2] Cited place.

687 **II. Division.** A promissory oath is divided into a **simple** promissory oath, or one standing by itself, and a **confirmatory** promissory oath. A simple oath is one which is emitted without a promise (or any obligation), whether previously existing or made together with the oath. A confirmatory oath is one emitted in confirmation of a promise (or of any obligation), whether previously existing or made together with the oath, either to God (a sworn vow), or to man (a sworn promise), or to God and man (a vow sworn together with a promise). Therefore the matter of a simple promissory oath is future action as such; but the matter of a confirmatory oath is the future fulfillment of a promise or of any obligation.

688 **III. Requisites for validity.** For validity some things are required on the part of the one swearing, others on the part of the matter.

1. **On the part of the one swearing,** almost the same things are required as on the part of the one vowing for the validity of a vow (n. 642). It suffices to add these things:

a) For the validity of a confirmatory oath there is required either a pre-existing obligation, or the intention of actually promising something either to God (a vow) or to man. For the validity of an oath standing by itself these things are not required.

It is disputed whether or not for a promissory oath there is necessarily required an intention of obliging oneself by force of the oath. But it seems this must be denied, because for the substance of a promissory oath there is required only the intention of invoking God to give assurance concerning

one's own future action (n. 682), not however the intention of obliging oneself by force of that invocation, although that obligation follows as a necessary effect.

b) Fear does not obstruct validity according to these words of can. 1317, § 2: "An oath extorted by force or grave fear is valid, but can be relaxed by an ecclesiastical superior" (St. Thomas, II-II, q. 89, a. 7, ad 3; St. Alphonsus, III, 174).

2. **On the part of the matter** it is required that it be honorable, not illicit or idle. The reason is that divine authority cannot be the bond of an inequitable or vain thing (St. Thomas, II-II, q. 89, a. 3, and a. 9, ad 3; St. Alphonsus, III, 176).

Corollary I. Oaths of parents to punish their children are commonly invalid or at least do not oblige, either because they were about a useless matter, or rather about disordered vengeance, or because the delinquents have already been corrected or have promised amendment (St. Alphonsus, III, 186). Likewise oaths of merchants not to sell for less or not to buy for more, even if they are made seriously, commonly do not have force, because ordinarily they are about a useless matter.

Corollary II. An oath of fidelity to a political Constitution which contains some things contrary to divine or ecclesiastical law is valid insofar as it is restricted to licit things. It is licit if that restriction is expressly added (namely by adding these or similar words: "saving divine and ecclesiastical laws"), or, as happens today, is drawn from usage.[1] Likewise valid and licit is an oath of fidelity to a usurping Prince, when he peacefully possesses the kingdom (St. Alphonsus, I, 94; II, 74).

Corollary III. An oath emitted by a cleric to remain in the diocese and not to enter Religion is valid, because it regards a thing owed by force of the promise made together with the oath, and confirmed by the oath itself.

Corollary IV. An oath concerning matter partly impossible or inept has force and obliges as to the other part, if the matter is divisible by its nature and also intended divisively. Hence, for example, a prodigal sworn promise (or not sworn) can have force in part.

[1] Cf. Brief of Pius VI *Charitas*, April 13, 1791; Sacred Penitentiary, December 1, 1866 (*Acta Sanctae Sedis* 1866, p. 675).

689 **IV. Effects.** 1. An oath added to an invalid act (for example, to a contract, promise, or vow) does not render it valid; nor, added to a rescindable act, does it render it unrescindable; since an oath does not change the nature of the contract, promise, or vow, as that exists of itself or by law. To this refer these words of can. 1318, § 2: "But if an oath is added to an act directly tending to the harm of others, or to the prejudice of the public good or of eternal salvation, the act obtains no firmness from this."

2. An oath added to an invalid act does not induce an obligation, because an oath added to an act follows the nature and conditions of the act to which it is added (can. 1318, § 1), or because the accessory follows the principal (St. Alphonsus, III, 180).[1]

3. An oath added to a valid act, and likewise an oath standing by itself, induce an obligation, as is clear both from Sacred Scripture,[2] and from what is soon to be said about the quality of the obligation. Nevertheless, an oath added to a valid act begins and ceases to oblige with the act to which it is added; for, as was said, it follows the nature and conditions of this act. But more must be said about the obligation of a promissory oath. Moreover:

a) A promissory oath induces an obligation of religion (can. 1317, § 1). The reason is that the reverence owed to God demands that the action be placed in the case in which God has been invoked

as patron of the execution, as happens in a promissory oath. But the obligation of an oath differs in species from the obligation of a vow, because the former regards God as witness of the present will and patron of the future execution; the latter regards Him as creditor.

Corollary. He who violates a promissory oath perpetrates at least two sins: namely, against the obligation of religion induced by the oath, and against the obligation, whether of religion induced by a vow, or of another virtue, induced by a promise made to man. A third is added, if he violates an oath added to a vow with a promise made to man.

b) A promissory oath induces a grave obligation of religion, if it regards a grave matter; for it is grave irreverence to omit a grave act as to which God has been invoked as patron. If it regards a light matter, it is disputed whether the obligation is grave or light. But it is quite probably only light, because grave irreverence does not appear in the fact that an action of lesser moment is omitted, even if God has been invoked as its patron (St. Alphonsus, III).[3]

Nevertheless note that he sins gravely who, while he swears, does not have the will of standing by the promises; because in a promissory oath God is invoked as witness of the present will. But it is grave irreverence to invoke God as witness of what is false.

c) As to establishing the extension of the obligation, the following rules have force:

a) An oath must be interpreted strictly according to law and according to the intention of the one swearing, or, if he acts with deceit, according to the intention of him to whom it is sworn (can. 1321).

b) A confirmatory oath follows the nature and conditions of the act to which it is added (can. 1318, § 1). Therefore its obligation extends itself to the same things to which the act - for example, a vow or promise - in confirmation of which it is added, extends.

Corollary. An oath which regards matter of law obliges according to the limits of law. Hence, for example, a pastor who has sworn residence can be non-resident insofar as this is conceded by law. An oath of observing statutes or rules does not oblige as to rules abrogated by legitimate desuetude; furthermore, an oath of this kind obliges under grave obligation or under light obligation or to penalty alone, according as the statutes themselves of themselves oblige under grave obligation, or under light obligation, or to penalty alone (St. Alphonsus, III, 181).

[1] Nevertheless, it is not repugnant that an oath added to an invalid act induce an obligation; for strictly speaking someone can oblige himself independently of the value of the act to which the oath is added. But these things are almost hypothetical.

[2] Matt. 5:33.

[3] Those who teach that God in a promissory oath is invoked either as witness or as surety of the future action rightly conclude that the obligation of the aforesaid oath is always grave: for it is grave irreverence to constitute God a false witness or an unfaithful or changeable surety. But the antecedent is not proved.

690 **V. Cessation.** From can. 1319, a promissory oath, or the obligation induced by an oath of this kind, ceases:

1. If it is remitted by him for whose advantage the oath had been emitted (St. Thomas, II-II, q. 89, a. 9, ad 2; St. Alphonsus, III, 193). And that remission quite probably is made validly and licitly even when the oath was emitted principally in honor of God. "The reason is that, although the promise was made to God, it was nevertheless always made dependently on the will of the man to whom it was sworn, namely: if he does not remit the execution" (St. Alphonsus, cited place).

2. If the thing sworn is changed substantially; or, when the circumstances have changed, becomes either evil or altogether indifferent; or finally impedes a greater good. The former is drawn from the fact that the intention of the one swearing is not judged to have extended itself to matter substantially or notably changed, as was said concerning the intention of the one vowing (n. 653). The other things follow from this: that the thing sworn, if it becomes evil, or indifferent, or an impediment to a greater good, ceases to be matter apt for an oath (n. 688). Notice, however, that honorable matter promised and accepted in favor of a third party, even if perhaps less perfect in itself, nevertheless here and now remains more perfect, indeed is commanded, on account of the right acquired by the third party (n. 688).

3. If the final cause or the condition under which perhaps the oath was given is lacking. See what was said about a vow, n. 655.

4. By irritation, dispensation, or commutation, according to the norm of can. 1320. Moreover, from the cited canon:

a) The same persons who can irritate vows can irritate promissory oaths, and for the same reason (n. 662). They can irritate them - equally as vows - even if the irritation tends to the prejudice of others, even though these refuse to remit the obligation.

b) Likewise the same persons who can dispense or commute vows can dispense or commute promissory oaths, and for the same reason (n. 671); but if the dispensation of the oath tends to the prejudice of others, the Apostolic See alone can dispense or commute the oath on account of the necessity or utility of the Church (St. Alphonsus, III, 189, 192).

Scholion. On the Fictitious Oath

691 **I. Notion.** A fictitious oath is an oath emitted merely externally, that is, without the intention of swearing. An oath of this kind is invalid (n. 682).

692 **II. Morality.** 1. A fictitious oath is always illicit; for there is irreverence in the fact that God is invoked only externally, and therefore vainly. There is added proposition 25, condemned by Innocent XI,[1] whose condemnation favors the stated opinion (St. Alphonsus, III, 172).

2. A fictitious oath emitted in confirmation of what is false is a grave sin, because grave irreverence is present in the fact that God, even merely externally, is invoked as witness of what is false. But this obtains in an assertory oath when the asserted matter is false; in a promissory oath, when the will of fulfilling what was sworn is lacking (St. Alphonsus, cited place).

3. A fictitious oath emitted in confirmation of what is true is quite probably of itself only a light sin, because grave irreverence does not appear in the fact that someone merely externally invokes God as witness of what is true. I said **of itself;** for it is a grave sin: 1. if the oath is commanded by legitimate authority, because authority commands a true oath; 2. if it is done with unjust and grave deception of one's neighbor (St. Alphonsus, cited place).

[1] "With cause it is licit to swear without the intention of swearing, whether the matter is light or grave" (Denzinger-Bannwart, n. 1175).

693 **III. Obligation.** A fictitious oath of itself does not oblige, because it is invalid; it can, however, oblige, and indeed under grave obligation, by accident, for example if one's neighbor is deceived with grave harm, if neglect of the thing sworn carries grave scandal with it, etc.

694 **IV. Things to be noted concerning oaths which are fictitious in appearance rather than in truth.**

1. A promissory oath emitted without the intention of fulfilling what was sworn is a true oath, but a mortal sin, which is called perjury; moreover it obliges, as being valid (St. Alphonsus, III, 172).
2. A promissory oath emitted without the intention of obliging oneself seems to be a grave sin, because grave irreverence seems to be present in the fact that someone invokes God, and at the same time does not wish to be bound by His invoked authority.

Section IV. On Adjuration

(St. Thomas, II-II, q. 90; St. Alphonsus, *Theologia Moralis*, bk. III, n. 193, appendix; *Homo Apostolicus*, tr. 5, n. 20.)

695 **I. Notion.** Adjuration is the invocation of God in order to bring someone to do or omit something (St. Alphonsus, III, 193, appendix, n. 1).

696 **II. Division.** Adjuration is divided:

1. Into **explicit** and **implicit,** according as God is invoked directly, or indirectly through creatures in which His attributes specially shine forth (n. 683).
2. Into **solemn** and **private.** Solemn is that which is done by ministers of the Church as such, and therefore in the name of the Church, with the form established by the Church observed; private is not done in the name of the Church.
3. Into **deprecative** and **imperative,** according as it is done in an imploring or preceptive manner (St. Alphonsus, cited place).

697 **III. Morality.** Adjuration is an act of latria;[1] since by adjuring we profess that the excellence of God is apt by which someone may be brought to something.

[1] The invocation of some Saint - while stopping at him - in order to bring someone to something is an act of hyperdulia or dulia, according as the Blessed Virgin Mary or another Saint is invoked.

698 **IV. Entities to be adjured.** To be adjured, that is, to be brought to something through the invocation of God, are capable:

1. Directly, all and only rational beings, because they alone can be moved through the invocation of God. Therefore God Himself, Angels, Saints, wayfaring men, and demons can be adjured.
2. Indirectly, irrational creatures can be adjured, namely either by adjuring God or the Saints not to allow them to harm, or by adjuring the demon not to harm through them (St. Alphonsus, cited place, n. III).

699 **V. Requisites for liceity** are truth, judgment, justice (as was said about an oath), and due manner.

1. **Truth** is placed in this: "that the one adjuring truly intends to attain what he asks, and that the cause on account of which he asks is true" (St. Alphonsus, cited place, n. II). Truth would be lacking, for example, if someone, pretending to be poor, were to adjure a rich man to give him alms. "But the lack of this truth will rarely be more than venial" (St. Alphonsus, cited place).

2. **Judgment** is understood in this: that adjuration be made from a reasonable cause, "the lack of which certainly is only venial" (St. Alphonsus, cited place).

3. **Justice** is understood in this: that the one adjuring try to bring another to an honorable matter. The defect of this is to be judged as defect of justice in an oath (n. 685).

4. **Due manner.** Moreover, God, Angels, and Saints are to be adjured deprecatively; demons imperatively; men subject to the one adjuring can be adjured both imperatively and deprecatively; but those who are not subject to the one adjuring are to be adjured deprecatively.

700 **VI. Adjuration of a demon, or exorcism.** 1. Exorcism - as adjuration taken generally - is distinguished into solemn and private, according as it is done or not done in the name of the Church. Solemn exorcism again is twofold, namely: 1. exorcism over the possessed; 2. exorcisms which occur in baptism and in consecrations or blessings.

2. Solemn exorcism can be exercised only by those who enjoy power of Order, namely the Exorcistate. Besides: 1. as to exorcism over the possessed, a special and express permission of the Ordinary is required (can. 1151, § 1);[1] 2. as to exorcisms which occur in baptism and in consecrations or blessings, it is required that someone be the legitimate minister of those sacred rites (can. 1153).

3. Private exorcism can be instituted by all; but the manner of instituting it, presented by the Roman Ritual, title XI, chapter 3, "can be used by Bishops, and also by priests who have authority for this from their Ordinaries."

4. Exorcisms can be performed by legitimate ministers not only over the faithful and catechumens, but also over non-Catholics or excommunicated persons (can. 1152).

Note 1. Exorcism over the possessed is found in the Roman Ritual, title XI, chapter 2.

Note 2. Exorcism over the possessed does not infallibly expel the demon, as experience has taught; nevertheless exorcisms always "obtain some effect, not completely, at least imperfectly by weakening the powers of demons" (St. Alphonsus, cited place, n. VII).

[1] This permission is to be granted by the Ordinary only to a priest endowed with piety, prudence, and integrity of life; he should not proceed to exorcisms unless, after diligent and prudent investigation, he has discovered that the one to be exorcised is truly possessed by a demon (can. 1151, § 2).

Part III. On the Third Precept of the Decalogue

(St. Thomas, II-II, q. 122, a. 4; St. Alphonsus, *Theologia Moralis*, bk. III, nn. 263-332; *Homo Apostolicus*, tr. 6.)

701 It is a natural precept that some time be appointed for divine worship. "The precept concerning the sanctification of the Sabbath... is moral indeed as to this: that man should appoint some time of his life for being free for divine things; for there is in man a natural inclination to this, that some time be appointed to each necessary thing, as to bodily refreshment, sleep, and other things of this kind; whence also for spiritual refreshment, by which man's mind is refreshed in God, according to the dictate of natural reason man appoints some time; and thus to have some time appointed for being free for divine things falls under a moral precept" (St. Thomas, II-II, q. 122, a. 4, ad 1; St. Alphonsus, III, 263).[1]

But the determination both of the time and of the manner was and is of positive law (St. Thomas, II-II, q. 122, a. 4, ad 1 and ad 4; St. Alphonsus, III, 263, 265). Now divine positive law in the Old Testament had dedicated the Sabbath day to divine worship, and on that day had commanded cessation from servile work. Now, with ecclesiastical positive law considered, these things have force:

I. The supreme ecclesiastical authority alone can establish, transfer, or abolish feast days common to the universal Church. Ordinaries of places can prescribe special feast days for their dioceses or places, but only for an individual act (can. 1244).

II. The common feast days established by the supreme authority are: all and each of the Sundays, the feasts of the Nativity, Circumcision, Epiphany, Ascension, and the Most Holy Body of Christ, the Immaculate Conception and Assumption of Mary, the gracious Mother of God, St. Joseph her spouse, Saints Peter and Paul the Apostles, and finally All Saints (can. 1247, § 1). Understand these things in this way:

1. Feasts not enumerated in the cited canon, by that very fact and by the law itself, are no longer of precept anywhere, even if in some nation, diocese, or place they previously had been of precept by particular law or custom, even centenary custom of the place, or by special concession of the Holy See.[2]
2. If anywhere some feast from those enumerated has legitimately been abolished or transferred, nothing is to be innovated without consulting the Apostolic See (can. 1247, § 3). As is drawn from the word **if anywhere** (that is, if in some place), the discussion concerns particular feasts, not however the feasts of Corpus Christi and St. Joseph, which were abolished by Pius X by the Motu Proprio *Supremae disciplinae*;[3] these feasts have again been introduced by force of the Code itself.
3. Feast days of Patrons, as follows from what has been said, are not subject to ecclesiastical precept; but Ordinaries of places can transfer the external solemnity to the next following Sunday (can. 1247, § 2).

III. The reckoning of a feast day is to be made from midnight to midnight, saving the prescription of can. 923[4] (can. 1246), and with the hours computed according to the common usage of the place; this seems to be drawn from can. 33, § 1, which does not count this law among laws in the observance of which an option of time is granted, and this, as it seems, both so that there may be uniformity in this law, and so that scandals easily arising may be forestalled.

IV. On feast days of precept, Mass must be heard, and one must abstain from servile works, forensic acts, and likewise, unless legitimate customs or particular indults provide otherwise, from public market, fairs, and other public purchases and sales (can. 1248). Several other things are counselled, especially that the faithful be present at the sermon and exercises to be instituted after noon (cf. cann. 1345 and 1348). With these things noted, we shall speak first of hearing Mass, then of cessation from certain works.

[1] Roman Catechism, part 3, chapter 4, on the third precept.

[2] Pontifical Commission, February 17, 1918 (*Acta Sanctae Sedis* 1918, p. 170).

[3] July 2, 1911.

[4] Canon 923 establishes: To gain an indulgence attached to some day, if a visit to a church or oratory is required, this can be made from noon of the preceding day up to the midnight which closes the appointed day.

Section I. On Hearing Mass

702 **I. Object of the precept.** One must assist at Mass celebrated in a Catholic rite, which is one sacrifice, at the whole Mass, physically, religiously, and in the due place. It is said:

1. **At Mass celebrated in a Catholic rite** (can. 1249). But it is the same whether the celebration is done in the Latin rite or in another (cited canon).
2. **At Mass which is one sacrifice.** Thus the obvious and natural sense of the precept (St. Alphonsus, III, 311).

Corollary. He does not satisfy who simultaneously hears different parts of several Masses. This is clear from proposition 53 condemned by Innocent XI.[1] Nor does it suffice successively to assist at different parts of several Masses; nevertheless in the case the substance of the precept is satisfied, if the consecration and communion of each species are had from the same Mass; hence, at least if a just cause is present, further things are not to be urged (cf. St. Alphonsus, III, 311).

3. **At the whole Mass.** Nevertheless, with the prescribed assistance considered, Mass is judged to end with the Priest's blessing. Besides, voluntary omission even of the smallest part is a venial sin.
4. **Physically;** but physical presence is to be taken morally; in other words, it suffices that someone from various circumstances can be judged to make one with the others. Hence he satisfies: 1. who is in the church, provided that in some way (for example, from sight or hearing of the celebrant, from the actions or movements of others, from the sound of the little bell or the singing of the choir) he can discern what is being done; 2. who outside the church a) is in the sacristy or in another room attached to the church, provided he can see the celebrant or (for example, if the door is closed) hear him; b) is joined to the crowd in the street and from signs can grasp what is being done; nevertheless he must not be too distant from the crowd, even if he can see everything; c) from a house neighboring the church can attend to the Mass (St. Alphonsus, III, 312). He does not satisfy who, remaining at home, follows Mass by means of radio, as they say.
5. **Religiously.** There is required:

a) An intention of worshiping God; since a religious act is prescribed, which, if the said intention is lacking, would be lacking. Therefore it is not enough if someone assists merely in order to observe some ceremony. An implicit intention of worshiping God suffices, such as is had, for example, if

someone assists with the intention of satisfying the precept, or of doing what the Church intends, etc. (St. Alphonsus, III, 313). Nor does assistance extorted by fear conflict with the required intention.

b) External attention, which consists in decent bodily composure together with the omission of external acts which cannot be combined with internal attention. Acts of this kind are sleeping, chattering, reading irrelevant writings. All concede that external attention is required, and it is drawn from the fact that the Church at least commands an act of external worship (St. Thomas, II-II, q. 122, a. 4; St. Alphonsus, III, 313).

c) Internal attention - that is, application of the mind to that which is being done, namely either to the thing which is performed by the celebrant, or to the meaning signified by the actions, or to other pious thoughts or prayers - internal attention, I say, is required by which someone can give an account of the things which are done at the altar, or by which he is constituted not plainly distracted from the sacrifice. The reason is that the hearing of Mass is prescribed (can. 1248); which word seems to involve at least the attention just explained. Further internal attention quite probably is not required; both because it is doubtful whether internal attention is required for the essence of prayer, and because a religious act probably suffices, for which physical presence together with the intention of worshiping God and the external and internal attention explained seems to suffice (St. Alphonsus, III, cited place).

Corollary I. Certainly those satisfy who are occupied in acts pertaining to divine worship (for example, playing the organ, collecting alms, etc.), provided they retain some attention to the sacred rite; and this has force even if at times they depart in order to seek necessary things (St. Alphonsus, III, 317).

Corollary II. Sacramental confession, at least a longer one, seems of itself to be capable of being combined neither with external attention nor with internal attention. For there is required an act of religion by way of one worshiping God in the sacrifice itself and the oblation of the victim. But the attention which one has who confesses sacramentally is not such, but is directed to declaring to the confessor the number, species, and circumstances of sins, to listening to his admonitions, corrections, penance, etc.[2] I said **of itself,** because in practice penitents seem not to be disturbed, if they are made attentive to the more principal parts. Indeed, if otherwise someone would have to remain for some time in the state of mortal sin or abstain longer from confessing, at least the Church is presumed to consent (St. Alphonsus, III, 314, 332).

6. **In the due place.** Moreover, he satisfies who assists at Mass celebrated:

a) In the open air (can. 1249); now even he who celebrates on the benches, or on the deck of a ship, is judged to celebrate in the open air; the same seems to have to be said about every Mass celebrated at sea.

b) In any church or public or semi-public oratory (can. 1249).

c) In the following private oratories: 1. in private cemetery chapels, of which in can. 1190 (can. 1249), that is, in chapels erected in a cemetery by families or private persons for their burial; these chapels are private oratories (can. 1190); 2. in private oratories of Cardinals and Bishops (can. 1189). In other private oratories only those can satisfy who are included in the indult. But, unless the tenor prevents it, the indultaries are judged to be included, and their blood-relatives, relatives by marriage, guests, table-companions, and household members.[3] But what has been said about other private oratories also has force if someone, using the privilege of a portable altar, celebrates in a place in which of itself the obligation cannot be satisfied; in other words, in the case only those validly assist at Mass who either

are expressly included in the privilege, or, considering the end of the privilege - for example, mission lands - are to be judged included.

d) Wherever Cardinals or Bishops celebrate, or where it is celebrated for their convenience. This is deduced from a response of the Sacred Congregation of Rites,[4] which affirms that point concerning Bishops.

Therefore, of itself he does not satisfy who assists at Mass: 1. in a private oratory; 2. in an entirely private place, for example, in a room of some house. I said **of itself** because of the cases above and others perhaps excepted by indults.

The obligation of hearing Mass in the parish church has long since been abolished. Nevertheless the faithful should be admonished that frequently, where this can conveniently be done, they should come to their parish churches and there be present at the divine offices and hear the word of God (can. 467, § 2).[5]

[1] "He satisfies the precept of the Church concerning hearing Mass who hears two parts of it, indeed four, simultaneously from different celebrants" (Denzinger-Bannwart, n. 1203).

[2] Billuart, *De religione*, dissertation 6, article 1.

[3] Sacred Congregation of the Sacraments, February 7, 1909.

[4] June 8, 1896, n. 3906.

[5] Cf. Council of Trent, session 22, decree on observances in the celebration of Mass.

703 **II. Obligation of the precept.** 1. The obligation of assisting at Mass celebrated in a Catholic rite, physically, and in the due place is grave.

2. The obligation of assisting at the whole Mass, and religiously, is grave from its genus. But the gravity of the matter in the case must be taken both from the quality and from the quantity of the part at which someone either in no way or not religiously assists. But as to quantity, note that parts of the Mass which do not always recur, such as the Creed, are computed less (St. Alphonsus, III, 310).

Corollary I. As to the obligation of assisting at the whole Mass: 1. with quantity considered, the matter seems grave if nearly a fourth part of the Mass is neglected, for example, those things which are done from the beginning up to the Offertory exclusively; 2. with quality considered, neglect of the Consecration and Communion is grave, or even of either one; 3. with both considered, the omission of those things which are done from the Consecration up to the Our Father exclusively is judged grave (cf. St. Alphonsus, III, 310); 4. finally note that omitted separate parts coalesce, as if someone omitted a part at the beginning and at the end.

Corollary II. As to the obligation of assisting religiously, the matter is grave if persons sleep, chatter, read newspapers, etc. for a notable time (St. Alphonsus, III, 317). But commonly grave defect is absent in those who sometimes chatter, sometimes attend; likewise in those who are occupied with vain or even dishonorable thoughts, or assist half-drunk or half-asleep (St. Alphonsus, III, 316).

Corollary III. He who arrives late is bound in this way:

1. Of itself he is bound to assist at another Mass, because assistance at one and the same entire Mass is prescribed. Nevertheless in practice a cause excusing from that obligation will easily be present,

especially if the delay is inculpable; indeed, if only a slight part of the Mass has been completed, he is excused from hearing another Mass.

2. If he cannot hear another Mass, or is otherwise excused from the said obligation, he is certainly bound to assist at the remaining part, if he has arrived before the Consecration. If he has arrived after the Consecration, according to many he is bound to nothing further, because he can no longer be present at the essential act of the Sacrifice. But St. Alphonsus (III, 310, question 2) maintains the contrary, because the Church also intends all and each ceremonies, insofar as they accompany the Mass, abstracting from whether or not someone has been present at the essential act; this being supposed, the reason of the law seems to be preserved even in the ceremonies alone. Nevertheless in practice there will easily be a reason excusing, for example great embarrassment or even scandal that would arise.

Likewise, he who otherwise than by arriving late has omitted a notable part of Mass, and is excused from hearing another Mass, of itself is bound to make it up (St. Alphonsus, cited place); but more often there will be a cause excusing from the obligation of making it up.

704 **III. Causes excusing from the precept** are enumerated: impossibility, charity toward neighbor, office, and custom; all of which - except custom - can be reduced to a moderately grave inconvenience, one's own or another's (or its danger), in goods of soul, body, fortune, honor, reputation, or modesty. Hence St. Alphonsus says, "Any moderately grave cause excuses from hearing Mass, namely one which involves some notable inconvenience, or harm in goods of soul, either one's own or one's neighbor's" (III, 324). Therefore the following are excused:

1. The sick, convalescents, who reasonably fear notable inconvenience or delay of convalescence; likewise those who fear lest, for example, because of a storm or lack of clothing, they be affected by illness. In doubt each one can stand by the judgment of a physician or superior; indeed, if the doubt persists, he is excused, because the danger of notable inconvenience suffices (St. Alphonsus, III, 325).

2. Those who are far distant from a church. Of itself, according to St. Alphonsus (III, 329), a foot journey of one hour and a quarter suffices; nevertheless here account should be taken of the condition of the person, age, inclement weather, custom, also the place (for example, city or village), etc., which can bring it about that a lesser distance suffices; but because of distance he is not excused who without new expenses or with moderate expenses can use a carriage or vehicle.

3. Those who cannot leave a house, a sick person, children, or a flock; but if there are several guardians and several Masses are said, let each assist successively; if only one Mass is celebrated, let them assist alternately (St. Alphonsus, III, 326).

4. Those for whom "there is danger of grave offense of husband, parents, or masters" (St. Alphonsus, III, 327). If, however, servants are frequently forbidden without just cause to assist at the Sacred rite, let them seek another service.

5. Those who cannot fulfill the precept without grave embarrassment, for example because suitable garments are lacking, because a girl is pregnant from a hidden crime, etc.; nevertheless, one must see whether perhaps they can assist at the Sacred rite very early in the morning without the said inconvenience (St. Alphonsus, III, 330).

6. Those who by assisting at Mass would omit an opportunity of gain which, considering their condition, is extraordinary. "For in L. un. C. *de sentent. quae pro eo*, etc., great loss of profit is equated with grave harm. At least in such a circumstance it seems it must be said that the precept of the feast, as human, does not oblige with so great a loss" (St. Alphonsus, III, 301, 332). Indeed, if the very condition of one's office has a difficulty of assisting at Mass annexed to it, notable loss excuses; apply this to sailors, drivers, etc. (St. Alphonsus, III, 332).
7. By custom, in some places for a certain time women after childbirth, widows after the death of a husband, and brides whose banns are proclaimed are excused, unless however they can assist at another Mass (St. Alphonsus, III, 330).
8. It is disputed whether he is excused who cannot fulfill the precept except by privilege, for example the owner of a private oratory, who cannot go to church, but can conveniently have a priest. Moreover, with St. Alphonsus (III, 319, doubt 3) we have denied it (n. 201).

Note. He who ordinarily is excused from the ecclesiastical precept, according to several theologians, while others deny it, is bound sometimes either on Sunday to undergo a graver inconvenience, or on a weekday to make it up, because it is a divine precept that the faithful at times be present at the Sacrifice. Besides, to him who is excused from hearing the Sacred rite, it is advised that he make it up at home by prayers.

Section II. On Cessation from Servile Works

705 **I. Object of the precept.** On feasts of precept the following are prohibited: 1. forensic acts; 2. unless legitimate customs or particular indults provide otherwise, public market, fairs, and other public sales and purchases; 3. servile works (can. 1248).

1. **Forensic acts.** Judicial acts are understood (both those concerning secular causes and those concerning ecclesiastical causes), which are exercised with judicial solemnity or apparatus, such as the citation of witnesses, the request for a judicial oath, the judicial investigation of a case, the pronouncement and execution of a sentence. But it is lawful to excommunicate, to dispense; likewise to perform preparatory actions privately, for example to consult an advocate, prepare a defense, etc. - Besides, where the prohibition is not observed, those whom it concerns are commonly excused on account of avoiding harm (St. Alphonsus, III, 284).
2. **Public market.** Therefore, of itself it is not lawful to sell or buy in public shops, much less in the forum. Yet custom and competition permit in many places that food and drink be sold in public shops, likewise, especially in the country, clothes, shoes, etc. (St. Alphonsus, III, 286). For the rest, however, today on account of the laws in force, those who sell with open doors are less easily excused.
3. **Fairs;** these likewise can be permitted on account of custom; if they fall on a feast day, in many places they are anticipated or deferred; but if this is not done, many nevertheless can attend fairs, either on account of custom or on account of an excusing cause (St. Alphonsus, III, 286).
4. **Other public sales.** Therefore purchases and sales made privately, even before a notary, are not prohibited. Contracts of lease, exchange, etc., are equated with purchases (St. Alphonsus, III, 285). Custom here and there permits some public sales, for example of doves which in French are called *pigeons-voyageurs*.

5. **Servile works.** Works are called servile which are exercised by the powers of the body rather than of the soul, and immediately serve the utility of the body, for example rural works, such as plowing, etc.; works of the mechanical arts, such as the shoemaking art, etc. They are called servile because they were formerly done by servants. Liberal works are those which are done by the powers of the soul rather than of the body, and immediately serve the utility of the soul or its cultivation, for example to study, to read, to teach, to play the organ, etc. They are called liberal because they were chiefly exercised by free men. Common or intermediate works are called those which are exercised promiscuously by all, such as making a journey, hunting, etc. (St. Thomas, II-II, q. 122, a. 4, ad 3; St. Alphonsus, III, 272, 279).[1] Besides, note that the servility or liberality of a work depends neither on the intention of the one working, so that it makes no difference whether it is done for the sake of utility or recreation, for oneself or for another, for gain or gratuitously; nor on bodily fatigue. Hence:

a) Liberal and common works are permitted, except those about which something was said under I, 1, 2, 3, and 4. Servile works are prohibited by the Church because "they are contrary to the observance of the Sabbath, insofar as they impede man's application to divine things" (St. Thomas, cited place). From the prohibition, however, are excepted works necessary for the nourishment and arrangement of the body and the house, which cannot conveniently, or are not customarily, anticipated, such as cooking food (even food to be prepared with greater skill, such as cakes), making beds, cleaning the house or clothing (St. Alphonsus, III, 298).

b) Concerning some works it is more difficult to determine whether they are servile, or at least whether and to what extent they are lawful. Practically these things can be established.

a) It is lawful to write and transcribe (even musical notes); likewise to correct books and to exercise other light accessory labors, for example by drawing necessary lines and gluing superposed paper; likewise it is lawful to form artists' drawings (St. Alphonsus, III, 279).

b) It is lawful to paint, provided one stops at the act of painting. "The reason is that painting, although it requires a material operation, nevertheless does not seem properly able to be called a servile action; indeed, it seems rather to be called liberal. For, just as writing expresses internal concepts, so painting expresses images of things" (St. Alphonsus, III, 280). It is said, provided one stops at the act of painting; for it is unlawful to grind and mix colors, to prepare and stretch panels. Likewise it is forbidden to dye cloths or walls.

c) What has been said about the act of writing and painting is also to be applied to some similar acts. Hence it is lawful: 1. to paint with a needle, but not to sew, nor to do what is called in Dutch *breien*, in French *tricoter*, in German *stricken* (cf. St. Alphonsus, III, 281); 2. to arrange type (St. Alphonsus, III, 279, 282), which nevertheless by common estimation in a public workshop is held to be unlawful; 3. to exercise the photographic art, insofar as it is done without notable labor, for example to form what is called a negative image; 4. to sculpt, insofar as it is a question of the final perfection of a statue; otherwise "the sculptural art commonly, at least in the estimation of men, is numbered among the mechanical arts" (St. Alphonsus, III, 281).

d) Whether to lead draft animals, ships, and carts loaded with merchandise is lawful in itself is disputed; but the accompanying labor of loading and unloading burdens seems to be unlawful or lawful according as it is great or slight (St. Alphonsus, III, 276 ff.).

e) Hunting, fishing, and fowling are lawful, unless they are done with great apparatus and labor (St. Alphonsus, III, 283).

f) Milling, in whatever way the mill is moved, is lawful, provided the application of man is moderate. Yet in our regions custom is opposed (St. Alphonsus, III, 277).

g) Finally, various works to be performed for the convenience of some establishment seem lawful, which bring with them scarcely any bodily labor, for example microscopic examination of milk or of some other material; nevertheless by common estimation they are held to be unlawful if they are performed in the public establishment itself.

[1] This distinction of works used to rest, and still rests, partly on custom; which custom indeed has been tempered somewhat, so that, for example, works which formerly could be servile are now common. We have tried to treat the matter in such a way that every difficulty arising from different custom seems excluded.

706 **II. Obligation of the precept** is grave from its kind. Moreover, in servile works, according to St. Alphonsus, for grave matter it is required that the labor be prolonged for two and a half hours (whether continuous or interrupted); if there is question of lighter labor, three hours can be established (St. Alphonsus, III, 305, coll. 282). In judicial apparatus and in market the gravity of the matter depends more on the quality of the business which is transacted (St. Alphonsus, III, 286, 307).

One who commands several persons to work, with grave scandal excluded, more probably does not sin gravely if none of them is objectively guilty of a grave transgression. The reason is that, since the obligation of keeping feast is personal, the transgressions of different persons are not considered to coalesce into one (St. Alphonsus, III, 306).

707 **III. Excusing causes** from the precept are enumerated: one's own or another's necessity, charity, piety, and custom.

1. One's own or another's necessity, that is, grave spiritual, bodily, or temporal harm to be averted from oneself or from a third party. Especially excused are:

a) The poor, who otherwise cannot provide for themselves and their own as to food or clothing. Likewise female servants, who otherwise lack time for mending or washing clothes (St. Alphonsus, III, 297). Although, if someone is known as poor, scandal ought to be absent, it is nevertheless better, as far as can be done, to work secretly.

b) Subjects who are compelled by a master to work; yet if servants must often work on Sunday, let them seek another service (St. Alphonsus, III, 296).

c) Bakers and butchers, who otherwise cannot satisfy those asking (St. Alphonsus, III, 298, 299). Nevertheless they are not excused, unless perhaps on account of competition, if the law forbids it, for example, to bakers.

d) Tailors and other workmen, if the matter is urgent, for example for impending weddings or funerals. Yet let them take care that, without a special cause, by taking on more work, or by refusing a sufficient number of workmen, they do not place themselves in such necessity (St. Alphonsus, III, 303).

e) Pharmacists providing necessities to the sick, unless they have agreed among themselves - as is done rather often today - that only one or another should sell on feast days.

f) Farmers, if from a storm or a similar cause grave harm is imminent (St. Alphonsus, *Homo Apostolicus*, tr. 6, n. 21).

g) Barbers are excused partly on account of necessity, partly on account of custom (St. Alphonsus, III, 290).

h) Blacksmiths who shoe "the horses of travelers, or of those who (on the following day) will set out on a journey at very early morning or go out into the field to work.... Likewise the plowshares of those who otherwise would not be able to work on the following day can be repaired. So also roads, bridges, etc., can be repaired" (St. Alphonsus, III, 300).

i) Whoever cannot interrupt works once begun without grave harm, as those who labor in foundries, and sometimes also in butter-making establishments (St. Alphonsus, III, 300).

j) Those who prepare things which are necessary for a public festivity, for example on account of the arrival or birthday of a Prince, and which cannot conveniently be prepared beforehand. "The reason is that such signs of joy are morally necessary for the commonwealth" (St. Alphonsus, III, 304).

k) Those who would miss an occasion of gain extraordinary in view of their condition, as was explained in n. 704.

l) Avoiding idleness does not excuse by reason of itself; yet by reason of avoiding sin it excuses those who, morally speaking, will not abstain from sin unless they work, for example prisoners who cannot occupy themselves with works lawful in themselves (St. Alphonsus, III, 302). - But to those who complain of idleness, it can be permitted that they perform lighter works for the benefit of a poor person or of a needy church. If these things cannot be done less conveniently, by epikeia it can be permitted (at least if otherwise there is danger that they will run about) that for some hours they be occupied with other labors, though lighter ones. Likewise light domestic labor is lawfully conceded to a workman who otherwise would be exposed to the danger of making himself drunk, etc.

2. **Charity** permits someone to serve the sick, bury the dead, and generally to do for another what that other could lawfully do for himself.

Question. To what extent is it lawful to work for the poor?

Resp. 1. It is certainly lawful to work to assist either a determined poor person placed in grave necessity, or a community placed in such necessity (St. Alphonsus, III, 293).

Resp. 2. It is certainly unlawful in common necessity to work or make things so that the gain received from the labor or the things may be granted to the poor.

Resp. 3. It is disputed whether in common necessity it is lawful to make things, for example clothes to be distributed to the poor. With St. Alphonsus and others, against some, it seems it must be denied; for, if that opinion were admitted, it would already be lawful for all and always to work; which seems to oppose the sense of the Church (St. Alphonsus, III, 293).

3. **Piety** permits servile works as follows:

a) Works which are proximately ordered to divine worship are permitted. Such are: ringing bells, playing organs, blowing them, etc. (St. Alphonsus, III, 291).

b) Works which are ordered to divine worship only remotely or by accident are prohibited unless necessity requires them. Such are, for example, "to cultivate the fields of the church, to carry stones and timber for its building, to whitewash the walls of the temple" (St. Alphonsus, III, 293).

Nevertheless, with sufficient probability it is lawful "to labor at making necessary ornaments for a needy church" (St. Alphonsus, cited place).

c) Works which are ordered to divine worship neither so proximately nor so remotely are prohibited at most under light sin, indeed according to St. Alphonsus with sufficient probability not at all. Such are: "to sweep the church, to bake hosts, to adorn the altar and church with tapestries, to erect platforms necessary for a festivity or sepulcher, and similar things." Yet "knowingly to prepare platforms on a feast day for viewing a procession is, of itself, a grave sin; but if they were not made the previous day, they are lawfully made on the feast day" (III, 292).

4. What **custom** permits has been sufficiently indicated above (n. 705).

5. Finally, in doubt whether a sufficient excusing cause is present, a dispensation is required, about which see n. 183; note, however, that a sufficient cause is undoubtedly present if grave danger of notable harm is imminent.

Part IV. On the Fourth Precept of the Decalogue

(St. Thomas, II-II, qq. 101-105; St. Alphonsus, *Theologia Moralis*, bk. III, nn. 333-362; *Homo Apostolicus*, tr. 7.)

708 The fourth precept of the Decalogue explicitly speaks only of the honor which children owe to parents; implicitly, however, it comprehends both the duties of parents toward children, and the duties of other blood-relatives, spouses, and other superiors and inferiors toward one another. Therefore we shall speak first of the duties of children toward parents, then of the duties both of other blood-relatives and of spouses, finally of the duties of domestic masters and servants; fifth, of the duties of non-domestic masters and servants; sixth, of the duties of teachers and pupils; seventh, of the duties of civil rulers and subjects.

Section I. On the Duties of Children Toward Parents

709 **I. Principles.** 1. Children must render love, reverence, and obedience to their parents. This is clear both from Sacred Scripture[1] and from what has been said about the virtue of piety and observance (nn. 395 and 398). In addition, the obligations of love and reverence persist; but the obligation of obedience ceases when children become of age or become their own masters by marriage or emancipation; nevertheless those remaining in the paternal home remain subject to parents as regards domestic order.

2. The duties of love, reverence, and obedience, since they regard morally different modes of exercising piety, differ specifically; hence one who transgresses them commits a specifically different sin according as he injures love, reverence, or obedience.

3. The duties set forth are grave from their kind, so that children who notably injure them sin gravely. The reason is that, in the supposed case, they are gravely opposed to the good of parents and therefore to charity (St. Alphonsus, III, 333; n. 282).

[1] Cf. Ecclus. 3:9 ff.; Prov. 19:26; 23:24, 30; Eph. 6:1.

710 **II. Applications.** 1. **Due love** requires that children pursue their parents with the affection of love, will good things for them, and furnish signs of love.

Against this obligation children sin gravely: 1. if they hate their parents, wish grave evil to them, or rejoice over their grave evil; 2. if - even though perhaps internal hatred is absent - nevertheless they behave as if they hated them, for example by habitually looking at them with a grim eye or addressing them harshly; 3. if they do not help parents in grave temporal or spiritual necessity; if they do not visit them in their illness; if they do not take care that the sacraments be administered to them when they are dying; if they do not fulfill their testament, etc. (St. Alphonsus, III, 333).

2. **Due reverence** requires filial fear, that they think honorably of them, acknowledging them as superiors, and that they prove the aforesaid sentiments by words and deeds.

Against this obligation children sin gravely: 1. if they despise their parents or are unwilling to acknowledge them; nevertheless merely external simulation without internal contempt, on account of some cause, at least excuses from mortal sin; 2. if they strike them, even only lightly, or raise a hand or instrument for striking them. Nevertheless those are excused from grave, and sometimes even from light, sin who restrain by words or deeds parents who are dull, insane, delirious from old age or

drunkenness (St. Alphonsus, III, 334). For the rest, the gravity of irreverence depends not a little on the condition of the family and the customs of the place, so that the same words can constitute light or grave irreverence according as they are uttered against parents of lower or higher condition.

3. **Due obedience** extends: 1. to the education of children both temporal and spiritual, which nevertheless have force only for minors and those not yet joined in marriage, minority being computed in civil matter according to civil law, in matter of morals and religion according to canon law (cf. can. 88, § 1); 2. to domestic order. But in order that in the case there truly be sin, a true command is required; one who acts against a will or against merely directive arrangements does not sin of himself, although by accident, if the honorable end of the act is lacking, he can easily sin. Moreover, as to grave matter, note that several transgressions, according to the mind of the one commanding, with the matter considered, often coalesce in an altogether prudent judgment (St. Alphonsus, III, 335). With these things attended to:

Against this obligation children sin gravely who, against a formal injunction of the parents, 1. omit a precept of religion or even abstain from the sacraments for a long time; 2. frequent bad company, taverns, dances, theaters; 3. do not cease wandering in the evening; 4. continue an untimely courtship; 5. refuse to perform work of grave importance, etc. (St. Alphonsus, cited place). As to neglect of studies, note that a son can sin gravely even if the parents have not imposed a strict command, namely on account of the harm to be inflicted on the parents. Moreover, for this reason the son of rich parents will not so easily sin gravely, but the son of parents of moderate fortune will more easily sin gravely.

For the rest, in this whole matter of obedience it must be well considered: 1. whether there is only a warning or directive arrangement, or a true mandate; 2. whether or not children sufficiently attended to the objectively grave malice, so that they are subjectively gravely culpable.

711 **Question 1.** Are children bound to obey parents in the choice of a state of life, whether matrimonial, celibate, clerical, or religious?

Resp. Children are not bound to obey either as to the state of life in general, or as to marriage with a determined person, or as to entrance into a determined religious institute. For, "according to those things which pertain to the nature of the body, man is not bound to obey man, but only God, because all men are equal by nature; for example in those things which pertain to the sustenance of the body and the generation of offspring; whence neither are servants bound to obey masters, nor children parents, concerning contracting marriage, or preserving virginity, or anything of this kind" (St. Thomas, II-II, q. 104, a. 5); these things are also to be applied to the state of life of the supernatural order (St. Thomas, II-II, q. 189, a. 6). It is added that in the aforesaid states there is a certain perpetual servitude, to which man cannot compel man (St. Thomas, Supplement, q. 47, a. 6). Hence parents sin gravely who compel children, even indirectly, to choose a state of life (St. Alphonsus, III, 335; cf. can. 2352). Yet by accident it can happen that children must either enter marriage, or for a time at least abstain from marriage, from the clerical state, or from the religious state, namely if otherwise the parents would be exposed to grave necessity (St. Thomas, II-II, q. 189, a. 6; St. Alphonsus, III, 335; IV, 66).

Question 2. Are children bound to seek the counsel and consent of parents in the choice of a state?

Resp. 1. As to the conjugal state, especially as to the person with whom marriage is to be entered, filial reverence seems to require that parents be consulted in so grave a matter, and that their assent be sought. Yet since children are not bound to follow the counsel to be given by parents, the obligation

itself of consulting and seeking assent seems of itself only light. Indeed there is none if the parents are foreseen to be irrationally unwilling, or another just cause of acting otherwise is present (St. Alphonsus, VI, 849, 877). By accident the obligation can be grave, for example if the parents will be gravely offended or affected with grave sadness from counsel not being sought.

Note. To what extent children, with civil law considered, need the consent of parents or of a guardian for entering marriage, see in domestic law.

Resp. 2. As to the religious or clerical state, there is no obligation of seeking the counsel or consent of parents; indeed often it is not even expedient to consult them, both because in this matter they lack experience, and because "as the flesh lusts against the spirit, as is said in Gal. 5, so also carnal friends frequently oppose spiritual progress" (St. Thomas, II-II, q. 189, a. 10, ad 2; St. Alphonsus, IV, 68). Yet if a son "can easily and safely obtain their consent, it is fitting that he not depart without the blessing of his parents" (St. Alphonsus, cited place, III, 335); but if they dissent, he should wait a little, if there is hope that afterward they will consent. Besides, note well that minors, with the civil law of many regions considered, can be brought back by force by their parents; hence let them not easily depart without their consent.

Corollary I. Although children are not subject to parents as to the choice of a state of life, nevertheless let them not easily contract marriage without the parents' knowledge or with them reasonably unwilling. Hence can. 1034 rightly establishes: the parish priest is gravely to exhort minor children of families not to enter marriages without the knowledge of their parents or with them reasonably unwilling; but if they refuse, he is not to assist at their marriage unless the local Ordinary has first been consulted.

Corollary II. What has been said about the state of life can almost be applied to the choice of a profession - for example of acquiring a science or art - since this too regards the whole life. Yet here by accident there will more easily be an obligation of satisfying the wishes of the parents.

Section II. On the Duties of Parents Toward Children

712 **I. Principle.** Parents owe their children love, both internal and proved by acts. The acts chiefly include bodily and spiritual education.

713 **II. Applications.** 1. **Due love** requires that they pursue their children with a good affection and wish good things for them.

Against this obligation they sin gravely: 1. who hate their children, wish grave evil to them, or from the heart curse them or rejoice over their grave evil; 2. who do not help them in necessity or do not avert some other grave bodily or spiritual evil from them; 3. who without cause often treat them truly harshly, strike them; 4. who undeservedly favor one much more than the others and thus are the cause why the others are gravely saddened.

2. **Due bodily education** requires provision for life, sustenance, and state. "Parents," as can. 1113 says, "are held by a most grave obligation, according to their powers, to care for the education of their offspring, both religious and moral, and physical and civil, and also to provide for their temporal good."[1]

a) **Provision for life** requires that parents care for the offspring from conception itself, and avoid those things which could harm it.

Against this obligation they sin gravely: 1. the mother who, while pregnant, dances immoderately, labors immoderately, lifts heavier burdens, consumes harmful things. Besides, let her beware of too tight clothing, of more vehement anger, melancholy, drinking spirituous liquors, and other things which can bring harm to the offspring or induce danger of abortion; indeed in the case there is also sin against justice, because the offspring has a right to life and to it whole. 2. The father who long vexes his pregnant wife, afflicts her with grave sorrow, or strikes her. 3. Parents who leave little children alone at home with danger that harm may come to them through fire, water, animals, instruments, or excessive crying. Likewise those who keep tender infants with them in bed with danger of suffocation;[2] the gravity of this danger depends on the age of the infant, the width of the bed, and on whether the mother is accustomed to be quiet in sleep. Commonly, however, especially in the first year of life, the mother should not keep the little infant with herself (St. Alphonsus, VI, 160).

Question. Is the mother bound herself to nurse the offspring?[3]

Resp. 1. In the affirmative; which is clear both from the authority of the holy Fathers,[4] and from the fact that the Author of nature granted milk to the mother for that end, as is evident; wherefore note that the milk of the mother herself profits the offspring more than another's. But the obligation is only light, because no grave disorder appears. Hence a just cause excuses, for example weakness of the mother or a new pregnancy (St. Alphonsus, III, 336).[5]

Resp. 2. If the mother herself abstains from nursing the offspring, she is bound to entrust it to a wet-nurse, because artificial nutrition cannot fully compensate for human milk. Indeed she is held to this under grave obligation if the infant is somewhat weak, namely on account of the danger otherwise to be feared for the offspring. From seeking a wet-nurse a very grave or just cause excuses, according as the obligation is grave or light.

Resp. 3. If the mother abstains both from nursing the offspring and from seeking a wet-nurse, artificial nutrition remains. Moreover, if recourse is had to it, the mother is held under grave obligation to apply due precautions; for the death of innumerable newborns is to be attributed to the neglect of these precautions, for example to a defect of milk, uncleanness of vessels, etc.

Resp. 4. If the mother uses a wet-nurse, there is a grave obligation of taking on a wet-nurse healthy in body, because the infant is easily infected by diseases of the wet-nurse - especially syphilitic diseases. It is disputed whether there is also a grave obligation of substituting for herself a wet-nurse of honorable morals. Some affirm it, because they judge that the qualities of the wet-nurse flow into the infant. This, however, is denied today, because food, for example the flesh which we use, in no way directly flows into morals. Yet a grave obligation can be present from the fact that a wet-nurse ruined in morals can harm the infant in another way.

Corollary. Practically one must work so that the mother herself nurse her own offspring; both because of itself she is bound to this, and because the use of a wet-nurse is to be disapproved for the reasons set forth, and artificial nutrition is easily done without due precautions; which is so true that innumerable infants die chiefly on account of precautions neglected.

b) **Provision for sustenance** requires that parents furnish to children a dwelling, food, clothing, and all those things which are necessary for maintenance suitable to their condition, and this until the children can provide for themselves; finally, that according to circumstances they leave a suitable inheritance to the children (St. Thomas, II-II, q. 101, a. 2, ad 2).

Against this obligation they sin gravely: 1. who expose offspring in a public place; who hand it over to a foundling hospital, unless very grave poverty or infamy to be avoided excuses them (St. Alphonsus, III, 336). Let them see, however, whether the foundling hospital to which it is handed over provides due education, even religious education; 2. who deny food or other necessities to needy children; 3. who squander goods and thus cast the children down into a lower state[6] (St. Alphonsus, III, cited place).

c) **Provision for state** imposes on parents the obligation of seeing to it that afterward the children can live according to their condition; this obligation is of charity, not however of justice.

Therefore they sin: 1. who do not send children even to elementary school; indeed they commit of themselves a grave sin, since on the one hand this can be done easily today, and on the other hand neglect of elementary instruction creates grave inconvenience for children, and those who do not frequent schools easily find themselves in the occasion of sinning; 2. who do not see to it that children acquire a science, art, or craft suitable to their state and capacity; I say suitable: hence higher instruction is not to be imposed on those who are less apt in talent for acquiring it.

3. **Due spiritual education** comprises teaching and exhortation, example, vigilance and correction, and these so furnished that at the same time formation of character is kept before the eyes.

a) **Teaching and exhortation;** namely, parents are to instruct their children, by themselves and through others, in Christian doctrine, and therefore are to command them to frequent catechism (can. 1335) and sermons and ask them about what they have heard; they are to imbue them with hatred of sin, especially mortal sin, with love of virtue, of God, and of the Blessed Virgin Mary, and send them to Catholic schools (can. 1372 ff.); they are to take care that they recite prayers morning and evening, receive the sacraments of Penance and Eucharist in due time (cf. can. 854, § 4), fulfill the precepts of the Church, frequent the sacraments, be present at sacred offices, and enroll in pious associations (St. Alphonsus, *Homo Apostolicus*, tr. 7, n. 5).

Parents sin gravely who care nothing or little for Catholic instruction.[7]

About schools we shall speak more fully in Scholion I; about coeducation in Scholion II; about instruction concerning dishonorable actions and sexual life something is more suitably said in the treatise on the Sixth Precept.[8]

b) **Example,** according to the saying: words move, examples draw.[9]

Against this obligation they transgress gravely: 1. who blaspheme in the presence of children, speak shameful things, provoke a spouse with injuries and curses, indulge in marital liberties; 2. who are given to a notorious vice, such as drunkenness or lust; 3. who ridicule Religion or priests, or do not observe the precepts of the Church (St. Alphonsus, *Homo Apostolicus*, tr. 7, n. 5).

c) **Vigilance and correction.** Let them see from the first age what the inclinations of the children are, namely so that good inclinations may be promoted, but bad ones restrained. Let them amend those who offend, now by correcting them but without anger or curses, now by chastising them, chiefly by privative punishments. - Let them turn them away from dangers and occasions. Therefore let them beware lest sons and daughters sleep in the same bed, or even in the same room as parents; lest boys together with girls guard animals or play; lest they be perverted by bad companions or readings; lest they court untimely, or with a non-Catholic, or alone; lest they hand them over to dangerous service;

nor let them permit girls to be taught, for example, music, by a teacher outside all presence of others (St. Alphonsus, III, 339; *Homo Apostolicus*, tr. 7, n. 5; *Praxis confessarii*, n. 211).

d) **Formation of character;** about which we spoke in n. 50.

Corollary. Education "which, content with the mere powers of nature, rejects or neglects those things which divinely contribute to the right formation of Christian life, is false and full of error; and every way and method of educating youth which takes no or scarcely any account of the stain transmitted from our first parents to all posterity and of divine grace, and which therefore rests wholly on the powers of nature alone, wanders entirely from the truth."[10] "Here nearly belong the doctrines which place almost the whole foundation of education in this, that children should be free to form themselves by their own talent and wholly by their own judgment, or with the counsels of elders rejected and every law and both human and divine help set aside. Yet this does not prevent adolescents, the more they advance in age and knowledge of things, from having to bring their own effort and industry also more and more to their education; nor does it prevent force and harshness from having to be removed from the education of children, while just correction, however, is not excluded."[11]

[1] Cf. encyclical letter of Pius XI, *Divini illius magistri*, "On the Christian Education of Youth," December 31, 1929 (*A.A.S.* 1930, p. 49 ff.).

[2] Roman Ritual, title 2, chapter 2, n. 32.

[3] Cf. Muckermann, *Der biologische Wert der muetterlichen Stillpflicht*; Capellmann-Bergmann, *Pastoral-Medizin*, 8th ed., p. 96; *N. K. Stemmen* 1904, p. 239; Meuleman, *Het levensrecht van de geboren vrucht*; *De Katholiek*, vol. 148, p. 62 and p. 181.

[4] Cf. Benedict XIV, *De Synodo dioecesana*, bk. 11, c. 7, n. 9.

[5] The contrary custom of matrons is to be prudently opposed: both because it is observed on vain grounds, namely so that they may withdraw themselves from the burden and be able to frequent pleasures; because desire for wet-nurses who are well-fed multiplies fornications; and because wet-nurses more easily neglect their own offspring.

[6] Cf. 2 Cor. 12:14.

[7] Cf. the cited encyclical letter.

[8] Cf. the cited encyclical letter; our little work *De virtute castitatis*, p. 111 ff.

[9] Sirach 7:25.

[10] Cited encyclical.

[11] Cited encyclical.

Scholion I. On Non-Catholic Schools

714 **I. Among non-Catholic schools:**

1. Some are so harmful that the danger to faith or morals cannot, morally speaking, become remote, for example if children would continually hear bad doctrine or would be compelled to be present at prohibited rites, or if the students were so perverse that scarcely anyone could keep himself unharmed.[1]
2. Others are less, but nevertheless positively, harmful, either on account of doctrines to be handed on or on account of association with bad companions, which threatens in them.
3. Others are only negatively harmful, namely neutral schools, or such as merely exclude religion.

II. It is clear that the schools under 1 and 2 are to be condemned; but even neutral schools are to be disapproved. This is clear first from ecclesiastical documents. Thus Pius IX condemned proposition 48: "This method of educating youth can be approved by Catholic men, which is separated from the Catholic Faith and from the power of the Church, and which regards only, or at least primarily, the knowledge of merely natural things and the ends of earthly social life."[2] And Pius XI declares that "through schools which they call neutral, the whole foundation of Christian education is thrown down and overturned, since religion is wholly removed from them; these schools, moreover, will in no way be neutral except in appearance, since in reality they are or will be fully hostile to religion."[3] And can. 1373: in every elementary school, religious instruction is to be handed on to children according to their age (§ 1). Youth which attends middle or higher schools is to be cultivated by a fuller doctrine of religion, and Ordinaries of places are to see to it that this be done through priests outstanding in zeal and doctrine (§ 2). Next, that neutral schools are to be rejected is clear from the fact that - as the cited documents already declare - in practice they will cease to be truly neutral, because they are separated from the authority of the Church, whereby it easily happens that the teachers to be put in charge and the books to be used harm the children; all the more because scientific instruction, for example of history, can scarcely be handed on without its being plain which religion the teacher supports.[4]

III. As to attendance at non-Catholic schools, can. 1374 establishes: Catholic children are not to attend non-Catholic, neutral, mixed schools, namely those which are open also to non-Catholics. But it belongs to the local Ordinary alone to decide, according to the norm of the instructions of the Apostolic See, in what circumstances of things and with what precautions applied, so that the danger of perversion may be avoided, it can be tolerated that those schools be attended. With these things noted, I say:

1. It is never lawful to send children to schools about which we spoke under I, 1.
2. It is also of itself gravely unlawful to send children to a less, but nevertheless positively, harmful school. By accident, or on account of a grave cause, this is lawful, provided remedies are applied by which the danger becomes remote. As to children who attend universities (especially non-Catholic ones), let parents take the greatest care that before the children are sent to them, they be cultivated by solid education and knowledge of religion; that they enroll in a Catholic society of students; that they be able to approach a learned and upright man who by his counsel may remove dangers and doubts; that they choose a religious friend, which association may draw them back from illicit companionships.
3. To send children to a neutral school, as it is called, that is, to a school only negatively harmful or such as merely excludes religion:

a) It is a grave sin: a) if it is done from a gravely bad motive, for example because one approves neutrality or spurns the authority of the Church; b) if it is done with grave scandal; this can be present if in that place there is a Catholic school equally suitable.

b) Otherwise it is of itself a light sin, provided religious instruction is cared for in another way. But parents are excused if no Catholic school is at hand, or if the one available is little suited for instructing adolescents suitably according to their condition; if otherwise grave harm threatens the parents, for example from the side of magistrates.[5]

4. What has just been said is almost also valid concerning schools about which Pius XI speaks thus: nor can that school be tolerated (especially if it is the "only" one and all children are bound to attend it), in which, although the precepts of sacred doctrine are handed on separately to Catholics, nevertheless the teachers are not Catholic who instruct Catholic and non-Catholic children together in letters and arts.[6]

Finally, it must be seen whether the local Ordinary has prescribed anything concerning the aforesaid matters.

Corollary I. Unworthy of absolution are parents who "neglect to impart necessary Christian education and instruction to their children, or who permit them to attend such schools in which ruin of souls cannot be avoided; or finally who, although there is a Catholic school in the same place, suitable and aptly equipped and prepared, or although they have the ability to educate their offspring in a Catholic manner in another region, nevertheless entrust them to public (neutral) schools without sufficient cause and without the necessary precautions, by which the danger of perversion may be removed from being proximate."[7]

Corollary II. It is lawful for someone, on account of a grave cause, to assume the office of teacher in neutral schools, provided he is not compelled to use bad books. Likewise it is permitted to hold the office of inspector: 1. if a grave cause is present and the schools to be inspected are not positively harmful; 2. if the schools are indeed positively harmful but there is hope that they will be rendered notably less harmful. Yet it must be considered to what extent public scandal perhaps prohibits the aforesaid things.

[1] Instruction of the Holy Office, November 24, 1875 (*Collectanea de Propaganda Fide*, n. 1449).

[2] Denzinger-Bannwart, n. 1748.

[3] Encyclical *Divini illius magistri*, December 31, 1929; cf. Pius IX, letter *Quum non sine*, July 14, 1864; Leo XIII, allocution *Summi Pontificatus*, August 20, 1880; encyclical letter *Nobilissima*, February 8, 1884; encyclical letter *Quod multum*, August 22, 1886; letter *Officio sanctissimo*, December 22, 1887; encyclical letter *Caritatis*, March 19, 1894, etc.

[4] Instruction of the Sacred Congregation de Propaganda Fide, November 24, 1875 (*Collectanea*, n. 1449).

[5] Cf. encyclical of Pius XI, *Divini illius magistri*.

[6] Cited encyclical.

[7] Instruction of the Holy Office, November 24, 1875 (*Collectanea*, n. 1449).

Scholion II. On Coeducation

715 Coeducation is to be rejected; this is clear first from the fact that Pius XI, in his encyclical *On the Christian Education of Youth*, rejects it. "Equally fallacious," says the Supreme Pontiff, "and hostile to Christian training must that method of instructing adolescents be held which is commonly called coeducation." Next, education of this kind, on account of human nature inclined to illicit things and vitiated by the stain of our first parents, is not without danger. It is added that each sex precisely on account of the difference of body and soul must mutually complete itself and coalesce into one thing; hence that very difference must be held and fostered in education and instruction by apt distinction and separation, suitable to ages and conditions. And this must be observed "not only in all schools, through the anxious years of adolescence, on which the plan of almost the whole future life altogether depends, but also in gymnastic games and exercises, in which special care must be taken for the

Christian modesty of girls, since it is most unbecoming for them to display themselves and to put themselves before the eyes of all."[1]

[1] Cited encyclical.

Section III. On the Mutual Duties Both of Other Blood-Relatives and of Spouses

716 **I. Duties of other blood-relatives.** According to the things set forth in the treatise on virtues (n. 394), the obligation of piety, which is primarily between parents and children, also exists: 1. between blood-relatives ascending and descending, for example between grandfather and grandson; 2. between nearer collateral blood-relatives, for example between brothers; 3. between guardians and wards, between sponsors and spiritual children. For since guardians and sponsors are equated with parents, competent authority is judged to have imposed on them duties from the motive of piety. The aforesaid persons, moreover, owe to one another love, and, according to the circumstances of persons, reverence and obedience. For the rest, note can. 1372, § 2: not only parents, according to the norm of can. 1113, but also all who hold their place, have the right and the most grave duty of caring for the Christian education of children.

Toward more remote collateral blood-relatives, duties of common charity rather than of piety ought to be exercised.

717 **II. Duties of spouses.** 1. Spouses owe one another love, affective and effective,[1] conjugal fidelity,[2] and living together.[3]

2. The husband is bound: 1. diligently to administer family affairs; 2. rightly to govern the wife and the whole family. Yet let the husband be mindful of the condition of the wife, who is a companion, not a handmaid. Hence let him treat her honorably; if there is need, let him correct her, but it scarcely happens that it is lawful to strike her (St. Alphonsus, III, 351).

3. The wife is bound: 1. to reverence her husband;[4] 2. to obey her husband;[5] 3. together with the husband to govern the family; 4. to perform domestic duties. As to obedience, however, note that of herself she is not held to those things which the husband would irrationally impose, for example if he required from a woman of more honorable condition that she sweep the house, unless poverty excused it (St. Alphonsus, III, 351, 352, question 2). Besides, disobedience as such is not easily gravely evil, because she ought to obey as a companion, not as a handmaid.

Spouses sin gravely by provoking one another with hatreds, grave curses, or quarrels.

The husband sins gravely: 1. "if he hinders [his wife] concerning the precepts of God or of the Church... but if he hinders her, even without cause, concerning those good things which are only of counsel, as confession, communion, etc., he commonly sins only venially; 2. if he beats her gravely; yet sometimes he can moderately chastise by words, or even from a grave cause by moderate blows, with account taken of condition and state;... 3. if he neglects the governance of the house and the family property; 4. if he does not cohabit with his wife or is absent for a long time without just cause; 5. if, when he can, he does not procure food, unless however the wife has departed from the company of the husband by her own fault, or unless she has committed adultery" (St. Alphonsus, III, 356).

The wife sins gravely: 1. "if she provokes her husband by quarrels or otherwise by words to grave anger or blasphemy;... 2. if, despising her husband, she claims authority for herself; 3.... if she inserts herself

into the administration of the house without just cause; such as if, for example, the husband, being prodigal, squanders the goods of the family" (St. Alphonsus, III, 351).

[1] Cf. Eph. 5:25, 28, 29; Titus 2:4.

[2] Cf. our little work *De virtute castitatis*, n. 34.

[3] Cf. cited work, n. 103.

[4] Eph. 5:33.

[5] Eph. 5:22, 23.

Scholion. On the Emancipation of Women

718 **I.** Moderns distinguish a threefold emancipation of women: physiological, economic, and social: physiological, insofar as women wish, by their own free will, to be freed or to be free from the burdens of a wife, whether conjugal or maternal; economic, by which women wish, even without the husband knowing and with him objecting, to be freely able to have, conduct, and administer their own affairs for themselves, with children, husband, and the whole family set aside; social, insofar as they remove domestic cares, whether of children or of the family, from the wife, so that, with these neglected, she may be able to indulge her own talent and be devoted to affairs and offices, even public ones.[1]

II. The threefold emancipation set forth is altogether to be rejected. And indeed the physiological is manifestly a wicked deed, because it entirely neglects the rights and burdens intrinsically joined to marriage. The economic is opposed to the subjection owed to the husband. As to the social, however, we note these things.

1. Social emancipation is not true emancipation of woman, that is, it by no means procures for woman that liberty which is owed to the office of a Christian woman and wife; rather, it is a denial of the feminine character, a corruption of maternal dignity, and a perversion of the whole family. It is said:

a) **A corruption of the feminine character;** for that equality of rights which is so greatly exaggerated and claimed must indeed be acknowledged in those things which are proper to the human person and dignity, and which follow the nuptial compact and are inherent in marriage; in these indeed each spouse enjoys altogether the same right and is held by the same debt; but in other matters, the natural character of the female sex itself, both lesser aptitude for public affairs and offices, and the natural disposition suggest a certain inequality.

b) **A corruption of maternal dignity;** since through the said emancipation woman descends from that royal seat to which she was raised within the domestic walls through the Gospel, and in a short time will be reduced to the old servitude (if not in appearance, yet in very truth), and it will come about that, as among the pagans, she will be a mere instrument of man.

c) **A perversion of the whole family,** because through that emancipation the husband is deprived of a wife, the offspring of a mother, the house and the whole family of an ever-watchful guardian.[2]

2. "Yet if anywhere the social and economic conditions of the married woman, on account of changed modes and usages of human intercourse, must in some way be changed, it belongs to public authority to adapt the civil rights of the wife to the necessities and needs of this time, with account indeed taken of those things which the diverse natural character of the female sex, honorable morals, and the common good of the family require, provided also that the essential order of

domestic society remain unharmed, which has been founded by an authority and wisdom higher than human, that is, divine, and cannot be changed either by public laws or by private good pleasure" (cited encyclical).

[1] Encyclical of Pius XI *Casti connubii*, December 31, 1930.

[2] Cf. cited encyclical.

Section IV. On the Duties of Household Masters and Domestic Servants

Preliminary Note. The discussion concerns workers who have been received into the family, and therefore pertain to the masterly society.

719 **I. Duties of masters.** Masters are bound regarding domestic servants:

1. **To treat them kindly,** by not imposing excessive labor on them, by furnishing suitable food to them, and by addressing them humanely[1] (St. Alphonsus, III, 342).
2. **Not to dismiss them before the appointed time, unless a legitimate cause is present, and to pay them a just wage;** these things are explained at length in the treatise on the Seventh Precept of the Decalogue.
3. **To provide for their spiritual good.** This is clear both from Sacred Scripture,[2] and from the fact that "they are their head, and act in the place of parents; and therefore they are bound in some way to the same things to which parents are bound" (St. Alphonsus, III, 342). It is added that from the encyclical *Rerum novarum* and from can. 1524 masters must "take care that the same [that is, workers] have a suitable span of time free for piety";[3] which you may apply with greater right to masters of domestic servants. Add can. 1335: 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 or commended to them be instructed by catechetical instruction.

Corollary. "Masters sin gravely: 1. if without just cause they hinder servants from hearing Mass on feasts, or if on feasts they impose servile works;... 2. if they permit an occasion of sinning when they can prevent it; or if they do not correct those gravely offending" (St. Alphonsus, III, 342); 3. if they do not dismiss the incorrigible, unless they would suffer grave detriment from their dismissal.

As to forestalling occasions of sin, Aertnys-Damen rightly notes: "Regularly they should not permit a male servant and female servant of their house to court each other, but they ought to procure that those courting desist from courtship, or dismiss one or the other as soon as possible. Let them provide, as far as can be done, that servants not sleep together in the same bed. Let them also see to it that male servants and female servants are properly separated as to sleeping quarters; otherwise an occasion of sins will easily arise."[4]

[1] Cf. Ecclus. 33:31.

[2] 1 Tim. 5:8.

[3] Namely because they preside over the society which is called masterly (cf. St. Thomas, II-II, q. 65, a. 2; II-II, q. 72, a. 2, ad 2). From this encyclical masters must "effect that the worker have a suitable span of time free for piety."

[4] Aertnys-Damen, I, 556.

720 **II. Duties of servants.** Domestic servants owe their masters reverence, obedience, and faithful service.

1. They owe them reverence and obedience, as is clear from Sacred Scripture;[1] likewise from the fact that masters, as governors of the masterly society, are true superiors (St. Alphonsus, III, 343). Faithful service is owed by force of contract, and therefore from justice.
2. The duties of reverence and obedience, since they regard morally different modes of observance, differ specifically; that the duty of faithful service differs specifically from the aforesaid duties is clear.
3. Obedience, as regards minors, extends also to morals; those of age are subject as regards domestic governance. Faithful service requires that they fulfill the work to which they are held, with law, contract, and custom considered, labor diligently, and not depart illegitimately before the appointed time (St. Alphonsus, III, cited place).

[1] 1 Tim. 6:1; Eph. 6:5; 1 Pet. 2:18.

Section V. On the Duties of Employers and Non-Domestic Servants, or Workers

721 **Preliminary Note I.** The discussion concerns workers who have not been received into the family, and therefore do not pertain to the masterly society; such as those who labor in factories or workshops.

Preliminary Note II. It is disputed whether between employers and non-domestic servants there exists a relation properly so called of superiority and inferiority, or only that relation which every contract brings with it between contracting parties.[1] Now the reasons which are alleged for the existence of superiority properly so called, that is, authority, seem less firm.

Objection 1. Everything cannot be determined by contract; therefore it remains that authority be admitted, which orders what has not been determined.

Resp. Everything can be sufficiently determined by contract, at least implicitly; but if something obscure remains, recourse should be had to friendly composition, or the matter should be settled by a judge.

Objection 2. Between the employer and the workers there exists a true society, since they are bound to pursue a good common to themselves; but a common good to be pursued argues a society. But where there is a society, there is also authority.

Resp. The employer and servants are bound to pursue a good common to themselves, as all men are bound to that with respect to neighbor; indeed masters and servants are bound to that in a special way because they are joined to one another in a special way: granted. They are bound to pursue a good common to themselves insofar as they constitute a society, or insofar as they must pursue one moral end: this is not proved, or rather seems to be denied, because it is lawful for each one to rest in his own good, with common charity nevertheless preserved.

[1] Cf. Oskar Renz in *Xenia Thomistica*, vol. I, p. 474 ff.; Peques, *Commentaire litteral sur la Somme Theologique*, t. XII, on II-II, q. 104, a. 1; Vermeersch, *De Iustitia*, n. 455; *Ned. Kath. Stemmen*, 1927, p. 85.

722 **I. Duties of employers.** Employers are bound:

1. To treat workers kindly, for example by addressing them kindly and not imposing "more work than their strength can bear, nor that kind which is at variance with their age and sex."[1]

2. To grant them a suitable wage, and not dismiss them illegitimately; concerning these things, in the treatise on the Seventh Precept of the Decalogue.

3. The things said in n. 719 about the spiritual care of domestic servants are not to be urged equally as regards workers. Yet certainly employers are bound, insofar as it can morally be done:

a) To take care that those who are of childhood age, and mothers of families, are not employed in factories or workshops.

"It is wrong to abuse childhood age and the weakness of woman. Let mothers of families chiefly at home, or in those things which are adjacent to the home, devote their labor by applying themselves to domestic cares. But it is a very bad abuse and to be removed by every effort, that mothers of families, on account of the smallness of the father's wage, are compelled to exercise gainful work outside the domestic walls, with their peculiar cares and duties, and especially the instruction of infants, neglected. Therefore one must strive with every effort that fathers of families receive a wage sufficiently ample, which may suitably provide for common domestic necessities."[2]

b) To take care that in factories or workshops everything be done honorably; hence, for example, let neither sex labor promiscuously, and let those who continue to be a scandal to others be dismissed.[3]

"The soul shudders if the very grave dangers are weighed, to which in modern workshops the morals of workers (especially younger ones) and the modesty of girls and other women are exposed."[4]

c) To leave them the faculty of fulfilling ecclesiastical precepts.[5] Besides, other precepts also of common charity - for example of correcting - can be urged more as regards workers, since they are joined to the master by a special bond.

d) To acknowledge the right of workers to establish associations for protecting their rights and promoting their good.[6]

[1] Encyclical of Leo XIII *Rerum novarum,* May 15, 1891.

[2] Encyclical of Pius XI *Quadragesimo anno,* May 15, 1931.

[3] Encyclical of Leo XIII *Rerum novarum*.

[4] Encyclical *Quadragesimo anno*.

[5] Encyclical *Rerum novarum*; likewise *Quadragesimo anno*.

[6] Encyclical of Leo XIII *Longinqua oceani,* January 6, 1895; Sacred Consistorial Congregation to the Bishop of Lille, June 5, 1929; likewise encyclical *Quadragesimo anno*.

723 **II. Duties of workers.** Workers owe employers:

1. **Reverence,** and indeed from the virtue of observance. Moreover, they owe them a certain reverence because employers are more eminent in many things; wherefore note these words of St. Thomas: "In anyone there is found something from which someone can regard him as superior, according to that saying in Phil. 2: 'In humility, considering one another as superiors'; and according to this all also ought to anticipate one another in honor" (II-II, q. 103, a. 2, ad 3). But the reverence due is from the virtue of observance, according to these words of the same Doctor: "Reverence which is shown to some persons on account of any excellence whatever pertains to the same virtue [that is, to observance]" (St. Thomas, II-II, q. 102, a. 1, ad 2; n. 397).

2. **Faithful service;** which is owed by force of the contract entered into, and therefore from commutative justice; for the rest, as to faithful service, what has been said about domestic servants has force (n. 720).

Section VI. On the Duties of Teachers and Pupils

724 **I. Duties of teachers.** 1. Teachers, when and so long as they enjoy true authority over pupils, authority, I say, received from parents or from those taking their place, with due conditions observed, are held to the same duties by which parents are held toward children; for they truly take their place (St. Alphonsus, III, 362). These things are especially to be applied to teachers of institutions, and to instructors of the lower disciplines.

2. Teachers are bound diligently to care for the instruction of pupils; and they can violate this obligation even by negligence. Likewise they are bound, even if they do not fully take the place of parents, according to the circumstances, to provide for moral education; for example, while the pupils are subject to them, by watching over their morals, protecting good morals, correcting delinquents, and so forth. Yet these things have greater force for instructors of lower and middle-level discipline than for teachers of the higher sciences.

3. As regards the latter teachers, I note especially:

a) Teachers of the higher sciences sin if they teach the false as true; and indeed gravely, whenever from the doctrine handed on damage for faith or morals follows.

b) They are bound to obey if legitimate authority, whether a Rule or a competent Superior, imposes on them some system or weighty doctrine of some Doctor to be taught, that is, to be set forth together with the arguments which support it; they are bound to obey, I say, even if they themselves adhere to another system or doctrine. For it is lawful for them to obey, because the doctrine imposed, as we are supposing, can safely be taught. Now if it is lawful, there is an obligation of obeying; yet they should not propose the doctrine as their own if they do not admit it. But if a higher Authority has imposed another doctrine to be taught, let obedience be given to this. Hence obedience must be given to the Code when it establishes: let professors in every way treat the studies of rational philosophy and theology, and the instruction of students in these disciplines, according to the method, doctrine, and principles of the Angelic Doctor, and let them hold these sacredly (can. 1366, § 2; can. 589, § 1).

c) Likewise they are bound to obey if legitimate authority for a time forbids teaching or disseminating a doctrine which is apt to disturb peace or promote abuses. I said for a time, because we are supposing that it concerns a doctrine which, in itself, can safely be taught; on that supposition, one should abstain from a definitive prohibition. As regards our assertion, however, observe: the act of teaching is an act of beneficence or charity, which is lawful for anyone, unless per accidens he is impeded from the use of this natural liberty, whether: 1. because of reservation of the matter, as faith has been entrusted to the sole authority of the Church; or 2. because of injuring the right of a third party to reputation or to secrecy; or 3. because of the legitimate prohibition of a Superior, of a Superior, I say, who must attend to dangers which can threaten the community.

725 **II. Duties of pupils.** Pupils owe teachers, from the virtue of observance, reverence and obedience. They owe them reverence and obedience insofar, namely, and because, they are subject to them (n. 397 sq.). Moreover, that these duties are owed from the virtue of observance follows from the notion of that virtue handed down above (n. 397).

As regards pupils who, considering the circumstances, are not truly subject to teachers, these words of St. Thomas have force: "There is a moral debt, which is owed from a certain honesty; and in this way we owe worship and honor to those who are constituted in dignity, even if we are not subject to them" (II-II, q. 102, a. 2, ad 2). For pupils also with respect to teachers, more than the reverse, these words of the same holy Doctor cited above have force: "In anyone there is found something from which someone can regard him as superior, according to that saying in Phil. 2: In humility, considering one another as superiors; and according to this all also ought to anticipate one another in honor" (II-II, q. 103, a. 2, ad 3).

Section VII. On the Duties of Civil Rulers and Subjects

726 **I. Rulers** are bound to promote the public good and therefore especially: 1. to entrust public offices to worthy persons; 2. to provide for the rights and security of citizens; 3. to promote public prosperity by just laws and statutes; 4. to preserve the rights of the Church and to be of assistance to her.[1]

[1] Leo XIII, encyclical *Immortale Dei*, November 1, 1885; Council of Trent, sess. 25, chap. 20, *De reformatione*.

727 **II. Subjects** owe civil superiors reverence,[1] and subjection in those things which are justly established for promoting the common good.[2]

Corollary I. Rebellion is illicit, both because it is opposed to the right which a ruler enjoys, and because very great evils are everywhere joined to rebellion. Hence Pius IX in the *Syllabus* condemned proposition 63: "It is lawful to refuse obedience to legitimate rulers, indeed even to rebel."[3] And Gregory XVI says: "Both divine and human rights cry out against those who, by most shameful machinations of treason and sedition, strive to fall away from fidelity toward rulers and to hurl them down from authority."[4]

Question 1. Whether it is lawful to eject a usurper.

Resp. It is lawful to eject a usurper in the name of legitimate authority, so long as he has not yet become a legitimate ruler. Now he can become a legitimate ruler either by the just abdication of the legitimate ruler, or by the tacit or express consent of the people to transfer the rights of power to the usurper after the death of the legitimate ruler and of his heirs, or by the public welfare of the commonwealth, if this makes the permanence of the usurper necessary. It is disputed whether long possession of a realm confers a right to authority. It seems it must be denied, especially in the first usurper, and while good faith is lacking and the legitimate ruler still protests, unless that very long possession brings about the necessity that the government of the usurper remain for the public good.[5] On that supposition, to depose such a ruler already becomes illicit.

Question 2. Whether it is lawful to depose a ruler who is indeed legitimate, but a tyrant.

Resp. 1. It is not lawful to depose a legitimate ruler who is actually abusing power, since an actual injury does not confer the right of dissolving the constituted state.

Resp. 2. If the discussion is about habitual and excessive tyranny, one must distinguish thus:

If the right of electing a ruler belongs to the people, it seems it must per se be affirmed, both because election from the mind of the people seems to be interpreted in this way, and because of the reason to be adduced in the following hypothesis. I said per se, because of the inconveniences often joined to such a manner of acting, about which there will be discussion immediately.

If the principality is hereditary, several more recent authors deny it; but older authors and many more recent ones affirm it, at least per se, because the right of the people to be well governed prevails over the individual good of the ruler that he govern. I said at least per se, because in practice it is difficult to prevent a greater ruin from following from deposition and so forth.

"Tyrannical government," says St. Thomas, "is not just, because it is not ordered to the common good, but to the private good of the ruler, as is clear from the Philosopher in III *Politics* (chap. 5) and in VIII *Ethics* (chap. 10); and therefore the disturbance of this government does not have the character of sedition, unless perhaps when the rule of the tyrant is so inordinately disturbed that the subject multitude suffers greater detriment from the consequent disturbance than from the rule of the tyrant" (II-II, q. 42, a. 2, ad 3). And Leo XIII says: "Yet if sometimes it happens that public power is exercised by rulers rashly and beyond measure, the doctrine of the Catholic Church does not allow rising against them on one's own initiative, lest the tranquility of order be disturbed more and more, and lest society receive greater detriment from this. When the matter has come to this, that no other hope of safety shines forth, she teaches that a remedy must be obtained by the merits of Christian patience and by insistent prayers to God."[6] These words can be understood in such a way that the Supreme Pontiff practically fears that greater evils will arise from rebellion.

Corollary II. Although rebellion is everywhere illicit, nevertheless it is lawful for a nationality, by parliamentary means, as they are called, to tend toward its own commonwealth. It is said by parliamentary means, so that unjust means are excluded, whether with respect to the former commonwealth or with respect to another nationality existing in the same commonwealth. The doctrine stated is drawn from this, that it is lawful, with the rights of others preserved, to tend toward that which is the more suitable means for obtaining human good. But its own commonwealth is per se a more suitable means for a nationality to obtain human good, because citizens of the same morals, culture, and psychological dispositions cooperate more easily toward the common good.

Corollary III. Per se there is no obligation of obeying a usurper who has not yet become a legitimate ruler. The reason is that in reality he lacks authority. Per accidens there can be an obligation, namely lest scandal arise or order be disturbed (St. Thomas, II-II, q. 104, a. 6, ad 3).

Corollary IV. Nor per se is there an obligation of obeying the unjust precepts of a legitimate Ruler. Per accidens there can be an obligation, as was just said about a usurper.

"A man is bound to obey secular rulers," says St. Thomas in the cited place, "insofar as the order of justice requires; and therefore if they do not have a just rule but a usurped one, or if they command unjustly, subjects are not bound to obey them, except perhaps per accidens, on account of avoiding scandal or danger." From these things you may deduce what must be thought about resistance to unjust laws, whether passive or active. Passive resistance, which consists in this, that the law is merely not observed, is per se lawful; per accidens, or because of a greater evil to be avoided, there can be an obligation of fulfilling the law. Yet it is always illicit to observe the law if that which it commands is intrinsically evil. Active resistance, by which someone positively resists observing the law, likewise can per accidens be illicit, and at least as being generally useless is everywhere to be dissuaded.

[1] 1 Pet. 2:17.

[2] Rom. 13:1, 2, 7.

[3] Denzinger-Bannwart, n. 1763.

[4] Encyclical *Mirari vos*, August 15, 1832.

[5] Aertnys-Damen, I, n. 563.

[6] Encyclical *Quod Apostolici muneris*, December 28, 1878.

Section VIII. On the Duties of Electors and Deputies

728 **I. Electors** are bound to use the right of electing as follows:

1. The obligation of electing is grave: 1. if there is hope through one's own election of bringing it about that there will be present a number of good deputies sufficient for establishing good laws or at least for warding off harmful ones; in other words, at least in practice, that there will be present a number of good deputies greater than, or at least as great as, the number of wicked deputies; 2. if there is hope through one's own election of warding off a deputy who by his influence will notably harm the common good; 3. if it is of great importance that it be signified how many electors favor right principles, for example if from the number of votes the boldness of adversaries will be diminished.
2. Outside the aforesaid cases the obligation of electing is everywhere light, either because there is hope of increasing the number of good deputies, or because at least it is of interest that it be signified how many men oppose wicked principles. A just cause excuses from a light obligation. I said everywhere; for:
3. If neither of the enumerated causes is present, there is no obligation of using one's right, unless perhaps from a law which obliges at most under light sin, and which is satisfied by a blank ballot dropped into the urn. If the election is only between two wicked candidates, and the worse will certainly be warded off without the cooperation of Catholics, per se one should abstain from the election.

Corollary I. He who elects an unworthy deputy:

a) Sins gravely: 1. if he is led by a wicked end, for example because he approves wicked principles; 2. if it is to be feared that by electing an unworthy one he brings it about that the number of good deputies sufficient for establishing good laws, or at least for warding off wicked laws, will be lacking; 3. if it is to be feared that by electing he is the cause why a deputy is elected who by his influence will notably harm the common good.

b) Does not sin if he acts thus so that a greater evil may be forestalled, for example so that a worse candidate may be warded off.

c) Outside the aforesaid cases, he sins at least lightly.

Corollary II. He who abstains from an election is not bound to restitution of the damages that followed, because he is not bound by commutative justice to use the right of electing. There is a dispute about one who has voted illicitly; but the obligation of making restitution is denied with sufficient probability, because electors are rather the occasion than the cause of the damage, nor is it sufficiently proved that there belongs to the community a strict right that an unworthy candidate not be elected.

729 **II. Deputies** are bound to promote the common good, especially by establishing good laws and warding off harmful ones. Moreover, they sin gravely: 1. whenever they vote for a law intrinsically evil;

2. when, either by abstaining or by voting, they are the cause why a gravely harmful law, even though not intrinsically evil, is established, unless this is done so that a more harmful law may be warded off.

Corollary I. Deputies who, either by abstaining from voting or by giving a vote, have been the cause why a harmful law was established, are bound to restitution, because by reason of their office, to which remuneration is joined, and therefore from commutative justice, they must, if they can, promote the common good and ward off evil.

Corollary II. The things said about electors and deputies have greatest force concerning electors of legislative assemblies and concerning deputies to the aforesaid assemblies; nevertheless they can also be applied to electors of administrative assemblies, for example of a province or municipality, and to deputies to the said assemblies.

Part V. On the Fifth Precept of the Decalogue

(St. Thomas, II-II, q. 64; St. Alphonsus, *Theologia Moralis*, book III, n. 363-411; *Homo Apostolicus*, tract 8, n. 1-32.)

730 By the fifth precept there is prohibited "the unjust killing, mutilation, beating, and other similar affliction" of oneself and of one's neighbor (St. Alphonsus, III, 363).

Killing is distinguished:

1. Into direct and indirect. It is direct when the act of killing, as such, is intended as an end or is assumed as a means by which another end is obtained. Otherwise it is indirect.
2. Into simple and qualified, according as circumstances which contain a special malice are not joined or are joined to it. Qualified killing is again distinguished:

a) Into parricide, by which name the killing of some relative is designated. In parricide there is added a sin against piety, if the killing concerns parents or other blood-relatives. Moreover, the killings of the aforesaid persons quite probably do not differ from one another in species.

b) Into regicide, which is the killing of a king, pope, or prince. In regicide, which is also called the crime of lese-majesty, there is added a sin against observance.

c) Into robbery-killing, which is killing done with the intention of plundering. Another species of injustice is added.

d) Into sacrilegious killing, which is the killing either of a sacred person or one done with profanation of a sacred thing or place. The sin of sacrilege is added.

Civil laws for the most part distinguish killing or voluntary homicide, and homicide that is voluntary and perpetrated with deliberate purpose.

With these things noted beforehand, we shall speak first about the killing of an innocent person, then about the killing of a criminal, finally about the killing of an unjust aggressor. About the killing of oneself, something was said in the treatise on charity (n. 523).

Section I. On the Killing of an Innocent Person

We shall treat first of the killing of an innocent person in general, then of the killing of a fetus in particular.

Chapter I. On the Killing of an Innocent Person in General

731 **I. Direct killing of an innocent person is a grave sin from its whole genus.** This is clear both from Sacred Scripture,[1] and from the fact that the murderer: 1. destroys what is not his, but God's; 2. deprives his neighbor of the use of life and of the faculties, to which the neighbor has a right from divine ordination; 3. cuts off a member of the commonwealth (St. Thomas, II-II, q. 64, a. 6; St. Alphonsus, III, 393).

Corollary I. It is illicit to kill those lethally wounded, the dying, so that they may not suffer longer, and so forth.

Corollary II. Puncture of the heart or artery is illicit when done for this end, that one who seems to be dead may certainly be deprived of life, lest, namely, he be buried alive (euthanasia). But if it is certainly established that life has passed away, it is indeed per se lawful for a physician to puncture the heart or artery; yet since by acting thus a practice to be disapproved is promoted, that manner of acting is illicit unless both the physician signifies that he does not approve the wicked intention of those requesting it, and a grave cause is present.

II. Nor is it ever lawful for public authority directly to kill an innocent person; both because public authority does not have a right over the life of innocent subjects, and because the common good itself, for which public authority must provide, is promoted above all by the protection of the life of the innocent.

"The killing of a sinner," says St. Thomas, "becomes lawful, namely for public authority, by comparison to something else: considering man indeed according to himself, it is lawful to kill no one, because in any man, even a sinner, we ought to love the nature which God made, and which is corrupted by killing; but, as was said above (art. 2 of this question), the killing of a sinner is by comparison to the common good, which is corrupted by sin; but the life of the just is preservative and promotive of the common good, because they are the more principal part of the multitude; and therefore in no way is it lawful to kill an innocent person" (II-II, q. 64, a. 6; St. Alphonsus, loc. cit.).

Hence neither "is it lawful to kill hostages, even if those who sent them do not keep faith, because they are innocent" (St. Alphonsus, loc. cit.); nor can an innocent person be killed even if, for example, a tyrant besieging a city threatens that, unless he is killed, he will overturn the city. Nevertheless an innocent subject, when the besieging tyrant demands it, can be sent and handed over to the enemies, especially because the innocent person, if he is not a stranger, seems bound to expose his life for his own commonwealth (St. Alphonsus, III, 393).

Corollary. The killing of an innocent person can become lawful by the authority of God. "For God has dominion of death and life: by His ordination both sinners and the just die; and therefore he who kills an innocent person by the command of God does not sin in such a case, just as neither does God, whose executor he is; and he is shown to fear God, obeying His commands" (St. Thomas, II-II, q. 64, a. 6, ad 1).

III. Indirect killing of an innocent person likewise is per se illicit; it becomes lawful if a proportionate cause is present. It is said:

1. Indirect killing of one's neighbor is per se illicit, because charity per se demands that I avert damage from my neighbor, much less does it permit that I create it for him.
2. It becomes lawful if a proportionate cause is present; this follows from what was said about an act with a double effect (St. Alphonsus, III, 393).

Corollary I. Homicide is not imputed if someone places a work, even an illicit one, that is little dangerous, so that death rarely comes from it, provided, if it can be done, due diligence is used for forestalling death; as if someone rings a bell, and by chance the little bell, falling, crushes a traveler; if someone, giving attention to hunting wild beasts, by chance kills a man; if someone fornicates, and the woman dies from childbirth (St. Alphonsus, III, 398).

Corollary II. "For taking a city and winning victory, if it is necessary, it is lawful to direct cannons at that place where there are many innocent persons, because their death follows outside the intention"

(St. Alphonsus, III, 393); in other words, because the aforesaid act is not assumed as a means insofar as it is killing of an innocent person.

[1] Gen. 4:10; Exod. 20:13.

Chapter II. On the Killing of a Fetus in Particular

Article I. On Abortion

732 Before we speak about abortion, some things must be noted beforehand.

By the name fetus is understood the ovum of a woman fertilized by the semen of a man. Now it is freely disputed whether the rational soul, apart from a miracle, is infused at the very instant of fertilization or afterward; afterward, I say, that is, after the fetus has grown to the due organism of a human body.[1]

A fetus regularly cannot live outside the uterus unless after seven complete months of gestation. Yet if artificial incubation takes place, sometimes there is hope that a fetus may go on living outside the uterus after six complete months of gestation. In these matters one can stand by the judgment of an expert.

[1] Those who deny that the soul is infused at the first instant of fertilization admit a miracle with respect to Christ and the Blessed Virgin Mary.

733 **I. Notion.** Abortion is the expulsion from the mother's uterus of a fetus not yet viable outside the uterus.

Abortion differs from acceleration of birth, or from premature delivery, which consists in this, that the offspring is brought forth artificially before nine complete months of gestation, but when it can live outside the uterus.

734 **II. Division.** Abortion is distinguished into direct and indirect. It is direct when the act of ejecting the offspring as such is either intended as an end, or is assumed as a means by which another end is obtained. Otherwise it is indirect.

735 **III. Morality.** 1. Direct abortion is to be judged as follows:

a) Direct abortion of an animated fetus is always gravely illicit. This is clear from the constitution *Effrenatam* of Sixtus V;[1] likewise from the encyclical *Casti connubii* of Pius XI;[2] likewise from the decrees of the Holy Office;[3] finally from reason: namely, if the fetus is animated, direct abortion involves the killing of offspring, that is, its tearing away from the maternal uterus, whereby it happens that it can no longer live; it involves direct killing of offspring, because it involves an act which, insofar as it is killing or insofar as it is tearing away and expelling the offspring from the mother, is assumed as the means by which another end, for example the safety of the mother or avoiding disgrace, is obtained. It is commonly added that the fetus about to die is not baptized (St. Alphonsus, III, 394).

b) Direct abortion of a fetus not yet animated is likewise gravely illicit; for if the fetus is not yet animated, there is an action which is directly opposed to the good of the species, equally as is the disordered use of semen; indeed even more, because a fetus not yet animated approaches more closely to man than semen does. Hence abortion of a fetus not yet animated is reduced by some to homicide, and is called by them imperfect or anticipated homicide. There is added proposition 34 condemned by

Innocent XI: it is lawful to procure abortion before the animation of the fetus, lest a girl discovered to be pregnant be killed or disgraced[4] (St. Alphonsus, loc. cit.).

Objection 1. He who procures an abortion does not kill the offspring, but merely ceases to preserve its life.

Resp. I deny the assertion, since he who procures abortion positively places the offspring in that condition in which it cannot live. Such a manner of acting cannot be called a mere cessation from preserving the offspring.

Objection 2. A fetus which creates danger for the mother can be regarded as an unjust aggressor.

Resp. Since the fetus is merely present to the mother, and indeed with nature itself directing the matter thus, there can be no discussion of an aggressor of the mother.

What if it is doubted whether the fetus is dead?

Resp. Doubt about the death of the fetus easily persists. Some indeed judge that the death of a sufficiently developed fetus can be established by means of a stethoscope, which demonstrates that the pulsations of the heart have ceased; but from the recent opinion about apparent death, the said certainty does not seem to be had unless it is established that for a sufficiently long time, for example for an hour, the pulse of the heart has altogether ceased. With these things noted, I answer: in doubt whether the fetus is dead, direct abortion is gravely illicit, because, to use the words of St. Alphonsus, "it is intrinsically evil positively to expose an innocent person to danger of direct death" (III, 394), or because it is illicit to place an act which probably is directly killing an innocent person.

2. Indirect abortion likewise is per se gravely illicit; it becomes lawful if a grave cause is present, provided, however, that the hope of baptizing the offspring is not diminished.[5] For the things said about indirect killing have force, since such killing is had in the case (n. 731). Moreover, a cause is required that is graver in proportion as the means employed has more influence on the abortion (St. Alphonsus, III, 394).

Corollary I. For saving the life of the mother, it is lawful to use a medicine which of itself tends equally to the cure of the disease and to abortion, because the act of taking medicine is not employed as a means of saving the mother insofar as that act is killing. Likewise it is lawful to extirpate a uterus infected with cancer, even if the death of the fetus must follow from this, because the extirpation is not assumed as a means insofar as it is killing the fetus (St. Alphonsus, III, loc. cit.).

Corollary II. Incision or puncture of the membranes of the fetus, so that the uterus may be replaced, seems illicit, because the act of cutting or puncturing is assumed as a means insofar as it is killing, that is, insofar as it is expelling the fluid without which the fetus cannot live, indeed also insofar as it is expulsive of the fetus. Make an exception if, as they contend can sometimes be obtained, the incision or puncture can be done in such a way that only part of the fluid flows out and ejection of the fetus does not follow.

Corollary III. Mothers sin gravely, objectively, who, with their condition considered, induce grave danger of abortion: by carrying heavy burdens, undergoing hard labors, indulging in vehement sadness or anger, dancing, riding, and so forth; likewise those who strike a pregnant woman, afflict her with vehement pain, or excite her to vehement anger. But if in the aforesaid cases abortion is intended, there is guilt of direct abortion.

Note 1. Since the illicitness of feticide carried out to save the mother is not so evident, good faith is not always excluded either among physicians or in the mother. Moreover, if good faith is present and there is no hope of fruit, the priest can be silent, unless there is danger of apparent connivance and thus harm can also be done to the common good. For the rest, baptism of the fetus should always be provided for as much as can be done. But those who procure abortion to avoid the disgrace of a girl, to forestall more numerous offspring, to strengthen the health of the mother, or to remove a light danger of death, should ordinarily be instructed, and, unless they are willing to renounce the perverse practice, should be sent away without absolution. The same must be said of those who induce abortion when sufficient provision can be made for the mother by acceleration of birth.

Note 2. Medicines which are usually prescribed for diseases commonly cannot influence abortion except remotely, so that, provided some good effect is intended, there is scarcely an obligation of abstaining from them. Several causes which are assigned by some, such as violent disturbances of the mind, excessive fatigue, riding in a carriage, and so forth, although for the most part they do not induce abortion, nevertheless are not done without moderate danger. But more dangerous are extensive abuse of intercourse, the wearing of garments constricting the uterus, baths that are too hot, and so forth.[6]

Note 3. Today indirect procurement of abortion is rarely necessary for saving the life of the mother, since provision can be made for both mother and offspring by Caesarean section, symphysiotomy, pubiotomy, and so forth.

[1] October 29, 1588.

[2] December 31, 1930.

[3] July 24, 1895, decree of the Holy Office *de abortus illiceitate*; May 4, 1898 (Collect., n. 1898).

[4] Denzinger-Bannwart, n. 1184.

[5] This hope is commonly not diminished, since the fetus can usually be baptized either in the uterus (cf. treatise on Baptism) or after abortion has followed.

[6] Surbled, *La vie sexuelle*, p. 230.

736 **IV. Penalties against the crime of abortion.** 1. Those are irregular by reason of delict who have procured the abortion of a human fetus, the effect following, and all cooperating (can. 984, 4°).

2. Those procuring abortion, not excepting the mother, incur, the effect following, excommunication latae sententiae reserved to the Ordinary; and if they are clerics, they are besides to be deposed (can. 2350, § 1). These matters are more fully explained in the treatise on ecclesiastical penalties.

Article II. On Embryotomy, Etc

737 **I. Embryotomy** - from Greek *embryon* = fetus and *temno* = I cut - to which craniotomy - *kranion* = skull - and cephalotripsy - from *kephale* = head and *tribo* = I crush - pertain; embryotomy, I say, and similar operations, are gravely illicit. For they contain killing, and that direct killing (n. 731). There are added the responses of the Holy Office,[1] which declare that in Catholic schools it cannot safely be taught that craniotomy and any surgical operation directly killing the fetus or the pregnant mother are lawful.

[1] May 28, 1884 (Collect., n. 1618) and August 14, 1889 (Collect., n. 1716).

738 **IV. Extraction of an ectopic or extra-uterine fetus**[1] is to be judged as follows:

1. If, considering the time elapsed from conception, provision can be made for the offspring, it is lawful,[2] indeed it even obliges if otherwise the fetus cannot certainly be baptized.
2. If provision cannot be made for the offspring, it is not lawful to extract it from the body of the mother, because the act of extracting is assumed as a means insofar as it is killing, that is, insofar as it tears the offspring away from the mother. Nevertheless it is lawful to extirpate a tumor infected with cancer or lethal on another count, even if the fetus is cut out at the same time, because the act of extirpating is not assumed as a means insofar as it is killing, that is, extirpative of the offspring itself.
3. If there is doubt whether or not a true fetus is had, the same solutions have force. Others judge that in the case an ectopic fetus can be extracted from the mother's body, even if provision cannot be made for its life, because, they say, the certain right of the mother must be preferred to the uncertain right of the offspring. But these things are not pleasing, because, to use again the words of St. Alphonsus, "it is intrinsically evil positively to expose an innocent person to danger of direct death" (III, 394), or because it is illicit to place an act which probably is directly killing an innocent person.

[1] Namely, sometimes it happens that conception occurs outside the natural place, that is, outside the maternal uterus; in that case birth cannot occur in the natural way. Moreover, a threefold ectopic pregnancy is distinguished, namely tubal, ovarian, and abdominal, of which tubal, which takes place in the oviduct, seems more frequent.

[2] Cf. Holy Office, May 4, 1898 (Collect., n. 1997); likewise May 5, 1902; yet the latter decree lacks pontifical approval.

739 **V. Acceleration of birth** (n. 733) is lawful for a proportionate cause, as if the safety of the mother is hoped for from accelerated birth, or if it is feared that the woman cannot give birth to a more developed fetus. Hence the Holy Office[1] declared that acceleration of birth is not per se illicit, provided it is performed for just causes, and at that time and by those methods by which, according to ordinary contingencies, provision is made for the lives of the mother and fetus.

[1] May 4, 1898 (Collect., n. 1997).

Scholion. On Mutilation, Imprisonment, and Beating of an Innocent Person

740 What mutilation is, and what direct and indirect mutilation are, has been set forth in the treatise on charity (n. 526). Now proceed:

I. Direct mutilation of an innocent person, with the required consent posited, is lawful if it is ordered and necessary for the preservation or well-being of the whole body. Otherwise it is illicit. For the reasons brought forward where there was discussion of direct mutilation of oneself have force (n. 526).

II. Indirect mutilation of an innocent person is per se illicit; but for a proportionate cause it becomes lawful, as was said about indirect mutilation of oneself (n. 526).

III. Imprisonment of an innocent person is likewise illicit, because each person has a right of procuring his own good even by external action; this right is violated by one who imprisons someone (St. Thomas, II-II, q. 65, a. 3).

IV. Finally, beating of an innocent person is illicit, because each person has a right to the delight or quiet of his senses, "to which beating is opposed, or anything whatever that affects the sense with pain" (St. Thomas, loc. cit.).

V. Nor is it lawful for public authority directly to mutilate an innocent person; for just as it is not lawful for it to deprive an innocent person of life (n. 731), so also and for the same reason it is illicit to deprive him of the integrity and use of members (St. Thomas, II-II, q. 108, a. 4, ad 2). Likewise it is illicit for it to imprison or beat an innocent person, because neither can public authority injure the goods of the body of innocent persons; and goods of the body, besides life and integrity of members, are the use of members, which is impeded by imprisonment, and the quiet of the sense, to which beating is opposed (St. Thomas, II-II, q. 65, a. 3).

Nor does public authority lawfully impose mutilation, for example vasectomy, oophorectomy, and so forth, for this end, that the procreation of weak, miserable, and similar offspring may be forestalled. Thus expressly Pius XI in the encyclical *Casti connubii*.[1] And the Holy Office, to the question, "What must be thought of the theory called eugenic, whether positive or negative, and of the means indicated by it for improving human progeny, with laws, whether natural, divine, or ecclesiastical, concerning marriage and the rights of individuals set aside," answered on March 31, 1931: "That it is altogether to be disapproved and to be held as false and condemned, as in the encyclical letter on Christian marriage, *Casti connubii*, given on December 31, 1930."[2] And indeed, first, the end does not justify a perverse means, such as the mutilation of an innocent person. Next, neither can public authority directly impede the good of the species, since it is ordered to no intermediate end, but to God alone, and therefore cannot be impeded for any intermediate end.[3]

Objection 1. Public authority can provide for the common good; consequently it can mutilate an innocent person and impede the good of the species, if that is necessary for the common good.

Resp. I deny the consequence; or rather, public authority can provide for the common good, but not by an evil means, of which sort are mutilating an innocent person and impeding the good of the species.

Objection 2. Public authority can provide for the good of the species. But by impeding the procreation of weak offspring it provides for the species.

Resp. That public authority can provide for the good of the species by using an evil means, such as mutilation of an innocent person, I deny. Besides, the Minor must be denied, because the good of the species pertains in no way to the accidental condition of the offspring.

[1] December 31, 1930.

[2] *Acta Apostolicae Sedis*, 1931, p. 118.

[3] Cf. Brouillard in *Etudes*, 1931, p. 440 sq. and 578 sq.; Dr. Grosam in *Theologisch-praktische Quartalschrift*, 1931, p. 497 sq.

Section II. On the Killing of a Criminal

741 **I. Public authority has the power of killing criminals.** This is clear first from Sacred Scripture,[1] likewise from the doctrine[2] and practice of the Church;[3] then from reason. For public power has a power which is very useful, and sometimes necessary, for the common good, for example for the security of citizens. But such is the power of imposing the penalty of death (St. Thomas, II-II, q. 64, a. 2).

With the primary natural end of punishment considered, which is the reparation of a violated order or retribution, it seems one must say that all grave transgressions of the public order can be punished with the penalty of death without injustice. Yet such a use of power would have to be disapproved, both because it would tend toward the harm of the community, and because "the punishments of the

present life are more medicinal than retributive; for retribution is reserved to divine judgment, which is according to truth upon sinners; and therefore, according to the judgment of the present life, the punishment of death is not inflicted for any mortal sin whatever, but only for those which bring irreparable harm, or also for those which have some horrible deformity" (II-II, q. 64, a. 2, ad 2). Note, however, that sometimes deservedly, especially by military law, capital punishment is established for faults light in themselves but, with the circumstances considered, grave.

II. Only the supreme authority in the commonwealth has the power of killing criminals. This is drawn both from the fact that it belongs to the governor alone of the commonwealth to establish those things which are ordered to the safety of the whole community (St. Thomas, II-II, q. 64, a. 3; St. Alphonsus, III, 379), and from the fact that it belongs to the governor alone of the community to subtract from the community what pertains to the community. But "man himself and all his parts" belong to the community (St. Thomas, II-II, q. 65, a. 1). For the rest, observe:

1. It is another question to what extent public authority is bound to use the aforesaid power; the solution of this question depends on whether, with the circumstances of things and also the condition and character of subjects considered, certain very grave crimes, such as homicides and seditions, can be sufficiently forestalled in another way. Yet the safety of the commonwealth seems to require that in time of war and sedition the penalty of death be decreed against certain persons.
2. Authority, where the penalty of death is concerned, is per se bound to observe the order of law; namely, per se it is not lawful to kill criminals unless they have first been both cited and heard, and, with the crime legally proved, have been condemned, "because by the law of nature a public act must be done from public knowledge and authority" (St. Alphonsus, III, 377). I said per se, because on account of an extraordinary necessity of the commonwealth it is lawful to depart from the order of law, provided, however, that the crime is established. Moreover, an extraordinary necessity can occur especially in time of sedition or war.

Corollary I. Killing which in English is called lynching is altogether to be rejected, although perhaps good faith can excuse by reason of custom; likewise killing of traitors in time of war carried out by one's own authority. Officers cannot kill a criminal, even if he flees or wrests himself from their hands, unless they have a special mandate (St. Alphonsus, III, 380).

Corollary II. It is not lawful to kill either a tyrant of government, as it is called, that is, a tyrant who possesses rule by a just title but greatly abuses it (n. 727), or a tyrant of title who possesses the kingdom peacefully.[4] But a tyrant of title who does not yet possess the kingdom peacefully can be killed by the authority of the legitimate Prince (St. Alphonsus, *Homo Apostolicus*, tract 8, n. 13).

[1] John 19:11; Rom. 13:4.

[2] The doctrine of the Church is known, for example, from the profession of faith proposed by Innocent III to the Waldensians, where it was read thus: "Concerning secular power we assert that without mortal sin it can exercise judgments of blood, provided that in inflicting vindication it proceeds not from hatred but from judgment, not incautiously but advisedly." Then among the errors of Luther proscribed by Leo X in the bull *Exurge Domine*, this proposition 33 is read: "That heretics be burned is against the will of the Spirit" (Sweens, *Theologia moralis fundamentalis*, 2nd ed., n. 524).

[3] As regards the practice of the Church, history teaches that formerly Superiors of the Church often handed over heretics or other criminals to the secular judge to be punished with death; something the Church certainly would not have done unless the State had the right of punishing evildoers with death (Sweens, *Theologia moralis fundamentalis*, 2nd ed., n. 524).

[4] These things in practice also have force in the case in which the one who peacefully possesses the kingdom is not yet judged a legitimate prince (n. 727).

Scholion. On Mutilation and Beating of a Criminal

742 **I. Public authority,** just as it can kill a criminal, so a fortiori can mutilate, imprison, and beat him. But it is another question whether public authority lawfully imposes certain mutilations, namely vasectomy, oophorectomy, and so forth, as a punishment. Now, speaking theoretically, a punishment of this kind, although it can be defended from the fact that it deprives criminals of a great good, that is, of the faculty of procreating, seems less congruent with the common sense of morality. I said theoretically, because in practice it will impose the said punishment for this end, that the procreation of offspring to be procured by the criminal may be impeded. But that is illicit, because it is not lawful even for public authority directly to impede the good of the species (n. 740).

II. Superiors lacking supreme power, for example parents and those taking their place, cannot mutilate or strictly imprison their delinquent subjects; nevertheless they can beat them moderately. It is said:

1. They cannot mutilate them, because "man himself and all his parts" belong to society (St. Thomas, II-II, q. 65, a. 1); but it belongs only to the supreme governor of society to subtract from the community what pertains to the community (n. 741).
2. They cannot strictly imprison them, because not only man and all his parts belong to the community, but also his activity; hence again it belongs only to the supreme governor of society to impede the activity of man by strict imprisonment (St. Thomas, II-II, q. 65, a. 3). Nevertheless inferior Superiors can keep their subjects at home for just causes.
3. They can beat them moderately. For they enjoy the power of coercing subjects insofar as by acting thus they do not inflict injury on the community. But beating a subject inflicts no injury on the community, because it removes neither life, nor the integrity of members, nor activity (St. Thomas, II-II, q. 65, a. 2). Yet it is not lawful for a man to beat his wife, unless a most grave necessity urges, since the wife is not his servant but his companion (St. Alphonsus, VI, 972).

III. Equals, for example brothers and sisters, even if older by birth, cannot even beat delinquents, unless by consent of a superior. The reason is that by beating some harm is inflicted on the body of him who is beaten; moreover, it is not lawful to inflict harm on someone except by way of punishment, on account of justice. But no one can punish someone unless he is subject to his power. Therefore an equal cannot beat an equal (St. Thomas, II-II, q. 65, a. 2).

Section III. On the Killing of an Unjust Aggressor

743 **I. It is lawful to repel an unjust aggressor against life, even, with the necessary conditions posited, by killing him.** This is clear from Sacred Scripture[1] and from the doctrine of the Church contained in the old Law.[2] And indeed what prevents me from repelling unjust force by force, if otherwise it cannot be repelled? Or: what prevents me from returning like for like to him who is on the point of inflicting unjust harm on me, if otherwise the damage cannot be averted? For the rest, if the proposition were denied, sufficient provision would not have been made for the security of life (St. Alphonsus, III, 380).

Nor is it an obstacle that the one attacked, by killing the attacker, seems to prefer his own temporal life to the eternal life of his neighbor, since we are bound only to give life for a neighbor who is placed in extreme spiritual necessity. But the attacker is not placed in extreme spiritual necessity, because he can rescue himself from necessity by ceasing from the attack. In a word: his spiritual necessity is voluntary, and therefore not extreme (St. Alphonsus, III, 380).

I said: **it is lawful,** because a man is not bound to use an extraordinary means, of which sort is the killing of one's neighbor, for saving life. Indeed it is even an act of charity "to permit one's own killing, lest another be deprived of temporal and eternal life" (St. Alphonsus, loc. cit.). Make an exception, however, if the life of the one attacked is necessary or quasi-necessary to the community or family.

I said: **with the necessary conditions posited.** Moreover, the conditions required so that it may be lawful to kill an aggressor against life are: 1. that the aggression be unjust; 2. that the aggression be physical; 3. that the moderation of blameless defense be observed. It is said:

1. **That the aggression be unjust;** this is clear. Thus it is not lawful to kill an executioner who carries out a sentence of death. Yet it suffices that it be materially unjust, for example if it is done by a madman, by a drunk person, and so forth. The reason is that a right, in this case the right to life, by its nature can be defended absolutely or always without injustice; without any sin, if charity does not stand in the way. But charity stands in the way only in the case in which the one attacked is in the state of grace, while the aggressor, for example a drunk person, is morally certainly in the state of mortal sin, and therefore, in the posited hypothesis, is placed in extreme spiritual necessity (St. Alphonsus, III, 390).
2. **That the aggression be physical;** for the negation of this condition would give occasion to delusions and would gravely harm public order. Thus it does not suffice, for example, that another has merely decided on or threatened aggression; that someone persuades or orders an attack on you; that a judge pronounces an unjust sentence against you. Hence proposition 18 was rightly condemned by Alexander VII: it is lawful to kill a false accuser, false witnesses, and even a judge from whom an unjust sentence certainly threatens, if an innocent person cannot avoid damage in another way[3] (St. Alphonsus, III, 388). Yet it suffices that the aggression has begun in some way; therefore it is not required, for example, that the enemy already aim a gun, but it suffices that he take up arms to kill you at once (St. Alphonsus, III, 387).
3. **That the moderation of blameless defense be observed,** as it is usually said, that is, that in defending oneself one not proceed beyond necessity. Thus it is not lawful to kill an aggressor if the one attacked can flee or by beating or wounding rescue himself from danger of death. But if he cannot flee without great dishonor, which nevertheless today generally has no place unless perhaps you except a military man, especially one constituted in a higher rank, he is not bound to flight (St. Alphonsus, III, 381). And generally it is not evident that one attacked who is bound to flight is bound to it from justice. Moreover, observe that those who in the case, especially of a sudden attack, exceed in their own defense are easily excused from grave sin, namely because of disturbance of mind and lack of time for deliberating.

[1] Exod. 22:2.

[2] Chapter *Significasti nobis* (18, book 5, Decretals, title 12); chapter *Si perfodiens* (3, book 5, title 12); the single Clementine *De homicidio*, etc. Civil laws agree.

[3] Denzinger-Bannwart, n. 1118.

744 **II. What is lawful for preserving life is also lawful for preserving the integrity of members, for forestalling grave wounding, for preserving chastity, and for acquired goods of fortune of great importance.**[1] Namely, the said goods are regarded as sufficiently grave goods, which may be defended by any force whatever, even lethal, if there is need, against an unjust aggressor. But the same is not lawful for protecting honor and reputation. These indeed are more grave than goods of fortune; but, besides the fact that honor and reputation can generally be defended in another way, the faculty of defending them by death would open the way to delusions and innumerable killings. Hence proposition 30 was condemned by Innocent XI: "It is lawful for an honorable man to kill an attacker who strives to inflict calumny, if otherwise this ignominy cannot be avoided; the same also must be said if someone strikes with the open hand or beats with a stick, and after the open-hand blow or blow of the stick flees."[2] Yet one is not bound to permit another by deed, for example by a blow, to assail one's honor; he can therefore repel ignominious treatment and, if the other then proceeds further, oppose force (St. Alphonsus, III, 313, 386; 381).

[1] As regards goods which are either of lesser importance or are not yet possessed, note the propositions condemned by Innocent XI. Proposition 31: regularly I can kill a thief for the preservation of one gold coin (Denzinger-Bannwart, n. 1181). Proposition 32: it is lawful to defend by killing-defense not only the things which we actually possess, but also those to which we have an inchoate right and which we hope to possess (Denzinger-Bannwart, n. 1182). Proposition 33: it is lawful both for an heir and for a legatee to defend himself in such a way against one unjustly impeding either the entering upon an inheritance or the payment of legacies; likewise also for one having a right to a chair or prebend against one unjustly impeding possession of them (Denzinger-Bannwart, n. 1183).

[2] Denzinger-Bannwart, n. 1180.

745 **III. Finally, it is lawful, even by killing the aggressor, to defend the life, integrity of members, chastity, and great goods of one's neighbor;** and indeed the life and integrity of members, whether the neighbor dissents from or consents to the killing or mutilation of himself; for since he is not the master of life and members, his consent is invalid. It is generally not lawful to defend the chastity and goods of one's neighbor in this way if the neighbor consents to the one attacking. I said generally, because it is lawful for him upon whom disgrace or damage redounds to defend even the one who consents to his own damage (St. Alphonsus, III, 389, 391).

746 **IV. Generally there is no obligation of defending one's neighbor by killing,** because charity does not oblige one to such a burden. Make an exception: 1. if the common good requires it; 2. if the neighbor is very near, namely a parent, child, spouse, or brother (St. Alphonsus, III, 390).

Question. Whether it is lawful to kill an unjust aggressor directly, or only indirectly.

Resp. Several teach that an unjust aggressor can be killed only indirectly. Namely, they judge that the killing of the aggressor is lawful insofar as it is lawful to place the act of defending oneself; from this act a double effect follows, one's own preservation, which is intended, and the killing of the aggressor, which is permitted. Thus Cajetan[1] and Billuart.[2]

Others defend the contrary, and it seems one must adhere to them. For it is lawful by the consent of all to place an act of defending oneself, for example the discharge of a gun. But sometimes an act is defensive of oneself only insofar as it is killing of the aggressor. Therefore it is lawful to place the act insofar as it is killing of the aggressor. But this is nothing other than to take the killing of the aggressor as a means, or to kill the aggressor directly.

Objection. The defended opinion is contrary to the doctrine of St. Thomas.

Resp. St. Thomas (II-II, q. 64, a. 7), at first glance, seems to oppose our opinion; for he reasons, in order to prove that the killing of an unjust aggressor is lawful, from an act with a double effect, of which one, namely the preservation of life, is intended, while the other, namely the death of one's neighbor, happens outside the intention. But if you suppose that, according to the mind of St. Thomas, only that which is sought as an end is properly intended, but not that which is only assumed as a means, the holy Doctor is not opposed to us. But that this is wrongly supposed is not proved; hence there remains doubt for me about what St. Thomas judges (cf. St. Alphonsus, *Homo Apostolicus*, tract 8, n. 12).

[1] Commentary on II-II, q. 64, a. 7.

[2] *De tractatu de iure et iustitia,* dissertation 10, article 5.

Scholion I. On Dueling

(St. Alphonsus, Theologia Moralis, book III, nn. 399-401; Homo Apostolicus, tract 8, nn. 21-28.)

747 **I. Notion.** Dueling, in the canonical sense, is defined: a contest of two persons, or at least of a few, entered into by a prior agreement about place and time, and that with lethal weapons. It is said:

1. **A contest of two persons, or at least of a few;** these words are to be understood so that single and determined persons fight with single and determined persons.
2. **By a prior agreement about a determined place and time.** Therefore both the place and the time must be designated. Hence it would not suffice that they say: we shall fight wherever we first meet each other (St. Alphonsus, III, 401).
3. **With lethal weapons.** It is not required that the contest be entered into with grave danger of killing or grave wounding; rather, it suffices that the weapons with which the contest is carried on be lethal.

Corollary. To dueling accepted in the canonical sense there also pertain: 1. duels to first blood, as they are called;[1] 2. academic duels (*Bestimmungsmensuren*), that is, those which students are accustomed to enter into for the sake of display, with weapons indeed lethal, namely with a small knife, but with such cautions employed that danger of killing or grave wounding is morally removed.[2] But so-called American duels do not pertain here, that is, those by which both expose themselves to danger of death or grave harm, so that one falls by chance and the other by chance escapes unharmed; for example, if of two tablets one is harmless and the other is infected with poison, and both must consume one or the other.[3] Such duels, I say, do not pertain here, because they exclude combat; hence they are not subject to the ecclesiastical penalties against duelists, although, as is clear, they are gravely illicit. Nor do fictitious duels seem to pertain here, that is, duels offered and accepted with the sole intention of simulating combat, in order to avoid the mark of timidity among uncultivated men; nevertheless these too are gravely illicit on account of scandal (St. Alphonsus, III, 399).

[1] Clement VIII, Constitution *Illius vices*, § 5 (1592).

[2] Sacred Congregation of the Council, June 13, 1926 (*Acta Apostolicae Sedis* 1926, p. 132).

[3] Vermeersch, *Theologia Moralis*, II, 614.

748 **II. Division.** A duel is distinguished into public or solemn and private, according as it is entered into without or with certain ceremonies, for example with witnesses, whom they call seconds, and so forth.

749 **III. Morality.** 1. A duel entered into by public authority in place of war is lawful. For what authority can impose on many, it is also lawful to commit to a few; indeed, it is preferable that a few should fight in the name of the commonwealth in place of many (St. Alphonsus, III, 400).[1] Yet if the ranks are very unequal, the common good seems to require that the leader of the stronger rank, provided he is waging war justly, choose war, unless they prefer to choose unequal persons for single combat; but duels of this kind now have no place.

Corollary. I said that a duel entered into by public authority in place of war is lawful; for not even public authority is permitted to impose or permit a duel for displaying or increasing skill, for investigating truth or manifesting innocence,[2] for vindicating an injury, and so forth. It is illicit to permit these, both because a duel, unless it takes the place of war, is evil in itself, and because, if there is question of investigating truth, or manifesting innocence, or vindicating an injury, a duel is an unsuitable means to the intended end (St. Alphonsus, III, 399).

2. A duel entered into by private authority and with danger of killing or grave wounding is gravely illicit. For it is an attack upon the life or integrity of members of one's neighbor, done deliberately and by private authority; according to what was said in n. 741, this is altogether prohibited. There is added the malice of suicide, insofar as it involves consent to one's own killing or wounding. Add the ecclesiastical documents which altogether reprobate dueling;[3] and especially note the propositions condemned by Benedict XIV in the Constitution *Detestabilem*,[4] which are:

First: A military man who, unless he offers or accepts a duel, would be regarded as fearful, timid, abject, and unfit for military duties, and would thereby be deprived of the office by which he sustains himself and his own, or would have to lack forever the hope of promotion otherwise due and deserved by him, would be free from fault and penalty, whether he offers or accepts the duel.[5]

Second: Those who accept or provoke a duel for the sake of protecting honor or avoiding human contempt can also be excused, when they know certainly that the fight will not follow, as it is to be impeded by others.[6]

Third: The commander or military officer who accepts a duel from grave fear of loss of reputation or office does not incur the ecclesiastical penalties laid down by the Church against duelists.[7]

Fourth: In the natural state of man it is lawful to accept and offer a duel in order to preserve one's fortunes with honor, when the loss of them cannot be repelled by another remedy.[8]

Fifth: The asserted license for the natural state can also be applied to the state of a badly ordered city, namely one in which, either by the negligence or by the malice of the magistracy, justice is openly denied.[9]

Objection. It is lawful to place an act which has an evil effect, provided it also has a good effect. But a duel also has a good effect, namely honor to be restored.

Resp. Strictly speaking, a duel does not have a good effect, or it is not ordered to a good effect, that is, to honor to be restored; rather, once the duel has been posited, insulting men regard honor as restored. There is added that the good effect is obtained by means of an evil act.

3. Duels entered into without danger of killing or grave wounding are likewise gravely illicit; either because, according to what was said in n. 747, they pertain to dueling taken in the canonical sense, in which case they are prohibited by the Church under grave obligation; or because they bring grave

scandal with them, as fictitious duels do; or because they expose persons to danger, even though they exclude combat, as American duels do.

Corollary I. "If a nobleman, or a soldier, is challenged to a duel, he can lawfully respond: I, as a Christian, cannot accept a duel; nevertheless I am prepared to defend myself against unjust aggressors" (St. Alphonsus, III, 400).

Corollary II. If someone challenges you to a duel, prepared to kill you in any way whatever, it is lawful to accept the fight and weapons, because then you are rather defending yourself against an unjust aggressor than accepting a duel (St. Alphonsus, III, 400).

[1] Cf. 1 Kings 17.

[2] Chapters 1 and 2, *De purgatione vulgari*.

[3] Council of Trent, session 25, *De reformatione*, c. 19; Gregory XIII, Constitution *Ad tollendam* (1582); Clement VIII, Constitution *Illius vices* (1592); Leo XIII, letter given to the Bishops of Germany and Austria (September 22, 1891).

[4] November 10, 1752.

[5] Denzinger-Bannwart, n. 1491.

[6] Denzinger-Bannwart, n. 1492.

[7] Denzinger-Bannwart, n. 1493.

[8] Denzinger-Bannwart, n. 1494.

[9] Denzinger-Bannwart, n. 1495.

750 **IV. Penalties against duelists.** 1. The penalties established against a duel accepted in the canonical sense are:

a) Excommunication simply reserved to the Apostolic See (can. 2351, § 1), which is explained in the treatise on delicts and penalties.

b) Deprivation of ecclesiastical burial, according to the norm of can. 1240, § 1, which likewise is explained in the cited treatise.

c) Infamy of law, according to the norm of can. 2351, § 2.

d) Irregularity from delict, according to the norm of can. 985, 4° and 5°.

2. As regards remission of penalties, see the treatise on delicts and penalties.

V. Obligation of restitution which a duel can bring with it is explained in the treatise on the seventh precept.

Scholion II. On War

(St. Thomas, II-II, q. 40; St. Alphonsus, Theologia Moralis, book III, nn. 402-411; Homo Apostolicus, tract 8, nn. 29-32.)

751 **I. War,** that is, a fight of one people against another, is distinguished into defensive and offensive. Defensive war is that which repels force here and now being brought against one; offensive war is that which is undertaken to compensate for or vindicate an injury that has been inflicted (St. Alphonsus, III, 402).

II. War is sometimes lawfully waged; defensive war, because a commonwealth, just as a private person, can repel unjust force by force; offensive war, because society ought to enjoy a means of defending its rights and of vindicating or recovering things lost. But sometimes no other means is at hand except war (St. Thomas, II-II, q. 40, a. 1; St. Alphonsus, loc. cit.). There is added that God in the Old Testament more than once commanded war.

III. Only the supreme authority in the commonwealth can declare war. For since "the care of the commonwealth has been committed to princes, it pertains to them to protect the commonwealth of the city, or kingdom, or province subject to them" (St. Thomas, II-II, q. 40, a. 1; St. Alphonsus, III, 402). Nor can an inferior authority or a private person declare war which regards only part of the commonwealth. The reason is that inferiors can "prosecute their right in the judgment of a superior" (St. Thomas, loc. cit.). Besides, as regards a private person, "to summon a multitude, which must be done in wars, does not pertain to a private person" (St. Thomas, loc. cit.; St. Alphonsus, III, 402).

Nevertheless, with natural law considered, the Supreme Prince can confer on an inferior magistrate, for example on the governor of a town or province, the faculty of declaring war on another town or province of a kingdom; and the same faculty can also belong to an inferior magistrate by force of the law of nations.

IV. In order that war may be lawfully declared, a just cause is required, and that the end justly intended cannot be obtained in another way.

1. **A just cause,** that is, one proportionate to the damages annexed to war. Moreover:

a) For defensive war, the unjust aggression itself of the other party suffices. As regards offensive war, "just wars are usually defined as those which avenge injuries, if a nation or city is to be punished because it has either neglected to vindicate what was wickedly done by its own people, or to restore what was taken away by injury"[1] (St. Thomas, II-II, q. 40, a. 1; St. Alphonsus, III, 402).

b) In doubt whether a just cause is present, war cannot be declared; both because in doubt the condition of the possessor is better, and because "war commonly brings with it such crimes and damages to religion, to the innocent, to the honor of women, and so forth, that practically it can scarcely ever seem just if it is inferred from things merely probable and not certain" (St. Alphonsus, III, 404). But subjects, called by law or already bound by contract before the war, are not bound to inquire into the justice of the war as long as no vehement suspicion occurs; indeed, even in doubt about the justice of the war, although an arduous matter is involved, they are bound to obey on account of the common good. The contrary must be said of those who are bound neither by law nor by contract (St. Alphonsus, III, 408).

2. **That the end justly intended cannot be obtained in another way;** for example, through arbiters who settle the case. Indeed, with the immense damages annexed to war considered, princes must strive with every effort and work that wars always be averted.

V. As regards things lawful, prescribed, and prohibited in war, it suffices to have noted these things:

1. It is lawful, if it conduces to the end of the war, to lay waste fields, to destroy fortresses, to occupy hostile goods and lands, to besiege cities and harass them with fire, although by accident it happens that innocent persons are harmed and killed. Indeed, sometimes it is right to destroy monasteries and churches, and in them to despoil and kill, if, for example, enemies use them as a

fortress to defend themselves. Yet the aforesaid things are not lawful for private soldiers or inferior officers without the permission of the commander[2] (St. Alphonsus, III, 409, 410). It is likewise lawful to use ambushes and stratagems, provided lies are absent (St. Thomas, II-II, q. 40, a. 3; St. Alphonsus, III, 410).

2. "Faith pledged to an enemy must be kept, unless either you gave it under compulsion, or it would turn to grave detriment of the commonwealth or of religion; or if the enemies do not keep it; or finally if the conditions and circumstances have been altogether changed" (St. Alphonsus, loc. cit.).

3. "Soldiers sin with the burden of making restitution if they take from country people or others, among whom they lodge or through whose places they pass, or extort from them unwilling, anything beyond those things which, by the constitution of the prince, these persons ought to furnish to them; unless, however, they are in extreme or at least grave necessity" (St. Alphonsus, loc. cit.).

4. To the question, who can be justly killed in war, one must answer thus:

a) The following can be killed directly: commanders and soldiers of the hostile army; likewise those who bring aid to them.

b) The following cannot be killed: 1. the conquered and captured, unless from another source they are guilty of a crime of death; 2. those who have surrendered, under an agreement that they be spared; 3. the innocent, such as children, women, the elderly, country people, clerics, religious, pilgrims, unless it is established that they themselves are guilty; nevertheless they can be killed indirectly, insofar as their death cannot be avoided in military operations (St. Alphonsus, III, 409).[3]

5. Finally, citizens not belonging to the army, by force of the law accepted among nations, are bound to abstain from bloody defense of the fatherland and bloody attack upon enemy soldiers.[4]

[1] St. Augustine, book 6, *Quaestiones* (on Joshua, q. 16).

[2] Aertnys-Damen, I, 590.

[3] Aertnys-Damen, *Theologia Moralis*, I, 590.

[4] *Nederlandsche Katholieke Stemmen*, 1915, p. 86.

Part VI. On the Sixth and Ninth Precepts of the Decalogue

752 As regards the sixth precept of the Decalogue, which commands external chastity and prohibits sins opposed to it, and likewise as regards the ninth precept of the Decalogue, which regards internal chastity and the vices contrary to it, we refer to our little work pertaining to Moral Theology, whose title is *De virtute castitatis et de vitiis oppositis*.[1]

[1] Published by Beyaert, Bruges.

Part VII. On the Seventh and Tenth Precepts of the Decalogue

(St. Thomas, II-II, q. 57 ff.; St. Alphonsus, Theologia Moralis, book III, nn. 486-961; Homo Apostolicus, tract 10.)[1]

[1] Cf. Crolly, *Disputationes theologicae de Iustitia et Iure, ad normam iuris municipalis britanici et hibernici conformatae*; Waffelaert, *De virtutibus cardinalibus*, tract II, *De Iustitia*; Marres, *De Iustitia*; Pothier, *De Iustitia*; Vermeersch, *Quaestiones de Iustitia*; Van Gestel, *De Iustitia et Lege Civili*; Sweens, *Institutiones theologicae de virtute cardinali Iustitiae*; Van Egeren, *Notationes de virtute Iustitiae*; Duynstee, *Burgerlijk Recht en Zielzorg*.

753 The seventh and tenth precepts of the Decalogue command commutative justice, prohibit its violation or injustice strictly so called, and, when it has been violated, impose reparation or restitution; moreover, the seventh precept regards external acts, the tenth internal acts, at least directly. Therefore we shall speak first of commutative justice itself, then of injustice and restitution. But so that this whole matter may be clearer, it is useful both very briefly to recall to memory the things which elsewhere we discussed at length concerning justice taken more generally, and also to discuss in appendices the matter akin to commutative justice, that is, distributive justice and legal or social justice.

754 **I. Notion of justice taken more generally.** Justice taken more generally is a moral virtue inclining a man to render to each one his right (n. 377).

755 **II. Conditions required for justice taken more generally.** "The notion of justice consists in this, that there be rendered to another what is due to him according to equality" (St. Thomas, II-II, q. 80, single article); from these words it follows that three conditions are required for justice, namely alterity, debt, and equality (n. 379).

756 **III. Division of justice taken more generally.** Justice taken more generally is divided into commutative, distributive, and legal or social justice.

1. **Commutative justice** is: justice inclining an individual man to render to another individual his right, that is, a strict right, or a right founded in the devinction or quasi-devinction of some thing to some individual (n. 380).
2. **Distributive justice** is: justice inclining the prince to render to the members of society their right, that is, the goods which belong to them, with capacity, merits, and necessity considered (n. 381).
3. **Legal justice** is: justice inclining both subject and prince to render to society its right, that is, to promote the common good (n. 382).

Social justice, of which Pius XI speaks in the Encyclical *Quadragesimo anno*, since it regards the common good almost exclusively, belongs to legal justice.

757 **IV. Fuller exposition;** this is especially set forth by a fuller exposition both of the object of justice, that is, as is clear from the definition handed down, right,[1] and of its subject.

1. **Notion of right.** The word right is taken in different senses, for example for a moral and inviolable faculty in regard to something, that is, in regard to some thing or some action, whether one's own or another's; for a law granting some moral faculty in regard to something; for a body of laws, as when someone is said to study law; for the sentence of a judge, who therefore is said to declare the law; for the place in which sentence is pronounced, whence someone is said to appear in court.

Now right, insofar as it is the object of justice, is a thing due to someone according to some equality; namely the material object is the thing due, and the formal object is the character of debt. Moreover, under the name of thing we also comprehend an action or omission.

2. **Source of right.** The remote source of every right is law, whether natural or positive, and ultimately the eternal law, which is the origin of all laws according to these words of St. Alphonsus: "The will of God alone, as being most holy, most wise, most upright, is the one source of every law, of every rule, and of the measure of honesty" (*Dichiarazione del sistema*, n. 18). The proximate source of right is the moral faculty itself, on account of which some thing is due to someone. I said moral faculty, by which is understood some power with respect to some thing.

3. **Division of right.** Right, insofar as it is the object of justice, is divided:

a) By reason of origin, into natural right and positive right, according as it flows from natural law (n. 82) or from positive law (n. 89).

b) By reason of subject, into individual right and social right, according as it belongs to man as an individual, or as part of a whole, or as a member of society.

c) By reason of the title in which it is proximately founded, into right founded in the title of devinction or quasi-devinction[2] of a thing to some person, and this is the object of commutative justice; into right founded in the title of capacity, dignity, merit, or necessity, on account of which some good, for example an office, ought to be granted by the whole, that is, by the prince, to some member of society, and this is the object of distributive justice; into right founded in the ordination of subjects and of the prince to society, and this is the object of legal justice.

d) By reason of efficacy, into strict right and less strict right, according as it is founded in the title of devinction or quasi-devinction of a thing to some person, or in another of the titles just assigned.

Strict right, that is, the object of commutative justice, is distinguished into *ius in re*, or real right, and *ius ad rem*, according as a thing has already been bound to someone, or someone has a right that a thing, still bound to another, be bound to himself. This right is sometimes called *ius in personam*, insofar, namely, as some person, from commutative justice, is obliged to render some thing to someone (St. Alphonsus, III, 486).

4. **Subject of right.** A rational being, and it alone, is the subject of right. For right is a thing due to someone according to some equality. But something can be due only to a rational being.

The Minor is proved. Something can be due only to him who has a moral faculty in regard to something. But a moral faculty in regard to something belongs to a rational being, and to it alone.

The subsumed Minor is proved. A moral faculty belongs to him, and to him alone, who can and ought to direct himself to the ultimate end; for such a one and such a one alone enjoys the faculty of choosing means to the ultimate end, a faculty, I say, of which others ought to take account. But a rational being, as free, and it alone can and ought to direct itself to the ultimate end; irrational beings, as lacking liberty, cannot direct themselves. Therefore a moral faculty belongs to a rational being, and to it alone.

Corollary I. Even infants and the insane are capable of rights. This is clear: 1. from Sacred Scripture: "For as long as the heir is a little child, he differs nothing from a servant, although he is lord of all; but he is under tutors and governors until the time predetermined by the father";[3] 2. from the consent of

all nations and laws; 3. from the fact that nothing prevents some thing from being destined to the special utility of someone and therefore owed to him, even if in the use of the thing he must be directed by the reason and will of another.

Corollary II. Not only physical persons, but also moral persons, can be the subject of right, or at least be regarded as if they were the subject of right;[4] concerning these we shall speak specifically later.

Corollary III. The capacity of acquiring a right can be restricted by authority, both civil and ecclesiastical, and this both directly, for example if someone is deprived of the usufruct of his own thing (n. 764), or is rendered incapable by reason of a solemn vow of poverty; and indirectly, insofar as certain things are placed outside commerce. The state in which someone exists deprived of the capacity of right is called civil death.

And with these things having been premised concerning justice taken more generally, let us proceed to the treatment of commutative justice, speaking, as we have already noted, first of commutative justice itself, then of injustice and restitution. We shall add a double appendix, the former on distributive justice, the latter on legal justice.

[1] Cf. Lijdsman, C.SS.R., *Introductio in Ius Canonicum*, vol. I, n. 1.

[2] By quasi-devinction I understand the power which belongs to a private person, so that some thing may be bound to him (*ius ad rem*).

[3] Gal. 4:1-2.

[4] It is disputed: 1. whether and 2. in what precise sense a moral person can be called the subject of right. Cf. Brinz, *Pandekten*, III, § 432-454; Ihering, *Der Geist des Romischen Rechts*; Vermeersch, *Quaestiones de Iustitia*, XIV; F. C. von Savigny, *System des heutigen Romischen Rechts*, II, § 85-103; d'Annibale, *Summula Theologiae Moralis*, I, n. 43; Waffelaert, *Etude de theologie morale sur l'obligation en conscience des lois civiles*, p. 157-184; Cathrein, *Moralphilosophie*, II, p. 394-395; Gierke, *Das Deutsche Genossenschaftsrecht*, cited by Duynstee, n. 22.

Section I. On Commutative Justice Itself

We shall speak first of commutative justice generally, then of commutative justice in the matter which is especially regarded by it, that is, in contracts.

Chapter I. On Commutative Justice Generally

We must treat: 1. the nature and division of commutative justice; 2. the objects of commutative justice, that is, strict rights; 3. the modes of acquiring strict rights.

Article I. On the Nature and Division of Commutative Justice

758 **I. Nature.** Although the nature of commutative justice and its difference from distributive and legal justice have been explained above (n. 380 ff.), nevertheless it is useful to recall to memory or to add these things:

1. **The conditions required for justice,** namely alterity, debt, and equality, are present in commutative justice in a more perfect way than in distributive and legal justice. For in it there is:

a) The perfect character of alterity, as between part and part; not so in distributive justice, which is between the whole and the parts, nor in legal justice, which is between the part and the whole.

b) The perfect character of debt, because it regards a strict right, while the other kinds of justice regard a less strict right (n. 757).

c) The perfect character of equality, because it requires equality taken simply, or arithmetic equality, of thing to thing; while the other kinds of justice require equality, proportionately taken, of thing to thing. I say proportionately taken, that is, if there is question of distributive justice, corresponding to the capacity, merit, and so forth of the part; if there is question of legal justice, corresponding to the requirements of the whole, or the common good.

2. **Commutative justice, and it alone, if it has been violated, brings with it the obligation of restitution.** It is said:

a) **Commutative justice brings with it the obligation of restitution.** The reason is that commutative justice regards those things which, by force of a special connection, are peculiarly destined to someone's advantage and are proper or quasi-proper[1] to him; and therefore, if they have been taken away and still exist, they must be rendered in themselves; if they have been destroyed or consumed, they must be rendered in an equivalent (St. Thomas, II-II, q. 62, a. 1; St. Alphonsus, III, 547).

b) **Commutative justice alone brings with it the obligation of restitution.** For legal justice regards things which are not proper or quasi-proper to society, in other words, things which are owed to society not by strict right but only by broad right, at least if the thing to be rendered is determinate. But a broad right, if it has been neglected, must indeed be rendered as long as the law persists, yet not by way of restitution, but as if the obligation were now beginning for the first time. Distributive justice likewise regards things which are not proper or quasi-proper to a member of society, but are owed only by broad right. But if that broad right has been neglected, restitution can no longer be made: not from common goods already distributed in a disorderly way, because they have become his to whom they were distributed; not from common goods yet to be distributed, because these also must be distributed according to an equal proportion; and not from proper goods, because distributive justice regards common goods only (St. Alphonsus, III, 547).

[1] By quasi-proper things I understand those things in which someone has a strict right (*ius ad rem*, n. 757).

759 **II. Division.** Commutative justice is divided into various species. The reason is that the objects of commutative justice, that is, the rights which it commands to be rendered, are of different orders, for example a right to material goods, to reputation, to honor. Hence also the sins which violate those different rights, for example theft, detraction, insult, are specifically different.

Article II. On the Objects of Commutative Justice, or on Strict Rights

The objects of commutative justice are strict rights, especially rights in things, or real rights (n. 757). We shall speak: 1. of strict rights considered in themselves; 2. of the different subjects of strict rights, especially of ownership; 3. of the modes of acquiring strict rights.

§ I. On Strict Rights Considered in Themselves

All strict real rights involve something of ownership; most, however, involve only limited ownership. So that these may be explained completely and in order, we shall treat first of ownership generally, then of limited ownerships.

Point I. On Ownership Generally

We must speak first of the notion, division, legitimacy, and necessity of ownership, then of the objects of ownership.

I. On the Notion, Division, Legitimacy, and Necessity of Ownership

760 **I. Notion.** Ownership is a right which is concerned with a thing already bound to someone; but what that right imports depends on the species of ownership which is had, as will be clear from what is to be said under II. The ownership of which we speak is also called ownership of property, or low or base ownership; and it is distinguished from high or eminent ownership, or ownership of jurisdiction, of which we shall speak in the scholion.

761 **II. Division.** Ownership is divided into full or perfect ownership, and non-full or imperfect ownership.

1. **Full or perfect ownership** is the strict right of disposing of a thing in any way not prohibited by law, with others excluded. It is said: **of disposing in any way,** that is, of using the thing, or applying it to one's own operation; of enjoying the thing, that is, of receiving the fruits of the thing; of consuming or destroying the thing; likewise of retaining, throwing away, giving, exchanging, or selling the thing. Therefore full ownership regards the substance, use, and fruits of the thing.
2. **Non-full or imperfect ownership** is ownership which is destitute of one or several of the rights enumerated above. Moreover it is called:

a) **Direct,** or radical, or naked, insofar as it comprises only the substance of the thing.

b) **Indirect,** or useful, insofar as it regards only the use or only the fruits.

762 **III. Legitimacy.**[1] **An individual man has the right of acquiring ownership.** This is established against Communists and Socialists, insofar as at least many of them contend that all things, or at least productive movable goods (capital) and immovable goods, must be abolished as private possessions and transferred to particular societies, whether economic (syndicates) or political (municipalities), or to the universal society (the State). The proposition is proved first from Sacred Scripture, which manifestly signifies that ownership of many things can be acquired by an individual. Thus Deuteronomy: "You shall not covet your neighbor's wife, not his house, not his field, not his maidservant, not his ox, not his ass, and all things that are his."[2] Add those passages in which theft,[3] that is, the violation of the ownership which belongs to one's neighbor, is condemned.

Ecclesiastical documents are added.

Thus, for example, Leo XIII: "But that God gave the earth to the whole human race for use and enjoyment cannot in any way be an obstacle to private possessions. For God is said to have given the earth to the human race in common, not because He wished its dominion to be promiscuous among all, but because He assigned no part to anyone for possession, leaving the delimitation of private possessions to the industry of men and the institutions of peoples."[4] Again: "For since the right of possessing goods privately has been given not by human law but by nature, public authority can abolish not the right itself, but only moderate its use and compose it with the common good."[5] Pius XI teaches the same.[6]

There is added the constant use of all peoples.

There are added reasons which confirm the proposition. For first, the individual man enjoys a right of providing for himself and for his family, not only for the present but also for the future; and he cannot do this unless he makes several things his own, so that he can dispose of them according to his will. Nor should one object that the means of sustenance are to be received from the commonwealth; for since nature tends toward the perfect, existence itself brings with it the right of continuing existence independently of another. Indeed, since man and the family are prior to the commonwealth, "he must have had by nature this right of his to protect life and body before any State had come together."[7] Secondly, the proposition is deduced from the fact that private ownership is necessary for the good of society, as we shall soon see.

Objection. An individual man has the right of acquiring ownership only insofar as the State leaves that right intact.

Resp. The State cannot take away that right, but at most limit it: both because the State, as destined to the good of citizens, can protect the rights of individuals, and at most moderate them, rather than extinguish them;[8] and because private ownership, as we shall say, is morally necessary.

Corollary. The use of the right of acquiring ownership is lawful. This is deduced first from Sacred Scripture, in which renunciation of private ownership is taught to pertain only to perfection,[9] and salvation is said to have come to Zacchaeus, who retained half of his goods.[10] Secondly, it would be useless for a right to be granted if the use of the right were prohibited. Finally, it is clear from the necessity of private ownership, now to be proved.

[1] Cf. Horvath, *Eigenthumsrecht nach dem hl. Thomas v. Aquin*; Schweigman, *De eigendomsphilosophie van Hugo de Groot*.

[2] Deut. 5:21.

[3] For example, Luke 19:8.

[4] Encyclical *Rerum novarum* (May 15, 1891), n. 6.

[5] Encyclical cited.

[6] Encyclical *Quadragesimo anno* (*Acta Apostolicae Sedis* 1931, p. 193).

[7] Encyclical *Rerum novarum*, n. 35.

[8] "Always the very natural right of privately possessing goods must remain intact and inviolable, since the commonwealth cannot take it away; for man is older than the commonwealth." Thus Pius XI in the Encyclical *Quadragesimo anno*, May 15, 1931.

[9] Matt. 19:16; Mark 10:17; Luke 18:18.

[10] Luke 19:8.

763 **IV. Necessity. Private ownership is necessary for the good of society.** For the good of society requires ordered and peaceful life together, and also solicitude for conserving and increasing goods. But common possession hinders ordered life together, since distinction is lacking by which each one cares for his own thing; it hinders peaceful life together, since disputes very easily arise both about the production and about the use of things; it hinders solicitude for conserving and increasing goods, since solicitude is usually had only for conserving and increasing one's own things (St. Thomas, II-II, q. 66, a. 2). For the rest, however, observe:

1. Although private ownership and therefore some division of goods is legitimate and necessary, nevertheless not for that reason, as Pius XI teaches in the Encyclical *Quadragesimo anno*,[1] can every

division of goods be approved, because not every distribution is apt by which the end intended by God may be obtained.

"The very immense multitude of proletarians on the one hand," says the Supreme Pontiff, "and on the other hand the most enormous riches of certain very wealthy persons, are an argument greater than every exception that riches so abundantly produced in this age of ours, which they call the age of industrialism, have not been rightly distributed and have not been equitably applied to the different classes of men."[2] Now this disordered distribution of goods is ascribed by Pius XI to the abuse of the so-called capitalistic system; hence:

Question. What does the Supreme Pontiff understand by the so-called capitalistic system or regime, and what judgment does he offer concerning the said system?

Resp. 1. By the capitalistic system or regime the Supreme Pontiff understands that system "by which generally for the common exercise of the economic thing, by some things are supplied, by others labor is supplied, as Leo XIII, using a felicitous combination of words, defined it in the Encyclical *Rerum novarum*, n. 15: neither capital can stand without labor, nor labor without capital."[3]

Resp. 2. The Supreme Pontiff teaches that this mode of economy "is not to be condemned" in itself, but that its abuse must be condemned. "And indeed it is not vicious by its own nature; but it violates right order when capital hires workers or the proletarian class for this end and under this condition, that business affairs, and therefore the whole economic thing, be turned according to its own will and advantage, with the human dignity of the workers, the social character of economy, and social justice itself and the common good contemned."[4]

2. But from the fact that the division of goods, such as it now is, is disapproved by the Supreme Pontiff, you should not deduce that disparity of fortunes is to be disapproved.

"The Socialists indeed agitate this," says Leo XIII, "but every contention against the nature of things is vain. For in men there are very many and very great natural differences: not all have equal talents, nor equal diligence, nor health, nor strength; and from these things an unequal fortune follows of itself by necessary difference. And this is plainly accommodated to the uses both of private persons and of the community: for common life needs varied ability for managing affairs and diverse offices; and men are especially impelled to fulfilling these offices by difference in each one's family property."[5]

3. But it is another question whether the use of each one's fortune is left to his own choice; this must be denied.

"Just possession of money," says Leo XIII again, "is distinguished from the just use of money. To possess private goods, as we saw a little before, is a natural right for man; and to use that right, especially in the society of life, is not only lawful, but plainly necessary for human life.[6] But if one asks what sort of use of goods must be made, the Church indeed responds without any hesitation: as to this, man ought not to have exterior things as his own, but as common, namely so that he easily communicate them in the necessity of others." And Pius XI says: "Nor are a man's free revenues left in every way to his choice; namely those which he does not need for sustaining life conveniently and decorously. Indeed, Sacred Scripture and the holy Fathers of the Church continually declare in the clearest words that the wealthy are held by the gravest precept of exercising almsgiving, beneficence, and magnificence."[7]

4. Therefore it is certain that the wealthy are bound to give alms. But again there is another question, how great the alms owed are; concerning this, note:

a) Each one, as already follows from what has been said, can first take care of himself and his family, and indeed live suitably to his state.

"Certainly no one," says Leo XIII, "is commanded to help others from that which pertains to the necessities of himself and of his own; indeed, not even to hand over to others what he himself needs for preserving what is suitable to his person and what is becoming: for no one ought to live unbecomingly,"[8] that is, in such a way that he "could not pass his life suitably according to his own state and the affairs that occur" (St. Thomas, II-II, q. 32, a. 6).[9]

b) It is lawful to spend superfluous things "so that the advantage of profitable work may be abundantly had, provided that that work is expended for acquiring goods truly useful."[10]

c) It remains to inquire to what extent truly superfluous goods, if they are not spent on profitable and useful works, are to be spent on good works. Now, with St. Alphonsus, we judge that in practice the obligation is satisfied if they are spent partly on pious works; this we explained in n. 534.

[1] Encyclical *Quadragesimo anno*, May 15, 1931.

[2] Encyclical cited.

[3] Encyclical cited.

[4] Encyclical cited.

[5] Encyclical *Rerum novarum*, May 15, 1891.

[6] St. Thomas, II-II, q. 66, a. 2.

[7] Encyclical *Quadragesimo anno*, May 15, 1931.

[8] Encyclical cited.

[9] St. Thomas, II-II, q. 32, a. 6.

[10] Encyclical *Quadragesimo anno*.

Scholion. On High or Eminent Ownership

764 **I. High ownership** is the faculty of the prince of disposing of the goods of citizens, insofar as this is necessary or at least very useful for the common good. From the definition it is clear that high ownership is not ownership properly so called, but the power of jurisdiction. For ownership properly so called involves the faculty of disposing of a thing and its fruits for one's own advantage. But the prince cannot dispose of the goods of citizens so as to provide for his own good, but only so as to provide for the common good.

II. That high ownership belongs to the commonwealth follows from the fact that otherwise it would not be sufficiently equipped for attaining its end, which is the common good.

III. In order that the prince may dispose of the goods of citizens, there is required necessity or a great utility that is sufficiently common. For the commonwealth exists for the common good; moreover, by easily restricting the rights of individuals and families, rather than protecting them, it would harm the common good more than consult it.

Corollary. When necessity or great utility demands it, the commonwealth can deprive someone of some thing by way of expropriation, as it is called, in which case, however, the owner is to be rendered unharmed; likewise, by way of prescription, it can transfer the ownership of one person to another, and so forth. Nevertheless the high ownership of the civil State does not comprehend sacred things, nor temporal things which have been referred by ecclesiastical authority to a supernatural end.

IV. Annexed or akin to high ownership is the faculty of determining whose goods are, or will be, things belonging to no one, such as a treasure to be found; likewise goods not yet existing, such as the fruits of some thing. Now laws looking to this matter, as otherwise the obvious sense of the dispositions sufficiently signifies, are presumed to constitute true and strict rights. Make an exception if the nature of the thing suggests that the disposition of the law rather has the character of a penalty; in that case, before the sentence of a judge, obligation is lacking, but through the sentence of a judge the right is determined. We shall apply these things in their own place to different cases.

Question. Whether the commonwealth also enjoys the so-called right of colonization.

Resp. Colonization is distinguished as twofold, absolute and qualified. Absolute colonization is that by which an external region perfectly depends on a state of higher culture. Qualified colonization is that by which a society of higher culture subjects another to itself, insofar as subjection is necessary for fittingly distributing the goods of the other. Colonization differs from a protectorate or mandate, to which a foreign region is subject, as Egypt and Syria are with respect to Britain and France.

The question regards an unwilling region; for nothing prevents subjection from being constituted by a free contract. Now:

I say first. Absolute colonization is opposed to the right of a foreign region, as is clear.

I say second. Qualified colonization seems lawful; for each state has some right to the goods of the world, since they have been created for the human race. Hence if some uncultivated nation altogether neglects the riches of its region, and impedes other nations from their use and exchange, and refuses and prohibits social life, its subjection in a qualified sense seems lawful.

Corollary I. Colonization established solely for the sake of profit and dominion is not legitimately constituted. From this, however, it does not follow that colonizations constituted in this way must be dissolved at once; for by this manner of acting the colonies would be reduced by rampant communism and other commonwealths into a much worse state, indeed even into extreme misery. Besides, it could have happened that subjection, at first tolerated by unwilling persons, has now been legitimated by free consent.

Corollary II. The duty belongs to the colonizing state of procuring, in its own way, the riches of the region, profitable cultivation, and the goods of the Christian faith for the subject nation.

II. On the Objects of Ownership

765 Goods in relation to man are distinguished into:

1. **Internal goods,** to which belong goods of the body, such as life and members; likewise goods of the soul, both natural, such as faculties, sciences, and so forth, and supernatural, such as grace, virtues, and so forth.

2. **External goods,** such as houses, fields, money, in a word, goods of fortune. External goods are divided:

a) Into movable and immovable goods. Movable goods are those which can easily be transferred from place to place, such as money, furniture, and so forth. Immovable goods are those which are in no way, or only with difficulty, transferred.

b) Into consumable and non-consumable goods, according as the use of them consists, or does not consist, in their very consumption. Thus, for example, grain is consumable, but a book is non-consumable.

c) Into fungible and non-fungible goods. Fungible goods are those of which one can stand in the place of another of the same species, because it makes no difference whether the same thing individually, or another of the same species, is had; thus one who has borrowed money is not bound to return the same money individually. Non-fungible goods are those of which one cannot be substituted for another of the same species; thus one who has stolen a horse is bound to return the same individual horse.

3. **Intermediate goods,** namely reputation and honor, which, although they are founded in good qualities, nevertheless formally exist in others, who think well of someone or honor him. For the rest, compare also the division of goods or things with attention to the law of one's country. Moreover:

766 **I. A man does not have direct ownership, but he does have useful ownership, of those goods which pertain to his substance and integrity,** such as life, members, and the faculties of the soul. The first is proved from Sacred Scripture: "See that I alone am, and there is no other God besides me: I shall kill, and I shall make live."[1] The reason is that direct ownership exists only over a thing distinct from him who has ownership. Besides, ownership imports a certain superiority with respect to the thing of which direct ownership is had. But no one is superior to himself. The latter is clear; for to what end would those goods have been granted by God, if man lacked the right of using them?

II. A man has full ownership of those internal goods which do not pertain to his substance and integrity, such as operations and habits produced by natural activity. The reason is that a man is the owner of those things which he has acquired by his own industry. The same seems to be said in some way of grace, of habits, and of supernatural acts. For it is rightly admitted that these have truly been given by God as a gift to man. There is added, as regards an adult, that "through the use of free will with the help of God, man disposes himself to such goods, and therefore they are effects of cooperating grace, because man obtains them from God by cooperating with His help for receiving them."[2]

III. A man has full ownership of reputation and honor. The reason is that a man has acquired these by his own labor. Besides, "if a man were not owner of his own reputation, he could not condone or remit restitution of it; for no one can remit what is not his own. But nevertheless this is often done, and is done laudably."[3]

One who without proportionate cause neglects his reputation is guilty of the sin of prodigality, just as one who without cause dissipates riches.[4] Hence Sacred Scripture says: "Have care for a good name; for this will remain to you more than a thousand precious and great treasures. The number of days of a good life is limited; but a good name will remain forever."[5] This warning must especially be attended to if our reputation is necessary to our neighbors.

"Our reputation," says Lessius,[6] "can be necessary to our neighbors in three ways. First, when the reputation of a neighbor so depends on our reputation that from our disgrace his disgrace follows; as from the disgrace of a monk there follows a certain disgrace of the monastery. Second, when our reputation is necessary so that we may render to a neighbor an office due to him by strict right; as the reputation of a public person, a Bishop, a Pastor, an Abbot, is necessary so that he may govern subjects well; and in these two events, in the judgment of many, one who disgraces himself sins against justice: not because precisely he deprives himself of reputation, but because as a consequence he harms his neighbor, either by bringing disgrace upon him, or by rendering himself unfit to perform the due office for him. Third, when we are bound to benefit a neighbor not from office but only from charity, and through disgrace we are rendered unfit for this, then one who disgraces himself sins only against charity; just as he sins against charity who throws away money by which he could have benefited the poor."

IV. A man can have full ownership of external goods or goods of fortune, provided they are such that they can be the object of ownership. The truth of the proposition is clear both from Sacred Scripture[7] and from those things which we said concerning the legitimacy and necessity of private ownership.

I said, however: **provided they are such that they can be the object of ownership.** In order that this can have place, it is required: 1. that the thing can be subjected to man or occupied by him; hence, for example, the stars are excluded; 2. that the thing can be useful; nevertheless, observe that sometimes a thing which seems useless can be for some use; 3. that the thing is not of inexhaustible use, that is, such that all can use it without harm to anyone, of which sort are, for example, air and daylight.

To the question to what extent the sea can be the object of ownership, Waffelaert responds thus: "If there is question of the vast ocean, then it can scarcely be guarded; then certainly the use, which is major fishing and navigation, is inexhaustible. But if there is question of the parts of the sea washing the land, of gulfs and straits, the use, which is fishing, the finding of pearls and other precious things, the collecting of shells, and so forth, is not inexhaustible, especially since things of this sort and certain kinds of fish are frequently found in determinate and not very spacious places. Besides, provision would not be sufficiently made for the security of a maritime nation if, without any precaution, it were lawful for anyone to bring armed ships to the shore."[8]

V. A man cannot have direct ownership of those goods which pertain to the substance and integrity of the members of another; nevertheless he can acquire useful ownership of them. It is said:

1. **A man cannot have direct ownership of those goods which pertain to the substance and integrity of the members of another.** This is clear from the fact that ownership imports that the thing of which someone is owner is referred to him as to an end. But it is repugnant that one man be referred to another as to an end.
2. **Nevertheless he can have useful ownership of these.** This is clear from Sacred Scripture,[9] and from those things which we shall say concerning the different titles on which the aforesaid ownership can rest. Moreover, the said ownership or servitude, by which someone is bound to furnish all his works to another for food and other things necessary for life, can be introduced:

a) By free agreement; for since man has useful ownership of himself, he can freely transfer it, and indeed entirely, to another.

b) By just condemnation, or as a penalty for a delict; as is clear.

c) By right of war, and by birth from slaves; these, however, with every fault set aside, even original fault, cannot be just titles. "There is," says St. Thomas, "a twofold subjection, one servile, according to which the one presiding uses the subject for his own utility; and such subjection was introduced after sin" (I, q. 92, a. 1, ad 2; I, q. 96, a. 4).

Corollary. Servitude which is extended so far that a man, as if an irrational animal with respect to his works, can be bought and sold, is altogether unbecoming to man, and therefore is judged to be abolished by law.[10]

VI. An author has a right in the fruit of his mind, that is, in literary, musical, or other works of the liberal arts; an inventor has a right in the art or industry invented, according as follows:

1. **When the work has not yet been published by the author,** he certainly has the right that another not seize and publish the manuscript, or steal the secret, for example of a known art. One who has violated that right is bound to restitution of the damage thence following; and therefore, if the author would have published the work, he must compensate the damage hoped for from publication. The same must be said of one who uses knowledge to which he has come by fraud or from a communication made by the author under secrecy.
2. **When the work has been published in some measure,** for example a writing printed for private use, lectures given, sermons delivered, the author seems to have the right that another not publish it. The reason is that from the circumstances themselves and from common estimation, the aforesaid things have not yet been made simply of public right, but he has retained them as his own. This posited, another also seems to lack the right of making them of public right. Nevertheless custom permits some publication, or even an entire publication, of sermons in newspapers.
3. **When the work has been plainly published,** one must speak thus:

a) With natural law considered, it is disputed whether the author has the right that another not further disseminate the work, for example by reprinting it.[11] Moreover, the opinion which is theoretically sufficiently probable and therefore safe in practice denies this, both because a work published by the author by that very fact becomes of public right, or destined for common use, and because the buyer of the work acquires ownership of it, and therefore can use it according to his will.

Finally, for the same reason the doctrine handed down seems also to be applied to a law which grants someone the right or privilege of using a commercial trademark exclusively.

Corollary I. If someone, within the limits determined by civil law, inflicts some detriment on an author or seller, he does not sin against justice; for by the very fact that civil law determines the right of authors, beyond these limits it takes away their right, if perhaps it exists, by force of high ownership. The same holds concerning international agreements.

Corollary II. The custom even of God-fearing persons commonly permits many things against the right of authors and inventors, namely: 1. the right of buying what has been publicly displayed, even though contrary to law; 2. the right of representing scenic and musical works in circles; 3. the right of

making for private use some work for the manufacture of which the author's license is required, because the damage which the inventor suffers, if he suffers any, is very slight, since often it would not have been bought. From the said custom, laws which prohibit the things set forth rather seem to be merely penal.

Objection 1. The author has the right of receiving a fitting reward from the work.

Resp. The assertion is very ambiguous and must be distinguished: the author has the right that others buy the work and thus procure a reward for him, I deny; he has the right that others, for example by reprinting the work, not be the cause why less profit comes to the author, this must be proved; indeed, on account of the arguments adduced, it seems it must be denied.

Objection 2. Authors, at least today, by exposing their works for sale, add the tacit condition that others not reproduce the work by their own authority; in other words, authors sell the spiritual use, but not the commercial use of the work.

Resp. Besides the fact that that condition is asserted gratuitously, it seems one must deny that a condition so vague or indeterminate is validly attached.

Concerning the right of religious in manuscripts and so forth, we shall speak in the treatise on the duties of religious.

b) With civil law considered, which, as order and natural equity demand, has commonly determined this matter, an author, that is, a writer or inventor, seems to have a strict right to those things which the law establishes for his advantage; for legislators in this case expressly declare that they grant the author an exclusive right. Unless the nature of the thing or the context of the law suggests something else, this word seems to be understood of a full or strict right. Nor again should it be objected that the legislator does not care about obligation in conscience; for the explicit or implicit intention of granting a right suffices. Hence a transgressor of the law is bound to restitution of damage even before the sentence of a judge; but penalties established against transgressors do not oblige except after the sentence of a judge.

Some,[12] indeed, do not apply the doctrine handed down to inventors to whom patents (*brevets*) have been granted, because they are accustomed to increase too much the natural price of the invented thing, which is against the common good. But the fact that they act thus does not seem to impede Authority from being able to grant them a right in the thing invented and published; and that in fact it has granted them a right is to be deduced from the fact that, with the terms of the law considered, it equates them with writers and so forth.

[1] Deut. 32:39.

[2] Salmanticenses, tract XII, chapter 2, point 5, n. 46.

[3] Billuart, IV, dissertation 3, article 2.

[4] Billuart, loc. cit.

[5] Ecclus. 41:15 ff.

[6] Book 2, chapter IV, doubt XI, n. 59.

[7] Gen. 1:28, 29; 9:1, 3; Ps. 8:7-9.

[8] *De Iustitia*, I, n. 88.

[9] Exod. chapter 21; Lev. chapter 25; Deut. chapters 20-21; cf. Eph. 6:5.

[10] Cf. Leo XIII, letter *In plurimis*, May 5, 1888.

[11] Cf. Lehmkuhl, I, 904; Goepfert (II, 68) and Sweens (n. 39), who affirm; Waffelaert (I, 171) and Vermeersch (n. 248), who deny.

[12] Vermeersch, *Quaestiones de Iustitia*, n. 250.

Point II. On Limited Ownerships

To limited ownerships, or those more or less imperfect, there especially pertain: usufruct, use, servitude, and in some respect also possession.

I. On Usufruct

767 **I. Notion.** Usufruct is the right of receiving the fruits of another's thing, with the substance of the thing preserved. In Roman Law it is called: "the right of using and enjoying another's things, with the substance of the things preserved."[1] From the notion handed down, it is clear that usufruct is not constituted in things which are consumed by first use. A right in things of this sort, for example in wine or oil, is sometimes called quasi-usufruct (St. Alphonsus, III, 487).

[1] Law 1, Digest, *De Usu fructu*.

768 **II. Acquisition.** Usufruct can be acquired: 1. by law, for example where the law grants parents a right in the fruits of the goods of minors; 2. by the will of the owner, who, for example by contract or testament, assigns usufruct to someone.

769 **III. The rights and burdens both of the usufructuary and of the proprietor,** what precisely they are, you should deduce from the title by which the usufruct is constituted, and from civil law.

770 **IV. Cessation.** Usufruct ceases: 1. by the lapse of the time for which it was constituted, or by fulfillment of the resolutory condition; 2. by the death of the usufructuary, or, if there is question of a moral body, by its dissolution; 3. by the fact that ownership of the thing passes to the usufructuary; 4. by renunciation by the usufructuary of his right; 5. by prescription or non-use for the time required by law; 6. by the destruction of the thing.

II. On Use

771 Use is the right of using another's thing, with its substance preserved (St. Alphonsus, III, 487). If the other's thing is a house, it is called habitation.

It is acquired and extinguished in those ways in which usufruct is.

The rights and burdens of the user and of the proprietor are to be drawn from the title and the law.

III. On Servitude

772 **I. Notion.** Servitude is a right consisting in this, that the owner of some estate,[1] as its owner, has some favor over the estate of another. The favor is called active servitude; the burden inhering in the estate of another is passive servitude. The estate which is considered to have the favor is called the dominant estate; the estate in which the burden inheres, the servient estate.

[1] Under the name of estate come corporeal immovable things, such as fields, pastures, houses, and so forth.

773 **II. Division.** Servitudes are distinguished:

1. Into continuous and discontinuous, according as they are exercised without human action or through it. Continuous servitudes are, for example, the right of a stream, of drip, and so forth; discontinuous servitudes are the right of a path, of drawing water, and so forth.
2. Into visible and invisible, according as it appears by an external sign, for example a door or window, or does not appear. Invisible servitudes are, for example, a servitude of not building on an estate, or of not raising some building higher.

774 **III. How acquisition and cessation have place** you should deduce from the laws of the country; the rights and burdens annexed to servitude you should draw from the title by which it is constituted and from the law.

IV. On Possession

Possession can be taken both for a right in a thing and for a fact. Possession taken in the former sense is a right in the very detention of some thing, with the intention of ownership; taken in the other sense, it is the very detention of the thing, with the intention of ownership. But since possession accepted in this latter sense can bring certain rights with it, it is useful to set forth certain things concerning it. Therefore let there be:

775 **I. Notion of possession.** Possession, as is drawn from what has been said, is understood here as detention of a thing, with the intention of ownership. It is said:

1. **Of a thing;** moreover, under the name of thing there is understood not only a thing properly so called, for example a field or house, but also the use of a thing, such as dwelling in a house or the exercise of authority.
2. **Detention;** by this word are comprehended physical detention, or its equivalent, if there is question of a corporeal thing; the very acts of using a thing, if there is question of the use of a thing.
3. **With the intention of ownership,** that is, with the intention of having the thing as one's own.

776 **II. Division of possession.** Possession, not indeed by reason of itself but by reason of the mind with which it is possessed, is divided into possession of good, bad, and doubtful faith.

1. **Good faith** is had when the possessor judges that he licitly retains the thing; in other words, it is had: 1. when the possessor is conscious that the thing is his own; 2. when the possessor, although he doubts whether the thing is his own, nevertheless detains it without fault or, if there is question of a grave thing, at least without grave fault. These things will be explained more fully later.
2. **Bad faith** is had when the possessor judges that he illicitly retains the thing; in other words, it is had: 1. when the possessor is conscious that the thing is another's; 2. when the possessor doubts whether the thing is his own and detains it with fault, if there is question of a light thing, or with grave fault, if there is question of a grave thing.
3. **Doubtful faith,** strictly speaking, is not had, because one who doubts whether the thing possessed is his own necessarily detains it either without fault or with fault; in that case he becomes of good or bad faith, as the case bears according to the things explained above. But what is lawful for one doubting whether the thing possessed is his own, we shall explain later. I said strictly speaking; but

doubtful faith is customarily taken for the doubt of a possessor whether the thing possessed by him is his own. What is lawful for one thus doubting, however, we shall say at once.

777 **III. Effects of possession.** 1. Possession in good faith, and in some way also in doubtful faith, creates some presumption of an existing true right.

2. Possession, if doubt about the right in the thing possessed persists after truth has been investigated, brings with it the right of continuing the use of the thing, or even, if there is question of a thing which can be consumed, of consuming it, if: 1. the possession was begun in good faith; 2. the possession is such as is required by a just law; 3. the judge has not justly determined otherwise. The reason is sought both from the fact that the common good requires this; and, as regards ecclesiastical matter, from rule 50 in Sexto: in doubt the condition of the possessor is better; and, as regards civil matter, from civil law. What the law is, if possession began in doubtful or bad faith, you should draw from what is to be said later about the possessor in doubtful or bad faith.

§ II. On the Different Subjects of Strict Rights

Point I. On the Ownership of Children of the Family

Children of the family are here understood as children born of a legitimate marriage, or legitimated, and still subject to parental power. Now:

778 **I. Children of the family acquire direct ownership of all goods which come to them by a just title.** This follows from the fact that they, just as others, are capable of ownership. Moreover, just titles are donation, inheritance, purchase, contract, and so forth. Hence parents sin against justice who transfer to themselves, alienate, or squander goods which have come to their children by a just title. For the rest, observe:

1. A child acquires a right in goods granted to him by his parents according as follows: he acquires a full right in those things which are truly given to him. Hence he obtains a full right in small things and in a small amount of money granted for recreation, so that by abusing them he does not violate justice. The contrary must be said of things given for a special use, for example for paying school fees, for buying books, clothes, or other necessities; by abusing these, the child is guilty of injustice.

2. A child who exercises an art or industry in common with his father, with any agreement set aside:

a) Does not acquire a right to a part of the profit, since he is not his father's partner. Moreover, he is considered to exercise an art or industry in common with his father when he works as the agent or helper of his father, whether he exercises the work in the paternal home or outside it, for example because the father, as an artisan, has hired out the works of the son to another.

b) Nor does he have a right to wages if he performs only labor to which he is held from piety or from an equitable precept; for what one owes from piety or obedience, he owes gratuitously. On the other hand, however, the father is bound from piety to support the son; and this piety again brings it about that, if suitable support is denied to the son, the son can procure for himself what suitable support requires (St. Alphonsus, III, 488, doubt 2).

c) The child acquires a right to wages for labor furnished beyond what is owed and not otherwise compensated, for example by a donation made in view of special labor, by equal labor of the brothers,

and by the inheritance thereby increased. The reason is that, since the said labor is not owed, the child ought not to be of worse condition than a stranger. Make an exception, however, if the child has expressly or tacitly renounced his right; concerning this, however, observe that in itself the silence of the child does not contain a renunciation of the right, because often he abstains from explicit petition only from reverential fear (St. Alphonsus, III, 488, doubts 2 and 3).

3. If, on account of peculiar circumstances, equity seems to demand that the labor owed by the child be compensated by wages or a part of the profit, for example if the other children lead idle leisure, or, although subject to parental power, labor for themselves, an agreement between father and child can sometimes prudently be advised.

4. A child who exercises private labor or industry acquires a right in those things which he thus procures for himself. Moreover, private labor or industry is had if the child labors neither in the name of his father, or as his agent, nor in his service. Therefore it is present if the child has hired out his works in his own name, even if he dwells in the paternal home; likewise if he has been received as a servant by another family, even if the father entered into the contract. Yet these things do not prevent the child from being bound from piety to assist needy parents, and, if the father wishes it, to compensate for food and clothing perhaps to be received from the parents.

5. A child who does business with paternal goods acquires a right in the profit if he acts in his own name, but not if he acts as the agent or helper of his father. And this holds even if he stole money from his father; nevertheless he is bound to restore the damage and the profit ceased which followed for the father (St. Alphonsus, III, 488, doubt 1).

II. Children of the family do not have the administration of their own goods, but it belongs to the father or mother or guardian.

III. The right of the fruits is commonly determined by positive law. Therefore from that law it is to be drawn to whom it belongs. Again, however, note that the silence of the child in itself does not contain a renunciation of the right in the fruits which he enjoys by force of law.

Point II. On the Ownership of Spouses

779 The goods of spouses are distinguished into common and proper, according as they belong to both or to either one. It depends on the law what kind the goods of spouses are: whether common, or proper, or partly common and partly proper. In many kingdoms legal community is in force; in other words, the goods of spouses are common unless before marriage something else is agreed. Now:

I. As regards common goods, ownership of them belongs to both; the right of administration is in the husband's hands; the right of the fruits falls to both. It is said:

1. **Ownership of them belongs to both;** this is the same as asserting co-ownership, as it is called.

A twofold co-ownership of spouses can be distinguished: one by which spouses are not distinct subjects of right but one owner; according to many, though undeservedly as it seems, co-ownership of this kind is constituted by Dutch law. The other co-ownership is that by which the spouses are two distinct subjects of rights. And this co-ownership is again twofold, Roman and Germanic. Moreover, the chief difference between them consists in this, that the Romans divided common goods mentally, and then considered the undivided part of the thing as a separated whole, which any co-owner could

alienate or burden. But the Germans did not divide common goods mentally, but continued to consider them as one whole, and therefore left to all co-owners the right of disposing of the common goods.

2. **The right of administration is in the husband's hands; the right of the fruits falls to both.**

Corollary I. Spouses who seize common goods for themselves alone or squander them sin against commutative justice if, with the law considered, the co-ownership is Roman or Germanic. The reason is that they violate the strict right of the other spouse. The contrary is to be said with sufficient probability if the co-ownership is of the former kind explained above, because deservedly it is doubted whether the alterity required for commutative justice is present if one person, although one is not the same as two, with another becomes one subject of rights or one owner. In a word: the matter depends on whether the two are to be regarded as a moral person or not; if the former, the required alterity is certainly had. For the rest, not only the husband, but also the wife, can subtract those things which otherwise will be squandered by the husband. This is clear if Roman or Germanic co-ownership is had, because squandering is opposed to strict justice, as we have said; and the wife can certainly forestall that injustice. If co-ownership is of the former kind explained above, the squandering to be feared is a sufficient reason for withdrawing common goods from the husband's disposition and acquiring for herself the administration of those goods (St. Alphonsus, III, 541).

Corollary II. If the husband refuses necessities or grants them with great difficulty, the wife can, even if Roman or Germanic co-ownership is had, from the common goods:

1. Give out what is necessary for suitable support of herself and the offspring, for decent adornment and suitable recreation, for alms to be given according to condition; likewise for guarding herself in the future and procuring a suitable state for the offspring, or for averting grave spiritual or temporal damage from the family. The reason is that the intimate conjunction between wife and husband, between children and parents, brings it about that common goods, if the proper good or the good of the offspring demands it, can be treated as proper goods (St. Alphonsus, III, 540, 541).
2. Spend those things by which she may consult the necessary support of her parents or of offspring received from another marriage; for what is lawful for her in order to her own advantage also seems lawful in order to the good of those who are in some way one with her; all the more because in the case the husband is also bound from piety to consult the parents and offspring of his wife (St. Alphonsus, III, 542).

II. As regards proper goods, each spouse has direct and useful ownership of them, that is, of proper goods; but to whom administration belongs is to be drawn from the law.

Corollary I. Those about to marry sin against justice, and in themselves are bound to restitution, by deceiving the other party, for example by exaggerating goods, lessening debts, and thus bringing it about that a nuptial agreement is omitted by which community of goods would be excluded wholly or in part.

Corollary II. A wife can freely dispose of those things which she has gathered by extraordinary labor or parsimony, or has saved from what was granted for food or pleasure (St. Alphonsus, III, 541).

Corollary III. If the husband refuses, or grants with great difficulty, the things which are necessary for suitable support of the wife or offspring, for decent adornment and suitable recreation, for alms to be given according to condition, for guarding the wife in the future and procuring a suitable state for the offspring, or for averting grave damage from the family, if, I say, the husband refuses these things or

grants them with great difficulty, the wife, in defect of proper and common goods, can also use the husband's proper goods, because the intimate conjunction between wife and husband, between children and parents, brings it about that the proper goods of one are in some way also those of the other, so that things owed to the other spouse or to the children, if they are denied, can be seized (St. Alphonsus, III, 540-541).

In general, however, the confessor should not easily indulge the complaints of wives, lest the reins be loosened too much.

Point III. On the Ownership of Clerics

780 **I. The goods of clerics are distinguished into beneficial or ecclesiastical goods and non-beneficial goods.**

1. **Beneficial goods** are those which come to them from the endowment of a benefice. Moreover, the endowment of a benefice is constituted either by goods whose ownership is in the juridic entity itself, or by certain and due payments of some family or moral person, or by certain and voluntary offerings of the faithful which belong to the rector of the benefice, or by stole fees, as they are called, within the limits of the diocesan tax or legitimate custom, or by choral distributions, with a third part of them excluded, if all the revenues of the benefice consist in choral distributions (can. 1410).

To beneficial goods are to be counted pensions or annual salaries which in Belgium and in those districts of Holland which, at the time of the Concordat of 1801, belonged to France, that is, in the whole diocese of Roermond, in part of Gelderland and Staats-Vlaanderen, are paid by the Government to Bishops, canons, and pastors.[1] The reason is that they represent the fruits formerly received from the endowment of benefices.[2] The same, for the same reason, seems to be said of annual payments which are sometimes stably assigned by the Government to some pastors under the name of competencies.[3]

2. **Non-beneficial goods** are all other goods of clerics. They are customarily divided into patrimonial and quasi-patrimonial goods. Patrimonial goods are those which fall to them by a profane title, for example by contract, inheritance, testament, labor, or industry, that is, profane labor or industry. Quasi-patrimonial goods are stipends which are received for sacred functions and, according to what has been said, do not pertain to the endowment of the benefice. To this class belong, for example, Mass stipends; likewise the third part of choral distributions, if all the revenues of the benefice consist in choral distributions (can. 1410).

To non-beneficial goods are counted: 1. supplements which are sometimes paid to pastors by municipalities or from the treasury of the Church; 2. annual pensions which in our country are paid by the Government to priests, except in the places enumerated above; 3. retirement pensions. The reason for all these is that they are not, or not necessarily, to be considered as representing fruits formerly received from the endowment of benefices. 4. Payments by whatever name which are assigned to vicars, because, since vicars lack a benefice, they neither are nor represent fruits of a benefice.

3. **As regards offerings, I note:**

a) Offerings handed over in boxes or collected for a certain end must be used for that end.

b) Certain and voluntary offerings of the faithful made in a place subject to a pastor are considered to have been granted to the pastor, unless the intention of the faithful to cede them to others is clear. If they are granted to the pastor, they pertain to the endowment of the benefice, and therefore are counted among ecclesiastical goods.

[1] Sacred Penitentiary, January 19, 1819 and August 19, 1821, collected response of January 9, 1823, apud Carriere, I, 194.

[2] Sacred Penitentiary, January 19, 1819 and August 19, 1821, collected response of January 9, 1823, apud Carriere, I, 194.

[3] Sweens, n. 79.

781 **II. Rights of clerics with respect to goods.** 1. Clerics acquire full ownership, so that they can freely dispose of them, of non-beneficial goods. For from no source is it clear that ownership and the liberty of disposing are restricted in any way.

2. Clerics likewise acquire full ownership, so that they can freely dispose of them, of beneficial goods, insofar as these are necessary for suitable support. And this, as can. 1473 expressly establishes, is to be understood so that a cleric, even if he has other non-beneficial goods, can freely use and enjoy beneficial fruits which are necessary for his honorable support. Moreover, from these things it is deservedly deduced that the cleric can freely dispose also of goods which, from beneficial goods necessary for suitable support, he has set aside by living more frugally; and therefore they are called savings from frugality (St. Alphonsus, III, 490; IV, 185).

3. As regards those things which are superfluous after honorable support from beneficial goods, these things hold:

a) A cleric is bound to spend them for the poor or for pious causes, with the prescription of can. 239, § 1, n. 19 saved (can. 1473). By force of the prescription of can. 239, all Cardinals from their promotion in Consistory enjoy the faculty of freely disposing of beneficial revenues, even by testament, with the prescription of can. 1298 saved. For the rest, "it must be noted that in this, in order that the matter be considered grave, a much greater quantity is required than in theft" (St. Alphonsus, III, 490 under IV; St. Thomas, II-II, q. 185, a. 7). Under the name of the poor come "not only those begging door to door, but also those who otherwise cannot preserve their state; likewise blood-relatives, if they are truly poor, so that otherwise they cannot sustain their own state... But these needy blood-relatives the cleric can prefer to other poor persons, even those more gravely in need. The reason is that... the support of needy relatives pertains also to preserving the cleric's own state, since their poverty redounds to his own disgrace" (St. Alphonsus, III, 491, question 2).

b) It is disputed whether the obligation extends itself to stole fees which constitute the endowment of the benefice. It seems one must answer affirmatively, because on the one hand the law counts them among beneficial goods, and on the other hand, as regards the obligation imposed concerning them, it does not distinguish, or no longer distinguishes.

c) It is further disputed whether the obligation explained is an obligation of justice or of another virtue. If it is an obligation of justice, a cleric who, for example, has squandered things superfluous from beneficial goods, is bound to restitution. Moreover, a sufficiently probable opinion denies an obligation of commutative justice, because, as is deservedly deduced from canons 729, 2°, 1475, and 2403, the beneficiary makes the fruits of the benefice his own, provided he is not deprived of them as a penalty for delict or negligence (St. Thomas, *Quodlibet* 6, q. 7, a. 12, ad 3; II-II, q. 185, a. 7; St. Alphonsus, III, 492; IV, 183).

Point IV. On the Ownership of Religious

We shall set forth in brief summary the things which are more abundantly explained in the treatise on Religious.

782 **I. Religious solemnly professed.** 1. In the individual, per se, they are incapable of ownership; they can, however, dependently on Superiors, use the goods of the community. I said **per se**, because religious of both sexes solemnly professed in Belgium and in Holland have received the faculty that, with due dependence on legitimate Superiors, they can, at least civilly, acquire, retain, administer, and dispose for pious and honest uses of goods which have come to them.[1] I said **at least civilly**, because the decrees are explained in a twofold way: either so that they become proprietors only civilly, or so that they become proprietors also naturally and before God.

One professed of simple vows who is about to emit solemn profession must, within sixty days before solemn profession - he cannot validly do so before - with special indults granted by the Holy See being saved, renounce all goods which he actually has, to whomever he shall prefer, under the condition that profession will follow (can. 581, § 1). Once profession has followed, all those things must immediately be done which are necessary so that the renunciation also obtains its effect in civil law (can. 581, § 2). As regards goods that will come to him after solemn profession, see what is to be said below.

2. Religious solemnly professed can have ownership in common both of immovable and of movable goods, except the Franciscans of the stricter observance and the Capuchins, who cannot have ownership of immovable goods, and have only the use of fact of movable goods, dependent on the Apostolic See, which has ownership of those goods. The Fathers of the Society of Jesus, for professed houses, and the Discalced Carmelites do not enjoy ownership of immovable goods, but do enjoy ownership of movable goods. Therefore:

a) If the Order is altogether incapable of possessing, all goods which after profession come in any way to a regular are acquired for the Holy See in ownership (can. 582, 2°).

b) If the Order is not altogether incapable of possessing, the said goods, insofar as they can be possessed in common, fall to the Order, or to the province, or to the house, according to the constitutions; otherwise they are acquired for the Apostolic See (can. cited).

[1] Sacred Penitentiary, December 1, 1820, and Sacred Congregation for Extraordinary Ecclesiastical Affairs, July 31, 1848.

783 **II. Religious simply professed.** 1. Any professed of simple vows, whether perpetual or temporary, unless something else is provided in the constitutions, preserves ownership of his goods and the capacity of acquiring other goods. Whatever, however, he acquires by his own industry or in view of the religious institute, he acquires for the religious institute (can. 581, §§ 1 and 2).

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2. It is not permitted to those professed of simple vows in a religious Congregation, by an act inter vivos, to abdicate ownership of their goods by a gratuitous title (can. 583, § 1).

III. Novices. 1. If a novice, in the course of the novitiate, renounces his benefices or goods in any way, or obligates them, the renunciation or obligation is not only illicit, but void by the law itself (can. 568).

2. Before profession of simple vows, whether temporary or perpetual, a novice must, for the whole time during which he will be bound by simple vows, cede the administration of his goods to whomever he shall prefer, and, unless the constitutions provide otherwise, freely dispose of their

use and usufruct. This cession and disposition, if it has been omitted because of a lack of goods and these afterward supervene, or if it has been made and afterward other goods by any title come to him, must be made or repeated according to the norms established in § 1, notwithstanding the simple profession emitted (can. 569, §§ 1 and 2).

3. A professed religious can change the cession or disposition that has been made, not indeed by his own judgment, unless the constitutions allow this, but with the permission of the supreme Moderator; or, if it is a question of nuns, with the permission of the Ordinary of the place, and, if the monastery is subject to regulars, of the regular Superior, provided that the change, at least concerning a notable part of the goods, is not made in favor of the religious institute. But by departure from the religious institute a cession and disposition of this kind ceases to have force (can. 580, § 3).

4. A novice in a religious Congregation, before profession of temporary vows, should freely make a testament concerning goods present or perhaps to come (can. 569, § 3). It is not permitted to change a testament made without the permission of the Holy See, or, if the matter is urgent and there is not time to have recourse to it, without the permission of the major superior, or, if even he cannot be approached, of the local superior (can. 583, 2°).

Point V. On the Ownership of Moral Persons

785 **I. Notion of a moral person.** A moral person is a subject of right distinct from a physical person; it is also called a juridic person (cf. can. 99).[1]

[1] Cf. Code of Canon Law, can. 99 sq.; Gillet, *La personnalité juridique en droit ecclésiastique*.

786 **II. Division of moral persons.** Moral persons are distinguished into collegial and non-collegial moral persons (can. 99). That is, several physical persons can constitute one whole, which is distinguished from those constituting it, and as such is ordered to a determined end; and, when the things to be observed have been observed, there is had a moral person, which in Canon Law is called a collegial moral person (can. 99).[1] Likewise certain goods can be destined to a determined end and administered stably; and, when the things to be observed have been observed, there is had a moral person, which in Canon Law is called a non-collegial moral person (can. 99).[2] I said **when the things to be observed have been observed**; these will become clearer from the things to be said under III.

[1] In civil law it is called a *universitas personarum*, or also a moral body.

[2] In civil law it is called a *universitas rerum*, or also an institute or foundation.

787 **III. Diverse moral persons.** 1. By force of natural law the civil State is a juridic person. Moreover, citizens within the State have the right of constituting juridic persons; nevertheless this does not prevent the State from establishing certain things which regulate both the constitution itself of juridic persons and their norms of acting.

2. By force of divine-positive law the Catholic Church and the Apostolic See have the character of a moral person (can. 100, § 1).

3. By force of ecclesiastical law juridic persons likewise can be constituted and in fact have been constituted. Hence can. 99: In the Church, besides physical persons, there are also moral persons, constituted by public authority. Moreover, they receive the character of a moral person either from the prescription of law itself or from a special concession of the competent ecclesiastical Superior,

given by a formal decree for a religious or charitable end (can. 100, § 1). Thus, for example, hospitals, orphanages, and other similar institutes, destined for works of religion or of charity, whether spiritual or temporal, can be erected by the Ordinary of the place and by his decree constituted as a juridic person in the Church (can. 1489, § 1).

The rest, which concerns moral persons within the Church, should be consulted among the Canonists.

Corollary. The civil power and all citizens are bound to recognize as a juridic person both the Church itself and the Apostolic See, and the other juridic persons constituted by Canon Law. Hence a defect of civil recognition cannot be opposed to them without injustice, so that damage inflicted on a juridic person by precisely that means, or a good denied to it by force of that means, must be repaired or compensated.

4. By force of civil law, various moral persons also have been constituted in various kingdoms; but the things which pertain here are to be drawn from the diverse laws. I note this one thing, however: the State, by force of natural law, cannot validly constitute or recognize juridic persons which primarily pursue a sinful end, since a right to evil cannot subsist. Hence, for example, a right of personhood conferred on an association which is destined to promote Neo-Malthusianism is not valid.

§ III. On the Modes of Acquiring Strict Rights

788 There are some who judge labor to be the only legitimate mode of acquiring strict rights, and therefore that ownership and income or proceeds which have not been gained by labor are to be attacked and abolished. Pius XI declares these things to be erroneous in the encyclical *Quadragesimo anno*,[1] and it will be clear from the things to be said concerning the other modes of acquiring rights. Nor is the Apostle rightly appealed to for confirming the said error when he says: "If any man will not work, neither let him eat."[2] "For the Apostle pronounces sentence against those who abstain from work, although they can and ought to labor, and he warns that time and the powers either of body or of mind are to be used diligently, and that others are not to be burdened when we can provide for ourselves. But the Apostle by no means teaches that labor is the only title for receiving food or proceeds."[3]

Therefore diverse modes of acquiring strict rights are distinguished: primitive or originative, and derivative or translative. Primitive modes are those by which either a thing, or right, which belonged to no one is acquired, or a thing which belonged to someone is transferred into the ownership of another independently of the act of the prior owner. Of the former kind are occupation, production, to which we reduce specification, and accession; of the latter kind are prescription, and in a certain way also possession, and finally legal succession. Derivative modes are those by which a thing, or right, which belonged to someone becomes another's dependently on the act of the prior owner; here belong testament, or testamentary succession, and contract.[4] We shall speak of each, with the exception, however, of contract, which we shall treat in a special chapter.[5]

[1] *Acta Apostolicae Sedis* 1931, p. 197.

[2] 2 Thess. 3:10.

[3] Encyclical cited, *Acta Apostolicae Sedis* 1931, p. 197.

[4] Most authors, however, call primitive those modes by which a thing which belonged to no one is acquired; derivative, those modes by which a thing which belonged to someone is acquired.

[5] We proceed thus because contract, although it is a mode of acquiring a strict right, nevertheless ought rather to be considered as the matter of commutative justice.

Point I. On Occupation

789 **I. Notion.** Occupation, taken generally, is the apprehension of a thing with the intention of making it one's own; if you add: of a thing which belongs to no one, you have the notion of occupation insofar as it is a mode of acquiring ownership.[1] It is said:

1. **Apprehension of a thing;** by this is understood an external act by which someone subjects a thing to himself; and this can occur in different ways for different things.
2. **Which belongs to no one,** that is, of a thing which either has not had an owner up to now, or is destitute of its owner, for example because the owner has abandoned ownership. Note, however, that goods of shipwrecked persons taken from the sea or cast by the waves onto the shores are not things belonging to no one;[2] nor are the goods of soldiers who have been killed.

[1] Code of one's country.

[2] Bull *In Coena Domini*. Civil laws everywhere establish that shipwrecked goods found on the shore are to be handed over to the official constituted for this purpose.

790 **II. Force of occupation.** Occupation is a mode of acquiring ownership.[1] For the individual has the right of having private ownership, as was proved in n. 762. But unless you admit that occupation is a mode of acquiring ownership, originally, that is, when things were undivided, that right could not have been exercised by the individual, or private ownership acquired by the individual. For, if occupation as a mode of acquiring ownership is excluded, that right would have had to be exercised through labor. But several things can serve our use which require no labor, or even exclude it, such as animals, metals found on land belonging to no one, and many fruits. But that such things should be excluded from private ownership is asserted irrationally. It remains, therefore, that - if they belong to no one - they are acquired by occupation.

With these things noted generally, we shall speak specifically about the occupation of animals, about found treasure, and about lost things.

[1] Encyclical *Quadragesimo anno* (*Acta Apostolicae Sedis* 1931, p. 194).

I. On the Occupation of Animals

791 **I. Species of animals.** Animals, as they are considered here, are distinguished into tame or domestic animals, animals made tame or tamed or gone wild, and wild or sylvan animals. **Tame** animals are those which by their nature serve man and therefore are said to lack liberty, such as horses, dogs, hens, and so forth. **Animals made tame** are those which have been made such by human industry that they serve man and therefore are said to have been deprived of primitive liberty, such as doves in a dovecote. **Wild** animals are those which are subject neither by nature nor by human industry to man, and therefore, unless they are captured, are said to enjoy full liberty, such as lions, birds, and fish. Therefore:

792 **II. It is explained insofar as animals belong to no one, or become such, and therefore can be occupied.** 1. Wild animals established in primitive liberty, or restored to it, belong to no one and therefore can be occupied. I said **or restored to it**; nevertheless they are not said to have recovered

liberty immediately when they are taken away or have escaped, but it is required that they already cannot morally be recovered by the owner.

2. Tame animals have an owner, and remain in the property of the owner however much they wander, provided they are not lost; in that case the principles concerning the occupation of lost things are to be applied.

3. Animals made tame likewise have an owner, and remain in the property of the owner as long as they have not recovered primitive liberty, by which they become things belonging to no one. Hence:

a) Doves remain the owner's as long as they return to the owner's dovecote; and the same seems to be said even if they pass from one dovecote to another and no longer return. The reason is that they have not recovered primitive liberty, and therefore have not become things belonging to no one; but this is required so that they can be occupied by the owner of another dovecote. Nevertheless it must be seen whether custom perhaps permits that another's doves be enticed in certain ways and be able to be considered as one's own by the owner of another dovecote.

The doctrine set forth under a) is rather commonly denied; and, when the contrary opinion is posited, it is asked how far the owner of another dovecote can bring it about that the doves no longer return to the former dovecote. Now he cannot, without injustice, impede them by force, for example by shutting them in; for the owner has a right that no one use force against his thing. But he can arrange his own dovecote more conveniently and provide better food to his doves, permitting, though not intending, that another's doves pass into his dovecote and thus pass into his ownership.

b) A swarm of bees which has flown out from a hive remains the owner's as long as he can easily pursue and recover it, because it is not yet judged to have been restored to primitive liberty. But if he abstains from pursuing the swarm, he is judged to abandon it.

c) Deer and pheasants which the owner keeps in a wood or on an estate cannot be occupied as long as they retain their dwelling there. Understand, however, places not so vast that they rather enjoy natural liberty.

793 **III. Mode of occupying animals belonging to no one.** Wild animals established in primitive liberty are occupied: 1° if they are killed, or so wounded or entangled that morally they cannot escape (St. Alphonsus, III, 604); 2° if they are so enclosed by someone - for example by a narrow circuit or pond - that they are judged to be destitute of natural liberty. It is not enough that the wild animal be in your field, or be enclosed by fences so vast that it must be said to enjoy natural liberty, as deer in large forests or pheasants on large estates.

Question. Whether an owner, on whose land another has placed a snare without his consent, can take for himself or free the wild animal caught in that snare.

Response. Per se he cannot take it, because it belongs to the one who placed the snare; nor can he free it, because he would bring it about that another's thing became a thing belonging to no one. Yet he can keep from his land the one who placed the snare without consent; and if he does this, the wild animal can no longer be of use to the one placing the snare. With this posited, the wild animal can be released or taken by the owner of the land at will.

794 **IV. The right of hunting and fishing.** 1. A law which assigns the right of hunting and fishing to the owner of the land alone, considered according to its obvious sense, grants a strict right, so that no

one can hunt or fish on another's land without the owner's permission. One who injures that right is bound to restitution, not indeed of the captured wild animal or its equivalent - since the wild animal belonged to no one and was truly occupied - but for the owner's lost hope of capturing those wild animals or fish. The same must be said of the right of fishing in rivers, which someone buys from the Government. Nevertheless, legitimate hunters and fishermen are not judged to require any other restitution beyond the legal penalty, if this penalty has been imposed on those who violate the right.

2. Laws which regulate the use of the right of hunting and fishing - for example by determining at what time or with what instruments hunting or fishing is permitted - are held to be merely penal (St. Alphonsus, III, 605, 614; I, 145).

Hunters, especially secret hunters, can sometimes sin gravely for other reasons, for example because of the danger of injuring officials, to which they expose themselves.

II. On the Occupation of Treasure

795 **I. Notion.** A treasure is any thing hidden or buried by man or by a natural event, which now has no owner, or whose owner now cannot be known. It is said:

1. **Any thing,** whether money or another thing; according to Roman Law this ought to be precious. But, considered according to natural law, which we attend to, it suffices that it be curious, for example a marker-stone which has no saleable value.
2. **Hidden or buried;** if it lies publicly in the road, it is a thing recently lost, concerning which there will presently be discussion. Per se it does not matter whether it is hidden in an immovable or in a movable thing. Practically, it should be seen whether experts in law interpret the respective civil law so that they exclude from the notion of treasure a thing hidden in a movable thing.
3. **By man or by a natural event,** for example an inundation. Therefore veins of coal or metal are excluded, since they are not said to be hidden by a natural event.

The finder of a treasure is the one who makes it visible; it is not required that he have apprehended it, nor, more probably, that he have seen it. But the finder of a lost thing is said to be the one who first sees and apprehends the thing.

796 **II. Occupation of treasure.** 1. Considered according to natural law, the whole treasure belongs to the finder; for he is the first occupier of a thing which belongs to no one, or at least can be treated as if it belonged to no one.

2. Considered according to civil law, see in the civil Code whose the treasure is; concerning this, however, I note:

a) Civil laws everywhere distinguish between treasure found on one's own land and on another's land. Now, under the name of another's land also comes a place which pertains to the private ownership of the State, province, or municipality; but one who finds treasure in a place which pertains to public ownership can rather probably proceed as if he had found it on his own land.

b) It is disputed whether civil law also has force with respect to treasure found on land of the Church. Some affirm, relying on can. 1529, by force of which civil contracts also have force in ecclesiastical matter; and this, considered in view of can. 20, seems to be extended also to laws about treasure, as being similar to laws about contracts. Others deny this, because the disparity seems too great; hence

they judge that natural law is to be applied. But since in each case it is a matter of disposition concerning material goods, and since the reason of canon 1529 also has force for laws about treasure, the disparity seems material rather than formal.

c) Civil law, as justly determining rights, obliges from commutative justice (n. 764). Nevertheless, insofar as it attributes the whole treasure to the owner of the land when the treasure has been sought deliberately and without the consent of the owner, it is held to be merely penal, and therefore does not oblige before the sentence of a judge.

Corollary. One who buys at the common price a field in which he knows that a treasure lies hidden does not sin, because the just price is not determined according to private knowledge, but according to common estimation. If afterward he comes upon the treasure, he can retain the whole of it for himself; but this does not hold for one who buys a field after he has discovered the treasure and perhaps has buried it again.

III. On the Occupation of Lost Things

797 Lost or misplaced things are things which someone has involuntarily lost or misplaced; unlike treasure, they are presumed to have an owner, though commonly an unknown one. They are distinguished from vacant things, which have been left by a deceased owner without an heir and without a testament; likewise from abandoned things, that is, from things whose ownership someone has voluntarily cast away.

Vacant things, considered according to natural law, belong to the first occupier; considered according to civil law, they commonly fall to the fisc. Abandoned things, as is clear, belong to the first occupier. But concerning lost things, receive these points:

798 **I. The finder of a lost thing is bound from charity to apprehend it** if there is hope of finding the owner, and that business of finding the owner can easily be undertaken.

II. The finder who has carried the thing away with him is bound to take care of the thing, and to apply diligence proportionate to the gravity of the thing so that the owner may be found. He is bound to these things from justice if otherwise the owner would be thrown into a worse condition because of the apprehension of the thing; if this does not occur, he is bound, according to some, from charity; according to others, from justice, either, as some say, by reason of the tacit contract which is called *negotiorum gestio*, or by reason of the possession itself, which belongs to the owner, and therefore seems to carry with it an obligation of justice at least to seek the owner, for this end, that he may be put into possession. Once the owner has been found, he is bound to restore the thing, insofar as it exists in itself or in its equivalent, after deducting, if he wishes, the expenses made for preserving the thing and finding the owner. Today due diligence for finding the owner is judged to have been applied if notice is made in public newspapers, and this the more frequently, the more serious the lost thing is. For the rest:

1. **Considered according to natural law alone,** these points hold:

a) If, after diligence has been applied, every hope of finding the owner has vanished, the finder can dispose of the thing at will. I said:

a) **He can dispose of the thing;** since the thing is destined for use, and therefore, if it is judged that it can no longer serve the owner, let it serve another.

b) **He can dispose of the thing at will.** There are some who judge that the thing must be expended for the poor or for a pious use, because the will of the owner is presumed to be that, if the thing can no longer profit the body, it should profit the soul (cf. St. Thomas, II-II, q. 62, a. 5, ad 3). But that is quite probably denied, both because in the posited hypothesis the thing at least probably becomes a thing belonging to no one, and therefore can be occupied by the finder; and if it has become a thing belonging to no one, there is no reason why the presumed will of the owner should be cared for; and because - even if the thing is not said to belong to no one - such a will of the owner is presumed without foundation. I said that in the posited hypothesis the thing probably becomes a thing belonging to no one; for since ownership is for the sake of use, it seems to cease if every hope has vanished that the owner will be able to use his thing (St. Alphonsus, III, 603).

What if the owner afterwards appears?

Response 1. If the thing now exists neither in itself nor in its equivalent, there is no obligation, because the damage was inflicted inculpably. The same must be said if the thing has been legitimately prescribed (St. Alphonsus, III, 590).

Response 2. If the thing exists in itself or in its equivalent, there seems to be an obligation of restitution, because in doubt the condition of him who certainly was owner seems to be the better.

2. **Considered according to civil law** - which in the case supplies the norm to be observed from justice - draw from the law what things have force.

Corollary. One who culpably neglected due inquiry, but now can no longer find the owner, has indeed sinned, but can rather probably retain the thing, because it is judged to belong to no one, or at least can be treated as a thing belonging to no one. If, however, the owner is afterwards found, he is bound to restore the thing insofar as it exists in itself or in its equivalent; furthermore he is bound to repair all damages following from his manner of acting and sufficiently foreseen, at least if the owner was thrown into a worse condition because of the apprehension of the thing.

Point II. On Production and Specification

799 **I. Notion of production.** Production is the production of fruits, and concerns both fruits of ingenuity and other fruits which some thing produces either by its own nature, or by man's labor and industry. Production, insofar as it includes fruits of ingenuity, was discussed in n. 766. It remains that we speak of it insofar as it concerns other fruits of things.

800 **II. Distinction of fruits.** Fruits are distinguished:

1. By theologians into: 1° **natural** fruits, which proceed from the thing itself without notable human labor, such as the offspring of animals and the fruits of trees; 2° **industrial** fruits, which are properly produced by the labor of man, although using the thing as a means, such as works of art, profit from commerce and trade; 3° **mixed** fruits, which proceed from the thing itself through notable human labor as a means, such as crops, wine, cheese; 4° **civil** fruits, which come to someone on the occasion of a thing through a contract, such as rental payments, rents, and the increase of money given as a loan.

2. By jurists, fruits are distinguished conformably to the respective civil Code; consult it.

801 **III. To whom do fruits belong?** 1. Natural fruits, likewise mixed fruits taken in the sense of theologians, per se belong to the owner of the fruitful thing, with expenses made by another for

producing the fruits nevertheless being compensated. I said **per se**, on account of the things to be said concerning the possessor in good faith who is not the owner of the thing.

2. Industrial fruits, taken in the sense of theologians, belong to him who produced them, even if in producing them he used another's thing, yet under the burden of compensating the damages which he voluntarily caused by using another's thing.
3. Civil fruits - just like natural fruits - belong to the owner of the thing through which they were obtained, if the use of the thing is of itself apt for producing fruits, such as rental payments; they belong - just like industrial fruits - to him who produced them, if it is a question of interest on money.

802 **IV. To production can be reduced specification,** which is had when someone fashions a new object from another's matter, for example a statue from a stone. Therefore specification is a mode of acquiring ownership,[1] because neither the active power from which the new species principally proceeds, nor the new species itself, was possessed by the possessor of the thing not yet changed; nevertheless the possessor of this thing should be, or be made, unharmed.

Insofar as the aforesaid things are modified by civil law, see the law of one's country.

[1] Encyclical *Quadragesimo anno* (*Acta Apostolicae Sedis* 1931, p. 194).

Point III. On Accession

803 **I. Notion.** Accession is the right by which we acquire whatever is united with our thing.

804 **II. Modes of accession.** Accession can occur by alluvion, by planting, sowing, and building, by commixture and confusion. It is useful to hand down certain notions.

1. **Alluvion** is had when, from an overflowing river, something of land accrues to someone's estate.
2. **Commixture** is had when solid things, and **confusion** when liquid things, belonging to different owners, are mixed together.

What right accrues to the owners in individual cases, you should draw from the civil laws.

Point IV. On Prescription

I. On Prescription Generally

805 **I. Notion.** Prescription is a mode of acquiring something, or of liberating oneself from some obligation, through a definite lapse of time and under conditions established by law.

806 **II. Division.** From the definition it is clear that prescription is twofold: acquisitive, by which someone acquires something; and liberative, by which someone is freed from an obligation. The former is also called *usucapio*.

807 **III. Power of the civil State to establish prescription.** The civil power, by force of eminent ownership, can for very grave reasons - in other words, when necessity or great common utility urges it - transfer rights and remove obligations (n. 764). But very grave reasons urge that, through a certain lapse of time, with certain conditions observed, in other words through prescription, rights be transferred and obligations removed. The reasons are: lest possessors be held in perpetual fear of losing their things; lest lawsuits always be able to be moved; lest debtors be compelled always to

preserve receipts or testimonies of payment made; lest debts increase too much and thus create poverty for debtors (St. Alphonsus, III, 517). And this exercise of right is the more just because it does not diminish the rights of private persons. For before every event prescription favors one no more than another, since each has both fear of losing and hope of acquiring. It is, as it were, an aleatory contract which citizens can enter among themselves, and which the State imposes in the name of all. Moreover, even Canon Law generally, at least implicitly, approves prescriptions established by civil law, by the very fact that canon 1508 received "prescription, as a mode of acquiring and of liberating oneself, as it is in the civil legislation of the respective nation,... for ecclesiastical goods," with the prescription of the canons to be set forth afterward being saved.

Corollary I. Insofar as very grave reasons urge prescription upon the State, it is said to be introduced by the civil Authority, with natural law soliciting it.

Corollary II. Since prescription ultimately draws its force from positive law, it is clear that for the validity of prescription it is required that it be clothed with the conditions required by the aforesaid law.

II. On Acquisitive Prescription

808 For acquisitive prescription there are required: a prescriptible thing, possession prescribed by law, a just title, good faith, and the time established by law (St. Alphonsus, III, 504).

I. A prescriptible thing. All things are prescriptible which can be the object of private ownership, unless they are excluded by positive law, ecclesiastical or civil.

1. **Which can be the object of private ownership:** hence those things cannot be prescribed which pertain to public ownership, that is, which are destined for the use of the community, such as roads and a river;[1] the contrary must be said concerning those things which pertain to the private ownership of the State, province, or municipality.
2. **Unless they are excluded by positive law.** Which things are excluded by civil law, you will find in the respective civil Code; which by ecclesiastical law, is set forth in n. 811.

II. Possession held with the intention of ownership, continuous, and endowed with other conditions perhaps established by law. It is said:

1. **Possession:** that is, physical or moral detention of a thing.
2. **Held with the intention of ownership,** that is, held in one's own name. Those who possess a thing in another's name cannot acquire it by prescription; here belong, for example, the tenant, the depositary, the usufructuary, and others who possess a thing by a precarious title, as it is called.
3. **Continuous,** that is, not interrupted, for example by a lawsuit which is moved concerning the thing.
4. **And with other conditions,** etc.; these conditions should be drawn from the law.

III. A just title. It is said:

1. **Title.** Title in general is the reason on which possession is founded. Title taken universally is distinguished into title translative and non-translative of ownership. Title translative of ownership is again divided into true, colorate, putative, and legally presumed. **True** is that which both exists

and is valid; **colorate**, that which exists and is invalid, either because the one transferring the thing lacks ownership of it, or because the translative act is null on account of a defect in form; **putative**, that which is thought to exist but does not exist; **legally presumed**, that which is presumed by law to exist, whether in fact it exists or does not exist. A true title, as is clear, is never required, because of itself it transfers ownership. A title non-translative of ownership is called defective, and never suffices.

2. **Just,** that is, a title which is recognized by law, and indeed deservedly.

IV. Good faith. 1. Good faith can be taken both theologically and juridically. What theological good faith is was explained in n. 776. Juridical good faith is that which is required by civil law, whether it coincides with theological good faith or does not coincide with it.

2. Theological good faith is always required in the forum of conscience, and it must be had throughout the whole time established for prescription. "It is necessary," so says Lateran Council IV, "that he who prescribes should in no part of the time have consciousness of another's thing."[2] For the rest, this is clear from the fact that as soon as good faith ceases before the time is ended, an obligation of restoring arises. Nevertheless, from the same Council (l.c.), venially bad faith does not prevent it (St. Alphonsus, III, 511).

Corollary I. One who possesses one part in bad faith and another in good faith can prescribe this other part.

Corollary II. One who possesses first in good faith, afterward in bad faith, and then again in good faith, must prescribe by this last possession.

Corollary III. One who in good faith succeeds a predecessor in bad faith can acquire or not acquire a thing by prescription according as the civil law is not opposed or is opposed.

Corollary IV. One who, after possession begun in good faith, begins to doubt whether the thing is his, and, after inquiry into the truth, continues to doubt, can without fault and therefore in good faith continue possession and, when the time is completed, prescribe. But one who before possession begun doubts whether the thing is his or belongs to a determinate other person, is bound to divide it, and therefore cannot begin prescription of the whole, though he can begin prescription of the part (St. Alphonsus, III, 504, 625). Make an exception, with sufficient probability, if with doubt he succeeds a predecessor in good faith, since the predecessor seems to transfer his whole right to the successor (St. Alphonsus, I, 37 at the end). But if someone doubts concerning the good faith of the predecessor, let him presume good faith, unless indications of bad faith are such that they ought to create the contrary presumption.

Corollary V. If someone is subject to guardianship, and therefore is civilly incapable, the good faith of the guardian seems to be required, and also to suffice. It seems to be required because the guardian, before the law which establishes prescription, acts the person of the one subject to guardianship. It suffices rather probably because the law, which indeed regards only the guardian, seems honest. Likewise and for the same reasons, if it is a question of a moral person, the good faith of those who can act the affairs of the moral person even before the law seems to be required and to suffice.

Nevertheless, in the former case the minor, and in the latter the voters, who judge the thing to belong to another, are bound, insofar as can be done, to remove the good faith of those who represent their persons.

Corollary VI. A thief who, having forgotten the theft, has possessed another's thing in good faith through the required time, cannot prescribe it, since a law which deprives someone of ownership of a thing in favor of him who took the said thing by theft seems dishonest (cf. St. Alphonsus, III, 515).

V. Established time. How much time is required for different things, draw from the respective law. Note, however:

1. A possessor can add to the time through which he himself possessed the thing the time through which a predecessor or predecessors possessed it in a manner useful for prescribing.
2. If prescription is suspended, the time which preceded the suspension is computed with the time following the suspension; but if it is interrupted, prescription must be begun anew. But when prescription is suspended, and when it is interrupted, the law establishes. Note this one thing: by force of natural law prescription is interrupted by bad faith.

[1] In these the State has rather ownership of jurisdiction than of property.

[2] Cap. 41.

III. On Liberative Prescription

809 **I. Liberative prescription can be constituted in a twofold way,** namely, either so that it truly extinguishes the debt itself, or so that it excludes only a judicial action against the debtor. In what way it is constituted for different debts, draw from the law and jurists of one's country.

810 **II. For liberative prescription there are required: a suitable thing, theological good faith, and the time established by law.** It is said:

1. **A suitable thing;** almost as was said concerning acquisitive prescription (n. 808).
2. **Theological good faith;** concerning this, observe:

a) Theological good faith is had: 1° when thought about the existing debt does not even enter the mind; 2° when someone judges either that the debt was not contracted or that it has been paid; 3° when without grave fault he doubts whether the debt was contracted. But if he is certain concerning the debt contracted and doubts concerning payment, he is bound to pay, according to the opinion of St. Alphonsus, which we shall embrace in its own place.

b) Theological good faith is always required, with a twofold case excepted, namely: 1° when it is a question of a debt which someone is not bound to pay unless it is demanded, such as a penal debt (St. Alphonsus, III, 513); 2° when it is a question of extinguishing a passive servitude, for example a servitude of way, and someone other than the one prescribing places an act which impedes the use of the servitude.

3. **Time established by law;** concerning this, consult the respective civil law. Note also that here too the things which we said concerning the suspension and interruption of acquisitive prescription have force (n. 808).

Scholion. On Prescription for Ecclesiastical Goods

811 **I. The Church recognizes prescription as a mode of acquiring ecclesiastical goods and of liberating oneself from a debt** arising either from a disposition of ecclesiastical authority or from a contract entered concerning an ecclesiastical good (can. 1508). Nevertheless:

1. The following are not subject to prescription: 1° those things which are of divine law, whether natural or positive; 2° those things which can be obtained by apostolic privilege alone; 3° spiritual rights of which laymen are not capable, if it is a question of prescription for the advantage of laymen; 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 would now be subject to no Prelate; 8° payment of the cathedraticum (can. 1509).

2. Sacred things which are in the ownership of an ecclesiastical moral person cannot be prescribed either by a private person or by a non-ecclesiastical moral person, but only by an ecclesiastical moral person. But sacred things which are in the ownership either of private persons or of a non-ecclesiastical moral person can also be acquired by private persons and by non-ecclesiastical moral persons, who nevertheless cannot apply them to profane uses; but if they have lost consecration or blessing, they can be freely acquired even for profane uses, though not sordid ones (can. 1510).

II. For acquisitive prescription there are required: possession, established time, and good faith; for liberative prescription: established time and good faith.

1. **Possession** - which it suffices to note - is the detention or enjoyment of a thing which someone has in his power by himself or through another as if it were his own (n. 775).

2. **Established time.** a) Immovable things, precious movable things, rights, and actions, whether personal or real, which pertain to the Apostolic See, are prescribed by a span of one hundred years; those which pertain to another ecclesiastical moral person, by a span of thirty years (can. 1511).[1] If a cleric who possesses a benefice has proved that he has been peacefully in possession of the same benefice for an entire three-year period in good faith, even perhaps with an invalid title, provided simony is absent, he obtains the benefice by legitimate prescription (can. 1446).

b) Other things are prescribed in the time determined by the civil legislator for a thing of this kind (can. 1508).

Note 1. Concerning the prescription of actions, consult canons 1702-1705, 2240.

Note 2. Interruption and suspension of prescription have place according to the norm of civil law (n. 808).

3. **Good faith.** No prescription has force unless it rests upon good faith, not only at the beginning of possession, but throughout the whole time of possession required for prescription (can. 1512).

[1] Concerning possession begun, but not yet completed when the Code had been issued, cf. *Ius Pontificium*, 1924, p. 23.

Point V. On Hereditary Succession

We shall speak first about hereditary succession generally; then about testamentary succession; then about legal succession.

I. On Hereditary Succession Generally

812 **I. Notion.** Hereditary succession is a mode of acquiring the strict rights of some deceased person, by way of succession into them.

813 **II. Division.** Hereditary succession is distinguished as twofold: testamentary and legal. It is **testamentary** when someone is constituted heir by the deceased himself, namely through a testament. It is **legal**, or ab intestato, when someone is called to the inheritance by law, no testament having been made, or the testament being void, or made void.

Note. Anyone who succeeds to some good of the deceased can be called an heir; but, with laws considered, he is called an heir who, whether from testament or from law, acquires either the whole inheritance or some quota part of the inheritance, for example half or a third. An heir is said to succeed to the deceased by universal title. A legatee is called one who from a testament receives some particular thing or things, or all things of a certain species, for example a sum of money, a house, all movable goods, all immovable goods, the usufruct of all goods, and so forth.

Heirs are distinguished as legal and testamentary, according as they receive goods by force of law or by force of testament; necessary and voluntary, according as they cannot or can be excluded from the testament by the testator.

814 **III. Origin of hereditary succession;** concerning this we establish two things, of which one regards children, and the other is more universal.

1. **The succession of children into the goods of deceased parents is of natural law.** The reason is that private ownership was instituted not only for the good of the individual, but also and no less for the good of the family; in other words, it was instituted so that a man might provide for himself and for his family (n. 762). But that end is not fully obtained if children do not succeed into the goods of deceased parents.

St. Thomas says thus: "It must be said that marriage from the intention of nature is ordered to the education of offspring, not only for some time, but for the whole life of the offspring; hence it is of natural law that parents lay up treasure for children, and that children be heirs of their parents" (IV Sent., dist. 33, q. 2).[1]

Corollary I. When no testament has been made, children by force of natural law are the heirs of their parents; in other words, children by force of natural law succeed ab intestato.

Corollary II. Parents per se cannot disinherit children; nevertheless they are not bound to leave all goods to them, for the good of the family per se does not require this.

2. **Testamentary succession is a mode of acquiring ownership;** in other words, the owner of goods can transfer ownership of them to another by testament. This is clear first from these words of Sacred Scripture, which manifestly suppose the faculty of making a testament: "For where there is a testament, the death of the testator must of necessity come in. For a testament is confirmed among the dead: otherwise it is not yet of force, while he who made the testament lives."[2] Then it is deduced from the notion of ownership, which imports the faculty of disposing of a thing for as long as someone is its owner. But the testator disposes of his own thing while he still enjoys ownership, namely at the departure of life. Nor should it be objected that the union of wills is lacking, namely of the one testating and the one accepting, because the testator at the time of acceptance is already dead; since the will of the testator juridically persists in the disposition itself that has been made, just as the will of the legislator persists in legislation that has been enacted, even if he has died or has been deprived of power.[3]

3. Although both the succession of children into the goods of parents, and the faculty of disposing of one's own things by testament, are of natural law, nevertheless, on account of the common good, they can be more determined by positive laws, circumscribed by certain limits, and subjected to certain norms, and indeed in such a way that, if the norms have not been observed, the disposition made is invalid (n. 764).

[1] Leo XIII in the encyclical *Rerum novarum*, May 15, 1891, says thus: "It is a most sacred law of nature that the father of a family should protect, with food and every provision, those whom he has begotten; and he is led to this by nature itself, that he should wish to acquire and prepare for his children, since they represent and in a certain way continue the father's person, that by which they may honorably defend themselves from miserable fortune in the uncertain course of life."

[2] Heb. 9:16-17.

[3] Pius XI in the encyclical *Quadragesimo anno*, May 15, 1931, says thus: "Always... the natural right itself... of transmitting goods by inheritance must remain intact and inviolate, since the State cannot take it away."

815 **IV. Subject of hereditary succession.** All human beings can be heirs who are not excluded by law, even infants and the perpetually insane (n. 757). Who are excluded, see in the code of one's country.

816 **V. Use of hereditary succession.** Each person can either accept or repudiate an inheritance; if there are several heirs, one can accept it and another repudiate it. It can be accepted either simply or under the benefit of inventory, as it is called.

817 **VI. Effects of an accepted inheritance.** 1. The effect of simple acceptance is that the heir, on the one hand, acquires all the rights of the deceased, and, on the other hand, is bound to pay his debts insofar as the resources of the inheritance permit this. If there are several heirs, each is bound to pay debts for his proportionate part, but not beyond the part which he has received. If one fails, another must supply, insofar as the part received by him permits this. Thus, abstraction being made from civil law, which is accustomed to modify the aforesaid things (St. Alphonsus, III, 790). Hence:

Question 1. Whether the disposition of law, if it exists, has force in conscience, by which individual heirs are bound only for a proportionate part to pay debts and legacies, so that if one fails another is not bound to supply.

Response. Affirmatively; since the law, as one which justly divides burdens among the heirs, is altogether just. Moreover, laws establishing this commonly leave to creditors, who suffer damage from that disposition of law, other means of providing for themselves, for example by requiring payment of the debt before the division of the inheritance, etc.; concerning this, consult the civil code (St. Alphonsus, III, 790).

Question 2. Whether the disposition of law, if it exists, has force in conscience, by which an heir who has accepted an inheritance simply is bound to pay beyond the resources of the inheritance.

Response. It seems one must answer affirmatively, because the law seems to rest upon the danger that heirs might fraudulently conceal goods; and a law of this kind obliges even if in a particular case the danger is absent (n. 152). Many indeed teach the contrary and judge that the law rests upon a presumption of fact, either of fraud committed, or of the heir's intention to hold as ratified all debts contracted by the deceased and all legacies imposed by him. But the legislator must not be judged to presume what is undeservedly presumed. There are also some who hold the disposition of the law as a

penalty for the neglect of the benefit of inventory; if this is admitted, the obligation is not had except after the sentence of a judge. But there can be no discussion of a penalty, since the law leaves to the heir full liberty of accepting the inheritance without the benefit of inventory.

2. The effect of acceptance under the benefit of inventory is that the heir is not bound beyond the resources of the inheritance to pay the debts, legacies, and burdens incumbent upon the inheritance. Other effects also are commonly established by civil law.

3. The effect of any acceptance, with civil law considered, is customarily **collation**, as it is called; that is, the obligation by which heirs are bound, for the favor of co-heirs, to bring back into the inheritance to be divided the donations inter vivos which they received from the deceased. Concerning this obligation consult the law of one's country and its approved interpretation.

II. On Testamentary Succession

818 **I. Notion of a testament.** A testament is an act by which someone disposes of his goods for the time that will follow death. The act of a testament can be revoked during life, but it is confirmed by death.

819 **II. Division of a testament.** A testament is divided into solemn and non-solemn, or informal, according as the solemnities required by law, or the prescribed form, have been observed, or have not at all or only partly been observed.

820 **III. Faculty of testating.** 1. Considered according to natural law, all who enjoy the use of reason can make a testament. Those who habitually or sometimes lack the use of reason can testate during the time of a lucid interval, if such is given. Nevertheless, for the validity of a testament free consent is always required (St. Alphonsus, III, 921, 942).

2. Who can make a testament, considered according to civil law, see in the law of one's country.

821 **IV. Faculty of acquiring from a testament.** Considered according to natural law, all human beings can acquire from a testament (n. 757); who are excluded by civil law, learn again from the law of one's country.

822 **V. The form of a testament is established by civil law; consult it.**

Whether and how far an informal testament has force in conscience is explained where discussion will be had concerning an informal contract, or a contract voided by law for another reason.

VI. Testamentary dispositions prohibited by law, interpretation, execution, and revocation of a testament should be consulted in the law of one's country. As regards prohibited dispositions, two things commonly must be guarded against: 1° lest the testament contain a fideicommissary substitution, as it is called; 2° lest the legitimate portion be injured. Now:

1. **Substitution**, taken generally, is a clause by which someone is called to an inheritance or legacy after another. It is distinguished as twofold, vulgar and fideicommissary. **Vulgar** substitution is that by which someone is called to an inheritance or legacy for the case in which another cannot or refuses to accept it;[1] **fideicommissary** substitution is when the burden is imposed on the heir or legatee of preserving the inheritance or legacy and afterward handing it over, either whole or in part, to another. Now fideicommissary substitution is commonly voided by civil law.

2. The **legitimate portion** is that part of goods which must be left to necessary heirs, so that it cannot be disposed of either by donation inter vivos or by testament. Who are necessary heirs, and how great the legitimate portion is, see in the law of one's country; as regards its obligation, consult approved interpretation.

[1] For example: I constitute Peter heir; if Peter refuses, let Paul be heir.

Scholion. On Legacies

823 **I. Notion.** A legacy is a clause by which a testator bequeaths some particular thing to someone. The very thing thus bequeathed is also called a legacy.

824 **II. Rights of a legatee.** Whether a legatee acquires from a testament a right in the thing, or a right to the thing, depends on law. Moreover, as regards the rights and burdens of a legatee, the law of one's country should be consulted. Besides these things, observe:

1. A legacy left to determinate girls so that they may marry can also be given to them so that they may become religious, unless the intention of the testator is otherwise clear (St. Alphonsus, III, 930). Thus the Sacred Congregation of Bishops and Regulars.[1] The reason is taken from the fact that the testator is presumed to have consented implicitly. The contrary is commonly to be said concerning a legacy left to indeterminate girls so that they may marry; "for such testators often and piously intend thus to provide only for girls wishing to marry, lest they be exposed to the danger of prostitution" (St. Alphonsus, l.c.).
2. A legacy left to indeterminate nuns can also be given to women religious who profess simple vows, provided their institutes have been approved by the Holy See, they emit perpetual vows, and the testator has not expressly established that the legacy should come only to those professed of solemn vows. Thus Pius IX by decree of the Sacred Congregation of Bishops and Regulars.[2]
3. A legacy left to orphans can, rather probably, be given to those who have parents by whom they cannot be supported. The reason is that it is sufficiently probable that the testator implicitly consented (St. Alphonsus, III, 930, doubt II).

[1] February 25, 1812.

[2] November 12, 1847; cf. Aertnys-Damen I, n. 702.

III. On Legal Succession or Succession Ab Intestato

825 **I. When the owner of goods has died without a legitimate testament,** de facto those can be heirs whom civil law assigns.

II. Who come in the first place, who in the second, etc., likewise learn from the law of one's country; likewise in what manner and in what order blood-relatives are called to the inheritance; likewise what the law is in a case in which, with or without legitimate heirs, illegitimate persons are present; likewise how succession is made to illegitimate persons; likewise what part falls to each. Moreover, observe:

1. As regards the manner in which blood-relatives are called to an inheritance, note that they can be called per capita, per stirpes, or per lines.

a) Succession is made **per capita** when several heirs, distant from the deceased by an equal degree, divide the inheritance equally among themselves.

b) Succession is made **per stirpes** when one or another of the heirs is dead, and his descendants are called to the inheritance by representation; it is called **by representation** because they represent the deceased heir.

c) Succession is made **per lines** when the inheritance is divided into two parts, of which one falls to paternal blood-relatives, the other to maternal blood-relatives.

2. As regards legitimacy and illegitimacy, observe:

a) A child who, considered according to ecclesiastical law, is legitimate, but considered according to civil law is illegitimate, cannot vindicate for himself the rights of legitimate persons, except insofar as natural law itself attributes them to him. The reason is that the legislator, though to be reprehended, nevertheless de facto does not admit canonical legitimation for his own forum, and therefore de facto does not grant to a child who is only canonically legitimate the rights of the civilly legitimate.

Objection. A canonically legitimate child has the right that he be held as legitimate also in the civil forum, and so that he participate in the rights of legitimate persons.

Response. That the child has a strict right, I deny; a broad right, so that the State violates distributive justice, let it pass.

b) A child who, considered according to ecclesiastical law, is illegitimate, but considered according to civil law is legitimate, cannot use the rights granted to him by civil law, except insofar as natural law itself grants them to him. The reason is that the disposition of civil law, since it ought to follow Canon Law, is dishonest and therefore destitute of force.

It is disputed whether parents act unjustly or not when they falsely recognize and legitimate illegitimate offspring, namely offspring of only one of the two, and thus bring it about that the legitimate portion of legitimate heirs is diminished. Now it seems one must distinguish thus:

1. If the parents, with civil law considered, by injuring the legitimate portion do not act unjustly with respect to the legitimate heirs, neither do they act unjustly with respect to the same by falsely recognizing the offspring. For in the posited hypothesis they have the right of bringing it about that goods come to the illegitimate child; with this posited, recognition - granted that it is a lie - does not become unjust with respect to the legitimate heirs, so that they do not impede them by an unjust means from obtaining a good.
2. If the parents, with civil law considered, by injuring the legitimate portion act unjustly with respect to the legitimate heirs, they also act unjustly with respect to the same by falsely recognizing the offspring. For, once this hypothesis is admitted, recognition becomes an unjust means by which they impede the legitimate heirs from obtaining a good.

Scholion I. On a Testament and Legacy for Pious Causes

826 Under the name of a pious cause come: 1° every thing which by its nature is ordered to a supernatural end, such as Masses and processions. To these, from the sense of the Church, are reduced the poor and miserable persons, at least collectively; 2° every institute erected by ecclesiastical Authority for a religious or charitable end, such as churches, monasteries, episcopal hospitals, and so forth; but not those charitable institutes which have not been approved by ecclesiastical Authority, such as civil hospitals. There are some, however, who count dispositions made in favor of institutes of this kind, or even other dispositions made for public utility, among dispositions for a pious cause,

provided they are made in view of a supernatural end.[1] They would say the same concerning a disposition in favor of some poor person.

I. Governance of a testament for a pious cause. A testament, likewise a clause and a legacy, for a pious cause is subject to ecclesiastical power alone. Hence per se - that is, unless the Church itself establishes it - the capacity of testating and the mode of testating required by law are not required. This follows from the fact that the Church is a perfect society in its own sphere, independent of the civil State, and indirectly superior to it.[2]

II. Capacity of testating for a pious cause. One who by natural and ecclesiastical law is freely able to establish concerning his own goods can leave goods to pious causes, whether by an act inter vivos or by an act mortis causa, that is, by testament (can. 1513, § 1). Therefore it can happen that someone is able to make a testament for a pious cause who, considered according to civil law, lacks the capacity of testating. Practically, however, that will not so easily have place, because most who are incapable by civil law, for example minors, are also incapable by canon law (can. 89).

III. Mode of testating for a pious cause. Those things suffice which are required by natural law for a valid testament, that is, the free, manifested, and not revoked will of the testator.

A few indeed judge that civil formalities also must be observed;[3] but authors almost universally and deservedly deny this. For a testament for a pious cause, as subject to the Church alone, must be held as immune from civil form, unless it is proved that the said form has been assumed by the Church. But this is clear from no source. Then Canon Law, considered in can. 1513, § 1, for the very faculty of testating in favor of a pious cause, does not admit the requisites of civil law; and this brings in a presumption that the requisites imposed by civil law in the use of that faculty are also not accepted by the Church. Then can. 1513, § 2 requires that the aforesaid solemnities be observed if it can be done; but by the words **if it can be done** absolute necessity is excluded. Finally the cited canon declares that the heirs are to be admonished to fulfill the will of the testator, even if civil solemnities have been omitted; but the word **are to be admonished** is not only exhortative but preceptive.[4] Therefore an admonition to be made - otherwise if there were discussion only of persuasion - argues that an obligation is had. Moreover, in doubt, if any remains for someone, one must not depart from the old law (can. 6, 4°).[5] Nevertheless, the Sacred Penitentiary, to the question whether heirs who, because of a defect of legal formality, refuse to pay a pious legacy can be absolved, responded on February 10, 1901: "the practice of this sacred tribunal in similar causes is that generally pious legacies are to be held valid and obligatory in the forum of conscience; nevertheless heirs are readily admitted to composition with the Church or the pious cause to which the legacy has been made."

Although civil formalities are not required in a testament and legacy for a pious cause, nevertheless they are usefully observed, so that the dispositions made may certainly be able to obtain their due effect also in the civil forum (cf. can. 1301).

Corollary I. The legal heir, if he is also executor of a testament for a pious cause, is bound to execute the testament if the will of the testator is clear to him, for example by writing, by words, or by nods of the deceased given to him, that is, to the heir (St. Alphonsus, III, 923). But he is not bound to acquiesce in the testimony of only one witness, however approved, for example of the pastor alone or confessor alone (St. Alphonsus, III, 924; cf. can. 1791).[6]

Corollary II. Another executor, not the legal heir, can and is bound to execute a testament for a pious cause to which the legal heir does not object, even if the will of the testator is clear to him, that is, to the executor, only through the testimony of one approved witness.

Corollary III. A testament void with respect to profane causes has force with respect to pious legacies inserted into it. Some deny this, "because when the principal falls, the accessory falls; ... but a special reason is found in the accessory which is not in the principal, namely the favor of religion; and therefore there only canon law is attended to" (St. Alphonsus, III, 924).

Corollary IV. If profane legacies are inserted into a non-solemn testament for a pious cause, these must be handed over or not handed over according to the norm of civil law.

IV. The execution of pious wills is governed by these points:

1. Ordinaries, namely for the different cases the Ordinary of the place or the major Superior of an exempt clerical religious institute, are executors of all pious wills, both mortis causa and inter vivos. By this right, Ordinaries can and must watch, even through visitation, that pious wills be fulfilled, and other delegated executors, when they have performed their office, must render an account to them. Clauses contrary to this right of Ordinaries, added to last wills, are to be held as not added (can. 1515).
2. A cleric or religious who has received goods for pious causes in trust, whether by an act inter vivos or from a testament,[7] must make the Ordinary certain concerning his fiduciary commission and indicate to him all goods of this kind, whether movable or immovable, with the burdens attached. But if the donor has expressly and altogether forbidden this, let him not accept the fiduciary commission (can. 1516, § 1). The Ordinary must require that fiduciary goods be placed safely and watch over the execution of the pious will according to the norm of can. 1515 (can. 1516, § 2). When fiduciary goods have been committed to some religious, if indeed the goods have been assigned for helping the churches, inhabitants, or pious causes of a place or diocese, the Ordinary mentioned in §§ 1-2 is the Ordinary of the place; otherwise, the Ordinary is the proper Ordinary of the same religious (can. 1516).

"To exercise its power the Holy See uses, in the internal forum, for occult cases, the Sacred Penitentiary; in the external forum, the Sacred Congregation of the Council and the Fabric of St. Peter; for mission places, the Sacred Congregation of Propaganda Fide; for religious, the Sacred Congregation for Religious; and, unless we are mistaken, after the declaration of December 7, 1922 (*Periodica* XII, 43 ff.), which decrees this about alienations, the Sacred Consistorial Congregation for the episcopal mensa, and the Sacred Congregation of Seminaries and Universities, for Seminaries."[8]

V. Change of last wills. The reduction, moderation, and commutation of last wills, which must be done only from a just and necessary cause, are reserved to the Apostolic See, unless the founder has expressly granted this power also to the Ordinary of the place. But if, because of diminished revenues or another cause, without any fault of the administrators, the execution of the burdens imposed has become impossible, then the Ordinary also, after hearing those whose interest is involved, and preserving the will of the founder in the better way in which it can be done, will be able likewise to diminish the same burdens equitably, with the exception of the reduction of Masses, which always belongs solely to the Apostolic See (can. 1517).

[1] Schmalzgrueber, *Ius ecclesiasticum*, t. I, p. III, tit. XXVI, n. 43, 2 and 3.

[2] Sacred Penitentiary, June 23, 1844, and January 10, 1901.

[3] Thus Retzbach, *Die Verbindlichkeit formloser letztwilliger Verfuegungen zu frommen Zwecken nach dem alten und neuen Kirchenrecht*.

[4] Pontifical Commission, February 17, 1930 (*Acta Apostolicae Sedis* 1930, p. 176). The Code uses a prudent word when it says that heirs are to be admonished, lest by too great insistence good faith be uselessly disturbed, or difficulties be raised in the civil forum (Vermeersch, *Epitome*, II, 835).

[5] The things to be said concerning donation, or rather concerning disposition in favor of a pious cause, should be consulted.

[6] Cap. *Relatum*, II, De Test. (III, 26).

[7] For example, a sum of money donated or bequeathed with the obligation of handing it over to a pious institute.

[8] Vermeersch, *Epitome*, II, 836.

Scholion II. Practical Warnings

827 **I.** Per se there is no obligation of making a testament; per accidens there can be, for example so that disputes may be avoided.

II. Generally, it is to be dissuaded that, with blood-relatives passed over, all things be left to a pious cause. Indeed, there is an obligation of piety, and a grave one, of leaving one's goods to that extent to brothers, sisters, and spouse, insofar as it is necessary for relieving their grave need. With respect to more remote and needy relatives there is no grave obligation (St. Alphonsus, *Theologia Moralis*, III, 946; *Homo Apostolicus*, tr. 10, n. 237; *Praxis Confessarii*, n. 233).

III. Several diocesan synods rightly advise that clerics make a testament in good time; but they discourage them from making it in favor of a maidservant. Rather, through donations inter vivos or through a legacy, let them remunerate services rendered.

Chapter II. On Commutative Justice in Contracts

We must treat first of contracts generally, then of contracts specifically, after first noting these things from the Code of Canon Law: those things which civil law establishes in the territory concerning contracts, both in general and in species, whether named or unnamed, and concerning payments, are to be observed by canon law in ecclesiastical matter with the same effects, unless they are contrary to divine law or something else is provided by canon law (can. 1529).

Article I. On Contracts Generally

We shall treat: 1° of the notion and division of contract; 2° of the subject; 3° of the object and cause; 4° of the intrinsic form, or of consent; 5° of the extrinsic form; 6° of the effects of a contract.

§ I. On the Notion and Division of Contract

828 **I. Notion.** A contract is the consent of two or more persons to some agreement, by which each party or one party binds himself to it. It differs from a mere convention, which is the consent of two or more persons to some agreement, without any one of them binding himself.

829 **II. Division.** Contracts are chiefly distinguished:

1. Into named and unnamed, according as it enjoys a proper name in law, or lacks one. Unnamed contracts are: **Do ut des**, I give that you may give; **Do ut facias**, I give that you may do; **Facio ut des**, I do that you may give; **Facio ut facias**, I do that you may do.
2. Into unilateral and bilateral, according as only one party or each party undertakes an obligation.
3. Into gratuitous, onerous, and mixed. A contract is **gratuitous** when one party furnishes an advantage to the other gratuitously. It is **onerous** when each party binds himself to an equivalent or nearly equivalent burden. It is **mixed** when one party binds himself to a burden which is compensated by the other party only in part, as if something is given under a relatively light burden.

Corollary. The division of contracts into unilateral and bilateral almost, but not wholly, coincides with the division of contracts into gratuitous and onerous. The former division regards only the obligation of one party or both parties; the latter also regards the mutual compensation of the burden undertaken. Hence, for example, a donation without an added burden is a gratuitous and unilateral contract; lease-hire is an onerous and bilateral contract; commodatum is a gratuitous and bilateral contract.

4. Into consensual and real, according as in its species it is perfected by consent alone, as buying-selling, or in its species is not perfected without delivery of the thing, as a mutuum.
5. Into express or explicit, and tacit or implicit, according as consent is manifested by word or by writing, or is gathered from some fact, for example from the undertaking of some office. A tacit contract is rather often called a quasi-contract by theologians.[1]
6. Into solemn and non-solemn, according as for its validity some certain form prescribed by law is required or not required.
7. Into vested and naked, according as it admits or does not admit an action in court.

[1] By jurists a quasi-contract is called a licit act of a human being which does not include mutual consent, but to which law attaches the rights and obligations of a contract, as if someone without a mandate conducts the affairs of another who is absent.

§ II. On the Subject of Contract

830 **I. Persons capable or incapable.** Capable of contracting are all who enjoy the full use of reason, unless they are excluded by ecclesiastical or civil law. The reason is that the full use of reason suffices for giving consent, by which a contract is constituted. Which persons are excluded by ecclesiastical law, canonists teach; which by civil law, see in the civil Code.

831 **II. Consequences of incapacity.** Contracts entered into by one civilly incapable are commonly made void in this sense, that they can be rescinded by the judge in a case in which rescission is legitimately sought. Civil law should teach who can seek rescission.

Corollary I. Incapable persons - and others who can seek rescission - if they have acted in good faith, licitly seek rescission of the contract. Nevertheless, it is not equitable that rescission of the contract be sought if there is question of contracts which commonly are entered into with an incapable person even by prudent and upright persons. The aforesaid can likewise use an exception, that is, deny execution of the contract; nor does the natural validity of the contract stand against this assertion, because no one is bound to furnish what he can immediately recover by petitioning the judge for rescission of the contract. If they have acted in bad faith - for example if the incapable person

pretended himself capable, or contracted with the intention of later seeking rescission of the contract with damage to the other - they are bound at least to repair the injury inflicted on the other.

Corollary II. One who has contracted with an incapable person can stand by the contract until the right of the incapable person is legitimately urged.

§ III. On the Object of Contract

The object can be distinguished as twofold, remote and proximate. By **remote** we mean that about which consent is concerned, as a horse, wheat, and so forth; by **proximate** is understood that to which the parties consent with respect to the remote object, as the buying-selling of a horse, of wheat, and so forth. Now then:

832 **I. The remote object must be:**

1. Placed in human commerce; but what things are placed outside commerce by natural law, see n. 766; what things by ecclesiastical law, n. 625; what things by civil law, consult the Code of one's country.
2. Determinate, at least with respect to species; with respect to quantity let it at least be determinable. The reason is that otherwise the contract would be illusory, as if someone should say that he sells some plant.
3. Proper to one of the contracting parties, at least if there is question of a thing determined in the individual, and it is disposed of absolutely. For nothing prevents someone from selling to another a thing determined only with respect to species, for example wheat, which he himself must still procure for himself. Nor does the condition proceed if someone contracts in the name of another, for example as mandatary.
4. Estimable by price, at least insofar as something is sold or quasi-sold to another.

Corollary. A thing already owed to the other contracting party cannot be sold or quasi-sold to him, if it is owed to him from justice, because then no right is conferred which the other does not already enjoy. Otherwise, if it is owed to the other contracting party from another virtue, because then a strict right is conceded to him who lacked it (St. Alphonsus, III, 713; IV, 216).

833 **II. The proximate object must be:**

1. Possible, at least physically. Someone can indeed oblige himself to an act morally impossible, but he is presumed not to have done this. If the thing is partly possible, the contract subsists for the possible part, except in the case in which the thing is indivisible, either by its own nature or from the intention of the contracting parties.
2. Honest, because no one can oblige himself to something dishonest. But this requisite must be discussed more fully, and it must be investigated more exactly to what extent a contract concerning a prohibited object has force, for example concerning servile work to be done illicitly on a feast day, concerning fornicatory or adulterous intercourse, and so forth. Now then, with natural law considered, this must be said:

a) If the prohibited work has not yet been performed, the contract is weak at least to this extent, that each party can and must revoke consent; but once consent has been revoked by at least one party, the

contract vanishes, so that, even if one party performs the dishonest work, nevertheless the other is not bound to pay the price.

b) If the prohibited work has been performed, and consent has not previously been revoked, the obligation of paying the price is commonly admitted if there is question of a work prohibited only by positive law; for this payment, in our opinion, the same reason can be alleged as for a work intrinsically evil. It is added, however, that in the case no difficulty can be taken from the fact that the intrinsically evil work is not estimable by price.

It is controverted if there is question of a work intrinsically evil. Some deny the obligation of paying the price, because an intrinsically evil work is not saleable, as not estimable by price, neither insofar as it is a sin, nor insofar as it is laborious, dangerous, or pleasurable, because these are inseparable from sin. It is added that a contract, plainly null from the beginning, cannot become valid through the completion of the work. Others admit the contrary, because it is not evident that the act of the one promising the price and the act of the one accepting the promise, as persisting once the work has been fulfilled, do not obtain their effect. Nor, in this opinion, is the contract plainly null from the beginning, because the effect is produced by force of the acts placed and not retracted in due time. St. Thomas seems to adhere to this opinion (II-II, q. 32, a. 7; q. 62, a. 5, ad 2; q. 87, a. 2, ad 2). If, however, civil law makes contracts of this kind void or renders them rescindable, it certainly can be urged by the one promising the price.

St. Alphonsus deservedly regards each opinion as sufficiently founded. But while doubt stands, one can stand in favor of the possessor; in other words, one who has not yet paid the price is not bound to it; one who has received the price can retain it (St. Alphonsus, III, 172). This, however, does not prevent one who paid the price, if he can, from recovering it by judicial action, because he was probably not bound to pay. But he cannot use occult compensation, because the debt is not certain.

The Sacred Penitentiary[1] responded: "A penitent woman is not to be compelled but exhorted, according to the judgment of a prudent confessor, to expend the price of prostitution for pious uses."

Question. Whether a woman, to whom a man has given something to elicit intercourse, can retain the thing given if intercourse has been denied.

Response. Affirmatively, if the man added no condition, because the donation is judged wholly liberal, made for alluring the woman. Nevertheless acceptance will scarcely be able to be excused from scandal (St. Alphonsus, III, 712, 734, 736).

[1] April 22, 1822.

§ IV. On the Intrinsic Form of Contract, or on Consent

The very nature of contract sufficiently signifies the necessity of consent, and of consent furnished by each party and simultaneous (n. 828). Hence the following do not suffice: 1° interpretative consent, that is, consent which would be present if this or that had place, which in reality does not have place; 2° only presumed consent; if consent is only presumed, it is lacking in reality.

These things having been noted, we shall speak distinctly about the qualities and about the obstacles of consent.

Point I. On the Qualities of Consent

834 Consent must be internal, fully deliberated, external and intimated to the other party, and indeed by the contracting party or in his name, and finally simultaneous. It is said:

I. Internal. If it is not internal, consent or volition is lacking in reality. Therefore a fictitious contract is invalid, that is, one entered into externally but without the mind of contracting (St. Alphonsus, III, 709; VI, 832). One who by contracting fictitiously has inflicted damage on the other party is bound to repair it, even, if it cannot otherwise be repaired, by now truly contracting (St. Alphonsus, III, 709; VI, 832, 833).

Corollary I. One who wills to contract as others are accustomed to do truly contracts, even if he merely does not know that an obligation arises, because he implicitly wills the obligation. The same seems to have to be said of him who wills to contract as others are accustomed to do, although he judges that an obligation does not arise, because by willing the contract he also seems implicitly to will the obligation, which he does not explicitly exclude.

Corollary II. One who wills to contract, but has the mind of not obliging himself, seems not to contract, because he excludes that without which a contract cannot exist; hence those two volitions destroy each other. Indeed even the other volition, as more particular, seems to prevail over the former (St. Alphonsus, III, 201).

Corollary III. One who wills to contract validly contracts, even if he has the mind of not fulfilling the obligation; for the said volitions, as regarding diverse and separable objects, do not exclude each other.

II. Fully deliberated; for only an act of this kind can beget obligation and the acquisition of a right.

III. External; namely insofar as it must be intimated to the other party.

IV. Intimated to the other party, as follows:

1. The consent of the one offering the contract must be intimated to the other party. For the offerer cannot be bound with respect to the other party unless he has offered to the other party that by which he binds himself, that is, his own consent. But consent is offered to the other party through intimation.

2. The consent of the one accepting the contract must be intimated to the other party, as will be explained:

a) If there is question of an onerous contract, the answer is affirmative. For the acceptor, equally as the offerer, cannot be bound with respect to the other party unless he himself has offered to the other party that by which he binds himself, that is, his own consent; but consent is offered through intimation.

b) If there is question of a gratuitous contract, the answer is negative, because in the case the acceptor, with respect to the other party, is not bound or burdened by any obligation, so that the reason set forth above does not hold in the case.

Corollary. The offerer and the acceptor of a contract, for example of buying-selling, per se can revoke consent - for example consent given by letters - by a telegraphic message, as long as the consent has not yet become known to the counterparty. I said **per se**; for law, custom, or the manifest will of the offerer can bring it about that the offerer can no longer revoke consent without injury after it has

become known to the counterparty; for example, if someone offers and transmits to another a sum of money for buying a thing, he sufficiently indicates that he renounces the right of revoking consent.

V. Intimated to the other party by the contracting party or in his name; namely insofar as it must be intimated. The reason is that only the author of the consent can offer to the other party that by which he binds himself, that is, consent.

VI. Simultaneous with the other, because otherwise they do not truly come together into one. Nevertheless it suffices that one consents while the consent of the other endures.

Point II. On the Obstacles of Consent

835 The obstacles of consent are enumerated: ignorance, error, fraud, and fear. **Ignorance** is the mere absence of knowledge concerning some thing. **Error** is a false judgment concerning some thing or person. **Fraud** is the deliberate circumvention of another. Now those things which regard ignorance practically fall under those things which have force concerning error. Enough will be said about fraud where there will be discussion of error.

I. Error

836 **I. Division.** Error is distinguished:

1. Into substantial and accidental. **Substantial** error is had: 1° when the nature of the contract intended by one party is different from the nature of the contract which the other party intends, as if you accept something as a gift, when the other party intends to lend it for use; 2° when the object of consent, at least morally speaking, is different from the object of the present contract, that is, the object upon which the expression of consent is borne, as if you intend to buy a gem, and the expression of consent is borne upon glass; 3° error concerning the person with whom one contracts can be substantial only then when, as in matrimony, the person constitutes the object of the contract.

Others, however, speak thus with respect to error concerning the person: error concerning the person can be substantial or accidental. In matrimony it is always substantial, because the person itself is the object about which the contract is made. In other contracts error is substantial if the person is intended per se and principally, as commonly happens in gratuitous contracts; for example, if you give alms to Peter, thinking him to be poor, when he is rich. Error is accidental if the person is something secondary, which most often has place in onerous contracts, for example if you buy something from Paul the heretic, thinking him to be Catholic; sometimes it also has place in gratuitous contracts, as if you give alms to Peter the poor man, thinking him to be Paul.

Outside the cases enumerated above, error is accidental.

2. Into error which gave cause to the contract, and such as did not give cause to it, according as the contract, with the error set aside, would not have been entered into, or nevertheless would have been entered into.

837 **II. Influence upon the contract.** Error concerning the nature of the contract, as is clear, makes the contract void. Hence now let us speak about error which concerns the object of the contract. Now then:

1. Substantial error makes the contract void. For it brings it about that consent is borne upon an object different from the object of the present contract, that is, from the object upon which the expression of consent is borne. Therefore consent is lacking with respect to the object of this contract (St. Alphonsus, III, 714; cf. can. 104).

2. Accidental error effects these things:

a) It makes the contract void if the contracting party attaches his consent to the accident in such a way that it falls back into a condition sine qua non (cf. can. 104). Otherwise it does not make the contract void, because it does not prevent consent from being borne upon the object of the present contract. But the case of nullification occurs especially in error concerning the person, and indeed, that we may apply what others according to the things said in n. 836 hold as substantial error, if the person is intended per se and principally, as commonly happens in gratuitous contracts; for example, if you give alms to Peter, thinking him to be poor, when he is rich. Otherwise it must be said if the person is something secondary, which most often has place in onerous contracts, for example if you buy something from Paul the heretic, thinking him to be Catholic; sometimes also in gratuitous contracts, as if you give alms to Peter the poor man, erroneously thinking him to be a religious (St. Alphonsus, III, 737).

b) It renders the contract rescindable if the error was induced by fraud, and indeed by the other contracting party, and gave cause to the contract. Otherwise it does not render the contract even rescindable.

The reason for the former is that a contract induced by the fraud of the other contracting party involves an injury inflicted by the other contracting party; and this injury must be repaired by him. It is repaired by the fact that the contract involving the injury is removed, in other words rescinded. Therefore it must be rescinded, or at least rescission of it must be offered, by him who inflicted the injury; corresponding to this obligation is the right of rescinding in him who has suffered the injury. If the contract has already been given to execution, the injury is repaired by the fact that the deceived person is restored to his former state with respect to his things (St. Alphonsus, III, 715).

The latter involves three things, namely:

a) Accidental error does not render the contract rescindable if it was not induced by fraud, but, for example, inculpably or fortuitously, or by a non-free cause; because an injury, at least a formal one, to be repaired is lacking.

b) Accidental error does not render the contract rescindable if it was induced by the fraud of a third party. The reason is that injury to be repaired by the other contracting party, for example by Peter, is absent. But an injury inflicted by a third party, Paul, upon one contracting party, James, is not a reason why the other contracting party, Peter, can be deprived, by rescission of the contract, of the right acquired through the contract with James.

c) Accidental error does not render the contract rescindable if it did not give cause to the contract. For from the fact that, with the error excluded, the contract nevertheless would have been entered into, it follows that the contract, equally as other contracts entered into without error, was acceptable to the will; hence, equally as those other contracts, it must be held as firm and non-rescindable.

Nevertheless, observe that if the due equality between wage and price has been injured because of error, it must be repaired; and if fraud has been added, the deceiver is bound to repair also other

damages, if perhaps they have followed from the fraud (St. Alphonsus, III, 714 and 715).

Note 1. With respect to ecclesiastical matter, observe these words of can. 104: "In contracts error can give place to a rescissory action according to the norm of law"; likewise these words of can. 1684, § 1: "If someone ... circumvented by fraud ... has entered into a contract which is not null by the law itself, he can, ... once the fraud has been proved, obtain ... the rescission of the contract by the action which is called rescissory."

Note 2. What civil law establishes concerning error, see in the law of one's country.

II. Fear

838 **I. Notion.** Fear is a trepidation of mind on account of a present or future danger.[1]

[1] Thus Roman Law, L. 1, ff. *Quod metus causa*, IV, 2.

839 **II. Division.** Fear, with our matter considered, is distinguished:

1. Into grave and light. It is **grave** when the evil to be feared is grave and certainly or probably threatens. But the gravity of the evil must be taken, or judged, relatively, with age, sex, and the condition of the person to whom fear is instilled considered. It is **light** when a light evil threatens, or indeed a grave evil, but one that is little probable.

Reverential fear, insofar as it signifies confusion and trouble because of the indignation of a superior, is not grave. Nevertheless grave fear is had if "there are added either blows, or threats, or fear of some grave evil, for example hatred, long-lasting indignation, etc." (St. Alphonsus, 1056).

2. Into fear justly and unjustly instilled.

3. Into fear proceeding from within, from a necessary cause, from the other contracting party, or from a third party.[1]

4. Into fear instilled for extorting consent, or in order to the contract, or for another end.[2]

5. Into fear which gave cause to the contract, and fear which did not give cause to it.

[1] For example, a robber lies in wait for you; but you promise a sum of money to a passerby so that he may protect you.

[2] For example, someone threatens death to you from hatred; but you promise a sum of money to him so that he may withdraw from his purpose.

840 **III. Influence upon the contract.** Fear which so disturbs the use of reason that the act is not fully deliberated makes the contract void, as follows from the things said in n. 834. With these things set aside:

1. Fear, whether arisen from within, or from a necessary cause, or instilled justly or unjustly by a free cause, does not make the contract void. The reason is that fear does not prevent the contracting party from furnishing perfect consent. But by perfect consent a contract is intrinsically constituted (St. Alphonsus, III, 716; cf. can. 103, § 2). Nevertheless observe: 1° that some contracts entered into from grave and unjust fear are invalid by canon law, as, for example, a matrimonial contract; 2° that the same, according to many, holds for matrimony by reason of a special reason, even if only natural law is considered, as we shall explain in its own place.

Objection 1. Unjustly instilled fear makes a gratuitous contract void; for the matter about which one contracts in the case is liberation from unjust vexation, as if someone gives something to another

because the other threatens him with death. But liberation from unjust vexation, as already owed from justice, cannot be the matter of a contract.

Response. Liberation from unjust vexation is only in appearance, but not in reality, the matter about which the contract is made. For there is question of a gratuitous contract; but in a contract of this kind the matter is from only one party, for example from the one promising or giving, and is, for example, that which is promised or given.

Objection 2. Unjustly instilled fear makes a gratuitous contract void, because the cause of the contract is lacking, that is, the liberal mind to be shown.

Response. A liberal mind is the ordinary cause of a gratuitous contract; but it is not repugnant that from another motive, for example from fear of an evil otherwise threatening, something be promised or given.

2. Fear renders a contract rescindable if it was both unjustly instilled, and by the other contracting party, and gave cause to the contract. If one of the assigned conditions is lacking, fear does not render the contract rescindable.

The former is deduced from the fact that, in the hypothesis posited, one contracting party inflicted an injury on the other, which must be repaired by him. But it is repaired by the fact that the effect of the injury, that is, the contract, is removed or rescinded. Therefore the contract must be rescinded, or at least its rescission offered, by him who inflicted the injury; from which it follows that the contract can be rescinded at the will of the party who suffered the injury (St. Alphonsus, III, 717). If the contract has already been given to execution, the injury is repaired by the fact that the one who suffered fear is restored to his former state with respect to his things. But it makes no difference whether the fear was instilled for extorting consent or for another end, because in fact the contract was the effect of the injury. Moreover, if the thing has come to a third possessor in good faith, the one who suffered fear can seek the thing back from him, and it must be restored by him, because a thing taken away from its owner through injury remains bound to him (St. Alphonsus, III, 719). Except if, with positive law considered, the thing had been prescribed.

The latter involves three things, namely:

a) Fear does not render the contract rescindable if it proceeded from within or from a necessary cause; likewise if it was instilled by a free cause but justly. The reason is that an injury to be repaired is absent.

b) Fear does not render the contract rescindable if it was instilled by a third party. The reason is that injury to be repaired by the other contracting party, for example by Peter, is absent. But an injury inflicted by a third party, Paul, upon one contracting party, James, is not a reason why the other contracting party, Peter, can be deprived, through rescission of the contract, of the right acquired through the contract with James.

c) Fear does not render the contract rescindable if it did not give cause to the contract. For from the fact that, with fear excluded, the contract nevertheless would have been entered into, it follows that the contract, equally as other contracts entered into without fear, was acceptable to the will; hence, equally as those other contracts, it must be held as firm and non-rescindable.

Note 1. Light fear is presumed not to have given cause to the contract; and account of it is not had in the external forum (St. Alphonsus, III, 718; VI, 844).

Note 2. With respect to ecclesiastical matter, observe these words of can. 1684, § 2: "If someone, moved by grave fear unjustly instilled ... has entered into a contract which is not null by the law itself, he can, once the fear has been proved, obtain ... rescission of the contract by the action which is called rescissory."

Note 3. What civil law establishes concerning fear, see in the civil Code.

Scholion. Lesion

841 **I. Notion.** Lesion consists in this, that the equality which is required in onerous contracts is not preserved.

842 **II. Influence upon the contract.** Lesion, with natural law considered, per se neither makes the contract void nor renders it rescindable, but brings with it the obligation of restoring equality. I said **per se**, because at the same time there can occur error or fraud, which renders the contract invalid or rescindable.

With respect to ecclesiastical matter, observe can. 1684, § 2: "One who has suffered grave lesion beyond half from error in a contract can, within two years, obtain rescission of the contract by the action which is called rescissory."

What civil law establishes concerning lesion, see in the civil Code.

§ V. On the Extrinsic Form of Contract

843 **I. Notion.** By the extrinsic form of a contract are understood the solemnities, according to law, to be employed in entering at least some contracts.

844 **II. Division.** 1. The extrinsic form of a contract is divided:

1. With Canon Law considered, into essential and accidental, according as it is required for validity or only for liceity; thus the presence of witnesses and of the pastor for matrimony is essential; but that matrimony must be entered into publicly pertains to the accidental form.
2. With civil law considered, some solemnities are sometimes required for merely proving the contract; others are in some way necessary for validity, as we shall explain more fully in the scholion.

§ VI. On the Effects of Contract

A contract, whether concerning a thing to be given, or concerning a thing to be done or omitted, brings with it the obligation of executing the contract and of repairing damages following from neglect of execution.

845 **I. The obligation of executing the contract;** this obligation, since contracts must be regarded as entered into in good faith, extends not only to those things which are expressed in explicit words, but also to those things which equity, usage, or law postulates for the nature of the contract.

What if, in the time which intervenes between the contract entered into and its execution, the value either of money or of things is changed?

Response 1. If there is discussion of ordinary or, so to speak, normal changes, the contract must be put into execution just as it lies, because the contracting parties are judged to have consented to changes of this kind.

Response 2. If there is question of a greater change, this must be said:

1. If law, or an express pact, or custom assigns a norm, one must stand by these. With respect to law or pact the matter is clear; with respect to custom it follows from the fact that the contracting parties are judged to have contracted according to custom.
2. With law, express pact, and custom set aside, the one who suffers damage by executing the contract is bound to undergo this if there is question of a case which could be foreseen or feared; otherwise, if there is discussion of a case which could not be foreseen or feared, as an earthquake. The reason is that every contract entered into in the mode assigned in the question has something of an aleatory contract; and, this being posited, the former cases are judged to be comprehended in the contract, but not the latter. We shall apply these things in their own place to several contracts.

846 **II. The obligation of repairing damages.** But in order that this obligation arise from neglect of the contract, there is required either theological fault, or a special pact, or juridical fault together with the sentence of a judge.

These things having been noted concerning the effects of contracts in general, we shall speak specifically about the effects of qualified contracts, namely about the effects of a contract entered into under a condition, under a mode, for a cause, for a day, under a penalty, and confirmed by oath.

Point I. On the Effects of a Contract under a Condition

847 **I.** A condition concerning the past[1] or concerning the present[2] brings it about that the contract immediately subsists or does not subsist, according as the condition has been fulfilled or not fulfilled. But execution of the contract is suspended until it is known whether the condition has been fulfilled or not.

[1] For example: if your father has died, I give this thing to you.

[2] For example: if you are a minor, I confer this or that on you.

848 **II.** A condition concerning the future operates thus:

1. A condition concerning a future necessary event,[1] as known as such, is presumed to be interpreted in such a way that it does not suspend the existence of the contract, but only its execution; hence the contract immediately subsists.
2. A condition concerning a future contingent event:

a) If it is suspensive,[2] it effects: 1° that the value of the contract and the obligation of executing it are suspended; 2° that the debtor must await the event of the condition and not impede it; 3° that, once the condition has been fulfilled, the contract becomes absolute without new consent.

Question. What does revocation of consent, made before the condition has been fulfilled, effect?

Response. Consent revoked in this way prevents the contract from being perfected when the condition has been fulfilled, since the will ceases without which the contract cannot be perfected. If, however,

consent is revoked illegitimately, the obligation of furnishing that which the contract involved per se persists by force of the obligation of repairing the injury.

b) If it is resolutory,[3] it effects: 1° that the contract immediately has force and must be put into execution; 2° that fulfillment of the condition must be awaited and not impeded; 3° that, once the condition has been fulfilled, the contract ceases, and things must be restored to their former state; 4° that, if the condition fails, the contract becomes absolute; but the condition is judged to fail when it becomes certain that it will never be fulfilled.

[1] For example: I give you a watch if I die.

[2] For example: if that business succeeds, I give you 100 florins.

[3] I give you 100 florins until you have arrived at a better state.

849 **III. Things to be observed concerning certain particular conditions.**

1. A condition concerning an impossible thing[1] effects that the contract is null; one who contracts thus is not judged to will to contract. If, however, the condition is added only in jest, the contract is valid.
2. A condition, merely suppositive,[2] concerning a base thing[3] effects that the promisor can and must revoke the promise before the base act has been performed; once it has been revoked, the contract wholly collapses. If he has not revoked it, in our opinion he is bound, at least per se, after the condition has been fulfilled, to stand by the things promised, because a conditioned contract, although under a base condition, does not seem to be plainly null from the beginning, and therefore, once the condition has been fulfilled, to obtain effect.[4]
3. A condition contrary to the substance of the contract[5] makes the contract void if it is truly placed as a condition. For consent is lacking with respect to the object of the contract, since it is destroyed by the condition.

[1] I give you 100 florins if you stop the course of the sun.

[2] It is merely suppositive if the condition is not added as one to be placed.

[3] I promise you 10 florins if you admit intercourse.

[4] Those things which according to the things said in n. 833 militate against a contract under a base condition to be placed can by no means be urged by the same right against a contract under a merely suppositive base condition.

[5] I contract with you if you renounce the right to begetting offspring.

Point II. On the Effects of a Contract under a Mode

850 **I. Notion.** A contract under a mode is had when to a contract substantially complete there is added by one contracting party a burden to be fulfilled by the other from justice; as if someone gives another some sum of money for buying books, or sells someone a house on this condition, that he himself should dwell in it.

A contract under a mode is not had when a burden is not imposed, or is not imposed from justice, but is added only for the sake of stimulating; as if a father on the occasion of a feast gives something to his son, adding that he gives it for this end, that in the future he may study well.

A contract under a mode differs from a contract under a condition; for the latter depends, as to value, upon the condition, whereas a contract under a mode involves a new obligation being added to a valid

contract.

Note 1. A mode contrary to the substance of the contract makes the contract void if consent is in reality attached to it, since it excludes consent with respect to the object of the contract.

Note 2. An impossible or base mode can be held as not added, unless it is established that consent was attached to it. For an impossible mode is presumed not to have been added seriously, but a base mode is imposed not by way of obligation but of allurement or seduction.

851 **II. Effects.** 1. One who accepts a contract under a possible and honest mode is bound from justice to fulfill the mode, as follows from what has been said. If it is culpably not fulfilled, restitution per se must be made to the amount of the interest in the mode being observed.

2. A mode not fulfilled does not render the contract rescindable. For the faculty or obligation of rescinding the contract would have to arise from the injury which neglect of the mode would involve. But from that injury there arises only the obligation of restoring to the amount of the interest in the mode being observed. But if the said injury could not be sufficiently repaired except by rescinding the contract and restoring things to their former state, per accidens, so to speak, the contract would become rescindable.

Often, however, there will not be a contract under a mode strictly so called, but from the mind of the contracting parties a mode, improperly so called, is added by way of a condition; if this is not fulfilled, the contract collapses or is rendered rescindable.[1]

What the party whose interest is involved can do, with civil law considered, if the mode is not fulfilled, see in the Code of one's country.

[1] From cap. *Verum*, L. 4, tit. 5, *De cond. appos.*, a donation for a pious cause does not collapse because of a mode not observed, unless the donor established this; but then a resolutory condition rather than a mode is had.

Point III. On the Effects of a Contract for a Cause

852 **I. Notion.** A contract for a cause is had when in the contract there is expressed the motive on account of which it is entered into, for example: I give this to you because you have done this or that for me.

853 **II. Validity.** 1. If the sole or principal cause does not subsist, the contract is invalid. The reason is that substantial error is had; in other words, the object of consent, for example a donation as remuneratory or as alms, is different from the object of the present contract, for example a donation which is not remuneratory or alms, or at least consent is attached to the sole or principal cause.

2. If a secondary cause does not subsist, this must be said: if it did not give cause to the contract, the contract is valid and non-rescindable; and this holds even if the error was induced by fraud and by the other contracting party. If it gave cause to the contract, and was induced by fraud by the other contracting party, the contract is valid, but rescindable (n. 837).

III. The effect or obligation is easily drawn out from what has been said.

Point IV. On the Effects of a Contract for a Day

854 **I. Notion.** A contract for a day is had when a time certainly future is assigned at which the contract is to be executed. I said **certainly future**; for if it is uncertain whether the time will ever be

future, as if you say, "when you have recovered from the dangerous illness," a contract under a suspensive condition is presumed to be intended.

II. The effects are sufficiently drawn out from the notion; besides this, let the law of one's country be consulted.

Point V. On the Effects of an Alternative Contract

855 **I. Notion.** An alternative contract is had when someone is bound to furnish one out of two or more things, so that, once one has been furnished legitimately, he has satisfied. I said **legitimately**, that is, at his own will if the choice is in the hands of the debtor, and at the will of the creditor if it is in the hands of the creditor.

II. The effects are sufficiently drawn out from the notion; besides this, let the law of one's country be consulted.

Point VI. On the Effects of a Contract under a Penalty

856 **I. Notion.** A contract under a penalty is had when a fine is added to the contract, to be paid for omission or delay of execution.

857 **II. Effects.** 1. If the penalty has been established because of omission, the creditor can demand either execution of the contract or the penalty; if it has been established only because of delay, he can demand both, that is, both execution of the contract and the penalty.

2. The penalty does not oblige unless there has been at least juridical fault; theological fault is not required.

3. The penalty is owed before the sentence of the judge, yet not before it is sought by the creditor; for such is presumed to be the intention of the contracting parties.

Point VII. On the Effects of a Contract Confirmed by Oath

It suffices, but it is also useful, to apply to a contract the things which elsewhere (n. 689) we said about an oath added to an act taken more generally.

858 **I. An oath added to an invalid contract does not render it valid;**[1] nor, when added to a rescindable contract, does it render that contract non-rescindable; since an oath does not change the nature of the contract, according as that nature exists of itself or from law. Refer here these words of can. 1318, § 2: "But if an oath is added to an act directly tending to the damage of others or to the prejudice of the public good or of eternal salvation, the act obtains no firmness from this."

II. An oath added to an invalid contract does not induce an obligation, because an oath added to an act follows the nature and conditions of the act to which it is added (can. 1318, § 1), or because the accessory follows the principal (St. Alphonsus, III, 180).[2]

III. An oath added to a valid contract adds the obligation of religion to the obligation of the contract; nevertheless it begins and ceases to oblige with the contract to which it is added. The former is clear both from Sacred Scripture[3] and from can. 1317, § 1, as well as from the things said about an oath in the treatise on the second precept (n. 689). The latter is drawn out from the fact that, as was said, an oath added to an act follows the nature and conditions of the act to which it is added.

[1] With respect to Roman Law, many judge that a contract invalid per se by positive law is convalidated by an added oath. Others extended the same to Canon Law (cf. St. Alphonsus, III, 177); but these things no longer seem to have force in Canon Law (cf. book III, chapter II, on the oath, coll. 6, 6°).

[2] Nevertheless it is not repugnant that, by an oath added to an invalid contract, an obligation be induced; for strictly speaking someone can oblige himself independently of the value of the act to which the oath is added. But these things are nearly hypothetical.

[3] Matt. 5:33.

Scholion. On a Contract Void by Civil Law

859 **I. Notion of a contract void by civil law.** A contract void by civil law can be taken in a threefold sense: 1° for a contract null in the forum of conscience; 2° for a contract only civilly null; 3° for a contract null neither in the forum of conscience nor civilly, but to be annulled by the judge.

860 **II. Power of voiding a contract.** The civil legislator also can void contracts completely, so that they are null even in the forum of conscience. For he can do those things which especially conduce to the public good. But it especially conduces to the public good to void some contracts, that is, to establish certain things without the observance of which contracts valid per se are completely voided, or at least are subject to a complete voiding to be pronounced by the judge. I said, **it especially conduces to the public good,** and so forth, namely for providing for the security of contracts, for preventing lawsuits about value from arising, and for settling those that have arisen.

861 **III. The manner in which contracts are voided by civil law.** 1. In most kingdoms, in practice one must act as if contracts are not deprived of natural value before the sentence of the judge. The reason is that the opinion which thus, almost everywhere, interprets laws theoretically is wholly safe in practice. Nevertheless, note this: a contract void by law is already deprived of value before the sentence of the judge, even in the forum of conscience, if the contracting parties intend to consent only to that extent to which the contract is firm also in the civil forum.

2. Through the sentence of the judge, a contract is deprived even of natural value; this all theologians admit.

Corollary I. The things which have been said about contracts also hold for other acts, especially for a testament made void by law (cf. n. 822).

Corollary II. It is licit for him to whom this faculty is conceded by law, provided he has previously proceeded in good faith, to seek rescission of the contract from the judge. But it is licit for the other party to stand by the contract until it is rescinded or is foreseen that it will be rescinded. If this is foreseen with certainty, he is bound from charity, so that expenses may be avoided, to yield already before the sentence of the judge.

Corollary III. It is not licit before the sentence of the judge to use occult compensation, because the contract persists until it is rescinded.

Article II. On Contracts in Species

§ I. On Promise

862 **I. Notion.** A promise is a giving of faith to another concerning something to be given or done. It differs both from a simple proposal and from a donation. It is said:

1. From a simple proposal; this is the mere will of doing or omitting something. Moreover, those things which verbally seem to be promises are often in reality simple proposals, insofar as they are not made with the mind of obliging oneself, but only of testifying to the present will; but a simple proposal does not oblige, not even from truthfulness, but at most from constancy, if there is no reason for changing; which is rare in common and free proposals.
2. From a donation, which is a giving of a right, whether in a thing or to a thing, made gratuitously to another.

863 **II. Division.** A promise can be distinguished into a promise properly so called and one improperly so called. A promise properly so called is the one which we have defined. One improperly so called is a promise made with the intention of conferring on someone a right to a thing; but a promise of this kind, strictly speaking, is a kind of donation. Now then:

1. A promise improperly so called is had or is presumed to be had: 1° when someone expressly wills to oblige himself from justice; likewise, if expressly under grave obligation, because a promise properly so called obliges only under light obligation; 2° when an oath, or a public writing, or a promissory note, or witnesses are added to the promise; 3° when neglect of the promise would manifestly tend to the damage of the promisee, as if someone promises to a poor man, wishing to buy a horse, that the price will be given as a loan (St. Alphonsus, III, 720); 4° when a mutual promise has place, as in betrothals.
2. Outside the aforesaid cases, a promise properly so called is had or is presumed to be had; namely: 1° if someone wills to oblige himself expressly from fidelity; 2° if someone wills simply to oblige himself, and does not add an oath, a public writing, a promissory note, or witnesses. Moreover, people commonly will simply to oblige themselves.
3. In doubt as to what kind of promise was present, practically one must stand in favor of a promise properly so called.

864 **III. Obligation.** 1. A promise properly so called induces an obligation of fidelity, as is sufficiently drawn out from the notion handed down. But the obligation of fidelity is only light, because neglect of it does not involve the injury of a right properly so called, and therefore brings with it only a light injury of the social order. St. Thomas says thus: "It must be said that according to honesty, from any promise a man is obliged to a man" (II-II, q. 88, a. 3, ad 1).

2. A promise improperly so called induces an obligation of justice, and one grave from its own kind; this is clear from the notion explained. But note that by St. Alphonsus and others, "to constitute grave matter in a promise there is required matter four times greater than in mortal theft; because the promisor deals with his own, the thief with another's" (III, 720).

865 **IV. Cessation of the obligation.** The obligation of a promise ceases: 1° by remission of the promisee; 2° if the thing promised becomes impossible, illicit, or useless to the promisee; 3° if in a reciprocal promise the other party does not stand by what was promised; 4° if there supervenes a notable change of circumstances which, if it had been foreseen, would have prevented the promise; for the one promising is not judged to have obliged himself for such an event (St. Thomas, II-II, q. 110, a. 3, ad 5; St. Alphonsus, III, 720). Therefore it ceases if, for example, the promisee becomes rich from being poor; if he shows himself ungrateful, and so forth; likewise it can cease, for example, because of the misfortune of the one promising, and so forth.

Corollary I. The obligation of a promise passes to the heirs of the one promising, and indeed by the same title, if there is question of a real promise; but it does not pass if there is discussion of a personal promise (n. 649).

Corollary II. The right or quasi-right arising from a promise passes to the family, the heir of the promisee, if the promise is judged to have been made with a view not only to the promisee, but also to his family.

Corollary III. A promisee to whom satisfaction is not made cannot use occult compensation, if the promise was properly so called, because such a promise confers no strict right.

§ II. On Donation

866 **I. Notion.** Donation is a gratuitous giving, whether of a thing or of a right to a thing, made to another. There was added **or of a right to a thing**; but concerning a donation of this kind, which we have also called a promise improperly so called, enough was treated in n. 863 and following.

867 **II. Division.** Donation is especially divided:

1. Into donation inter vivos and mortis causa. The former is had when someone irrevocably gives something. The latter, when he gives revocably, so that the donation does not become irrevocable except after the death of the donor; it differs from a testament insofar as the latter is made in the final instant of life, whereas the former is made in the course of life.
2. Into purely liberal and antidoral, or remuneratory, according as it supposes no obligation or an obligation of gratitude.

868 **III. Capacity of giving.** Capable of giving are all who enjoy the full use of reason, and have goods of their own and the administration of them, unless they are excluded by law. But who are excluded by law, and to what extent, see in the ecclesiastical as well as the civil Code.

Corollary. One who neither can nor will be able in his own time to pay debts gives validly indeed, but unjustly. He gives validly, because he has ownership of the thing which he gives. He gives unjustly, because by giving he renders himself more incapable of paying debts (St. Alphonsus, III, 722).

869 **IV. Capacity of acquiring from donation.** All human beings who are not excluded by law can acquire from donation, even infants and the perpetually insane. Nevertheless, one who accepts a gift from him who is absolutely unequal to paying debts seems to be guilty of injustice and to be obliged to restitution, if he accepts conscious of the debtor's inability, and this holds even if he has not induced him to give. Thus St. Alphonsus, Cajetan,[1] St. Antoninus,[2] and the much more common authors. But the reason is that by accepting he efficaciously cooperates in increasing the debtor's inability, and thus in inflicting injury upon the creditors; "for the contract of donation does not consist in the will of the donor alone, but also in the will of the acceptor, by which the contract is constituted, and without which no alienation or donation exists" (St. Alphonsus, loc. cit.). Nevertheless:

1. If he proceeded in good faith, he is bound only to restore the thing accepted, if it exists; or, if it no longer exists, insofar as he has been made richer.
2. One who doubts whether the donor is unequal to paying debts licitly accepts and retains the gift; he also licitly retains it if afterward he doubts whether at the time of donation he was unable.

[1] *Opuscula*, tom. 2, tr. 8, q. 4, v. *Ad obiecta*.

[2] Part 2, tit. 1, cap. 9, §§ 11 and 12.

870 **V. Intrinsic form of donation.** The intrinsic form of donation is constituted, as in every contract (n. 834), by the consent of each party, in the case the consent of the donor and the consent or acceptance of the donee (St. Alphonsus, III, 725). It is said:

1. **Acceptance of the donee;** for "no one by natural law can acquire any right in the things of another without his own consent; wherefore, without acceptance of the donation, no right over the thing given is transferred to the donee; and therefore, since the giver remains immune from any obligation before acceptance of the donation, he himself will indeed be able to revoke it at his pleasure" (St. Alphonsus, loc. cit.).

The same, for the same reason, has force even if there is question of remission or condonation of a debt made by way of donation. Indeed, the creditor can, without the consent of the debtor, and even with him resisting, renounce his right; and once this is posited, there follows for the debtor a right of retaining his own thing. But this is not done by way of donation, or of an act by which the creditor grants something to the debtor.

2. **Acceptance of the donee;** by which the mandatary of the donee is not excluded, since he acts in his place, and therefore can accept in his name; indeed, according to St. Alphonsus and others, anyone, as gestor of affairs, can accept a donation made to a church or to some pious cause (III, 726).

It is disputed 1 whether, when the donor has died before acceptance, the donee can nevertheless validly accept the donation. Some deny this, because the will of the acceptor can no longer be united with the will of the giver, since that will has expired. Others affirm this, because in the case the will of the donor juridically persists in the disposition itself that has been made, as was said about the will of the testator (n. 814). St. Alphonsus regards each opinion as sufficiently founded (III, 729); and, this being admitted, practically I would permit each party whose interest is involved to pursue his right in an orderly way. If, however, civil law requires acceptance for the validity of the donation, certainly before the death of the donor, the party whose interest is involved can appeal to this law, and thus acquire for himself the thing about which there is question.

It is disputed 2 whether, when the donee has died before acceptance, the heir of the donee can accept. This must be denied, because the heir succeeds into the real rights of the deceased, but not into personal rights, such as the right of accepting a donation. Except if the donation is judged to have been made also with a view to the family, the heir of the donee; in which case the family itself also is held as the donee (St. Alphonsus, III, 731).

It is disputed 3 whether a mandate of giving expires by the death of the mandator in such a way that it can no longer be put into execution. Some affirm this, because a mandate is simply extinguished by the death of the mandator. Others deny this, because in their opinion a mandate can juridically persist after the death of the mandator; St. Alphonsus regards this opinion as solidly founded (III, 730). While the doubt stands, practically I would permit the mandatary to execute the mandate; yet likewise I would permit each party whose interest is involved to pursue his right in an orderly way. If, however, civil law favors some party, it is deservedly appealed to.

871 **VI. Extrinsic form of donation.** With natural law alone considered, it suffices that consent be externalized either by words, or by writing, or by some fact; and therefore neither a public instrument

nor delivery of the thing is required. To what extent these things are required by civil law, learn from the Code of one's country.

872 **VII. Rescission of donation.** 1. A donation inter vivos, once perfected, cannot be rescinded by the donor, because the donee has acquired a right in the thing, of which he can no longer be despoiled by the donor. But positive laws, which you should inspect, establish cases in which the judge can rescind a donation; and it is licit to invoke this sentence of the judge. Moreover, positive laws can also bring it about that in some cases a donation collapses by the law itself; hence with respect to this case also let the law of one's country be consulted.

2. A donation mortis causa, as is clear from the notion handed down, can be revoked by the donor (St. Alphonsus, *Homo Apostolicus*, tr. 10, n. 134).

Note. Prelates and rectors should not presume to make donations from the movable goods of their churches, except for small and moderate ones according to the legitimate custom of the place, unless a just cause intervenes of remuneration, or of piety, or of Christian charity; otherwise the donation can be revoked by successors (can. 1535).

Scholion. On Donation for a Pious Cause

What a pious cause is, see n. 826.

873 **I. Governance of donation for a pious cause.** A donation for a pious cause is subject to ecclesiastical power alone (826).

874 **II. Capacity of giving to a pious cause.** One who by natural and ecclesiastical law is freely able to establish concerning his own goods can leave goods to pious causes by an act inter vivos, that is, by donation (can. 1513, § 1). Therefore it can happen that someone is able to give to a pious cause who, with civil law considered, lacks the capacity of giving. Practically, however, that will not so easily have place, because most who are incapable by civil law, for example minors, are also incapable by canon law (cf. can. 89).

875 **III. Mode of giving to a pious cause.** With respect to the mode of giving to a pious cause it is disputed whether civil solemnities have force for these donations. Now the affirmative opinion seems safe in practice. For first, the Code, can. 1513, § 2, admonishes, if there is question of a testament, that the solemnities of civil law be observed, the admonition not being extended to donations; and this is then aptly explained only if you admit that the solemnities have force for donations, so that an admonition concerning them would be superfluous. Then the Code, can. 1513, § 2, declares that heirs are to be admonished to fulfill the will of the testator, even if the solemnities of civil law have been neglected, again with the admonition not extended to donations; and this is well explained if you say that solemnities have force with respect to donations, so that, if they have been neglected, the donation cannot be urged. I said that this opinion seems safe in practice, although theoretically it is not certain; hence I judge that neither he who judges himself not to be bound by an informal donation, nor he who, resting on the contrary opinion, retains something given informally, is to be disturbed.

Objection. Canon 1529 establishes that in contracts the prescriptions of civil law are then only to be observed if there is question of ecclesiastical matter, that is, of ecclesiastical goods. But a donation made to a pious cause is not concerned with an ecclesiastical good.

Response. To someone it can seem that the objector insists too subtly on the letter. It is added that can. 1529 adds: unless something else is provided by canon law. But again, to someone it can seem that something else is sufficiently provided by can. 1513.

IV. The execution of pious wills was explained in n. 876.

876 **Note 1.** Unless the contrary is proved, those things which are given to rectors of churches, even of religious, are to be presumed to have been given to the church (can. 1536, § 1).

Note 2. A donation made to a church cannot be repudiated by its rector or Superior without the permission of the Ordinary (can. 1536, § 2). When a donation has been illegitimately repudiated, for damages which have arisen therefrom there is given an action of restitution in integrum or of indemnity (can. 1536, § 3).

Note 3. A donation made to a church and legitimately accepted by the same cannot be revoked because of the ungrateful mind of the Prelate or rector (can. 1536, § 4).

§ III. On Deposit and Sequestration

877 **I. Notion of deposit.** Deposit is a contract by which someone hands over to another a thing to be kept, and the other receives it with the burden of keeping it and afterward returning it in kind.

878 **II. Obligations of the depositor.** The depositor is bound to reimburse to the depositary the expenses made for conserving and returning the thing.

879 **III. Obligations of the depositary.** First, the depositary should not inquire what the deposited thing is, if the thing is closed or sealed. Besides this, he is bound:

1. To keep the deposited thing diligently.
2. Not to use it without the given or legitimately presumed consent of the one depositing. Consent should not easily be presumed, not even with respect to the use of money, though neither closed nor sealed; indeed not even then, when it could immediately be returned to one who asked. Nevertheless, the depositary, by using a deposited thing neither closed nor sealed, does not sin gravely if he is certain that he will be able to return in due time a thing equally good (St. Alphonsus, III, 748).
3. To return the thing to the depositor, and this in kind, as soon as it is asked, and together with the fruits which it has produced. It is said:

a) As soon as it is asked; this does not prevent him from retaining the thing until that which must be paid by reason of the deposit has been paid to him. Indeed, with natural law alone considered, it is licit also, observing what must be observed, to compensate oneself from the deposited thing (St. Alphonsus, III, 753).

b) Together with the fruits; except, however, industrial fruits, which the depositary has received, although illicitly, by using the deposited thing.

4. To what extent the depositary is held for damages arising from juridical fault alone, see n. 1009.

880 **IV. Sequestration.** Sequestration is a species of deposit by which a litigated thing is deposited with a third party under this law, that afterward it be handed over to him who has emerged victor.

It is distinguished as twofold, conventional and judicial, according as the thing has been deposited by the mutual consent of the litigants, or by order of the judge.

The obligations of the sequestrator are sufficiently clear from the notion itself and from the things said about deposit.

§ IV. On Commodatum and Precarium

881 **I. Notion of commodatum.** Commodatum is a contract by which someone grants to another the use of a thing gratuitously, under this law, that the latter return the same thing at a determined time. It is said **gratuitously**; if something is demanded for the use of the thing, there is had a species of letting. Commodatum is called **precarium** if the use of the thing is granted revocably at the nod of the lender; the name of precarium comes from this, that the one receiving, in the case, is judged continually to pray that he may be able to retain the thing. Commodatum differs from mutuum, in which ownership of the thing is transferred (St. Alphonsus, III, 744, 745, 754).

882 **II. Obligations of the lender.** The lender is bound:

1. To manifest harmful defects to the borrower, if he knows them; otherwise he is bound for the damage that follows.
2. Not to demand the thing back before the time fixed.
3. To reimburse to the borrower extraordinary expenses necessary for preserving the thing (St. Alphonsus, III, 747).

883 **III. Obligations of the borrower.** He is bound:

1. To keep the thing diligently, and to bear ordinary expenses.
2. Not to use the thing except for the use signified by the contract or by the very nature of the thing; otherwise he is bound for the damage that follows.
3. To return the thing at the time fixed, or when the use has been completed.
4. To what extent he is held for the destruction of the thing and for other damages arising from juridical fault alone, see n. 1009.

Note. Sacred things should not be lent for a use repugnant to their nature (can. 1537).

§ V. On Mutuum

884 **I. Notion.** Mutuum is a contract by which someone yields to another a certain quantity of fungible things under this law, that the other afterward return an equal quantity of the same nature and quality (St. Alphonsus, III, 754). By its nature it is a gratuitous contract; this nevertheless does not prevent - as we shall explain afterward - the lender from stipulating, for example, an increase; when this is done, another contract is added to the contract of mutuum. It is said:

1. **Yields to another,** that is, transfers into the ownership of another. Therefore it differs, for example, "from commodatum and letting, because in these ownership is not transferred, but only use" (St. Thomas, II-II, q. 58, a. 1; St. Alphonsus, III, 754).
2. **Of fungible things,** that is, of things which are consumed by first use, and this either physically, as wine, wheat, etc.; or morally, as money, which perishes for the one using it, and thus is as it were

consumed for him (St. Thomas, loc. cit.; St. Alphonsus, loc. cit.).

3. **An equal quantity,** etc.; wherefore compare what is to be said below under V.

885 **II. Division.** A twofold mutuum can be distinguished: mutuum of consumption and mutuum of production. The former is had when a thing is given by loan, for example wine, whose use consists in physical consumption. The latter, when someone gives by loan a thing whose use, with human industry added, can produce profit. Money especially belongs to things of this kind.

886 **III. Obligation of giving a loan.** An obligation of charity is present per se if someone is greatly in need of your thing, while you rightly expect the return of the principal granted, and do not prefer to aid the needy person in some other way.

887 **IV. Obligations and rights of the one giving a loan.** The one giving a loan:

1. Is bound to disclose harmful defects of the thing, if he knows any; likewise, not to demand what is owed to him before the time concerning which agreement was made (St. Alphonsus, III, 754).

2. Cannot, by reason of the contract itself, receive any profit, in other words anything beyond the principal. First, this is clear from Sacred Scripture.[1] Ecclesiastical documents are added, namely: cap. Praeterea, 7, *De usuris*, and cap. Consuluit, 10, same title; the Lateran Councils III[2] and V;[3] the Constitution of Benedict XIV *Vix pervenit*;[4] likewise the Code of Canon Law, which establishes thus: If a fungible thing is given to someone in such a way that it becomes his and afterward only as much in the same kind is restored, no profit can be received by reason of the contract itself (can. 1543). Finally, reason confirms the same thing; for if it were licit by reason of the contract itself to demand something beyond the principal, this would be permitted either because of the principal given up, that is, because of being deprived of the principal as such, or because of being deprived of the principal for some time. But the principal given up is compensated by the principal to be returned in equivalent form; and deprivation of the principal for some time as such is not worthy of compensation, as is clear in one who, for the entire time during which he will lack the thing, most certainly is not going to use it. Hence proposition 41 was condemned by Innocent XI: "Since counted money is more precious than money to be counted, and there is no one who does not value present money more than future money, a creditor can demand something beyond the principal from the borrower, and by that title be excused from usury"[5] (St. Alphonsus, III, 759).

St. Thomas says thus: It must be known that there are certain things whose use is the consumption of the things themselves; as we consume wine by using it for drink, and consume wheat by using it for food; whence in such things the use of the thing ought not to be reckoned separately from the thing itself; but to whomsoever the use is granted, by this very fact the thing is granted; and for this reason in such things ownership is transferred by mutuum. Therefore, if someone should wish to sell wine separately, and should wish separately to sell the use of the wine, he would sell the same thing twice, or he would sell what does not exist; whence he would manifestly sin by injustice. And by a similar reason he commits injustice who lends wine or wheat, asking that two compensations be given, one indeed the restitution of an equal thing, but the other the price of the use; and this is called usury (II-II, q. 78, a. 1). But note:

a) As we have already noted from St. Thomas, profit received by reason of the contract which is called mutuum is called usury. Hence Benedict XIV in the Constitution *Vix pervenit*: "That kind of sin which is called usury, and which has its proper seat and place in the contract of mutuum, is placed in this, that

someone, from the mutuum itself, which by its own nature demands only that as much be returned as was received, wishes more to be returned to himself than was received; and therefore contends that some profit beyond the principal is owed to himself by reason of the mutuum itself. Therefore every profit of this kind, which exceeds the principal, is illicit and usurious."

b) But profit received in this way is usury even if it is demanded as owed from benevolence and gratitude, and not as owed from justice. This follows from proposition 42 condemned by Innocent XI: "It is not usury when something beyond the principal is demanded as owed from benevolence and gratitude, but only if it is demanded as owed from justice."[6] The reason is that gratitude considers more the affection of the giver than the thing given, and therefore the recipient satisfies by a similar affection of doing good indeterminately. Therefore, when the lender demands something as owed from gratitude, he fictitiously appeals to gratitude, since there is no such debt of gratitude, but under the cloak of gratitude he hides the strict obligation which he tries to impose on the borrower. Therefore the Vatican thunderbolt strikes this fictitious obligation of gratitude[7] (cf. St. Thomas, II-II, q. 78, a. 2, ad 2; St. Alphonsus, III, 764, 780).

c) However, someone can hope for some gift, not "as if owed, but as gratuitous and to be rendered without obligation; and thus he who lends can licitly do so; just as one who does a service for someone trusts that he will in friendly fashion do him service in his own time" (St. Thomas, q. 13, *De malo*, a. 4, ad 13).

3. The lender can, if titles extrinsic to the contract are added, demand beyond the principal as much as the title is worth. That extrinsic titles can be present is recognized both in the encyclical *Vix pervenit* and in the responses of the Holy Office and of the Sacred Penitentiary;[8] likewise in canon 1543 of the Code. They are: risk of the principal, emergent damage, ceasing profit, conventional penalty; concerning others there is dispute.

a) **Risk of the principal,**[9] that is, the risk of not recovering the thing, and that greater than if he did not give the thing as a loan. "The reason is that to expose yourself to such a true risk is estimable by price" (St. Alphonsus, III, 765; St. Thomas, II-II, q. 77, a. 4, ad 2; *Opusc.* 73, cap. 6, at the end).

b) **Emergent damage,** that is, the detriment which he is going to undergo because of the thing given by loan, for example because for this reason he will have to buy the thing more dearly. The reason again is that, besides the principal, he suffers another damage which is estimable by price (St. Thomas, II-II, q. 78, a. 2, ad 1; St. Alphonsus, III, 768).

c) **Ceasing profit,**[10] that is, the profit which he is not going to receive because of the thing given by loan, for example because for this reason he is not going to trade with the money. The reason is that, besides the principal, he loses the hope of profit; and this is estimable by price; but in the case only as much can be sought as the hoped-for profit is worth (St. Alphonsus, III, 768). The mind of St. Thomas is disputed.[11]

Since money today, although in itself sterile, can be employed in innumerable ways for trading and thus for making profit, for example by buying a fruitful thing, or a thing which can at least be sold more dearly, or shares in an industrial or mercantile company, therefore one who gives money by loan can commonly stipulate an increase under the title of ceasing profit.

d) **Conventional penalty,** that is, a penalty to be paid by the borrower if he does not return the principal at the established time. A convention or contract of this kind is just, because it conduces to

forestalling the negligence of the borrower. Further, in order that the lender be able to demand the penalty, it suffices that the borrower, with juridical fault, has not returned the thing at the established time; indeed sometimes, according to the mind of the contracting parties, no fault is required. But the penalty seems to be owed before the sentence of a judge, because it has more the nature of a pact than of a penalty (St. Alphonsus, III, 766, 767); nevertheless, unless the contrary intention of the contracting parties is established, the petition of the one giving the loan can be awaited.

Question 1. Whether a law which permits an increase is a reason for demanding something beyond the principal.

Response. It must be affirmed, because the State, by force of high ownership, licitly permits it if grave reasons for doing so are present. But grave reasons are present; since a mode of acting of this kind creates the faculty of receiving money by loan, and this faculty promotes commerce. But the State can proceed in this way, whether another title, on which the law rests, is always present, or whether another title is lacking here and now. Canon 1543 says thus: "In the furnishing of a fungible thing it is not per se illicit to make an agreement concerning legal profit, unless it is established that this profit is immoderate, or even concerning greater profit, if a just and proportionate title supports it."

Question 2. Whether the benefit furnished to the borrower by the one giving a loan is a title for demanding something beyond the principal.

Response. The benefit furnished consists either in the action of giving a loan, or in the fact that a thing is given by loan which will be specially useful to the borrower. Now the action of lending is intrinsic to the loan, nor is it any more estimable by price, separately from the thing given by loan, than the action of donating or selling is estimable separately from the thing donated or sold. But the fact that the thing given by loan is specially useful to the borrower depends on the condition and circumstances of this borrower, not on the one giving the loan; and the one giving a loan cannot receive something for a thing which is not his.

Question 3. Whether the obligation of not demanding back the principal up to a certain time is a title for demanding something beyond the principal.

Response. This must be denied, with regard to proposition 42 condemned by Alexander VII: "It is licit for one lending to demand something beyond the principal if he obliges himself not to demand back the principal up to a certain time."[12] The reason is that deprivation of the principal for a time as such, and consequently also the obligation of lacking it as such, is not worthy of compensation (p. 594); nevertheless if someone obliges himself not to demand back the principal except after a long time, an extrinsic title for demanding something besides the principal will hardly be absent, since a lender who must wait for a long time will easily suffer damage or deprivation of profit.

Question 4. Whether the faculty of making profit, today commonly annexed to the possession of money, is a title for demanding an increase.

Response. It seems to be affirmed, because the said faculty, according to common estimation, has a value distinct from the commutative value of money, and therefore deserves to be compensated.

Corollary. Likewise, on account of the just titles explained, it is licit to demand interest from unpaid interest, that is, anatocism, because unpaid interest is equated with principal handed over.

[1] Cf. Ps. 14:1; Luke 6:35.

[2] Cap. 25.

[3] Session 5.

[4] November 1, 1745.

[5] Denzinger-Bannwart, n. 1191.

[6] Denzinger-Bannwart, n. 1192.

[7] Billuart, *De iure et iustitia*, diss. IV, art. 4.

[8] *Collectanea* (n. 1393).

[9] Lateran Council V (session 10), Bull *Inter multiplices*, in the year 1515; it is found in Labbe, tom. 19, col. 906.

[10] L. 13, ff. *Rem ratam hab.*; Benedict XIV, encyclical *Vix pervenit*, § 3, n. 3.

[11] Cf. Billuart, *De contractibus*, diss. 4, a. 5.

[12] Denzinger-Bannwart, n. 1142.

888 **V. Obligations of the borrower.** The borrower is bound to return a thing of the same species and quality;[1] but if he cannot return what must be returned in kind, let him give back an equivalent. As regards quantity, the same must be returned if the value, whether of money or of another thing to be returned, is the same at the time of return as it was at the time of the contract begun. If the value is different, what was said concerning contracts in general must be said, namely:

1. If there is question of ordinary or - so to speak - normal changes, the contract as it stands must be put into execution, because the contracting parties are judged to have consented to changes of this kind.

2. If there is question of a greater change, it must be said thus:

a) If law, or an express pact, or custom assigns a norm, one must stand by these. As regards law or pact, the matter is clear; as regards custom, it follows from the fact that the contracting parties are judged to have contracted according to custom.

b) Law, express pact, and custom being excluded, the one who suffers damage by executing the contract is bound to undergo this if there is question of a case which could have been foreseen or feared; otherwise, at least more often, if there is question of a case which could not have been foreseen, such as war or a disturbance of public affairs. The reason is that every contract entered into in the way assigned in the question has something of an aleatory contract; once this is posited, the former cases are judged to be comprehended in the contract, but not the latter.

c) Sometimes from the circumstances it is clear that the same quantity must always be returned, and that the same quantity always suffices; for example, if a farmer out of friendship gives by loan to another farmer some quantity of wheat.

As regards pacts which are licitly entered into, note these things:

a) If it is doubtful whether the value of the thing given by loan will be increased or diminished, they licitly agree about returning the same quantity; since to the contract of mutuum there is added a legitimate aleatory contract (St. Alphonsus, III, 782).

b) If it is foreseen that the value of the thing given by loan will be increased, it is not licit to agree about returning the same quantity, except on account of emergent damage or ceasing profit; as if, the

loan being excluded, you would have kept your thing until the time of the increased value and of the principal to be returned; likewise if, your thing having been given by loan, you are compelled to buy another more dearly. The reason is that otherwise you receive profit from the loan (St. Alphonsus, III, 782).

c) If it is foreseen that the value of the thing given by loan will be diminished, the lender can agree about a greater quantity being returned. The reason is that the lender, by receiving the greater quantity, does not become richer than he was at the time of the contract begun, so that he is not enriched from the loan or by reason of the contract.

[1] Nevertheless it is not repugnant, for example, that wheat or wheat of lesser quality be given by loan, by stipulating that another thing of the same value, or wheat of better quality in lesser quantity, be returned.

889 **VI. Obligation and penalties of usurers.** 1. It is clear that usurers are held to restitution, namely to the borrowers or their heirs.

2. Canon 2354 establishes: A layman who has been legitimately condemned for the delict of usury is held by the law itself to be excluded from legitimate ecclesiastical acts and from any office, if he has any in the Church, with the burden of repairing damages remaining firm. But a cleric who has committed the delict of usury is to be punished by an ecclesiastical tribunal, according to the diverse gravity of the guilt, with penances, censures, privation of office and benefice, dignity, and, if the matter requires it, even deposition.

Scholion. On Monts-De-Piete and Savings Banks

890 **I. Monts-de-piete.** Monts-de-piete - so called because the needy flee to them as to a mountain - are treasuries established for this end, that money be given by loan to the poor, with a pledge deposited, gratuitously or under moderate interest. If the sum owed has not been returned at the established time, the pledge is sold, and from the price the sum owed with interest is retained, so that what remains may be restored to the debtor.

2. Monts-de-piete, as is clear, are licit and useful, indeed in some way necessary.[1] But they are not without inconveniences. "The poor, not always upright and sober, deposit there even things necessary to themselves or to their family, which had been given to them for personal use. After about a year, if the money has not been restored, those things come under the hammer, often for an unequal price, so that the borrower labors under greater misery than before."[2] They are also more dangerous, namely because of excessive interest often exacted, if they are erected by private persons and are not constituted under inspection of public authority. Besides, it is licit, as is clear, to demand something beyond the principal on account of the expenses and labors of the ministers; to these another extrinsic title can also be added.

[1] Cf. Lateran Council (session 10), Bull *Inter multiplices*; Council of Trent, session 22, *De reformatione*, chapters 8 and 9.

[2] Vermeersch, *Theologia moralis*, 3rd ed., II, n. 450.

891 **II. Savings banks.** 1. They are banks constituted publicly or privately, where servants, workers, etc., deposit little sums at moderate interest. Interest whose day has come is added to the principal; but the depositor enjoys the faculty of demanding back the principal with the increments, or any part, at any time.

2. It is clear that institutions of this kind are to be commended. But it is licit for depositors to receive interest on money both on account of extrinsic titles, and sometimes because they have entered into a contract of partnership.[1]

[1] Cf. *Analecta Iuris Pontificii*, 1880, p. 587 sq.

§ VI. On Buying and Selling

We shall speak first about buying and selling generally, then about some buyings and sellings in species.

Point I. On Buying and Selling Generally

892 **I. Notion.** Buying and selling is a contract by which, through mutual consent, some thing is exchanged for a price. It differs from exchange, in which a thing is granted on each side.

893 **II. Subject.** With natural law considered, the same persons are capable of buying and selling as are capable of donating. To what extent civil law excludes some persons, learn from the law of one's country.

894 **III. Object.** Besides what was said in n. 832 and following about objects unfit for contracts in general, these things are specially to be noted:

1. The sale of another's thing, with natural law considered, is invalid; for no one enjoys the faculty of disposing in any way of the thing of another. But the seller, if he has acted in bad faith, is bound to render the owner and the buyer unharmed; if in good faith, he ought to refund the price to the buyer. The buyer, if he has proceeded in bad faith, is bound to restore his own thing to the owner and to reimburse him for other damages perhaps following; if in good faith, he is per se bound to restore the thing to the owner, but, if otherwise he cannot recover from the seller the price paid, he can return the thing bought (n. 983).

Nevertheless, let it be seen what civil law establishes, which one who has proceeded in good faith may licitly follow and urge.

2. The sale of a determinate thing already sold to a third party, with natural law considered:

a) Is invalid if the sale, with civil law considered, confers a right in the thing, as obtains, for example, in France. The reason is that there is had the sale of another's thing.

b) If the sale, with civil law considered, confers only a right to the thing, and delivery, by which a right in the thing is conferred, has not followed, it is likewise invalid, because the seller cannot grant to a third party the right which he has already granted to the former buyer. Nevertheless the delivery of the thing, although injurious to the former buyer, seems valid, because the seller, since he is still owner of the thing, is able to grant its ownership or right in the thing to the third party. But in the case he is per se bound to take care that the former buyer obtain the thing, and in addition, if he has proceeded in bad faith, to reimburse the former buyer for damages perhaps following from the injury.

What the law is, with civil law attended to, see in the Civil Code.

c) The sale of a thing which at the time of sale has totally perished is manifestly invalid. If the thing has perished only in part, with natural law considered, it must be resolved according to what is to be said in n. 898.

d) Finally, a thing bought with another's money belongs to the buyer; who nevertheless, as is clear, ought to return the money to the owner.

895 **IV. Price of the object, concerning which more must be said.**[1]

1. **Notion of price.** Price can be defined: the saleable or exchange value of a thing, expressed in money. It is said:

a) **Value of a thing.** Now the value of a thing is that on account of which it is worthy of estimation. But it is worthy of estimation on account of its aptitude for serving man.

b) **Saleable.** A twofold value of a thing can be distinguished: intrinsic and saleable. Intrinsic value is its aptitude immediately for serving man's necessity or utility. Intrinsic value again can be distinguished into objective and relative, according as a thing is commonly necessary or useful to human beings, or is specially necessary or useful to a determinate person, for example to the seller or buyer. Saleable value is the aptitude of a thing for serving the acquisition of another thing. That intrinsic and saleable value of a thing are not to be confused is clear, for example, from the fact that water is very useful, but is scarcely a medium for acquiring another thing.

c) **Expressed in money;** namely, so that the acquisition of necessary and useful things might be rendered easier, there was sought a common sign, a common measure or norm, which would represent the saleable value of all things; and money was selected for that end. Therefore money represents and expresses the saleable value of things; but the saleable value of things expressed in money is called price.

There are those who define price as: the objective value of things expressed in money. But price is money insofar as it has been constituted the medium of acquiring another thing. But money is the medium of acquiring another thing insofar as it represents or expresses saleable or exchange value. Therefore price is saleable value expressed in money.

2. **Division of price.** Price is distinguished into legal, common, and conventional, according as it is determined by legitimate authority, by common estimation, or by the free agreement of the contracting parties. But since human estimation is not accustomed to agree exactly in one point, the common price admits a certain latitude, and is distinguished as highest, lowest, and middle. Further: "the price of cheap things has a smaller latitude than that of precious things. For wine, either if it is worth 10, can be sold for 12 or 8 ... or if it is worth 100, can be sold for 105 and 95 ... But a house or estate, which perhaps was sold for 20 thousand, after a year will be able to be bought for 12 thousand" (St. Alphonsus, III, 804). These things, however, are now to be taken more broadly.

Corollary I. The saleable value of things, and consequently price, is subject to variation according to various circumstances. Thus, for example, generally it increases by reason of scarcity, and decreases by reason of abundance of merchandise (St. Alphonsus, III, 801).

Corollary II. A great number of buyers for the most part indicates that people now need some thing, or at least use it frequently, and therefore that the saleable value of the thing is greater; consequently the price increases. The contrary obtains if buyers are few (St. Alphonsus, III, loc. cit.).

Corollary III. If there is scarcity of money, the saleable value of things is not thereby changed; consequently the price decreases materially rather than formally; namely, a smaller sum of money is

indeed received for the thing sold, but the money itself, since it is rare, increases in value, or, if you prefer, can represent a greater saleable value of things.

3. **The just price** is per se that which represents a saleable value equal to the saleable value of the thing bought and sold. By accident even a greater or lesser price can be just; likewise sometimes the conventional price is just. It is said:

a) The just price per se is that which represents a saleable value equal to the saleable value of the thing bought and sold. For in the contract of buying and selling, equality between the contracting parties must be preserved. But equality is preserved only when the price represents a saleable value equal to the saleable value of the thing bought and sold.

The major is deduced from the fact that price, or, if you prefer, the contract of buying and selling, was invented for the common good, and therefore ought not to be more burdensome to one than to the other; in other words, equality between the contracting parties must be preserved. It is confirmed from the fact that buying and selling holds the place of the contract of exchange, namely insofar as price holds the place of the thing with which another thing would have to be acquired if price had not been invented. Hence, just as, clearly, equality between exchangers must be preserved in the contract of exchange, so also in the contract of buying and selling between buyer and seller.

b) By accident even a greater or lesser price can be just, for example if the seller, receiving a price just per se, would by accident suffer detriment, namely from the fact that the thing was worth more to the seller on account of peculiar circumstances; these matters will become clearer from what is to be said afterward.

c) Likewise sometimes the conventional price is just; this too will become clearer from what is to be said afterward.

St. Thomas speaks thus: "We can speak of selling and buying in two ways: in one way according to itself, and according to this buying and selling seems to have been introduced for the common utility of each, namely when one needs the thing of another and conversely ... But what has been introduced for common utility ought not to be more burdensome to one than to the other; and therefore the contract ought to be established between them according to equality of the thing; but the quantity of the thing which comes into human use is measured according to the price given; for this money was invented ... and therefore if either the price exceeds the quantity of the value of the thing, or conversely the thing exceeds the price, the equality of justice will be taken away; and therefore to sell a thing more dearly, or to buy it more cheaply, than it is worth, is in itself unjust and illicit. In another way we can speak of buying and selling according as by accident it turns to the detriment of the seller ... and in such a case the just price will be such that regard is had not only to the thing which is sold, but to the damage which the seller incurs from the sale; and thus something can licitly be sold for more than it is worth in itself, although it is not sold for more than it is worth to the one having it" (St. Thomas, II-II, q. 77, a. 1; St. Alphonsus, III, 807).

From what has been said the following norms are deduced:

a) **If a legal price exists, this must be observed.** For just as it belongs to the republic or to those who exercise public authority to establish laws and statutes for the common good, so also it sometimes belongs to the same common good to judge the saleable value of things and to express it by price, namely so that the cupidity and frauds of sellers and buyers may be forestalled, and the

plundering of the poor prevented[2] (St. Thomas, II-II, q. 77, a. 2, ad 2; St. Alphonsus, III, 803). Further, the legal price, as the very nature of price indicates, must be observed from commutative justice. Nevertheless it is licit to demand a greater price: 1° if because of changed circumstances it becomes less than just; 2° if the goods to be sold are notably better than usual, because the law is understood about ordinary goods. Besides, the buyer can buy below the legal price, while nevertheless preserving the common price, because the law is judged to have been made in favor of buyers (St. Alphonsus, loc. cit.).

b) **If the legal price is lacking, one must stand by the common price** - whether highest, lowest, or middle - which prevails in the place where the thing is bought and sold, and which has been constituted independently of fraud, unless nevertheless there is present a special title for selling above the highest or buying below the lowest. It is said:

a) One must stand by the common price, that is, the price which is determined by common estimation; for it belongs to this, and not to private estimation, to judge the saleable value of things and to express it by price. The reason is that the former is less subject to error, while the latter is often blind, deceitful, and perverted by passion, especially if there is question of one's own cause (St. Alphonsus, III, 816).

b) Whether highest, lowest, or middle (p. 600). Nevertheless it is unjust to induce someone by deceit to pay the highest price. Note, however, that often frauds are employed only in appearance, since the things which sellers put forward to commend their goods are commonly regarded as hyperboles and stratagems. Moreover, one who asks a price which exceeds the highest price, for the end that he may receive the common price, even the highest, cannot be accused of sin, provided that he is willing to restore if he receives more than the highest price.

c) Which prevails in the place where the thing is bought and sold. Therefore it is not licit in our region to demand from foreigners or barbarians a price above the highest, although the thing to be sold is held as more precious in their region. But it is licit in their region to acquire a thing, for example a gem, which is esteemed little by them and greatly by us, by granting to them a thing, for example glass, which is esteemed little by us and greatly by them. If the contract is entered into equally in one region and in the other - for example, if a seller who lives in America sells something by telegram to a buyer who is in the Netherlands - the contracting party can choose what pleases him.

d) Which has been constituted independently of fraud; hence they act unjustly who by false reports exaggerate the excellence of some merchandise or business and thus, with common estimation changed, receive a greater price.

Corollary I. One who by private knowledge knows that the price of goods will soon be increased or diminished can, without injustice, buy and sell at the price now current, because the price is not changed by particular knowledge (St. Alphonsus, III, 824). For the same reason it is licit to pay with money whose value someone knows by private information will soon be diminished (cf. St. Thomas, II-II, q. 77, a. 3, ad 4).

Corollary II. A magistrate who by official knowledge knows that the price either of goods or of public bonds will soon be changed can certainly buy or sell them as he has been accustomed to do, since he cannot be of worse condition than others. Besides, it is sufficiently probable that he does not sin against justice or against another virtue by buying up goods at a lesser price with the intention of later

selling them at a greater price. The reason is that the office undertaken sufficiently probably does not involve an obligation to abstain from the things mentioned. Nevertheless he would sin against his office by warning others about the price to be changed.

e) Unless a special title is present, etc.; which, lest the order of essential matters be interrupted too much, we shall explain under 4.

c) **If things have neither a legal nor a common price** - as notable paintings, extraordinary gems, etc. - the conventional price is sufficiently probably valid, or the thing can be bought or sold according to the price about which the contracting parties agree. Many indeed deny this, "because although the price of such things receives a great latitude, it is nevertheless equitable that it should have some assessment according to the judgment of prudent persons" (St. Alphonsus, III, 808). But "when a thing has no price, neither legitimate, that is, assessed by law, nor common, namely according to the common estimation of human beings, that is judged just which is agreed upon" (St. Alphonsus, loc. cit.). The same must be said of some human actions, as if someone exposes his life to danger for the safety of another. Finally, the conventional price is valid: 1° if the buyer alone, or almost alone, knows by private study that the thing is precious; the reason is that not only legal and common price are lacking, but also experts by whose judgment one would have to stand; 2° if each contracting party knows that the price of some thing is unknown to him, because there is had a just aleatory contract (St. Alphonsus, III, 802); 3° according to the authors, the buyer can buy at a conventional price: a) from antiquarians; b) from all those persons whose things have already been destined to vile use, as if a book is being carried to be torn apart or sold for the price of paper. The reason alleged is that things of this kind, by common estimation, have in some way lost their natural price, so that the buyer can proceed broadly. But should not common estimation in the case be called less correct? Besides, as regards antiquarians, there is added that the buyer can reasonably presume a quasi-condonation, because buyers are thus enticed by the hope of buying precious things for a lower price.

4. **Titles for departing from the common price,**[3] that is:

a) For selling above the highest price,[4] or rather more dearly, are:

a) Emergent damage and ceasing profit (St. Thomas, II-II, q. 77, a. 1; St. Alphonsus, III, 807).

b) The risk of not receiving the price, as was said about mutuum (p. 595; St. Alphonsus, III, 810).

c) Delay of payment, insofar as this brings with it for the seller emergent damage, ceasing profit, or risk of not receiving the price (St. Alphonsus, III, 810). Therefore this title is referred to the titles already assigned.

d) Sale made retail, since it brings with it greater cares and expenses (St. Alphonsus, III, 809).

e) Sale under the hammer (n. 901).

f) The special affection of the seller. "The reason is that deprivation of a thing toward which someone is specially affected is truly estimable by price" (St. Alphonsus, III, 807).

g) Whether the special utility and delight of the buyer are titles is disputed, but with St. Thomas (II-II, q. 77, a. 1) and St. Alphonsus (III, 806) it seems that it must be denied. For first, "if someone is much helped by the thing of another which he has received, but the one who sells is not harmed by lacking that thing, he ought not to sell it above price; because the utility which accrues to the other is not from the seller, but from the condition (or, in another reading, the buying) of the buyer; but no one ought to

sell to another what is not his; although he can sell to him the damage which he suffers. Nevertheless, he who is much helped by a thing received from another can of his own accord give something over and above to the seller, which belongs to his honesty" (St. Thomas, loc. cit.). Then, the just price not only can be demanded, but must be paid. Therefore, if the special utility of the buyer changed the account of the just price, the buyer would either have had to increase the price of his own accord, or at least to indicate that utility, so that the seller might be able to use his right of increasing the price. Yet no one would say this; and buyers have recourse to various arts so that this utility may be unknown.[5] Finally, if the contrary opinion is admitted, it does not appear why the price could not also be increased because of the buyer's necessity without sinning against justice; for necessity argues special utility and increases the value of the thing relative to the buyer equally with utility. Almost all the older authors and several more recent authors follow this opinion,[6] while other more recent authors contradict it.

Objection. In the supposed case the seller furnishes the buyer an accommodation or benefit, which is estimable by price.

Response. The benefit or accommodation consists either in the action of selling, or in the fact that he sells a thing which will be specially useful to the buyer. Now the action of selling is intrinsic to the sale, and therefore is not estimable by price separately from the thing sold. But the fact that the thing sold is specially useful to the buyer depends on this buyer's condition and circumstances, not on the seller; and the seller cannot receive something for a thing which is not his. If, however, the thing in question is already useful to many, its objective value, and therefore its price, has increased.

b) For buying below the lowest price, or rather at a lower price, are:

a) Emergent damage and ceasing profit by reason of this purchase, if nevertheless it is made in favor of the seller; as if, for his convenience, you buy a thing which you will need only when its price has been diminished. But if you do not buy in favor of the seller, but in your own favor, the reason for denying him the price just per se is lacking, because in reality emergent damage and ceasing profit are not present.

b) Risk of not receiving the merchandise bought and paid for.

c) Anticipation of payment, insofar as this brings with it for the buyer emergent damage, ceasing profit, or risk of not receiving the merchandise. Therefore this title is referred to the titles already assigned.

d) Purchase in a large quantity at once, since it frees the seller from many cares and expenses (St. Alphonsus, III, 809).

e) Purchase in a sale under the hammer (n. 901).

c) A spontaneous offering of goods - whether by a rich man or, as the things to be said seem to prove, by a poor man - insofar as this casts suspicion of a hidden defect, or argues fewness of buyers; for fewness of buyers rather often proves that the value and price of the thing have decreased (p. 600). If, however, the thing is offered spontaneously because of poverty, you will easily sin against charity unless you buy solely in favor of the seller (St. Alphonsus, III, 802).

But it is not licit for a buyer who knows the greater value of a thing to ask from a seller wholly ignorant of the greater value "that he condone what it is worth beyond this; ... because such a donation, since it proceeds from ignorance, is null" (St. Alphonsus, III, 819).

Besides, each should commonly warn the other about an existing legitimate title; nor should he increase or decrease the price more than the title allows, with common estimation considered.

[1] Cf. Janssens, *Le juste prix*; Hagenauer, *Das justum pretium bei Thomas von Aquino*; Aengenent, *Leerboek der Sociologie*, n. 125 sq.

[2] Billuart, *De iure et iustitia*, diss. 3, art. 2.

[3] Nevertheless do not take these things so strictly, because several of the titles to be explained rather bring it about that the price increases or decreases.

[4] Vermeersch, *De Iustitia*, n. 345.

[5] Vermeersch, loc. cit.; Lehmkuhl, I, n. 1330.

[6] Vermeersch, loc. cit.; Lehmkuhl, I, n. 1330.

896 **V. Form of the contract.** Let the form of the contract be consulted in the Civil Code; there also see what things regard the proof of the contract.

897 **VI. Effects.** 1. With only natural law considered, the contract of buying and selling confers on the buyer a right to the thing, since with the execution of the contract a right in the thing is constituted. Sometimes, however, the contract by force of civil law - for example French law - confers a right in the thing.

2. Where the contract without delivery confers a right in the thing, per se the thing sold and not yet delivered is at the risk of the buyer, so that the buyer is bound to pay the price even if the thing has perished. At whose risk the thing sold and not yet delivered is, where the contract confers only a right to the thing, see in the Civil Code.

3. The fruits of a determinate thing sold, not yet delivered, become the buyer's, unless the contracting parties have stipulated otherwise; for the contracting parties are judged to comprehend the accessory, such as fruits are, in the principal (St. Alphonsus, III, 798).

898 **VII. Obligations of the seller.** 1. The seller, as regards defects of the thing to be sold, is bound to manifest:

a) Substantial defects, and the defect of a quality to which he perceives the buyer's consent to be bound. For otherwise the contract, because the buyer's consent to the object of the present contract is lacking, is invalid, and therefore the seller cannot accept the agreed price (n. 837; St. Alphonsus, III, 819; cf. St. Thomas, II-II, q. 77, a. 3).

b) A notable and hidden defect. The reason is that a thing is sought by the buyer which lacks a notable defect; this being posited, the seller, by furnishing the thing and not disclosing the defect, tacitly affirms that it lacks such a defect, unless that defect itself is manifest; and therefore he uses deceit and inflicts injury on the buyer. Hence authors generally add that even a notable and manifest defect must be disclosed if it is noticed that the buyer is laboring under invincible ignorance (St. Alphonsus, III, 823). Besides, there must be manifested:

c) A defect about which he is specially questioned, unless the buyer can discover the defect by his own inquiry. The reason is that otherwise buyers would lack a means of inquiring what sort of thing it is concerning which they are going to contract; and this cannot be admitted.

d) Outside the cases assigned there is no obligation of manifesting defects, not even hidden ones; both because otherwise trading would become almost impossible, and because universal custom confirms

this.

Corollary I. If some defect can bring damage to the buyer and is not noticed by him, the seller must always - even in a case in which, according to what has been said, he is not held from justice - warn the buyer; as if a horse is furious, or a house ruinous.

Corollary II. The seller, even if he is not bound to manifest a defect, ought nevertheless to take account of the existing defect in establishing the price; if he has not done so, he is bound to restore part of the price received.

Corollary III. A seller who has not manifested defects that had to be manifested is bound, if the contract nevertheless was valid, to restore the excess of price and to reimburse other damages perhaps following from the silence; indeed, if the buyer's error gave cause to the contract, he is bound also to rescind the contract at the buyer's judgment (St. Alphonsus, III, 823).

Corollary IV. "If the seller," says St. Alphonsus with others, "protests that he does not wish to give an account of any defect whatever, but to sell as is commonly said: *A sacco d'ossa rotte*; then he is bound to nothing. Hence Tamburini deservedly approves the custom which flourishes in some places, especially in great fairs, that animals are sold in this way, even if the defects are most hidden. The reason is that, for removing lawsuits on account of the common good, this can be sufficiently rendered honorable by custom: provided it is understood that the thing is not sold beyond the just price, at least the highest," which the thing has when account is taken of that hidden defect (St. Alphonsus, III, 823). Apply the same to sales by an antiquarian.

Question 1. Whether it is licit to sell a "something for something else," as is said, provided that what is handed over is equivalent to the natural thing, for example to wine, butter, vinegar.

Response. It seems licit, because there is not present a substantial diversity as regards "the end of the buyer" (St. Alphonsus, III, 821). Except: 1° if the buyer manifestly wants the natural thing or a thing of a determinate species; 2° if merchants are held by custom to declare the imitation.

Question 2. Whether it is licit to sell merchandise mixed with cheaper merchandise, provided the just price is retained.

Response. Per se it is illicit. By accident it is licit: 1° if the seller's merchandise is better than usual; 2° if custom so bears. Except if the buyer offers a price greater than usual for this end, that he may certainly receive merchandise not adulterated.

2. The seller is bound to deliver the thing sold to the buyer, who, according to the diversity of civil law, by delivery acquires either a right in the thing and possession, or possession alone. In what way the thing must be delivered is established by civil law; what things must be observed by him or by the buyer as regards the place of delivery, expenses, etc., should be gathered from civil law and from the special stipulations of the contracting parties.

3. The seller is bound to furnish eviction, that is, he is bound to render the buyer unharmed if the thing bought is reclaimed totally or partially by a third party who proves himself to be owner. Hence he is bound to return the price perhaps received.

But what if a seller who proceeded in good faith no longer possesses the price either in itself or in an equivalent?

Response. Most judge that the seller is nevertheless obliged, namely by reason of the contract, whose nature carries this obligation with it. But with St. Alphonsus (III, 800) it seems that it must altogether be denied, because the seller is bound to nothing by reason of the contract, since it is invalid and destitute of all value (n. 894).

899 **VIII. Obligations of the buyer.** The buyer is bound to pay the just price, and this at the time and in the mode concerning which agreement was made. Besides, compare civil law. But if he himself perhaps received false money from a third party, he cannot for that reason give it to another contracting party as price. If he has given it, even though he acted in good faith, he is bound to restitution; since the fact that he himself suffers damage is not a reason why you can deny to another what is owed (St. Alphonsus, III, 855).

It remains that we say certain things about earnest money. Now then:

I. Earnest money is called a certain thing handed over to the other party on the occasion of a contract.

II. Earnest money is distinguished as twofold, confirmatory and penitential.

Confirmatory earnest money is that which is given by the buyer to the seller as a sign and confirmation of the contract, perfected according to the intention of the contracting parties. From a contract of this kind, since it is perfected and confirmed, one can retreat without mutual consent even less than from another contract. But the earnest money given is judged to be part of the price.

Penitential earnest money is that which is given by one party to the other for this end, that the contract, not yet plainly perfected, may be rendered more certain. In the case each party can withdraw from the contract, yet in such a way that he who gave the earnest money, if he withdraws, loses the earnest money given; but he who received the earnest money, if he withdraws, restores the earnest money received.

In doubt whether the earnest money is confirmatory or penitential, it is presumed to have been given according to the custom of the place (St. Alphonsus, III, 794).

Besides, also as regards earnest money let civil law be consulted.

Point II. On Some Buyings and Sellings in Species

900 **I. Sale with an added pact.** Sale with a pact concerning the right of the seller to redeem the thing if he himself should demand it,[1] a sale of this kind, I say, is licit, provided that in establishing the price account is taken of the burden which is imposed on the buyer or seller (St. Alphonsus, III, 812, 813). Let the law of one's country also be consulted.

[1] Akin to this pact was the contract whose Spanish name was *mohatra*, by which someone sold on credit with an explicit or implicit pact that the thing would immediately be sold back to him at a lesser price, but for present money. It was therefore a disguised contract of loan and was for cloaking usury, and therefore was condemned by Innocent XI.[2] But since civil laws commonly permit interest to be received from money given as a loan, that contract has become obsolete (Sweens, n. 719; cf. St. Alphonsus, III, 813).

[2] Proposition 40, Denzinger-Bannwart, n. 1190.

901 **II. Sale under the spear.** 1. **Notion.** Sale under the spear, or auction, is a sale in which the things to be sold are proclaimed by a crier and are commonly adjudged to the last or first bidder: to the last, if successively greater prices are offered by the bidders; to the first, if the highest price proposed by the crier is diminished until one bidder assents. It is called sale under the spear because among the

Romans in sales a spear, that is, a sign of ownership, was fixed in the ground. It is also called public auction, because a later bidder, by offering more, increases the price offered by a former bidder.

2. **Division.** It is distinguished as twofold, judicial and voluntary, according as it is made by precept of the judge or freely. In the former, the thing must be adjudged to the last or first bidder; in the latter, the seller can withdraw the thing. Public auction somewhat puts on the nature of an aleatory contract, insofar as the seller has hope of selling his things at a greater price because of the concurrence and rivalry, but runs the risk of selling them at a lesser price; likewise the buyer has hope of buying at a lesser price, but because of the concurrence he also runs the risk of buying at a greater price. These things, however, have more force for a judicial auction than for a voluntary one, because in the latter the seller can still retain his thing if a lesser price is offered.
3. The just price is that which is determined by bidding, even if it is above the highest or below the lowest; and this has force both for a judicial auction and for a voluntary one, provided nevertheless that the matter was done without fraud which restricts freedom of acting. It has force for a judicial auction; for since in the case authority absolutely wills the sale, it itself "implicitly approves as just that price which is publicly approved by the concurrence of buyers" (St. Alphonsus, III, 808). It has force for a voluntary auction; for all, being free to do the same thing if the occasion is given, freely judge as just the price approved by the concurrence of buyers. They judge thus both because the somewhat aleatory character of sale under the spear counsels this, and so that the sale of things, in a case greatly desired, may be better provided for. It was said: provided that the matter was done without fraud. Further, they act unjustly:

a) Sellers, if they positively deceive buyers as regards the thing to be sold. Mere concealment of defects now is not unjust, since they are accustomed to sell things as they are.

b) Buyers, if by an unjust means, for example deceit or fear, they prevent others from bidding; otherwise it must be said if they employ only prayers (St. Alphonsus, III, 808, dub. 1).

c) Officials, if they begin the auction before the time, that is, while buyers are still lacking, so that the thing is sold for less; likewise, if they adjudge the thing to a bidder too quickly.[1]

Corollary I. The seller licitly: 1° bids himself, for example through a friend; 2° suborns fictitious bidders; 3° retains the thing if a lesser price is offered. These things indeed were formerly illicit, with attention paid to the commonly admitted aleatory character of an auction; but today, the character of an auction having been tempered by common and known practices, true fraud seems absent, and therefore the aforesaid devices seem licit. There is added that even those whom the seller harms use various devices; hence the devices employed by the seller do not harm the equality to be preserved in the contract.

Corollary II. Buyers licitly agree by pact, either to buy a thing in a common name; or, when a determined price has been offered by one of them, to abstain from bidding; or, that one shall in no way bid against another. Buyers, I say, act licitly in this way if there is question of a voluntary auction, because the seller can withdraw his thing when a lesser price is offered. If there is question of a judicial auction, it seems illicit, because a judicial auction has retained more the nature of an aleatory contract, in which the seller is obliged to yield his thing at whatever price. But the equality to be preserved in contracts of this kind requires that the said obligation be compensated by hope of obtaining a greater

price, and this hope is diminished too much if the buyer turns many away from bidding (St. Alphonsus, III, 808, dub. 2). Except, however, if only one or another is turned away from bidding.

Corollary III. A buyer licitly gives or promises money to another so that the latter abstain from bidding; and this holds not only in a voluntary auction, since the seller can withdraw his thing, but also, as is drawn from what was said in Corollary II, in a judicial auction, if he gives or promises money to only one or another. But it is disputed whether one licitly accepts money who does not have the intention of bidding, or even has a positive intention of not bidding. It seems that it must be affirmed, because by accepting the money he takes on the obligation of not bidding; and this is estimable by price.

[1] Cf. Sweens, n. 707.

902 **III. Buying and selling through a broker.** 1. **Notion.** A broker is called one who buys or sells in the name of another, and therefore obliges that other person - not himself - toward the one with whom he deals. Some are public brokers, others are simple mandataries, according as they have been constituted by the municipality or have not been constituted by it. Brokers are distinguished from the so-called commission agents, who indeed act for another, but in their own name, and therefore oblige themselves - not another - toward the one with whom they deal.

2. **Obligations of the broker.** a) A broker, whether constituted publicly or privately: 1° by reason of the office undertaken, whether gratuitously or for payment, ought from strict justice to carry out the affairs of his patron diligently on account of at least a tacit contract; nevertheless one who receives a stipend for his office is held to greater diligence; 2° he is held from contract, and therefore from strict justice, to observe the obligations defined by a special mandate of the broker.

b) A public broker in addition, from the office tacitly undertaken according to the law in force concerning his function, and therefore from a tacit contract from strict justice, is held to the obligations which civil law decrees are to be observed by him.

c) A broker in the forum of conscience: 1° before any sentence whatever of a judge is held for damage which he has inflicted on the mandator either in bad faith or by grave culpable negligence; 2° for damage inflicted with merely juridical fault, he is not held except after the sentence of a judge.

Corollary I. A broker who in the name of the mandator buys below or sells above the price determined by the mandator cannot per se retain the profit thus made; for the mandator has a right to the profit which the contract entered into in his name carries with it, unless he must be judged to have yielded it to the mandatary. But determination of the price does not contain a cession of profit, since by determining the price the owner intends only this, that the thing not be bought more dearly or not be sold for less. Nevertheless he can retain the profit: 1° if the mandator is judged tacitly to consent, which is presumed by law to have place in the case in which the mandator assigns no wage of labor to the broker; 2° if the broker sold the thing more dearly because he himself improved it by undue industry. If he did not improve the thing, but sold it more dearly by employing undue diligence, likewise if by undue diligence he bought some thing for less, he can retain for himself a wage for the undue diligence (St. Alphonsus, III, 825).

Corollary II. A broker can buy for himself a thing of the mandator which is to be sold at a determined price, and afterward sell it for more, provided both that, after employing moral diligence, he has found no one who offers more, and that he truly buys the thing and therefore has it at his own risk. I said

who offers more, because the owner, by determining the price, intends that his thing not be sold for less, but, if it can be done, for more (St. Alphonsus, loc. cit.); the broker is held by this disposition of the owner concerning his own thing. I said also **and truly buys the thing and has it at his own risk,** so that, if he does not sell the thing for so much, he nevertheless returns the determined price to the owner (St. Alphonsus, III, 825).

Since the matter is not without risk, several civil laws are opposed to a way of acting of this kind.

Corollary III. A broker can sufficiently probably buy for himself at a lower price a thing which the mandator committed to him to buy at a determined price, and afterward sell it to the mandator at a higher price, provided that afterward, after employing ordinary diligence, he has found no occasion of buying the thing except at that higher price (St. Alphonsus, loc. cit.).

Objection 1. The moral diligence to be employed demands that the broker not pass over an occasion of buying that thing for the owner at a cheap price.

Response. It is not clear that the diligence to be employed demands more than that the broker buy at the price assigned by the mandator.

Instance. If the opinion defended is admitted, a broker who in the name of the mandator buys below the price assigned by the mandator can - contrary to what was said in the first corollary - retain the profit for himself, because the mandator also in that case has only the right that the thing, if it can be done, be bought at the assigned price.

Response. I deny the parity of the cases; in the first corollary the mandatary buys something for the mandator, who has a right to the profit which the contract entered into in his name carries with it; in our case the mandatary buys something for himself.

Corollary IV. One who buys a thing for another, that is, not at his own risk but at another's risk - as a maid-servant who goes to a shop in the name of her mistress, a tailor who buys cloth not for himself but for a client, from which he is to make clothing - can retain the part of the price which the seller gives to him; or, as the same thing is expressed less precisely, he can retain what the seller remits from the price in favor of the broker or of any mandatary. Nevertheless, let deceit be guarded against, since "sometimes merchants in reality rather simulate giving to them than give, so that if the owner himself went, he would obtain the thing for the same price" (St. Alphonsus, III, 826).

Corollary V. Servants, who are going to pay for a thing previously bought for the owner, can retain the part of the price which the merchant refunds to them, or the little gifts which he bestows on them. For an intention of favoring the servant is presumed.

903 **IV. Monopoly.** 1. **Notion.** Monopoly is called the power of selling or determining the price acquired exclusively by one alone or by only a few.

2. **Division.** Monopoly is distinguished into public or legal and private. Public monopoly is that which the government reserves to itself, or grants to one or a few. Private monopoly is that which is acquired by the industry of private persons, for example by buying up all goods of some kind; by preventing goods of the same kind from being brought in by foreigners. Private monopoly is especially introduced by companies which either buy up certain goods in a very great quantity, or determine the regions where individual companies are to trade, and quasi-divide them among

themselves. According to their diverse constitution they are called: trust, cartel or syndicates, pool, ring, corner.

There is also monopoly improperly so called, which is had when several persons conspire not to sell goods except at such and such a price.

3. **Morality.** 1. A monopoly which the government reserves to itself is licit, provided there is a proportionate cause, for example that the State may enjoy necessary revenues; that public order may be provided for, as in the monopoly of the postal office.

2. A monopoly which the government grants to another is likewise licit if a proportionate cause is present, for example that art, or industry generally, may be promoted.

3. One who, after buying up all the goods of some kind, sells them at the highest price which would be current if the monopoly were excluded, that seller, I say, sins neither against justice nor against charity. He does not sin against justice, "because everyone has a right to sell his own thing at the strict price" (St. Alphonsus, III, 816); he does not sin against charity, because no one is bound to neglect his own advantage in order to provide advantage for another (St. Alphonsus, loc. cit.). Nevertheless he is bound to abstain from a way of acting of this kind if competent authority, insofar as that is required by the common good and can practically be done, restricts the rights of private persons.

I said: "at the highest price which would be current if the monopoly were excluded"; for he would sin against justice if he increased the price above the highest at which the goods would be sold if the monopoly did not exist, or if the goods were available among several sellers (St. Alphonsus, loc. cit.). The reason is that the just price of a thing is that which is assessed by common estimation, with attention paid to the quantity of goods commonly known, whether they are or are not among several sellers - for the price does not increase precisely from fewness of sellers, but from the rarity itself of the goods; whence if there were few sellers but abundant goods, they would not on that account be estimated more highly. But the quantity of goods is the same in one seller as if it existed divided among several.

4. Those who conspire about not selling goods except at the highest price do not sin against justice; since they neither deprive buyers of a good to which they have a right - for no one has a right to buy at a lesser price - nor by an unjust means do they impede them from obtaining a good, that is, from buying at a lesser price. But it is more commonly taught that they sin against charity. "The reason is that although charity does not oblige you to sell below the highest price, it nevertheless seems to oblige you not to dissuade others from selling at a milder price; just as, although charity does not oblige you to give alms, it nevertheless seems to oblige you not to dissuade others who wish to give it" (St. Alphonsus, III, 817).

Corollary I. The things said about the conspiracy of sellers must also be applied to the conspiracy of buyers not buying except at such a price.

Corollary II. Those who sell goods at the lowest price with this event, that after others' shops have been overthrown they may demand a greater price, do not sin against justice, as is clear; nor against charity, because no one is bound to neglect his own advantage on account of another's damage, which will follow occasionally. And this has even more force if, with you abstaining, another perhaps less liberal person would do the same thing.

Corollary III. They act unjustly who compel their workers to buy goods in their own shops or in other determinate shops, and to receive goods less good or of greater price; which way of acting, moreover, is commonly also prohibited by civil laws.

Finally note that the contract of exchange is ruled by the same principles by which buying and selling is ruled.

904 **V. Buying and selling of shares.** Buying and selling of shares contains the buying and selling of a right to part of the profits of some company; but it is just if it is done at the current price; for otherwise trading would become morally impossible, so that all are presumed to consent. But one who has induced the price by fraud is held to restitution. Besides, trading in shares is especially to be dissuaded for the inexperienced.

Scholion. On the Sale of Ecclesiastical Goods

905 Besides those things which we are going to say about every alienation of ecclesiastical goods - for these things also must be applied to sale, since it is one of the modes of alienating - it suffices, as regards sale, to add these things:

I. Immovable ecclesiastical goods are not to be sold or let to their own administrators or to those joined to them in the first or second degree of consanguinity or affinity without the special permission of the local Ordinary (can. 1540).

II. In the sale or exchange of sacred things, no account of consecration or blessing is to be had in the estimation of the price (can. 1539, § 1).

III. Administrators can exchange titles to bearer, as they are called, for other titles more or at least equally safe and fruitful, with any species of commerce or trading excluded, and with the consent of the Ordinary, of the diocesan administrative Council, and of others whose interest is involved (can. 1539, § 2).

§ VII. On Letting-Hiring

906 Letting-hiring is a contract by which someone grants to another the use or fruits of a thing, or the work of a person, for a price or wage. He who grants the use or fruit of a thing, or the work of a person, is called the locator; he who pays the price or wage is called the lessee or hirer. There is added the letting of a work, or contract of completing a work, for example of building a house. We shall speak of each.

Point I. On the Letting-Hiring of Things

907 **I. Object.** The object of the contract is especially constituted by the use of houses and fields, although the use of other things also can be let and hired.

908 **II. Form.** With attention paid to natural law, it can be entered into both orally and in writing; as to what, with attention paid to civil law, is required for the form, and likewise for the proof of the contract, see the law of one's country.

909 **III. Obligations of the lessor.** 1. The lessor should not ask a price which does not correspond to what he himself grants to the lessee; almost as was said concerning the price to be observed in a thing to be sold (p. 601).

2. The lessor should manifest defects which impede or diminish the use of the thing, according to what was said concerning the manifestation of defects which adhere to a thing to be sold (n. 898).

3. If a tenant farmer, that is, a lessee of fields, has suffered a great loss of fruits either by a fortuitous event or because of storms, the lessor should from equity remit part of the rent, unless either the lessee expressly took the risk upon himself, or the sterility can be compensated by the abundance of the preceding or subsequent year[1] (St. Alphonsus, III, 860).

[1] Thus formerly from law 8, Code *de locato*, and from chapter *Propter sterilitatem*, same title.

910 **IV. Obligations of the lessee.** It is sufficient - for many things are clear - to note these things:

1. He is bound to use the thing only for that end for which it was let.

2. To what extent he ought to bear the expenses of repairs is to be gathered from the contract, civil law, or custom; the same is to be said about subletting the thing to another.

3. He is held for damages inflicted on the thing by his fault, but not for others. If merely juridical fault was present, he is not held before the sentence of a judge.

Scholion. On the Letting-Hiring of Ecclesiastical Things

911 **I.** The contract of lease of some ecclesiastical fund should not be made except according to the norm of canon 1531, § 2;[1] and in these contracts there should always be added conditions concerning the boundaries to be guarded, good cultivation, duly paying the rent, and suitable security for fulfilling the conditions (can. 1541, § 1).

II. For the lease of ecclesiastical goods, with the prescription of canon 1479 preserved:[2]

1. If the value of the lease exceeds thirty thousand lire or francs and the lease is beyond nine years, the Apostolic beneplacitum is required; if the lease is not beyond nine years, the prescription of canon 1532, § 3, must be observed[3] (can. 1541, § 2, 1).

2. If the value is contained between one thousand lire and thirty thousand lire or francs and the lease is beyond nine years, the prescription of the same canon 1532, § 3, must be observed;[4] if the lease is not beyond nine years, the prescription of the same canon 1532, § 2[5] (can. 1541, § 2, 2).

3. If the value does not exceed one thousand lire or francs and the lease is beyond nine years, the same prescription of canon 1532, § 2, must be observed;[6] if the lease is not beyond nine years, it can be made by legitimate administrators, with the Ordinary having been notified (can. 1541, § 2, 3).

[1] Canon 1531, § 2, establishes: Alienation is to be made by public bidding or at least made known, unless circumstances suggest otherwise; and the thing is to be granted to him who, all things weighed, has offered more.

[2] Canon 1479 declares: In the lease of benefice goods, anticipated payments beyond a half-year are prohibited without the permission of the local Ordinary, who in extraordinary cases should take care by suitable prescriptions that such a lease not turn to the damage of the pious place or of successors in the benefice.

[3] Canon 1532, § 3, has these words: If finally there is question of things whose price is contained between one thousand lire and thirty thousand lire or francs, it belongs to the local Ordinary, that is, the local Ordinary must grant the permission, provided that the consent has been added both of the Cathedral Chapter, of the Council of administration, and of those whose interest is involved.

[4] Cf. the preceding note.

[5] Canon 1532, § 2, establishes: But if there is question of things which do not exceed the value of one thousand lire or francs, it belongs to the local Ordinary, that is, the local Ordinary must grant the permission, after the Council of administration has been heard, unless the matter is of lesser importance, and with the consent of those whose interest is involved.

[6] Cf. the note above on canon 1532, § 2.

Point II. On the Letting of Work, or on the Contract of Rendering Work

912 **I. Notion.** The contract of rendering work is a contract by which one party, the locator, obliges himself to render his work for the benefit of another, and the other party, the hirer, to pay a wage. Therefore the object of this contract is the work or labor which someone lets to another.

913 **II. Honesty of the contract.** The honesty of the contract is clear from this: on the one hand, anyone can dispose of the use of his faculties for the advantage of another; on the other hand, that use can justly be compensated by the other party. Nevertheless the conditions of human association can be such that a contract of partnership is per se more to be recommended.

Pius XI speaks thus: "And first indeed, those who declare that the contract of hiring and letting labor is by its force unjust, and that therefore a contract of partnership must be substituted in its place, speak absurdly indeed and wrongly calumniate Our Predecessor, whose Encyclical Letters not only accept the 'wage-system,' but dwell at length on directing it according to the norms of justice.

"Yet in the present conditions of human association We judge it more advisable, insofar as it can be done, that the contract of work be tempered somewhat by a contract of partnership, as has already begun to be done in diverse ways, with no small advantage to workers and owners. Thus workers and officials become partners in ownership or management, or participate in some way in the profits received."[1]

[1] Encyclical of Pius XI *Quadragesimo anno*, May 15, 1931 (*A.A.S.* 1931, p. 199).

914 **III. Subject.** All who are able to render the work in question and are not excluded by law can enter into the contract of rendering work.

915 **IV. Form.** The form of the contract is to be drawn from law; likewise those things which are required for proof of the contract.

916 **V. Obligations of the locator, or hired person.** 1. The hired person is bound faithfully to render his work according to the agreement.

2. With attention paid to natural law, the hired person cannot leave the hirer before the fixed time except for a grave cause. But if he does so, he ought to compensate the damages perhaps following for the hirer from the illegitimate departure. If, however, in the case the hirer finds another worker, the hired person can diminish the compensation proportionately, or even omit it, if no damage follows for the hirer. For the rest, the hired person retains a right to the wage proportionate to the time during which he rendered service, with some part nevertheless deducted as a just penalty (St. Alphonsus, III, 845). But what has force with attention paid to civil law, see in the code of one's country.

Question. What is to be said about the concerted interruption of labor, or about what are called strikes?[1]

Response 1. Strikes are unjust: 1. if they are done for this end, that a wage greater than the just wage may be obtained;[2] 2. if the contract of letting was validly entered into, and the time of the lease has not yet elapsed, and a reason for not observing the contract is lacking. Therefore, with the end of obtaining a wage greater than the just wage excluded, they are not unjust: 1. if the contract of letting was invalid, for example because of a wage agreed upon that was less than just; 2. if the time of the lease has elapsed; 3. if there is a reason for not observing the contract, for example because the master himself does not observe the conditions.

Response 2. Strikes, though just, can nevertheless be illicit, with attention paid to graver damages that may perhaps arise, for example greater inconveniences that will befall families, disturbance of public order, etc. Hence they also are illicit if there is hope of obtaining the end by way of settlement.

Note. They are guilty of injustice who keep others back from work by an unjust means. Unjust means are threats, force, and fraud.

[1] Cf. Vermeersch, *Quaestiones de Iustitia*, n. 470-477; Aengenent, o.c., n. 140 sq.

[2] If workers conspire for the highest wage, they seem to act illicitly (n. 903).

917 **VI. Obligations of the hirer.** 1. The hirer cannot burden the hired person against his will with undue labor, that is, labor to which, apart from a special agreement, he is not bound according to the practice of the place.

2. The hirer is bound to pay a just wage. But a just wage per se is one which both suffices for the support of the worker and his family during the time of the work rendered, and corresponds to the nature of the labor which he renders, account also being taken of the social character which inheres in labor beyond its personal or individual character; and these things need a fuller explanation.[1] Therefore:

a) To labor there is owed at least some wage, and that from commutative justice. For one who labors for another grants to that other the use of his powers. But the use of human powers is worthy of a wage, or, in other words, gives to the one granting the use a right to some compensation or wage; which wage is rightly called as it were the price of labor, according to these words of St. Thomas: "For that is called a wage which is recompensed to someone in repayment of work or labor, as a kind of price of it; whence just as to pay the just price for a thing received from someone is an act of justice, so also to recompense the wage of work or labor is an act of justice" (I-II, q. 114, a. 1).

b) There is owed, and indeed from commutative justice, an individual wage, that is, one which suffices for the decent support of the laborer himself. This is clear first from the encyclical of Leo XIII, *Rerum novarum*.[2] "Let it be then," says the Supreme Pontiff, "that the worker and the master freely agree to the same compact, and specifically to the manner of the wage: nevertheless there always underlies it something from natural justice, and that greater and older than the free will of those making the pact, namely, that the wage ought not to be unequal to feeding the worker, if he is frugal and of good morals. But if, compelled by necessity or moved by fear of a worse evil, the worker accepts a harder condition, which, although he does not wish it, must be accepted because it is imposed by the owner or by the contractor of works, that indeed is to undergo force, against which justice protests." The same is drawn from the encyclicals of Pius XI *Casti connubii*[3] and *Quadragesimo anno*.[4] The reason, however, is sought from the right, indeed the duty, of guarding life, and can be proposed thus: Labor is the means destined by God by which most must provide for their own support (cf. St. Thomas, II-II, q. 187, a. 3).

But these things involve that labor of itself is worthy of a wage which suffices for the support of the laborer.

The major is clear from this, that a means of providing for themselves cannot be lacking to most, and no other means than labor can be assigned.

c) There is owed, and indeed likewise from commutative justice, a family wage, that is, one which suffices not only for the laborer, but also for the support of his family. It is said:

alpha) **A family wage is owed.** Thus Leo XIII and Pius XI expressly teach, as will be clear from the citations to be adduced. The reason, moreover, is sought first from the prescription of legal justice, which brings with it the obligation of pursuing the common good. But it is very greatly to the interest of the common good that a wage be granted to the laborer by which he can provide for himself and his family.[5] There is added the reason by which we shall soon prove that a family wage is owed from commutative justice.

Leo XIII in the encyclical *Rerum novarum* speaks thus: "If the worker receives a wage sufficiently ample that he can suitably protect himself, his wife, and his children, he will easily devote himself to saving," etc.

Pius XI in the encyclical *Casti connubii*: "And first of all this must be striven for with every effort, that what Our Predecessor Leo XIII had already most wisely decreed may be established in civil society, namely, that economic and social conditions be so constituted that all fathers of families can earn and gain the things necessary for feeding themselves, their wives, and their children according to their dignity and station: 'for the worker is worthy of his wage.'[6] To deny this or to make it less than equitable is a grave injustice and is placed by the Sacred Scriptures among the greatest sins;[7] nor is it lawful to establish wages so small that, according to the conditions of things, they are unequal to feeding a family."

The same Supreme Pontiff in the encyclical *Quadragesimo anno*: "And first indeed, a wage is to be supplied to the worker which is equal to the support of him and his family." ... "Therefore every effort must be made that fathers of families receive a wage sufficiently ample which suitably provides for common domestic necessities."[8]

beta) **A family wage is owed from commutative justice.** The reason again is sought from this, that labor is the means destined by God by which most must provide not only for themselves but also for their family. But these things involve that labor of itself is worthy of a wage which suffices not only for the laborer, as we have already said, but also for the support of his family. The major is deduced from this, that most men are called to founding a family; this being posited, a means of supporting a family cannot be lacking to most, and no other means than labor can be assigned.[9]

Corollary I. The wage explained above is understood of a worker who is fit for his work and is of that age at which, in that region, people think of entering marriage. It is nevertheless all the same whether the individual thinks of this, or in fact enters marriage, or remains celibate. For labor, as being destined to support a family, has such value as is required for supporting it, whether the worker founds a family or does not found a family.

Corollary II. The family wage which we maintain is understood as the wage which corresponds to supporting the usual family, or, in other words, we maintain the absolute family wage, as it is called, not the relative wage, that is, one which corresponds to an extraordinarily numerous family; for nature

does not regard those things which occur, as it were, by accident. But how great the wage ought to be in some region in order to suffice for the suitable support of the usual family is gathered especially from common estimation. Yet, taking into account both that estimation itself, which is not precisely the same in all individuals, and the very nature of the thing - for it cannot be determined accurately what suitable support of a family requires - taking these into account, I say, at least in practice, a lowest, middle, and highest wage is admitted.

Corollary III. The family wage which we admit is understood as the wage by which the worker, with added to it both those things which he deposited before marriage and in the first times of marriage, and those things which wife and children can suitably earn, is able to care decently for himself and his family in the ordinary circumstances of the whole of life, that is, to provide for himself and his family the suitable instruction of the children, to meet the usual cases of illnesses, to prepare for himself an old age that is not needy, in the course of life to indulge in certain recreations, and finally, with the family estate increased both by thrift and by wise administration, to provide in some way for the surviving family. And these things, at least in part, are hinted at by Pius XI in the encyclicals.

The Supreme Pontiff in the encyclical *Casti connubii*: "Care must nevertheless be taken that the spouses themselves, and that already long before they enter marriage, strive to foresee or at least lessen future inconveniences and necessities of life, and be taught by experts how they can do this in a way at once effective and honorable. Provision must also be made that, if they are not sufficient for themselves alone, by the joined work of similar persons and by private or public associations established, they may relieve the necessities of life." And in the encyclical *Quadragesimo anno*: "It is surely equitable that the rest of the family also contribute according to their powers to the common support of all, as can be seen especially in families of farmers, but also in many families of craftsmen and smaller merchants; but it is wicked to abuse childhood age and the weakness of woman. Let mothers of families devote their work especially at home, or in those things which are adjacent to the home, by applying themselves to domestic cares. But it is a very bad abuse and to be removed by every effort, that mothers of families, because of the scantiness of the father's wage, are forced to exercise a gainful art outside the domestic walls, with the cares and duties proper to them, and especially the instruction of infants, neglected."[10]

Corollary IV. Leo XIII and Pius XI also speak of so great a wage "as may give workers the occasion of coming to a modest holding,"[11] or of increasing the family estate,[12] and of leaving some goods to their children.[13] But these things will have place if workers, after receiving the wage assigned above, devote themselves to saving.

"If the wage," says Leo XIII, "is sufficiently ample that by it the worker can suitably protect himself, his wife, and his children, he will easily devote himself to saving, if he is wise, and will bring it about - as nature itself seems to advise - that, expenses having been deducted, something also remains, by which he may be allowed to come to a modest holding."[14] And Pius XI declares that workers must strive "to increase the family estate by thrift; by administering the increased estate wisely they may more easily and securely sustain the burdens of the family; and ... even after the end of this life they may trust that they will in some way provide for those whom they leave behind."[15]

Corollary V. Leo XIII and Pius XI likewise declare that goods are to be distributed more equitably. But this also will occur if the wage described above is granted and workers devote themselves to saving.

"When this has been done," says Leo XIII, "splendid advantages will follow; and first certainly a more equitable division of goods."[16]

d) It is asked whether there is also owed to labor that the laborer participate in the profit received. It must be denied, since it suffices that labor be truly compensated, and it does not matter whether this is done in this or in another way. But it can be compensated even if the laborer does not participate in the profit. Thus also Pius XI.[17]

Objection. Labor brings with it a right, at least some right, in that which is effected by labor, that is, in the product. But the right annexed to the product has a right in part of the profit, since profit is obtained by the price of the product.

Response. I deny the major, if there is question of an effect for producing which another supplies the material; and the major must be denied still more if another besides presides over the producing of the effect as principal cause and as one commanding; then it suffices that the labor of the cause less principal and as of one mandated be truly compensated. Nor should it be said that at least the furnishing of material - for example the factory, machines, or even money - cannot bring with it a right to the effect or product; for nothing prevents the one who furnishes the means of producing the product from also receiving a right in the product. But the one who furnishes the material furnishes the means of producing the product.

e) The wage described is owed to the laborer as such; but, with attention paid to the nature of a determinate labor, the preparation necessary for learning an art, etc., a greater wage will often be owed.

f) The things said above concerning the worker's wage have force when the matter is considered from the side of the hired worker. But it must also be considered from the side of the hirer or undertaker, who has a right to compensation both for the labor rendered by himself and for the capital expended in the business. I said **for the labor rendered,** which not only, equally with the worker's labor, is ordered to his own support and that of his family, but also, as directing works and therefore being nobler and a more principal cause of the product, is worthy of greater compensation than the labor of the worker. I said **for the capital expended in the business,** which capital indeed, as being a means of producing the effect, is likewise worthy of compensation. Now if, with attention paid to the condition of a business or workshop less flourishing, the rights of the hirer and of the suitable hired person cannot be satisfied, each should remit something to be established according to equity and good, unless the matter is brought to such straits that it is better to withdraw from the undertaking of the business.

And these things are at least in part, either explicitly or implicitly, confirmed by these words of Pius XI:

"Account must also be taken of the workshop and of its undertaker in determining the magnitude of the wage; for immoderate salaries would be unjustly demanded which the workshop cannot bear without its own ruin and the consequent calamity of the workers. Yet if, because of sloth or indolence, or neglect of technical and economic progress, it makes less profit, this is not to be regarded as a just cause for diminishing the wage of the workers. But if not so much money returns to the workshop itself as is sufficient for paying an equitable wage to the workers, because either it is oppressed by unjust burdens or is forced to sell the work produced by art for less than is just, those who thus harass it are guilty of grave fault; for they deprive the workers of a just wage, who, bound by necessity, are compelled to accept less than equitable.

"Therefore, with forces and counsels joined, let all, both workers and directors, strive to overcome the difficulties and obstacles of things, and let the wise providence of public authority aid them in so salutary a work. But if the matter has been brought to the greatest straits, then at last it will have to be deliberated whether the workshop can persist in the undertaking, or whether provision must be made for the workers in some other way. In this matter, surely most grave, a certain closeness and Christian concord of minds between directors and workers ought to flourish and to operate effectively."[18]

g) If the wage for any reason cannot correspond to the necessities of families, Christian charity and public authority should supplement it, according to these words of Pius XI:

"But when the things which we have said cannot equal the expenses of the family, especially if it is rather large or less strong, Christian love of neighbor wholly requires that Christian charity compensate for the things which are lacking to the needy, that especially the rich aid the poorer, and that those who have superfluous goods not spend them in vain expenses or utterly dissipate them, but turn them to preserving the life and health of those who lack even necessities. Those who have given of their own to Christ in the poor, when the Lord comes to judge the world, will receive a most abundant reward; but those who have done the contrary will pay their penalties. For the Apostle does not warn in vain: 'He who has the substance of this world and sees his brother having need, and shuts his bowels from him: how does the charity of God remain in him?'[19]

"But if private aids are not sufficient, it belongs to public authority to supplement the unequal powers of private persons, especially in a matter of such great moment for the common good as is the condition, worthy of men, of families and spouses. ... Therefore those who have care of the republic and of the common good cannot neglect such necessities of spouses and families without bringing grave harm to the State and the common good; therefore in making laws and in establishing public expenses let them so provide for relieving this poverty of needy families, that they have care of this kind among the principal parts of their power,"[20] for example by establishing a subsidy to be furnished for more numerous offspring or for the time of old age, etc.[21]

3. With attention paid to natural law, the hirer cannot dismiss the hired person before the fixed time except for a grave cause. But if he does so, he ought to compensate the damages that have followed from the illegitimate dismissal. If, however, in the case the worker finds another service, the hirer can diminish the compensation proportionately (St. Alphonsus, III, 842). If the worker was able, but did not wish, to let himself to another, the master does not seem to be held to the entire wage, because in this hypothesis the worker voluntarily admits the damage. But what has force with attention paid to civil law, see in the law of one's country.

Note. The Code of Canon Law establishes: "All, and especially clerics, religious, and administrators of ecclesiastical goods ... ought to assign to workers an honest and just wage; to see that they have a suitable space of time for piety; in no way to draw them away from domestic care and the pursuit of thrift; nor to impose more work on them than their powers can bear, nor that kind which is at variance with their age and sex" (can. 1526).

Question 1. To what extent is the hirer held to the entire wage, if the hired person for some time has not rendered the work owed at all, or has not rendered it duly?

Response 1. If the hired person is at fault, the wage can be diminished; indeed the hired person is also held to compensate the damages perhaps following for the hirer from his fault.

Response 2. If the hirer is at fault, he is held to the entire wage.

Response 3. If neither is at fault, a distinction must be made between natural law and civil law.

1. With attention paid to natural law, it must be said thus:

a) If the hirer cannot use the work of the hired person from a cause which could not be foreseen, for example because the factory is destroyed by fire, he is not held to the wage, because a case of this kind is not comprehended by the contract. The contrary must be said, by reason of the contrary argument, if the cause could in some measure be foreseen, such as a shortage of ordered works.

b) If the hired person cannot work because of illness or misfortune, the hirer can diminish the wage proportionately, because he is bound only to pay a stipend for the labor rendered. If, however, the hired person, hired for a long time, is ill for a brief time, then, with attention paid both to the nature of the thing and to custom, the contract will sometimes have to be so interpreted that the wage cannot be diminished without injustice (St. Alphonsus, III, 864).

2. With attention paid to civil law, see in the law of one's country what has force. But a just civil law in the case obliges in conscience.

Question 2. To what extent is the hirer held to bear the expenses of treatment of the hired person when incapacitated and ill?

Response. With attention paid to natural law, he is not held from justice. But with attention paid to civil law, see in the code of one's country to what he is held.

[1] Cf. Vermeersch, *De Iustitia*, n. 403 sq.; Pottier, *De Iure et Iustitia*, diss. 3, c. 3, a. 5; Aengenent, *Leerboek der Sociologie*, n. 180 sq.; Koenraedt, *Rechtvaardig arbeidsloon*.

[2] May 15, 1891.

[3] December 31, 1930.

[4] May 15, 1931.

[5] Cf. Encyclical *Quadragesimo anno* (*A.A.S.* 1931, p. 201).

[6] Luke 10:7.

[7] Cf. Deut. 24:14, 15.

[8] *A.A.S.* 1931, p. 200.

[9] I omit the argument which some deduce from the encyclicals of Leo XIII and Pius XI, since I do not see that an obligation of commutative justice is contained in those documents.

[10] *A.A.S.* 1931, p. 200.

[11] Encyclical *Rerum novarum*.

[12] Encyclical *Quadragesimo anno* (*A.A.S.* 1931, p. 198).

[13] Encyclical cited, loc. cit.

[14] Encyclical *Rerum novarum*.

[15] Encyclical *Quadragesimo anno* (*A.A.S.* 1931, p. 198).

[16] Encyclical *Rerum novarum*.

[17] Encyclical *Quadragesimo anno* (*A.A.S.* 1931, p. 199).

[18] Encyclical *Quadragesimo anno* (*A.A.S.* 1931, p. 201).

[19] 1 John 3:17.

[20] Encyclical *Casti connubii*, December 31, 1930.

[21] Cf. Aengenent, o.c., n. 186; Koenraedt, o.c., p. 147 sq.

918 **VII. Cessation.** The cessation of the contract is commonly determined by civil law; let it be consulted.

[1] Cf. Aengenent, *Leerboek der Sociologie*, n. 134 sq.; Koenraedt, *Rechtvaardig arbeidsloon*, p. 71 sq.

Scholion. On the Contract of Rendering Certain Services

919 As regards agreements about certain services to be rendered, it is sufficient to note these things: one who renders to someone a service already owed to another - for example, one who leads several persons at the same time to some place, or brings a message to several persons at the same time - can ask payment from each. For since the work rendered here and now is ordered wholly and entirely to each one, and is useful to each, it does not seem unjust to ask compensation from each one (St. Alphonsus, III, 862). Nevertheless he cannot demand the price twice for that which he himself bought only once, for example for a meal, for a carriage, because such a price is demanded after the manner of restoring damage, and therefore ought not to exceed the damage itself.

Point III. On the Letting of a Work, or on the Contract of Rendering a Work

920 **I. Notion.** The contract of rendering a work is a contract by which one party, the locator, lets some work to someone for a certain price, and the other party, the undertaker, obliges himself to complete the work for the assigned price. Therefore the object of this contract is the work itself.

921 **II. Obligations of the undertaker.** The undertaker is bound to render the work undertaken, and indeed according to the agreed description both of form and of material, and at the established time. Yet if they agreed about the best material, for example about using the best wood, etc., by usage truly good material is understood.

Question 1. Can those competing to complete a work either agree among themselves that each one increase the price which he was going to ask by a certain sum, which is to be divided among the others by him to whom the work is adjudged; or by common counsel establish the price and then by lot or some other way designate the undertaker who, once the work has been adjudged to him, will divide a certain part of the price among the others?

Response. A way of acting of this kind is not opposed to justice, if the price, with the addition to be divided added, does not exceed the highest price (p. 601). But per se they sin against charity, because by conspiring they prevent the locator from letting the work at a lower price (n. 903). Yet in the case a reason is not lacking by which, per accidens, a conspiracy of undertakers of this kind can seem also to be excused from sin against charity. For undertakers must make many expenses and spend much labor in order to compete in this way; all of which are done in vain if, as generally happens, the work is not adjudged to them. Therefore for these expenses and labor they can keep themselves indemnified by agreeing among themselves about increasing the price within just limits.

Question 2. Is the locator bound to increase the price, if the one who undertook the work for a determined price afterward rightly contends that the work cannot be completed for that price, for

example because the price of the material to be used or the wage of the workers has increased, or because he erred in computing expenses or in making the reckoning?

Response. It is disputed; but, except in an altogether fortuitous case, the locator does not seem to be held to supplement, although equity suggests it. The reason is that the undertaker is judged to undertake the work at almost his sole risk, or to include in the contract all cases which can be foreseen or feared - such as an increased wage of workers, increased prices of things - or can be guarded against, such as an error in computing expenses. Only those cases are excepted which can neither be foreseen nor guarded against, such as an earthquake which overturns the building.

Objection. In the case the just price is lacking.

Response. I deny it, because the contract about which there is discussion also has the character of an aleatory contract, and indeed with respect to the cases about which the question speaks, and which on that account are judged to be included in the contract. But altogether fortuitous cases are not judged to be included in the contract.

Scholion. On Labor

922 **I. Notion.** Labor here is understood as the use of powers which by its nature is not ordered to delight, as games or sport, as it is called, are. It is distinguished as spiritual and bodily.

923 **II. The right of laboring.** It is clear that to each person belongs the right of using his powers, insofar as by that use the right of another is not harmed. But it is asked to what extent one who otherwise cannot provide for himself and his own has a broad right that an occasion of laboring be procured for him. Now those who can conveniently furnish it are bound to furnish an occasion of laboring to those who lack another means of support. Likewise the State, insofar as there is need, should provide for this cause.

What is to be said about the rationalization of labor, as it is called?

Response 1. The rationalization of labor consists in this, that with the least possible powers the greatest number and best effects are produced and brought to buyers. The consequence will be that more workers become superfluous and are dismissed.

Response 2. This way of acting is not illicit, because no one is bound to neglect his own advantage in order to procure advantage for another. Make exception if the State, insofar as it is necessary for the common good and can practically be done, restricts liberty.

924 **III. Obligation of laboring.** Each person is bound to labor: 1° if otherwise he cannot provide for himself and his own; 2° if idleness would be a proximate and free occasion of sins. Labor is also necessary for the common good; but if the intended end, with attention paid to the common character of men, will be obtained certainly enough - as has place in the case - a necessity of this kind does not oblige individual persons (cf. St. Thomas, II-II, q. 187, a. 3).

Objection. The Apostle warns: "If anyone will not work, neither let him eat."[1]

Response. The Apostle can best be understood of those who, with labor neglected, cannot provide for themselves and their own.[2]

[1] 2 Thess. 3:10.

[2] Encyclical *Quadragesimo anno*, May 15, 1931 (*A.A.S.* 1931, p. 197).

§ VIII. On Census

The word *census* is taken both for an annual pension, and for the right to it, and for the title by which that right is created. Now a right to an annual pension can be created either by testament or by contract, and indeed by contract both gratuitous and onerous. We speak chiefly of the onerous census contract.

925 **I. Notion.** A census contract is a contract by which a right of receiving an annual pension is acquired. He who acquires the right to the pension is called the *censuista*; he who ought to satisfy that right is called the *censuarius*.

926 **II. Division.** A census contract, or at least census or pension, is divided by theologians:

1. Into reservative and consignative, or constituted. Reservative is when someone transfers ownership of his thing to another and acquires for himself, as it were reserves, the right of receiving from it a revenue or annual pension. Consignative is when someone transfers neither any direct nor useful ownership, but assigns to another, upon some thing or upon his own person, the right of receiving an annual pension from it.
2. Into real, personal, and mixed, according as it is founded on a fruitful or useful thing, on a person, or on both.
3. Into pecuniary and fructuary, according as the pension to be paid consists in money or in fruits.
4. Into perpetual, temporary, and life-long, according as the right to the pension is acquired either in perpetuity, so that it passes to heirs, or for a determined time, or for as long as the life of the censualist, the censuary, or another person will endure. Therefore note that a pension can also be bought for the benefit of another or others.
5. Into redeemable and irredeemable, according as, with the price restored or repeated, it can be removed by both or by either one; or cannot be removed by either, against the will of the other.

927 **III. Morality.** The census contract is licit. This is clear from the nature of the contract, which involves nothing other than the buying of a right to a pension. Nevertheless justice must be observed in the price, which indeed is established by legitimate authority, or is clear from common estimation, as was said concerning every buying and selling. If a pact of redeeming the census is added, let those things be applied which were said in n. 900 about buying with a pact of redeeming (St. Alphonsus, III, 839, 843-845). For the rest, consult civil law.

§ IX. On the Partnership Contract

928 **I. Notion.** A partnership contract is a contract by which two or more persons contribute something in common for this end, that the profit received may be divided among them. It is said **something,** for example money or other goods, labor, industry. But in order that a partnership contract be entered into justly, the hope of profit and the danger of loss must correspond to that which each contributed to the partnership; these things will be clearer from what is to be said under III.

929 **II. Form.** The form of the contract and its diverse species are to be drawn from civil law.

930 **III. Morality.** The honesty of this contract is clear; indeed Pius XI, with attention paid to present-day conditions of human association, judges it more advisable if, insofar as it can be done, even the contract itself of rendering work be tempered somewhat by a partnership contract (n. 913).

931 **IV. Division of profit.** In dividing profit, account must be taken both of the money or other good which each contributed, and of labor and industry, and likewise of the risk which each undergoes. But as regards the contribution of money or of another good, it must also be seen whether ownership also or only the use of them was contributed; but as regards the industry contributed, it must be noted that this sometimes is worth more than money or the use of it (St. Alphonsus, III, 907, q. 2). Moreover the division of profit will generally be just if the dispositions of the partnership itself are observed, and, if these are lacking, the statutes of law.

Note. The triple contract is called a contract of partnership together with an added double contract of insurance, namely of the principal and of the profit; that is, to some business one contributes work, another money (the first contract). The latter, furthermore, in order to remove the danger of the principal, yields part of the hoped-for profit under this condition, that his partner take on the danger of the principal (the second contract). Finally, in order to avoid the danger of making no profit, he renounces another part of the hoped-for profit, on condition that he receive a certain profit, even though a smaller one (the third contract). Now no reason appears from which the triple contract, provided equality is preserved, should be called illicit (St. Alphonsus, III, 908).

§ X. On Mandate and the Management of Affairs

932 **I. Notion of mandate.** Mandate is a contract by which someone entrusts to another some affair to be managed in his, that is, the mandator's, name, and the other, the mandatary, undertakes to manage it in that way. A general and a special mandate are distinguished, according as the mandator commits all affairs or only one affair or several affairs to the mandatary.

933 **II. Form of mandate.** With attention paid to natural law, it can be entered into both orally and in writing; but civil law should be inspected.

934 **III. Obligations of the mandator.** The mandator is bound: 1° to fulfill the obligations which the mandatary undertook within the limits of the mandate; those which he undertook by exceeding the limits of the mandate do not bind the mandator, unless he has expressly or tacitly ratified them; 2° to compensate the mandatary for the expenses to be made by him, and likewise the damages which he has suffered inculpably in executing the mandate; 3° to pay the agreed wage.

935 **IV. Obligations of the mandatary.** The mandatary is bound: 1° to execute the mandates diligently; 2° to keep himself within the limits of the mandate; otherwise he acts in his own name, and therefore does not oblige the mandator toward the third party. To what extent he can retain the excess of price, if he sells above the price assigned by the mandator or buys below it, see n. 902.

936 **V. Cessation of mandate.** Mandate ceases: 1° by legitimate revocation of the mandator, intimated to the mandatary; 2° by legitimate renunciation of the mandatary, intimated to the mandator; 3° by the affair for which the contract was entered into having been finished; 4° by the death of the mandator or of the mandatary. Some indeed teach, or hold as probable, that a mandate of donating does not expire by the death of the donor, so that the mandatary can execute the mandate of donating even after the death of the donor; but it is not clear by what reason a donation of some thing could be made in the name of a person already deprived by death of every right to the thing to be donated.

937 **VI. Management of affairs** is had when someone without mandate of the owner undertakes to manage another's affair.

Question 1. Does the manager of affairs have a right to a wage?

Response. It must be denied if he had the intention of rendering the service gratuitously. Otherwise it is disputed. Some deny it, because that right cannot arise except from a contract with the owner. But with St. Alphonsus (III, 825, at the end) and others, it seems that it must be affirmed in the case in which the owner wanted, for example, to buy something. The reason is that one who wishes, for example, to buy something also wills the normal conditions necessary for the purchase. But a normal condition is that he wishes the thing to be bought by another if he himself cannot buy it. This being posited, there is a contract, implicit on the part of the owner, between the owner and the manager of the affair, who buys the thing and receives a right to a wage.

Question 2. Is the owner bound to ratify the things which the manager of affairs prudently managed?

Response. It must be affirmed insofar as, according to the things just explained, a contract had place between him and the manager of affairs.

Note. What civil law establishes regarding the management of affairs, see in the code of one's country.

§ XI. On Exchange

938 **I. Notion.** Exchange is said from *cambire*, that is, to exchange, and is a profitable exchange of money with different money. He who asks for the exchange of money is called the *campsarius*; he who satisfies the request is the *campsor*.

939 **II. Division.** Exchange is divided as twofold: manual or small exchange, and local exchange. It is manual when money is exchanged with other present money, for example gold with silver, the coinage of one region with the coinage of another, paper money with metallic money. It is local when money is exchanged with other money at a distance, as if I pay in Amsterdam money which is owed to me in Rome.

940 **III. Profit from exchange** is licit, because it rests on just titles, of which kind are, for example, "the labor of the money-changer in counting the money, likewise diligence in gathering money of every kind, so that he may be ready for whatever customer asks" (St. Alphonsus, III, 851), likewise the wages of servants and the risks annexed to the virtual or real transfer of moneys. Insofar as any of the said titles is present, even a private person, that is, one who does not exchange by office, can receive profit from exchange (St. Alphonsus, III, 851-855).

"Whether a servant receiving gold money from his master, so that he may satisfy the master's creditors, can profit by exchanging it with copper money? It is affirmed, because it is the fruit of industry" (St. Alphonsus, III, 856).

§ XII. On Aleatory Contracts

Point I. On Insurance

941 **I. Notion.** Insurance is a contract by which someone, the insurer, for a certain price obliges himself to compensate someone, the insured, for an uncertain damage or ceasing profit. It is said **uncertain,** that is, for each party.

942 **II. Form.** The form of the contract is to be drawn from the civil code; likewise those things which are required for proof of the contract.

943 **III. Just price.** The just price is that which is proportioned both to the value of the things and to their danger. Today, because of competition among diverse companies, the price can commonly be held as just.

944 **IV. Obligations of the insured.** The insured is bound: 1° not to insure a thing which he knows has already perished; 2° to manifest the true value and danger, or to leave them to be investigated; 3° to take care that, in view of the insurance, he not watch over the thing more negligently; 4° not to ask compensation for damage for which, with attention paid to the conditions tacitly or explicitly admitted, compensation is not owed; nor compensation greater than just. Nevertheless, provided that he is free from fraud, he can accept a greater compensation if arbitrators, to whose judgment the parties submitted themselves, have established it, because there is an aleatory agreement; likewise that which the agents of the company, after the matter has been investigated, bring, because it can be held as a liberal donation; for it is in the interest of the company to show itself liberal.

945 **V. Obligations of the insurer.** These are for the most part clear from the nature of the thing and the terms of the contract. He is especially bound to compensate damage insofar as that damage is the object of the insurance. Hence he is also bound, unless it was otherwise agreed, to compensation if the damage has occurred from the fault, even theological fault, of a third party; but not if it has occurred from the theological fault of the insured. In the former case, however, the insurer succeeds to the rights of the insured against the one causing the damage.

If part of the insured thing has perished, the insurer is bound only to compensate part of the damage in proportion to the insured value; except if they agreed about compensating the whole damage.

946 **VI. Species of insurance.** Insurance can be extended to things of any kind, for example insurance against fires, against damage to crops, against damages that will follow from the death of someone, against dangers of the sea, of carriage, etc. Concerning insurance against damages arising from the death of someone, or life insurance, certain things must be noted.

1. Life insurance can be accomplished in a twofold way, namely: 1° so that after the death of the one whose life is insured, for example a husband, the insurer pays a certain sum to a third party, for example the wife; 2° so that the insurer pays a certain sum after some person has reached a certain age; but if he dies before that age, the insurer is held to nothing or only to part of the sum.
2. The insured, when questioned about diseases and defects, is bound to respond if he wishes to enter into the contract; if he is not questioned, he is not bound to manifest them, because it is permissible to presume that the company either compensates itself by a greater premium, or acts thus for this end, that it may attract men.

Question. What is to be said both about the validity of the contract and about the obligation of the insured, if the latter did not manifest the things which he ought to have manifested?

Response 1. If there is question of concealing a matter of lesser moment, the contract is valid; but the insured is bound, if the matter concealed is worthy of note, to supplement the premium that was paid at less than the just amount.

Response 2. If there is question of concealing a grave matter, it is disputed. Some hold the contract as valid, because the object of the insurer's consent and the object of the present contract differ only qualitatively, for example a healthy body and a sickly body; otherwise than if there were question of a man who was already not living but dead; in a word, there is no substantial error. Nevertheless, the

contract seems invalid, because the object of consent, at least morally speaking, seems diverse from the object of the present contract (n. 837). Whatever the case may be, if the contract is held as valid, the insured is nevertheless bound to supplement the premium that was paid at less than the just amount.

Point II. On Gaming

947 **I. Notion.** Gaming is a contract by which the players agree about a prize which the one conquered yields to the victor.

948 **II. Division.** Gaming is distinguished as threefold: industrial, aleatory, and mixed, according as it is ruled either by industry alone, as a ball game; or by fortune alone, as a game of dice; or partly by industry and partly by fortune, as a card game.

949 **III. Conditions required for the justice of gaming are:**

1. That the matter of the prize be a thing about which the players can freely dispose. If another's thing is exposed to be obtained by the victor, the contract is invalid (St. Alphonsus, III, 875; n. 894).
2. That equality be preserved among the players as regards hope of the prize and danger of loss. Yet a lesser prize exposed by one party can be compensated by greater skill of the other party; and lesser skill of one party can be compensated by a greater price exposed by the other party, or by other advantages granted. Moreover injustice is absent if the less skilled party freely consents to an inequality known to him; likewise if two persons play and neither knows the skill of the other, since each freely admits the danger of playing with one more skilled (St. Alphonsus, III, 881). And generally equality is not required if the party who is of worse condition consents implicitly or explicitly to the inequality.
3. That the players observe the rules of the game. Yet tricks received by usage are licit, for example: to look at cards which another through negligence presents to be looked at; to recognize cards by a sign not expressly placed, etc. But it is not permitted, for example, expressly to position oneself so that one can look at another's cards; to mark cards with a sign by which one can recognize them, etc. (St. Alphonsus, III, 882).

"The cheat is bound to restore not only that which he gained, but also what the other was going to gain justly if the fraud had been absent" (St. Alphonsus, loc. cit.).

Question 1. Is the loser bound to pay the prize, if there is question of a game prohibited by law?

Response. Sufficiently probably it is denied. "The reason is that, although the law does not remove the natural obligation, nevertheless, since it was enacted not only as a penalty of the victor but also in favor of the conquered, by giving to the conquered the right to defend himself by exception or by repetition of what was paid, it also gives an absolute right not to pay" (St. Alphonsus, III, 890). Nevertheless, if the victor has received the prize, he is not bound to return it before the sentence of a judge.

Question 2. Can one who by fraud or fear induced another to play receive and retain the prize?

Response. With St. Alphonsus against others, it seems that it must be affirmed, because fraud or fear quite probably was not the cause, but only the occasion of the damage, as it is said to have come about equally probably from misfortune and chance as from injustice. Nevertheless the one who suffered fear can rescind the contract; when this has been done, the victor is held to restitution of the prize (St.

Alphonsus, III, 889). There are indeed some who think that the contract cannot be rescinded, because the one who suffered fear enjoyed the hope of gaining. But the hope of gaining cannot be held as reparation of the injustice inflicted by fraud or fear, and therefore the cause of rescinding the contract remains intact.

Point III. On Wagering

950 **I. Notion.** Wagering is a contract by which two or more persons, contending about the truth of some thing or about an event, promise a prize to him who will be shown to have attained the truth.

951 **II. Condition required for the justice of wagering** is that equality be preserved among those wagering as regards hope of the prize and danger of loss. Hence the truth of the thing or event must be uncertain to each. One who is certain of that about which there is contention cannot wager (St. Alphonsus, *Homo Apostolicus*, tr. 10, n. 214).

But what if one who is certain of the truth or event warns the other about his certainty, and the other nevertheless wishes to wager? With St. Alphonsus against many, it seems that it must be said that the wagering is unjust, because the prize is unjust in itself, and the other is not per se judged to yield his right to a just prize (St. Alphonsus, III, 879; *Homo Apostolicus*, tr. 10, n. 214). Make exception if the other sufficiently manifests that he consents to the prize, whatever it may be.

Point IV. On Drawing Lots

952 **I. Notion.** Drawing lots is a contract by which several persons, for a price given, receive a right of determining by lot who is to receive the prize.

953 **II. The condition required for the justice of drawing lots** is that the price given be just. But the just price is that which has regard both to obtaining the prize and to acquiring the hope of it. The greater the number of those who, by paying the price, acquire the right of drawing lots, the lesser the hope of each becomes. All things will be safe if the one instituting the lottery does not receive beyond the value of the prize or prizes exposed, of the industry and labor spent, and of the emergent damage from the fact that he did not use the thing or money exposed profitably. Make exception if the lottery is instituted for a pious work or for public utility; in that case the participants spontaneously give more than they receive.

Note. Public government lotteries are not illicit in themselves; nor practically do they seem so much to be condemned; since on the one hand it is contended, not without some exaggeration, that through them love of labor is extinguished and fortunes are consumed; on the other hand government lotteries diminish the frequency of private lotteries. For the rest, he certainly sins who exposes to lot money necessary for the family.

Point V. On Stock-Exchange Games

954 **I. Notion.** Stock-exchange games are understood as contracts by which the contracting parties intend to make gain from the diversity of price which monetary values, merchandise, or securities have in the market at different times.

955 **II. Division.** The principal ones are: buying-selling for a term, and buying-selling for a premium.

1. In the case of buying-selling for a term, one party buys something from the other at a determined price, to be delivered on an established day, for example after three months. If the price has

increased on the established day, the buyer has made a gain and the seller a loss; the former indeed because he must sell the thing more dearly, the latter because he must buy it more dearly. If the price has decreased, the contrary has place.

More often, however, the contracting parties do not intend a true buying-selling, but only that profit and loss be divided between them. That is, if the price has increased on the day of delivery, as it were established, the seller pays the increase of price to the buyer; if it has decreased, the buyer pays the same sum to the seller.

2. In the case of buying-selling for a premium, one party likewise buys something from the other party at a determined price, to be delivered on an established day; but under this condition, that either of the contracting parties can withdraw from the contract, provided he pays some premium to the other party.

956 **III. Morality.** Stock-exchange games, as is clear, are not illicit per se. Per accidens they are often to be dissuaded from or even prohibited, namely because of the danger of harming the family or creditors, or of spreading false reports so that prices may be increased or diminished, etc.

As regards the price of shares and bonds, cf. n. 904.

Point VI. On Settlement and Arbitration

957 To aleatory contracts can in some way be reduced settlement and arbitration.

I. Settlement is a contract by which parties end a lawsuit that has arisen, or forestall one that is imminent, by cession, promise, or retention of some thing. Its form is determined by civil law.

958 **II. Arbitration** is a contract by which parties agree that a lawsuit that has arisen or is imminent be ended through arbitrators. Its form is to be considered in civil law.

§ XIII. On Subsidiary Contracts

Subsidiary contracts are called contracts which are entered into to strengthen another principal contract; with it, if it falls, they fall. The principal ones are suretyship, pledge, and hypothec.

Point I. On Suretyship

959 **I. Notion.** Suretyship is a contract by which someone, the surety, binds himself to fulfilling another's obligation if the principal debtor does not satisfy him.

960 **II. Form.** The form of the contract is to be drawn from civil law.

961 **III. Subject.** Those who can dispose of their goods and are not excluded by positive law can validly and licitly act as sureties. As regards clerics, canon 137 establishes: "A cleric is prohibited from acting as surety, even concerning his own goods, without consulting the local Ordinary"; by this precept, with attention paid to canon 592, religious also are bound.

962 **IV. Obligations of the surety.** The surety is bound to pay in default of the debtor; nevertheless regularly he cannot be sued for payment unless, after the principal debtor has been exhausted, it is clear that the latter is unable to pay. For the rest, the obligation of the surety, as being real, passes to heirs.

963 **V. Rights of the surety.** The surety, once payment has been made, acquires the rights of the creditor, and therefore has recourse against the debtor for whom he paid, and from him can recover both the principal sum and, if the debtor culpably did not pay, restitution of expenses and damages, if any have followed (St. Alphonsus, III, 912). Thus with attention paid to natural law; what civil law adds, see in the code of one's country.

Point II. On Pledge

964 **I. Notion.** Pledge is a contract by which a debtor delivers a movable thing[1] to the creditor as security of his debt. The creditor is called the pledge-holder, and the thing itself handed over is also called the pledge (St. Alphonsus, III, 913).

[1] If a pledge is constituted on an immovable thing, it is called antichresis.

965 **II. Form.** The form of the contract is to be drawn from civil law.

966 **III. Rights of the pledge-holder, or creditor.** The pledge-holder can retain the pledge until the debtor has paid; and if he is unequal to paying all debts, he has the right that payment be made to him from the thing pledged before the other creditors, according to what is to be said in n. 1012. But he is bound to keep the thing pledged safe and sound.

967 **IV. Obligations of the debtor.** The debtor is bound to compensate the pledge-holder for expenses necessary for the preservation of the thing, and likewise useful expenses made with the debtor's consent.

Note. To this belong contracts by which a certain sum of money is lent to one who, for example, has given merchandise or public bonds in pledge.

Point III. On Hypothec

968 **I. Notion.** Hypothec is a real right by which another's immovable thing is obligated to the creditor as security of a debt. The right of hypothec commonly arises from contract.

969 **II. Division.** Hypothec is distinguished as conventional, judicial, and legal, according as the right of hypothec arises from contract, from a decree of a judge, or from law.

970 **III. Form.** The form is established by law.

971 **IV. Rights of the hypothecary creditor.** The creditor has the debtor's thing obligated to himself until the latter has paid; and if the latter is unequal to paying debts, he has the right that payment be made to him from the thing obligated before the other creditors, according to what is to be said in n. 1012.

972 **V. Obligation of the debtor.** "It is not permitted to give the same thing in hypothec to several persons, unless it is sufficient for paying all, or the later ones are warned about the prior hypothec" (St. Alphonsus, III, 915).

[1] Cf. Oswald von Nell-Breuning, *Grundzüge der Börsenmoral*.

Scholion. On the Alienation of Ecclesiastical Things

973 **I. The matter about which the law is concerned.** The Church has subjected to special rules the alienation of ecclesiastical immovable or movable things which can be preserved by being preserved, or

kept in their substance (can. 1530). It is said:

1. **Alienation.** Under the name of alienation here are included both alienation properly so called and every contract by which the condition of the Church can become worse (can. 1533). Alienation properly so called includes: donation, exchange, sale, the cession of a right, for example of a credit, lawsuit, or action already acquired. To the contracts by which the condition of the Church can become worse are referred: hypothec, pledge, usufruct, emphyteusis, servitude. Likewise, under the old law, a long-term lease; but now leasing seems exempt from the rules of alienation, since by canon 1541 it is subjected to distinct rules.

The norms soon to be set forth also bind that alienation which takes place between two ecclesiastical moral persons.

2. **Of ecclesiastical things;** under this name come things which belong to an ecclesiastical moral person (n. 786).

3. **Which can be preserved by being preserved,** or which are not consumed by first use. Things are not touched by these rules which must be consumed or alienated lest they perish, or which have no use unless they are alienated: thus money. Hence the rules to be assigned do not govern, for example, the payment of a debt by means of money, the first investment of money, money given as a loan; nor, as it seems, the exchange of securities into others. "And if money destined for the building of a church is meanwhile profitably invested, it will not be thought to be an alienation, nor will the simple sale of those securities, so that the money obtained may be able to serve for the building."[1]

[1] Vermeersch, loc. cit., n. 852.

974 **II. The statutes of the law.** 1. In order that alienation may take place, with due regard for the prescription of canon 1281, § 1, these are required:[1] 1° an appraisal of the thing, made in writing by upright experts; 2° a just cause, that is, urgent necessity, or evident utility of the Church, or piety; 3° the permission of the legitimate Superior, without which the alienation is invalid. - Other suitable precautions also, to be prescribed by that same Superior according to diverse circumstances, are not to be omitted, so that damage to the Church may be avoided (can. 1530).

2. The thing must not be alienated for a lower price than that which is indicated in the appraisal. - Let the alienation take place by public bidding, or at least let it be made known, unless circumstances suggest something else; and let the thing be granted to him who, all things considered, has offered more. - Let the money received from alienation be invested cautiously, safely, and usefully for the advantage of the Church (can. 1531).

3. The legitimate Superior, of whom under 1, is:

a) If there is question of things which do not exceed the value of one thousand lire or francs, the Ordinary of the place, after the administrative Council has been heard, unless the matter is of very slight importance, and with the consent of those whose interest is involved (can. 1532, § 2).

b) If there is question of things whose price is contained between one thousand lire and thirty thousand lire or francs, the Ordinary of the place, provided the consent has been added both of the Cathedral Chapter, of the administrative Council, and of those whose interest is involved (can. 1532, § 3).

c) If there is question either of things which exceed the value of thirty thousand lire or francs, or of precious things,[2] the Apostolic See is the legitimate Superior (can. 1532, § 1).[3] But the permission of the Holy See is also required "for alienating in the manner of one thing ecclesiastical things of the same person which, taken together, exceed the value of thirty thousand lire or francs."[4] If, however, the experts lawfully appraised the price below 30,000 lire, and, after bidding has been announced or on another occasion, a higher price is offered, the consent of the Apostolic See is not required for carrying out the alienation.[5]

d) If there is question of alienating a divisible thing, in seeking permission or consent for the alienation, the parts previously alienated must be expressed; otherwise the permission is void (can. 1532, § 4).

4. The Church has a personal action against him who has alienated ecclesiastical goods without the due solemnities, and against his heirs; but a real action, if the alienation was null, against any possessor whatever, saving the right of the buyer against the one alienating badly. - Against an invalid alienation of ecclesiastical things there can act the one who alienated the thing, his Superior, the successor of each in office, and finally any cleric enrolled in that church which has suffered damage (can. 1534).

5. With the nullity of the act and the obligation remaining firm, even to be urged by censure, of restoring goods illegitimately acquired and of repairing damages perhaps inflicted, one who has presumed to alienate ecclesiastical goods, or to give consent in alienating them against the prescriptions of can. 534, § 1, and can. 1532, according to can. 2347:

a) If there is question of a thing whose price does not exceed one thousand lire, let him be punished with suitable penalties by the legitimate ecclesiastical Superior.

b) If there is question of a thing whose price is above one thousand, but below thirty thousand lire, let a patron be deprived of the right of patronage; an administrator, of the office of administrator; a religious Superior or economus, of his proper office and of capability for other offices, besides other suitable penalties to be inflicted by Superiors; but let an Ordinary and other clerics who hold an office, benefice, dignity, or function in the Church pay double in favor of the church or pious cause harmed; let other clerics be suspended for a time to be defined by the Ordinary.

c) But if the apostolic beneplacitum prescribed in the mentioned canons has knowingly been omitted, all guilty persons in any way, whether by giving, by receiving, or by giving consent, are moreover subject to excommunication latae sententiae reserved to no one.

Note. As regards religious, see the treatise on the duties of religious.

[1] Canon 1281 states: notable relics or precious images, and likewise other relics or images which are honored with great veneration by the people in any church, cannot validly be alienated nor perpetually transferred into another church without the permission of the Apostolic See (§ 1). Notable relics of Saints or Blessed are the body, head, arm, forearm, heart, tongue, hand, leg, or that part of the body in which a martyr suffered, provided it is whole and not small (§ 2).

[2] Precious things are those "which have notable value by reason of art or history or material" (can. 1497, § 2). The Sacred Congregation of the Council, February 14, 1922, in response I, declared that for the alienation of things precious in any way the beneplacitum of the Holy See is required (cf. A.A.S. 1922, p. 160).

[3] The Apostolic See is understood as the Sacred Congregation of the Council, for seculars; the Sacred Congregation of Religious, for religious institutes and Third Orders; the Sacred Congregation of Propaganda Fide, for regions subject to it, or also for religious institutes and associations which are placed under its full jurisdiction; the Sacred Congregation for

the Oriental Church, if the goods belong to moral persons of that rite, insofar as they are bound by these laws; the Sacred Consistorial Congregation, if the goods are of dioceses; the Sacred Congregation of Seminaries and Universities of Studies, if the goods belong to a Seminary.

[4] P.C., July 20, 1929 (A.A.S. 1929, p. 574).

[5] P.C., November 24, 1920 (A.A.S. 1920, p. 573 sq.).

Section II. On Injustice and on Restitution

975 The word injustice can be taken for a violation of commutative, distributive, or legal justice. Injustice taken thus generally is defined: the violation of another's right. Nevertheless injustice is especially understood of a violation of commutative justice. Of this alone we shall speak here, adding those things which regard the reparation of the said violation, that is, restitution. We shall speak first about injustice in common; then about restitution in common; then about injustice and restitution in particular cases.

Chapter I. On Injustice in Common

976 **I. Notion.** Injustice, also called injury, is the violation of another's strict right. From this very definition it must be deduced in what sense Rule 27 of law in the Sext is to be understood: *No injury is done to one who knows and consents,* namely:

1. If someone freely consents, and there is question of a right which he can validly renounce, injury is absent.
2. If someone freely consents, and there is question of a right which he cannot validly renounce - suppose if someone consents to his own killing, or a husband consents to intercourse being had with his wife - it is disputed whether injustice is committed with respect to the one consenting.

But now, against many, it seems that this must be affirmed; since, while the right persists, the violation of the right, or injustice, persists. But in the hypothesis posited the right persists, because the renunciation is invalid. There is added proposition 50 condemned by Innocent XI: "Intercourse with a married woman, with the husband consenting, is not adultery; and therefore it suffices in confession to say that one has fornicated;"[1] this is explained with difficulty by the adversaries. They do indeed speak of an injury inflicted on the marital state, etc.; but the marital state is not a moral person which enjoys strict rights.

Objection. In order that injustice cease, it suffices that someone not oppose his own right.

Response. I deny the assertion, in the case in which the right persists, even if someone does not oppose his own right. But in our hypothesis the right persists, whether someone opposes his own right or does not oppose it.

Still, it must be said otherwise concerning rights which the one consenting can validly renounce, and which would be violated together with the right which he cannot renounce. Thus, for example, one who, with the husband consenting, committed adultery is not bound to restore to the husband damages that would follow from the adultery.

[1] Denzinger-Bannwart, n. 1200.

977 **II. Division.** Injustice is divided:

1. Into formal and material, according as another's right is violated with or without theological fault.
2. Into personal and real, according as someone is harmed in goods of the soul or body, or in external goods.

978 **III. Morality.** Injustice is a grave sin by its kind, that is, grave or light according as it regards grave or light matter. Injustice which regards grave matter is a grave sin, because it is simply or gravely opposed to the good of one's neighbor and of society, and therefore to charity (cf. St. Thomas, II-II, q. 59, a. 4; q. 66, a. 6; St. Alphonsus, III, 700). Furthermore:

1. The gravity of the matter must be drawn both from damage that is relatively grave, or which is grave when the condition of him to whom it is inflicted has been considered, and from the relation which exists between the one causing damage and the one damaged, so that if, for example, there is question of a son of a family, a graver matter is required for mortal sin than if there is question of another.
2. A sign of grave matter is present when the damage inflicted, with attention paid to the common disposition of men, is apt to move great sorrow or indignation.
3. In doubt whether the thing or quantity to be taken away or consumed by you is grave, you are bound under grave obligation to abstain, because, once another's certain right to some thing or to a certain quantity has been posited, it is gravely illicit for you to expose yourself to the danger of inflicting grave damage on someone.

Chapter II. On Restitution in Common

Article I. Notion, Obligation, and Titles of Restitution

979 **I. Notion of restitution.** Restitution is the reparation of another's violated strict right, or it is an act of commutative justice by which someone returns another's thing or compensates damage unjustly inflicted by himself.

Restitution differs: 1° from satisfaction, which consists in the reparation of an offense inflicted on someone; 2° from payment, which neither returns another's thing nor supposes damage unjustly inflicted.

980 **II. Obligation of restitution.** 1. The obligation is clear both from Sacred Scripture[1] and from the reason brought forward in n. 978.

2. The obligation of restitution is grave by its kind, that is, grave or light according as the matter to be restored is grave or light; for the said obligation corresponds to the obligation of not committing injustice; and that obligation is grave by its kind (n. 978). Nevertheless, the gravity of the obligation ceases if so much has been restored that the remaining matter ceases to be grave (St. Alphonsus, III, 553).
3. In doubt whether the thing or quantity taken away by you, destroyed, or consumed, is grave, you are bound under grave obligation to restore, because, once another's certain right to a thing or to a quantity has been posited, it is gravely illicit for you to expose yourself to the danger of continuing grave damage. But in doubt whether you took, destroyed, or consumed more or less, for example

whether you stole 20 or 10 florins, you are bound only to restoring the lesser amount, because the fact founding the obligation of restoring more is doubtful (n. 228; St. Alphonsus, III, 706).

4. It is disputed whether one who has harmed someone in a kind of goods in which he cannot restore must compensate the injury with money, for instance if someone has mutilated or defamed another.

Response. St. Thomas (II-II, q. 62, a. 2, ad 1 and 2) seems to affirm, because where an equivalent cannot be restored, there must be made the compensation which is possible. Thus also Cajetan.[2] St. Alphonsus, however, with others, deservedly holds the contrary as sufficiently probable. For "commutative justice obliges one to restore according to the equality of the damage inflicted. But where restitution is to be made in a different kind, there is no equality present, nor will there ever be any compensation of the damage; for by any money whatever the damage will by no means be repaired, either in whole or in part. And thus response is made to the opposite opinion" (St. Alphonsus, III, 627). There is added that a strict right must regard something determinate. But it cannot be determined what in a diverse order would have to be restored.

Corollary. In this case the injured person generally cannot provide for himself by occult compensation, because the debt is only probable; cf. however n. 1074. But where the injured person has received compensation in another kind from the one harming him, he can retain it, nor can the one who harmed now recover it by occult compensation (n. 1033).

[1] Cf. Exod. 22:5; Tob. 2:21; Ezek. 33:15; Rom. 13:7; Jas. 5:4.

[2] *Summa*, word *Restitutio*, cap. 2.

981 **III. Titles of restitution,** that is, the reasons or roots from which the obligation of restitution arises, are: 1° another's thing materially unjustly possessed; 2° another's thing formally unjustly accepted; 3° mere damaging, which takes place when someone merely injures the good of another, or unjustly impedes him from acquiring a good. A contract, whether not observed or violated, is referred according to the circumstances to one of the assigned titles (St. Alphonsus, III, 548).

Article II. The Subject and Object of Restitution

As is deduced from what has been said in n. 981, those are bound to restitution: 1° who unjustly possess another's thing, or at least unjustly accepted and possessed it; 2° who merely inflict damage on another by violating his rights; 3° who unjustly impede another from acquiring a good. There are added those who cooperate in another's injustice. We shall treat of each, at the same time explaining the things to be restored by them, or the object of restitution.

§ I. On Unjust Possessors

982 **Preliminary note I.** Another's thing can be possessed in two ways, in itself and in equivalent. It is said to be possessed in equivalent when someone no longer possesses it, but nevertheless from it as such has become richer, or has more than he would have had if he had not possessed another's thing. This happens when someone: 1° sold another's thing received gratuitously; 2° by consuming or donating another's thing, received gratuitously, spared his own things; 3° sold at a profit another's thing which he had bought. He is not numbered among these who has received fruits from another's thing, because he has become richer not from the thing as such, but from its fruits.

Preliminary note II. The possessor of another's thing is distinguished in three ways, namely, as a possessor in good, doubtful, and bad faith (n. 776). But the obligation of restitution arising from the possession of another's thing can regard: 1° the thing itself; 2° the fruits of the thing; 3° damages following for the owner from the fact that his thing was possessed by another; 4° expenses made by the possessor concerning another's thing.

With these things noted in general beforehand, we shall speak singly about the different possessors.

[1] Cf. Vermeersch, *Epitome*, t. II, n. 851 sq.; Raus, *Institutiones canonicae*, n. 361 sq.

[2] Cf. Bonartz, *Die Restitutionspflicht des Besitzes fremden Gutes*; Kutsekker, *Die Lehre vom Schadenersatze*; Hohenlohe, *Gründe der Schadenersatzpflicht in Recht und Moral*.

Point I. On the Possessor in Good Faith

983 The possessor in good faith is bound as follows:

I. As regards the thing. 1. He who possesses another's thing[1] in itself is generally bound to return it as soon as possible to the owner, and indeed gratis. The thing, as the adage has it, cries out for its owner. I said **generally;** for one who bought a thing from another, for instance from a thief, can sufficiently probably return it even to the thief in order to recover the price, unless the owner, appearing, now claims his own thing for himself. The reason is that the buyer is not the cause but only the occasion of the damage that will follow for the owner; the cause of the damage is the bad will of the thief, while the buyer permits the damage. But avoiding the buyer's own damage, in this case recovering the price, is a just cause for permitting another's damage (St. Alphonsus, III, 569). If, however, the possessor can recover the price by another likewise easy way, he is bound to return the thing to the owner, since the cause for handing it over to the thief is lacking (St. Alphonsus, III, 569).

If the owner, appearing, claims his own thing for himself, the possessor can demand back from the seller the price paid by him. For the rest, let it also be seen what perhaps the law of the country establishes, for example concerning another's thing bought in public markets or in a public auction.

2. He who no longer possesses another's thing in itself, but in equivalent, is bound thus:

a) He who sold another's thing received gratuitously is bound to restore the price to the buyer, but the latter is bound to return the thing to the owner. But if the buyer refuses to return the thing, or it is foreseen that he will not return it, let the seller return the price to the owner of the thing insofar as it does not correspond to mere industry, and thus, insofar as can now be done, repair the equality violated also by himself, although without fault (St. Alphonsus, III, 609).

b) He who donated another's thing received gratuitously, and thus spared his own goods, is bound to warn the donee, who should restore the thing to the owner. But if he refuses to restore it, the donor is bound to restitution with respect to the owner; for he cannot become richer, to the owner's damage, from disposing of another's thing.

c) He who consumed another's thing received gratuitously, and thus spared his own goods, is likewise bound to restitution with respect to the owner, because, as was just said, he cannot become richer, to the owner's damage, from disposing of another's thing.

Both the donor, of whom under b), and the one who consumed another's thing, of whom under c), are bound to restore according to the value of his own thing preserved, if this is worth less than the other thing donated or consumed; but according to the value of the other thing donated or consumed, if his

own thing preserved is worth more than the other thing donated or consumed. The reason for the former is that they are not bound to restore beyond what they spared of their own goods. The reason for the latter is that they are not bound to restore beyond the damage which the owner suffered.

d) He who sold at a profit another's thing which he had bought is bound per se to return the price to the buyer, while the latter must restore the thing to the owner (St. Alphonsus, III, 800). But if the buyer refuses to restore the thing to the owner, let the seller give to the owner the profit insofar as it does not correspond to industry (St. Alphonsus, III, 601; 609, 6; 825, compared with 609, 8 and 610). Of him who sold another's thing which he had bought without profit, there is no discussion here, because he has not been made richer from another's thing.

3. He who no longer possesses another's thing either in itself or in equivalent is not bound, as far as the thing is concerned, to restitution; for he is an inculpable damager (n. 995). The same must be said of him who doubts whether he in some way possesses another's thing (St. Alphonsus, III, 706).

[1] Note, a thing legitimately prescribed is no longer another's.

984 **II. As regards the fruits of the thing,** the possessor in good faith:

1. With attention paid to the law of nature, is bound to restore natural, civil, and mixed fruits, while nevertheless retaining the price of the labor furnished for producing them; he can retain merely industrial fruits. The reason is that the former arise from the thing itself, the latter from the labor of the possessor (St. Alphonsus, III, 607, 610).

2. As regards civil law, which commonly has force in conscience, see the Code of the country.

985 **III. As regards expenses made,** the possessor in good faith can deduct:

1. With attention paid to the law of nature: 1° necessary expenses, or those without which the thing would have perished or become worse; 2° useful expenses, or those by which the thing was improved; 3° voluptuary expenses, that is, those which serve only ornament or pleasure, insofar as the value of the thing has been increased by them; nevertheless the possessor can remove the ornaments, provided this is done without detriment to the thing; 4° expenses made for producing fruits which are not merely industrial,[1] or which he restores.[2]

2. As regards civil law, let the law of the country be consulted.

[1] Since he can retain merely industrial fruits, he himself must also bear the expenses.

[2] Of course he is not bound both to restore the fruits and besides to bear the expenses made.

Point II. On the Possessor in Bad Faith

986 The possessor in bad faith is bound:

I. As regards the thing. If it exists, the thing must be returned as soon as possible. If it does not exist, generally its price or equivalent must be restored. Cf. the questions treated in n. 990.

987 **II. As regards fruits.** He is bound to restore the natural, civil, and mixed fruits which he received, even if the owner would not have received them; for a thing fructifies for the owner. Nevertheless, he can retain the price of the labor furnished for obtaining the fruits. For the rest, it does not matter that perhaps the fruits have been consumed, because by the very fact that they existed they were the owner's. Merely industrial fruits do not have to be restored (St. Alphonsus, III, 618).

988 **III. As regards damages to be repaired.** He is bound to restore emergent damage and ceasing profit, provided they were foreseen at least confusedly, for example fruits or interest which the owner would have received. But emergent damage and ceasing profit must be restored according to the estimation of the hope of avoiding damage or of acquiring profit (St. Alphonsus, loc. cit.). If emergent damage and ceasing profit doubtfully took place, he is not bound to restore them. Nor is he bound, with attention paid to the law of nature, to restore fruits which neither he himself received nor the owner would have received. But if civil law prescribes their restitution, it can be held as penal, and therefore should not be urged before the sentence of a judge.

989 **IV. As regards expenses made,** he can deduct:

1. With attention paid to the law of nature, necessary and useful expenses; voluptuary expenses for the same reason by which this is permitted to the possessor in good faith (n. 985); finally expenses made for producing fruits (St. Alphonsus, *Homo Apostolicus*, tr. 10, n. 74).
2. As regards civil law, let the Code of the country be consulted. But if the law of the country prohibits one who has occupied another's thing by force from deducting any expenses, these provisions, insofar as they restrict the law of nature, can be held as penal, so that they cannot be urged before the sentence of a judge.

990 **Question 1.** Whether the possessor in bad faith must restore the price of the thing or of the fruits which perished while with him, but would also have perished while with the owner.

Response 1. Negatively: 1° if the thing or fruits perished from an intrinsic defect, as a horse from old age; 2° if they perished by the same danger by which they would have perished while with the owner, as if the house of the thief, in which the thing is, and the house of the owner, in which the thing was, are burned by the same common fire. The reason is that the possessor in bad faith did not expose the thing to the danger, and therefore did not influence the destruction of the thing, or the damage that would follow; hence the obligation of repairing the damage is lacking.

Response 2. Affirmatively, if the thing or fruits perished by a different danger, as if the houses of the thief and of the owner are burned by different fires, or one is burned by fire, the other is overthrown by an earthquake. The reason is that the possessor exposed the thing to this danger, and thus influenced its destruction or the damage, as it occurred in the concrete; hence the obligation of repairing the damage is present. Nor does it seem to matter whether the different dangers took place at the same or at a different time, because it suffices that he influenced the destruction or the damage as it occurred in the concrete (St. Alphonsus, III, 620; *Homo Apostolicus*, tr. 10, n. 79).

Objection. It does not matter to the owner whether the thing perished by this or by that danger.

Response. I concede; but this does not prevent the possessor from having influenced the damage as it took place in the concrete.

As to what civil law establishes, see the Code of the country.

Question 2. To what extent the possessor in bad faith is bound to restore, if the thing possessed had varying intrinsic value or varying price.

Response 1. If the possessor in bad faith still possesses the thing, he is bound to restore it whole, even if it has increased either in intrinsic value, as if a lamb has grown into a sheep, or, the thing not having been changed, in price alone. If the thing has decreased in intrinsic value, as if a horse has

become old, both the thing must be returned and compensation must be added, if by the possessor's fault the thing has decreased more in value than it would have decreased while with the owner. If the thing, unchanged in itself, has decreased in price, it suffices to return the thing, unless, had the thing not been taken away or had it been restored at the time of increased price, the greater price would have benefited the owner, for instance because he would have sold it at the time of increased price. According to others, it does not suffice to return the thing, but restitution must be made according to the greater value, because when the price increased for the owner's benefit, and at that time the thief culpably did not restore, from that unjust detention he contracted the obligation of restoring it according to the greater price. But that contracted obligation is diminished by the very fact that the price of the thing is diminished; for the thing decreases in price for the owner.

Response 2. If the possessor in bad faith no longer possesses the thing, he is bound to restore thus:

1. He is bound according to the greater value: 1° if the thing profited the possessor according to the greater value, for instance if he sold it at the time of increased price; 2° if, had the thing not been taken away or had it been restored, the greater value would have benefited the owner, for instance because the owner would have sold the thing at the time of increased price; in doubt whether it would have benefited the owner, as regards the excess let only so much be restored as the probability of the excess that would have come to the owner is worth.
2. If the greater value neither profited the possessor nor would have profited the owner, as if the possessor sold the thing at the time of the price again diminished, and the owner, had the thing not been taken away or had it been restored, would not have sold it at the time of increased price, it suffices to restore according to the lesser value, by granting to the owner either a thing of the same species and value, or its price.

Objection. In the case just posited, the possessor in bad faith is bound to restitution according to the greater price, because by the very fact that he did not restore the thing at the time of increased price, he contracted the obligation of restoring it according to the greater price.

Response. That contracted obligation, as we have already noted, has been diminished by the very fact that the thing began to be worth less; for the thing decreases in price for the owner.

Question 3. To what extent restitution must be made if another's thing has passed through the hands of several possessors in bad faith.

Response 1. As regards the thing, it must be restored by the last possessor in bad faith who holds it in itself or in equivalent, or who unjustly destroyed or consumed it. If the last possessor in bad faith neither holds the thing in itself or in equivalent, nor unjustly destroyed or consumed it, according to some he, according to others the thief, is bound in the first place as regards the value of the thing. But if neither satisfies, the others must pay the price of the thing in equal parts. If all the others are lacking, each is bound for the whole, because he is a cause of the damage.

Response 2. As regards the fruits and damages of the thing, each is bound to compensation for the part of the time during which each detained the thing. If the others do not restore, the reparation of the whole damage falls upon each, in proportion to the time elapsed from the day on which they became unjust possessors.[1]

Note. Let the confessor not too anxiously compute with the penitent the sometimes very uncertain price, both of the thing itself and of its fruits, and the expenses to be deducted, either perhaps laid out

or perhaps spent for labor and industry; nor let him scrupulously estimate damage of whatever kind perhaps inflicted on the owner. But let him settle the matter... according to what is equitable and good with the unjust possessor or damager.[2] Prudence requires that the confessor also attend to the good faith and the mind of the penitent, more or less prepared for due restitution. Let him also observe that it can happen that an unjust possessor who was in bad faith by reason of the thing nevertheless received the fruits in good faith, and either consumed or destroyed them.

[1] Cf. Aertnys-Damen, n. 758.

[2] Cf. Aertnys-Damen, loc. cit.

Point III. On the Possessor in Doubtful Faith

991 **I.** The possessor in doubtful faith must investigate the truth, if there is hope of discovering it. Meanwhile he must have care of the thing, and not alienate it without warning the new possessor about the doubt. If he discovers the owner, the thing must be restored to him.

992 **II. He who doubts,** and either holds the investigation of the truth as useless, or, after investigation has been made, continues to doubt:

1. If he began to possess in good faith, he can retain the thing, and indeed even if the thing is more probably another's. For the security of possessions and the preventing of lawsuits require that I be able to retain a thing which I began to possess in good faith, until it is established, at least morally, that it is another's (St. Alphonsus, I, nn. 35 and 36; III, 711).

2. He who began to possess in doubtful faith:

a) If he took the thing away from a possessor in good faith, he is bound to restore the whole thing, because, as was said under 1, the prior possessor had the right of retaining the thing.

b) If by a title legitimate in itself, for example purchase, he received the thing while doubting whether another was the owner of the thing:

α) If he received it from a possessor in good faith, he can retain it, because sufficiently probably he succeeds to the whole right of his predecessor.

β) If he received it from a suspect possessor, he can retain part of the thing in proportion to the doubt; but the other part must be restored to the probable owner, if he is known. If besides the actual possessor, that is, the one who received the thing by a title legitimate in itself, there are several probable owners, the thing is to be divided among all probable owners, that is, the possessor and the others. The reason for all this is that all probable owners are of equal condition (St. Alphonsus, III, 625). If the probable owner or owners are unknown, he can retain the whole thing for himself. Many indeed think that, in the latter case, the other part is to be assigned to the poor or to a pious cause. But this is not proved with attention paid to the law of nature; and ecclesiastical law, if it existed, after the Code now cannot be urged (cf. n. 1011).

Note. He who doubts whether a thing has an owner, and cannot lay aside the doubt, can occupy it whole if the owner who perhaps exists is unknown; otherwise let him divide the thing in proportion to the doubt.

3. He who culpably neglected the investigation, so that the owner now cannot be discovered with certainty, is more probably bound to restore something to the probable owner, if there is one, and

indeed in proportion to the hope of which he unjustly deprived the owner (St. Alphonsus, I, 36). "I think, however, that restitution is not to be made according to the quantity of the doubt, so that, if the reasons on each side were equal, the thing or its price would have to be restored by half; but less and perhaps much less. The reason is that that hope of the owner could not be valued at half the value of the thing, but at much less, with an equal probability of reason standing on one side, and the certain right of possession on the other, which favored and still favors the possessor. For possession of the thing is indeed valued much more highly than possession of the hope" (St. Alphonsus, I, 37). If there is no probable owner, he can retain the whole for himself, nor is he bound, according to what has just been said, to restore a part to the poor or to a pious cause.

§ II. On Those who Merely Inflicted Damage

Preliminary note. Damage can be inflicted either with theological fault, or with juridical fault together with or without theological fault, or without any fault. Theological fault is had when someone commits a formal sin, and therefore is culpable before God. Juridical fault is the omission of diligence required by civil law, whether theological fault is added or is not added; in the former case there is juridical fault together with theological fault. But we inquire what things are required, apart from both contract and the sentence of a judge, in order that an act carry with it the obligation of restoring the damage that followed.

Now, in order that an action carry with it the obligation of restoring the damage that followed, it is required: 1° that it was the cause of the damage, and indeed, as is probable, of the damage which the agent willed to inflict; 2° that it was an unjust cause of the damage; 3° that it was theologically culpable.

993 **I. The first condition is that the action was the cause of the damage,** and indeed - as is probable - of the damage which the agent willed to inflict. It is said:

1. **That the action was the cause of the damage,** that is, either physical or moral. For an obligation of repairing damage which someone did not produce cannot be admitted (St. Alphonsus, III, 584). Now:

a) It certainly suffices - which is plain - that the action be a cause per se of the damage, or that the action by its nature be ordered to producing the damage.

b) A merely occasional cause of the damage does not suffice, that is, such a cause as does not itself inflict the damage, but, once it has been posited, another creates the damage; as if someone commits homicide, and that homicide, through an error of the judge to which the murderer gave no cause, is imputed to another. The reason is that in the case the action in truth cannot be called the cause of the damage (St. Alphonsus, III, 584, 635, 536). The same must be said for the same reason about an action which is only a condition without which the damage inflicted would not have occurred.

c) Nor does an accidental cause of the damage suffice, that is, such a cause as by its nature is not ordered to inflicting damage, but, some circumstances being posited, can produce it, as for example a theft which becomes for someone the cause of illness. The reason is that the burden of restoring the damage inflicted does not seem to arise in a case in which the damage must be attributed more to the circumstances of the action than to the action itself (St. Alphonsus, III, 632).

Nevertheless, both as regards an occasional cause and as regards an accidental cause, the case seems to have to be excepted in which the said causes assume the character of cooperation in inflicting damage; on this see the example set forth in n. 1073.

Question. Whether an occasional or accidental cause of damage suffices, if it is posited with the intention that the damage follow.

Response. Sufficiently probably this is denied, because restitution is owed only on account of damage created, with theological fault of course being posited, and consequently only on account of a cause or external act, since that is what creates the damage; hence if anything is lacking on the part of the external cause, the obligation of restitution does not seem to arise, with whatever intention at last the cause may be posited (cf. St. Alphonsus, III, 636). This, however, does not prevent the damage from being imputed to the one positing the cause in this sense: that on account of that damage he offends against charity.

Note. Sometimes it is difficult to determine whether an action is a cause per se or an accidental or occasional cause of damage. Especially there is dispute about example. Moreover, with St. Alphonsus we say that example per se is merely an occasion of damage; nevertheless, with attention paid to circumstances, it can be equivalent to counsel and therefore to a cause per se (II, 44, 4°; 45, at the end).

2. Sufficiently probably it is required that the action was the cause of the damage which the agent willed to inflict. Otherwise the damage actually inflicted was in no way willed, and therefore cannot be imputed to the agent. To this opinion adhere St. Alphonsus (III, 628, 629; *Homo Apostolicus*, tr. 10, nn. 84, 85); De Lugo;[1] La Croix;[2] Sporer;[3] D'Annibale;[4] Aertnys-Damen;[5] Marc.[6]

Corollary. He who culpably inflicted damage on some person, for example Peter, while willing to harm another, not that person - as if someone set fire to the house of Paul his friend, thinking it to be the house of Peter his enemy - is sufficiently probably not bound to restitution. The reason is that the arsonist was not the cause of the damage which he willed to inflict, but of damage which he did not will to inflict.

Objection. The arsonist willed to harm some man; this suffices for inducing the obligation of restitution.

Response. He willed to harm some man, whoever he was: I deny; he willed to harm Peter, who is some man, but not Paul: I concede. But in fact he harmed Paul. Therefore the damage in fact inflicted was not willed; and this is sufficiently probably required in order that the obligation of restoring arise.

[1] Disp. 18, n. 86.

[2] *Theologia moralis*, l. 3, p. 2, n. 200.

[3] *Theologia moralis super Decalogo*, tr. 4, c. 2, n. 139.

[4] *Summula Theologiae Moralis*, p. 2, l. 3, nn. 100 and 232.

[5] *Theologia moralis*, I, n. 767, q. 2°.

[6] *Institutiones morales S. Alphonsi*, I, n. 950, q. 4°.

994 **II. The second condition is that the action be an unjust cause of the damage.** Thus it is not enough that someone causing damage act illicitly or against charity, but it is required that by justice he be bound not to cause the damage. This condition is lacking, for example, in him who, with the things

to be observed having been observed, kills an unjust aggressor, and this indeed even if, by killing him, with attention paid to the circumstances, he sinned against charity.

Question 1. Whether he acts unjustly and is bound to restitution who, after a cause of damage has been inculpably posited - for example, after another's house has been burned without fault - does not prevent the damage.

Response. Affirmatively; for just as justice prohibits me from positing a harmful action, so also it must command that I take precautions against the damage that will follow from an action already posited. Make exception if someone cannot prevent the damage without his own damage greater than, equal to, or grave relative to the damage of his neighbor (St. Alphonsus, III, 564, 994; VI, 621).

Question 2. Whether he acts unjustly, and is bound to restitution, who destroys or consumes a thing, for example foodstuffs, that certainly would perish while with the owner, for example in a fire.

Response 1. If he destroys or consumes a thing already placed in danger, he does not act unjustly, because in that case the thing is considered of no value to the owner himself (St. Alphonsus, III, 620). But the resolution holds even if the one thus acting spared his own goods, since the owner suffered no damage. Nevertheless, the case will not easily occur in such a way that nothing is to be restored; because, says De Lugo,[1] "if someone could, if he wished, snatch the thing away, then the thing itself was not inevitably going to perish; therefore he ought in justice to pay something, namely as much as could be found and offered for the thing placed in that danger."

Response 2. If he destroys or consumes a thing soon to be placed in danger, a distinction must be made. The obligation of restitution is absent if the danger was certainly and commonly foreseen, because then by common estimation the thing was of no value to the owner. It must be said otherwise "if at the time the damage was given there was no knowledge of the destruction or future danger. The reason is that, since that danger was unknown, that thing was truly worth as much among men as if it had not later been going to perish."

Response 3. If someone destroys or consumes a thing rescued from danger, for example from a fire, he is bound to restitution, because a thing withdrawn from danger cries out for its owner. And, for the reason given, this holds, others denying it, even if the thing is immediately consumed. For the rest note that charity alone obliges someone to rescue another's thing from danger.

[1] Disp. 18, n. 146.

995 **III. The third condition is that the action be theologically culpable,** that is, a formal sin. The reason is that an act posited without sin, and therefore subjectively licitly, cannot carry with it the burden of repairing harmful effects that followed from it. There is added that the obligation of restoring has in some way the character of a penalty. But the obligation of a penalty is not contracted per se, or by the force of the act admitted alone, without sin (St. Alphonsus, III, 550). Thus of itself merely juridical fault does not suffice; this nevertheless does not prevent someone, when merely juridical fault has been admitted, from being able to be held to restitution by force of a judge's sentence or of a contract (n. 1009).

Moreover, sufficiently probably a formal sin against justice is required, because otherwise formal injury is not had. But the fact that someone did not know that injustice carries with it the obligation of restoring does not prevent the obligation from arising. For this arises from the very nature of justice culpably violated.

Finally, much more probably a perfectly voluntary act is required, so that a semi-deliberate act, whether there is question of light or grave matter, does not suffice. Only a perfectly voluntary act, or one plainly imputable, can induce the obligation of repairing effects that followed from the act; just as only a perfectly voluntary contract and only a perfectly voluntary vow can beget obligation. But a semi-deliberate act must be imputed to misfortune equally or rather than to the agent (St. Alphonsus, III, 552). "Whence it follows that he is free from every restitution who, inflamed by sudden anger, kills a man; a boy who from levity and imprudence causes a fire, etc. Yet authors warn that, unless it is certain, such venial fault from imperfection of the act is rarely to be presumed in grave damaging, and therefore confessors ordinarily ought to induce the penitent to some composition with the injured party, insofar as this can conveniently be done; which is altogether most advisable."[1]

Question 1. To what extent is he bound to restore who with light fault, perfectly deliberate, inflicted grave damage. The case occurs if someone inflicts damage grave in itself, but from an erroneous conscience thinks that for grave sin a graver matter is required, or that one who inflicts grave damage sins only lightly.

Response. Others thinking otherwise, sufficiently probably no obligation arises, because light fault probably cannot carry with it the obligation of undergoing a grave burden, of which sort is - at least if there is question of goods of fortune - the burden of restoring grave damage. There is added that a grave obligation does not correspond to light fault, while a light obligation is not proportioned to the matter or grave damage. All these things considered, sufficiently probably every obligation is denied.

Question 2. To what extent is he bound to restore who through several venial faults deliberately committed finally inflicted grave damage.

Response 1. If someone inflicted those small damages on different owners, the individual damages are to be restored only under light obligation, because to light faults there does not correspond a grave obligation.

Response 2. If the damages were inflicted on the same person, most think that there is a grave obligation at least of restoring so much that grave matter no longer remains. But sufficiently probably, just as in the former case, there is only a multiple obligation under light obligation, because, as was said, to light faults there does not correspond a grave obligation.

Question 3. Whether he is bound to restore who culpably posited a cause of damage, but before the damage followed retracted the wicked will.

Response. Affirmatively, unless together with the wicked will he also removed the influence of the cause posited on the damage. The reason is that the retraction of the will does not prevent the damage from following from the cause posited. The reason for the exception is that then the damage arises from elsewhere. Hence he who has thrown fire into another's crop is bound to restitution, even if afterward, grieving, he tried to extinguish the fire (St. Alphonsus, III, 559; VII, 40).

Corollary. He who was invincibly mistaken about the quantity of the damage, for example about the value of a thing which he destroyed or consumed, is bound to restore only according to the value which he apprehended. The reason is that "that damage is not judged willed which is not known; therefore as regards that excess the will of damaging is lacking" (St. Alphonsus, III, 613). It suffices, however, that someone apprehended the excess confusedly.

[1] Sporer, n. 213 sq.; Sweens, n. 306.

§ III. On Those who Impede Another from Obtaining a Good

996 He who impedes another from obtaining a good is bound to restitution, as follows:

I. If the other has a strict right to the good from which he is impeded, the one impeding is bound to restitution; nor does it matter whether he impedes the other by a means just in itself or unjust. Hence, for example, you are bound to restore to Paul if you persuade Peter, Paul's debtor, not to pay the debts to Paul (St. Alphonsus, III, 582).

II. If the other lacks a strict right to the good from which he is impeded, a distinction must be made:

1. If someone impedes another by a means not unjust - for example by persuading someone not to buy from Paul - he does not act unjustly; and this holds even if from hatred he impedes another from obtaining the good (St. Alphonsus, III, 584, 585).
2. If someone uses an unjust means, for example fear, force, calumny, fraud, lying,[1] a subdistinction must be made:

a) If the unjust means is unjust with respect to him who is impeded from obtaining the good, there is injustice and the obligation of restitution; as if someone, by calumniating a poor man, impedes him from obtaining alms. Make exception, however, if either the one about to confer the good cannot confer it without sin, or the one about to receive the good pursues it illegitimately or is going to abuse it; as if, by calumniating a poor man, you turn someone away either from making a prodigal donation to the poor man, or from giving alms which the poor man would abuse. In these circumstances injustice is absent in relation to the good impeded, although the act can be unjust on another head, for instance because of injured reputation. The reason is that per se someone can be impeded from obtaining a good which cannot be granted to him without sin, or which he himself pursues illegitimately, or which he is going to abuse; this being posited, the impeditive act is not unjust by reason of the good impeded through the act; but it can be unjust by reason of itself, for example by reason of the injury to reputation which it involves (St. Alphonsus, III, 587).

In a case in which someone uses an unjust means with respect to him who is impeded from obtaining the good, restitution must be made according to the certainty or probability by which the other is judged otherwise to have been going to obtain such a good.

b) If the means is directly unjust only with respect to him who was about to confer the good - as if someone by fear impedes another from conferring alms, for example, on Peter - it is disputed whether there is an obligation of restoring to Peter. Now it seems this must be denied, because under no head is it clear that injustice is committed with respect to Peter, neither by reason of the act, which is unjust only with respect to the benefactor, nor by reason of the good from whose attainment Peter is impeded, because Peter does not have a strict right to that good (St. Alphonsus, III, 632).

Objection. Everyone has a right that another not be unjustly impeded from giving a good to him.

Response. What is asserted is not evident, and therefore must be proved.

Nevertheless St. Alphonsus and others think that an obligation of restitution arises if someone impedes another from obtaining a good with precisely this intention, that the other not obtain the good, because the said intention seems to them to bring it about that the act assumes the character of

a violent means with respect to him who is impeded from obtaining the good, and thus becomes unjust also with respect to him (III, 633).

[1] Fraud and lying are unjust insofar as, equally with fear, they deprive another of liberty of acting.

§ IV. On Those who Cooperate in Injustice

997 The modes of cooperating in injustice are enumerated as nine, expressed in these little verses:

Command, counsel, consent, the flatterer, the receiver,

The participant, the silent one, the one not opposing, the one not manifesting.

Of these the first six are called positive, the last three negative (St. Thomas, II-II, q. 62, a. 1).

We shall speak first about those cooperating positively, then about those cooperating negatively, and finally about the measure and order by which cooperators are held to restitution.

Point I. On Positive Cooperators

998 **I. In order that positive cooperators be held to restitution of the damage that followed,** it is required: 1° that the cooperation was an efficacious cause, whether physical or moral, of the damage; 2° that it was an unjust cause of the damage; 3° that it was theologically culpable.

II. He who cooperated in damage is obligated to restitution, even if, failing him, another would have cooperated (St. Alphonsus, III, 562, at the end). He who cooperated only in part of the damage is held to restitution in proportion to that part; and this you should also apply to him who brought it about that a greater damage was inflicted.

III. A moral cause, for example one commanding, counseling, etc., in the case in which the author of the damage was already prepared for inflicting the damage, is bound thus:

1. If he in no way moved the author of the damage, he is not bound to restore, because in truth he exercised no influence, or cannot be called the cause of the damage (St. Alphonsus, III, 561).
2. If he only confirmed the author of the damage in his purpose, he is sufficiently probably immune from restitution, because it is denied not without foundation that he was an efficacious cause of the damage (cf. St. Alphonsus, loc. cit.).
3. If he only brought it about that the damage was inflicted sooner or in another way, he is sufficiently probably exempted from restitution, because he did not influence the substance of the damage (St. Alphonsus, III, 563).

With these things noted generally, we pass on to the individual cooperators.

I. On the One Commanding

999 **I. Notion.** Here one commanding is understood as one who efficaciously moves another to inflict damage in his own name, that is, in the name of the one commanding. For in this the one commanding differs from the one counseling: he who acts by command acts in the name of the one commanding; he who acts by counsel acts in his own name. For the rest, it makes no difference whether another is induced to inflict damage by precept or by threats or prayers or by contract, whether explicitly or tacitly. Nor is it required that the one commanding possess authority over the mandatary.

II. Damages to be repaired. The one commanding is bound to restore:

1. The damage which he ordered to be inflicted.
2. The damage which, besides the damage commanded, naturally follows from carrying out the order, and which he foresaw at least confusedly would follow; as if soldiers ordered to devastate a city kill citizens. It must be said otherwise concerning damage which is not morally connected with the damage commanded, or which was in no way foreseen; as if, being ordered to strike someone lightly, you kill him. It must also be said otherwise, sufficiently probably, concerning damage which the mandatary by error inflicted on someone other than the one commanded, for example on Peter instead of Paul. The reason is that in the case the command seems rather an occasion than a cause, while the error of the mandatary seems the cause of the damage. There is added that in this hypothesis the one commanding did not will the damage which in fact was inflicted (n. 993).
3. The damage which befell the mandatary in the execution of the command, the one commanding is bound to restore, if the danger of damage was attached to the execution and the mandatary was unjustly forced or deceived; otherwise if the mandatary freely accepted the command and the danger of damage, for instance because of a promised reward.

III. Cessation of the obligation. In order that the one commanding as such be freed from the obligation of restoring, there is required a serious revocation of the command, and that made known to the mandatary in time. If the revocation for any reason whatever was not made known in time, the command continued to exercise force, and therefore the one commanding remains a cause of the damage (St. Alphonsus, III, 558).

II. On the One Counseling

1000 **I. Notion.** The one counseling is he who induces another to inflict damage in his own name (cf. n. 999).

Counsel is distinguished into doctrinal and impulsive. Doctrinal counsel is that by which someone gives a judgment about the liceity or illicitness, the justice or injustice, of an action; impulsive counsel is that by which someone, once the morality of the action is known, excites another to the action. Each can be either bare or clothed, according as it is not confirmed, or is confirmed, by assigning motives, means, the place or opportune time of execution, or something similar.

II. Damages to be repaired. 1. He who gave doctrinal counsel is bound thus:

a) If he gave it from office, he is bound to repair both the damages which are going to befall the one seeking counsel and those which are going to befall others from it. For all the aforesaid damages must be imputed to him (St. Alphonsus, III, 564).

b) If he did not give it from office, he must restore the damages which befall others from it, but not those which befall the one seeking counsel. The reason for the former is that he is their unjust cause; the reason for the latter is that these must be ascribed to the imprudence of one seeking counsel from an unskilled person. If, however, he used deceit, namely by pretending skill, he is bound also to repair the damages that would follow for the one seeking counsel, because in this case these too must be imputed to him (St. Alphonsus, loc. cit.).

2. He who gave impulsive counsel is bound to restore the damages which befall others from it, but not those which befall the one seeking counsel. The reason for the former is that they must be

imputed to the one giving counsel; the reason for the latter is that the one seeking counsel, by freely following the counsel, should impute to himself the damage that followed from it (St. Alphonsus, III, 558).

III. Cessation of the obligation of restoring. The obligation of restoring ceases:

1. If the counsel was bare, whether doctrinal or impulsive, the obligation ceases by a serious revocation, signified to the executor in time. For thus the counsel ceases to influence the effect (St. Alphonsus, III, 559).
2. If the counsel was clothed, most authors hold as sufficiently probable that the counselor is freed from the obligation of restoring if he brings forward motives which of themselves ought to destroy the former motives; to these especially belong motives sought from faith. For then, they say, the execution is said to proceed more from the executor's own malice than from the counsel of another (St. Alphonsus, III, 559).

Corollary. The counselor who, after his counsel has been revoked and weakened as much as he can, could not turn another away from execution, is bound by charity to warn the person who is to be damaged; indeed by justice, if the counsel was clothed, because counsel of this sort - although the execution of the counsel is said to proceed more from the executor's own malice than from the counsel of another - nevertheless in some way continues to influence (St. Alphonsus, III, 559).

Question 1. Is it permitted to persuade one prepared to harm a determinate person that he should inflict on him rather a lesser evil than a greater one?

Response. Affirmatively, because by acting thus he prevents a graver damage rather than counsels some damage (St. Alphonsus, III, 565).

Question 2. Is it permitted to persuade one prepared to harm that he should inflict rather a lesser evil on one person than a greater evil on another?

Response 1. It is not permitted to persuade one prepared to harm that he should inflict rather a lesser evil on a determinate person than a greater evil on another. Namely, just as it is not permitted to avert one's own damage with injury to another, so neither is it permitted to prevent another's damage with injury to another; unless the difference between the two damages is of such a kind that the other, as regards the counsel given, cannot be reasonably unwilling (St. Alphonsus, III, 565, 577).

Others admit the contrary, because it is conformable to charity that the damage be prevented of him who will suffer more, rather than of him who is going to undergo lesser damage; hence the one to be harmed cannot be reasonably unwilling toward the counselor, but only toward the damager himself. But the fact that one consenting to his own damage exercises an act of charity does not prevent him from being reasonably unwilling and from licitly not consenting.

Response 2. Likewise it seems illicit to persuade one prepared to harm that he should inflict rather a lesser evil on someone, that is, on a non-determinate person, than a greater evil on another, for example that he should harm a rich man rather than a determinate poor man. The reason is that in this case the one persuading influences the damage of him who will be harmed (St. Alphonsus, loc. cit.).

III. On the One Consenting

1001 **I. Notion.** One consenting is said to be he who, whether by consenting or by casting a vote, influences the damaging act of another. Here can come: 1° Superiors and others who by external consent, laughter, etc., approve the evil will of the evil-doer; 2° legislative assemblies; 3° administrative assemblies of a province, municipality, etc.; 4° judges of diverse instances.

II. Damages to be repaired. The one consenting is bound to restore: 1° the damage in which he cooperated positively; 2° the damage which he did not prevent, and which he both could and, by justice, ought to have prevented.

Question. Which of those who have cast an unjust vote are bound to restore?

Response 1. If the votes were cast either at the same time, for example by standing or sitting, or by agreement,[1] all voting unjustly are bound to restitution, because all are equally the cause of the damage.

Response 2. If the votes were cast neither at the same time nor by agreement, those certainly must restore who certainly voted before the necessary number of votes was completed. But there is dispute about those who afterward cast a vote. Sufficiently probably they are immune from restitution. For although the law is not enacted until all votes have been collected or counted, nevertheless, strictly speaking, votes afterward cast effect nothing, or do not influence the law, since it already cannot be avoided (St. Alphonsus, III, 566).

Response 3. He who doubts whether he voted before or after the necessary number was completed - which will easily occur if votes are cast secretly - is certainly bound to restitution, because by casting his vote he brought it about that the authors of the damage are uncertain; and thus he worsened the right which the one who suffered damage had of recovering restitution from certain damagers. Indeed also for this reason, because he is the cause of uncertainty, he seems to be bound in solidum (St. Alphonsus, *Homo Apostolicus*, tr. 9, n. 50).[2]

III. Cessation of the obligation. An obligation that would follow from approval ceases by timely revocation; one that would follow from a vote given ceases for the same reason, provided however that the vote can legally be revoked.

[1] "Before a vote is truly cast by individuals, such a conspiracy rather has the character of counsel; wherefore one who only consented in the meeting of the faction, but in the assemblies themselves is not among those effectively voting, is not held to restitution in the same order, but generally after them" (Lehmkuhl, I, 1201).

[2] St. Alphonsus says otherwise in *Theologia moralis*, III, 566; but the text of the second edition seems to have remained changed through forgetfulness.

IV. On the Flatterer

1002 A flatterer is said to be one who, whether by flattering or praising, or by mocking or reproaching, etc., influences the damaging act of another.

He is bound to repair the damages inflicted just as one guilty of impulsive counsel, and indeed clothed counsel (n. 1000); and by the same reason he is freed from the obligation of restoring (St. Alphonsus, III, 567).

V. On the Receiver

1003 A receiver is he who, by providing refuge, security, or protection to an evil-doer, influences that one's damaging act. Receivers are, for example: 1° those who deliberately hide or buy stolen things; 2° those who conceal the goods of those who have ceded their goods in court or are about to do so; 3° one who receives or protects a thief formally, as is said, for example for the concealment of the theft; but not one who receives or protects him materially, for example as a wretched man, etc. (St. Alphonsus, III, 568).

He is bound to repair the damages inflicted just as the participant, of whom it will now be said.

VI. On the Participant

1004 **I. Notion and division.** The participant is distinguished in two ways: participant in the thing and participant in the unjust action, according as he either buys or receives as a gift part of the thing offered, or helps the damager in inflicting damage (St. Alphonsus, III, 571).

II. Damages to be repaired. The participant in the thing is bound as an unjust possessor of another's thing; the participant in the unjust action must restore as an unjust damager, and indeed in proportion to his influence (St. Alphonsus, loc. cit.; n. 993 sq.).

Question. To what extent is it permitted, in order to avoid one's own damage, to cooperate in a damaging action? The discussion is about material cooperation, because formal cooperation is always illicit. Furthermore:

Response 1. To cooperate mediately in damage to one's neighbor is permitted for a proportionately grave cause. Thus it is permitted, for example, in order to avoid death, to hand over a sword to one who is going to kill another (St. Alphonsus, III, 571; n. 556).

Response 2. To cooperate immediately is permitted as follows:

1. It is not permitted to cooperate immediately in the killing or mutilation of another, because such cooperation is intrinsically evil (n. 556).
2. It is permitted for a grave cause to cooperate immediately in damage in goods of fortune: 1° if the cooperator has both the power and the will of repairing the damage to be inflicted; 2° if there is question of inflicting light damage; 3° if, cooperation being denied, the damage will nevertheless be inflicted by the principal author. The reason for all of these is that in the cases posited the one to be harmed is bound by charity to consent to the cooperation, so that injury ceases. Outside the enumerated cases it is not permitted to cooperate immediately, because the one to be harmed is not bound to consent, so that injury does not cease. Make exception if, from denied cooperation, some most grave evil threatens someone, for example death, mutilation, etc., because then the one to be harmed is again bound to consent; or even consent is not required, almost as if there is question of one who in extreme or quasi-extreme necessity can take another's goods, by which he averts most grave damage (St. Alphonsus, III, 571).

It is disputed whether in this last case the cooperator is bound to restitution. Others affirm, excepting the case in which the cooperator was absolutely poor, that is, poor in reality and in hope; just as one is bound who in extreme necessity took another's goods. But with St. Alphonsus it seems that the distinction must be made thus: the cooperator is not bound to restitution if he avoided damage of a higher order, for instance death, mutilation, grave infamy; he is bound if he avoided damage of the

same order, that is, damage of fortune. The reason is that in the former case he did not spare his own goods, otherwise in the latter case (III, 571).

Point II. On Negative Cooperators

1005 **I. Negative cooperators are:** 1° the silent one; 2° the one not opposing; 3° the one not manifesting. The silent one is said to be he who by speaking or warning does not prevent damage to be inflicted. The one not opposing is he who does not impede the damage that is being inflicted or omits to procure restitution to be made. The one not manifesting is he who does not denounce damage that has been inflicted (St. Thomas, II-II, q. 62, a. 1; St. Alphonsus, III, 573).

II. The requisites in order that negative cooperators be held to restore are:

1. **That they ought by strictly so-called justice to have prevented the damage.** Now an obligation of strictly so-called justice arises from a contract, whether express or tacit.

By express contract there are bound, for example, keepers of woods, of hunts, administrators of the goods of an institute, etc.

A tacit contract is contained in the acceptance of an imposed office which, by reason of the remuneration annexed to it, is also considered a benefit; but not in the acceptance of an office which lacks the character of a benefit, as the office of parents or of the Superior of a religious house (St. Alphonsus, III, 360, but doubt 1°). By contract, at least tacit, there are bound, for example, officials of the police, who must provide for the safety of citizens, customs guards, etc., as will be explained more below.

2. **That they could have prevented the damage without grave inconvenience.** I said without grave inconvenience, because commonly contracts are not entered into with a greater burden, nor do offices carry a greater burden with them.
3. **That with theological fault they did not impede the damage,** according to what was said in n. 995 (St. Alphonsus, III, 573; cf. St. Thomas, II-II, q. 62, a. 7).

Corollary I. By force of natural law, owners, likewise parents or tutors, are bound to restore damages inflicted by their things which cannot govern themselves - for example by animals, by children lacking the use of reason - on account of culpable negligence; namely, by justice they are bound with moral diligence to prevent the said things from harming others.

Corollary II. By force of civil law, even if theological fault is lacking and merely juridical fault is had, commonly these are bound: 1° parents or tutors for damage inflicted by minor children living in the same household; 2° teachers and craftsmen for harm done by pupils or servants during the time in which they are under their custody; 3° masters for damage inflicted by animals, etc. Nevertheless, the law does not bind except after the sentence of a judge (n. 1009).

Corollary III. Guards of taxes who connive with those defrauding are bound to restore the value of the taxes to be paid. It is disputed whether they must also restore the fine which those defrauding, if denounced, would have had to pay. Now with St. Alphonsus (IV, 237) and others we deny, because a fine has the character of a penalty; but a penalty, of course after the sentence of a judge, is to be borne by the delinquent, not by another.

Objection. He who unjustly impedes another from obtaining a good is bound to restitution. But guards, by not denouncing those defrauding taxes, act unjustly, and therefore unjustly impede the treasury from obtaining a good, in the case from receiving a fine.

Response. He who unjustly impedes another from obtaining a good is bound to restitution if that good has the character of a penalty: I deny, because the penalty is to be borne by the delinquent himself, condemnation having been posited.

Keepers of woods, of hunts, etc., are bound to restore the damages that followed for the owner from their omission (St. Alphonsus, III, 573). "Nevertheless, the damage must be of great moment, and the owner rationally unwilling. Hence the keeper will not be bound to restore if he permits a poor person to take something away; or if the one defrauding were of such condition that he prudently presumed the owner, if he knew, would give him the faculty or would afterward ratify it; or finally, if by custom or by the patience of the Government knowing and dissimulating, it had been received that they should perform the office not so severely and with so great a burden."[1]

Corollary IV. Deputies who, by not casting a vote, are the cause that an unjust law is adopted are bound to restore damages that will follow from it for citizens; not so electors who, by neglecting to elect, are the cause why an unjust deputy is elected. The reason for the former is that deputies are bound to cast a vote from an office to which remuneration is annexed. The latter must be admitted for the contrary reason.

Corollary V. Servants who culpably did not prevent damage to the master are bound to restore if there is question of a thing specially committed to them. If there is discussion of other things, they are not bound to restore damages inflicted by fellow servants, because to prevent hatreds, the prevention of damages of this sort is not considered included in the contract (St. Alphonsus, III, 344). As regards damages inflicted by outsiders, there is dispute. Some affirm, because by the very fact that they are taken into the household, they are considered to have undertaken that burden. But that is today called into doubt in law, because servants are no longer accustomed to obligate themselves beyond the limits of the works assigned. Nevertheless, attention should be paid to circumstances, which sometimes are such that the aforesaid burden is considered to have been undertaken; this can easily happen, for example, if a servant is hired by a widow.

Corollary VI. A confessor who - even culpably - merely omits to warn a penitent about restitution to be made is not held by the obligation of restitution, neither with respect to the injured person, nor with respect to the penitent who perhaps suffers damage from the omitted warning. The reason is that the confessor is not bound by justice to warn the penitent. It must be said otherwise, however, if the confessor expressly or equivalently - for example if, when questioned, he is silent or dissimulates, although the reason for being silent or dissimulating is lacking - exempts the penitent from restitution (St. Alphonsus, VI, 621).

Corollary VII. A witness, even though legitimately interrogated, who does not manifest what he knows is not bound to restore, because he is not bound by justice to open the truth. The same must be said of a witness who falsely says or swears that he knows nothing, because, although he thus says or swears, nevertheless he did not by an unjust means impede someone from obtaining a good; since even in the case he impeded someone from acquiring a good not precisely by that lie or perjury, but by opening nothing, which is not unjust (St. Alphonsus, IV, 270).

[1] Aertnys-Damen, II, n. 786.

Point III. On the Measure and Order by which Cooperators Are Held to Restitution

1006 **I. Measure of restitution.** 1. Those who have cooperated in the same damage can be held to restitution in two ways: in solidum and pro rata, as they say. An obligation in solidum consists in this, that the cooperator is held to restore the whole damage; an obligation pro rata is had when someone is obligated only to the part which is commensurate with his influence. The obligation in solidum is distinguished as twofold: absolutely and conditionally solidary, according as someone is held to the restitution of the whole damage before all others, or only in default of the other cooperators. One who is held absolutely in solidum can demand no compensation from the cooperators; otherwise one who is held conditionally.

2. He is held in solidum who has so influenced the whole damage that the whole must be imputed to him; others are held only pro rata for their own part. Hence they are obligated in solidum:

a) He who alone was the principal cause of the damage, as a sole one commanding (St. Alphonsus, III, 579).

b) He who alone was the secondary cause of the damage, as a sole executor (St. Alphonsus, loc. cit.).

c) Those who were equal causes, whether principal or secondary, as follows. These are held in solidum:

α) Those whose cooperation was necessary, although not sufficient, for inflicting the damage; as if three carry away a chest which two could not have carried away (St. Alphonsus, loc. cit.).

β) Those whose conspiracy was necessary, so that, if one had not consented, the damage would not have been inflicted (St. Alphonsus, loc. cit.).

γ) Those whose cooperation was in fact sufficient, even if it was not necessary for inflicting the damage; as if two induced a thief to steal, and each proposed an efficacious motive; or two discharge a gun at the same person, and each inflicted a lethal wound (St. Alphonsus, loc. cit.).

δ) It is disputed concerning those whose cooperation indeed regarded the whole damage,[1] but was neither necessary nor sufficient.[2] But a sufficiently probable opinion teaches that they are held to restitution only pro rata, because in this hypothesis the whole damage seems to be ascribed rather to all together than to each separately (St. Alphonsus, loc. cit.).

Note. "It must be observed that although rough persons are held in solidum, it is rarely expedient to obligate them to the whole; since such persons are with difficulty persuaded that they are held to restoring the part taken by their companions. - Indeed, it can be presumed enough that the owners themselves to whom restitution is owed consent that they restore only the part taken by them; since otherwise there must be great fear that they will restore nothing, if they are obligated to the whole" (St. Alphonsus, III, loc. cit.).

[1] It is said: it regarded the whole damage; hence the case is not present if several, for example, carry away a heap of wheat, but each carries away his own part, and this without mutual influence or dependence.

[2] The case is present if someone, for example, proposed to another a motive for killing someone, which was not necessary, and yet by itself would not have sufficed to move the killer efficaciously; or if four carry away a chest which even two would have carried off.

1007 **II. Order of restitution.** Those who cooperated in the same damage are held to restitution in this order:

1. Before all others the possessor is held, that is, he who has another's thing in itself or in equivalent. If he is no longer possessor, before all others he is held who consumed or destroyed another's thing in bad faith, unless he did this in the name of another (St. Alphonsus, III, 580).
2. Next the one commanding is held, if there was one, because he "is principal in the deed" (St. Thomas, II-II, q. 62, a. 7, ad 2; St. Alphonsus, loc. cit.). But to him is assimilated the one who by unjust means, for example by false doctrinal counsel, "was the cause why the damage was inflicted: for although then he is not the principal cause in strictness, nor does the executor act in his name but in his own, nevertheless by injustice he cast the executor into the obligation of restoring; therefore he is bound to preserve him unharmed, and accordingly must restore in the first place for him on whom he unjustly imposed such an obligation."[1]
3. Then the executor is held (St. Thomas, loc. cit.; St. Alphonsus, loc. cit.). To him is equated one who was a participant in the unjust action and acted in his own name, for example one who with others cast a vote efficacious for passing an unjust sentence; because such persons are co-executors of unjust damage.
4. After the executor other positive cooperators are held; among these there is no order (St. Alphonsus, loc. cit.).
5. Finally negative cooperators are held (St. Alphonsus, loc. cit.). Even among them there is commonly no order. Nevertheless, sometimes an order seems to have to be admitted; thus, for example, particular guards, who are immediately bound to impede damages, seem to be obligated before general guards, who must watch that the particular guards duly fulfill their office.

Corollary I. Among cooperators there can be a twofold subordination: one as regards damaging, another as regards the mode of cooperating; and then there will also be a twofold order in the obligation of restoring. For example: Paul commands his son to counsel Peter not to impede damage which Peter by justice ought to impede. In the case all are non-impeding; but in the order toward restitution Peter precedes the rest; if he fails, Paul comes as the one commanding; finally the son as the one counseling.[2]

Corollary II. If a solidary debtor has repaired the whole damage, the less principal causes are held to nothing; but the more principal causes must refund the whole to the said debtor, and equal causes each their own part. For example, A, B, and C, equal solidary causes, owe Peter 30 florins. A restores the whole. In the case B and C must each refund 10 florins to him (St. Alphonsus, III, 581).

It is disputed whether, if some cause refuses to refund his part or cannot do so, another must partially supply the part not refunded. For example, in the case given, B refuses to return 10 florins. Must C refund 15 florins? Many deny, because the obligation in solidum exists only toward the creditor, not toward fellow debtors. But it seems this must be affirmed; for by the fact that B refuses to pay 10 florins, A and C are each held to return 15 florins to Peter, so that A, by returning 30 florins, returned 15 florins for C, and therefore can demand them from him.

To the argument of the adversaries I respond that the obligation in solidum exists directly indeed toward the creditor alone, but indirectly toward fellow debtors, if the latter have paid the creditor in place of another debtor.

Corollary III. If a solidary debtor has received condonation, all less principal causes are held to nothing; but more principal causes are in no way freed; nor, per se, are equal causes freed, although

they are not held to restore the part condoned to the fellow debtor. I said **per se,** because sometimes the intention of the one condoning to free equal causes can be presumed (St. Alphonsus, loc. cit.).

Nevertheless, let it be seen what civil law establishes about condonation.

Corollary IV. One of the solidary co-debtors who doubts whether his companion has restored his part is more probably bound to restore the whole; because in doubt about payment, the right of the damaged person, as prior to payment, is of better condition (St. Alphonsus, III, 569; I, 34; n. 1020).

[1] Waffelaert, II, n. 399.

[2] Sweens, n. 361.

Scholion I. On the Doubtful Damager

1008 **I.** He who doubts either whether damage followed, or whether he posited the cause of the damage, or whether he posited the said cause with the required theological fault - he who doubts about these things, I say, is not held to restitution. For in the enumerated cases there is question of a doubt of fact founding the law or obligation. But in such a doubt the obligation is lacking (n. 228; St. Alphonsus, III, 562).

II. He who posited the cause, but doubts about the influence of his action, for example of evil counsel given, on the damage that followed, likewise is not held to restitution; for the reason alleged under I holds. Note, however, that if there is question of a physical cause, for example of a wound inflicted and apt for killing, commonly there is no reason to doubt the influence; but it is more easily present if there is question of a moral cause, for example of counsel or command (St. Alphonsus, loc. cit.).

You should also apply these things: 1° if several unjustly posited a cause, and it is doubted whether some one of the agents influenced the damage; as if several committed adultery with the same wife, and it is doubted whether the offspring was born from conjugal intercourse or from adultery (St. Alphonsus, III, 658); 2° if several unjustly posited a cause, and it is doubted which one of them influenced the damage. The case would be if several, while the husband was absent, had intercourse with the wife at the same time morally speaking. Make exception, however, if one or the other was a culpable cause of the doubt, as if someone, while the husband was absent, conscious of adultery committed by another, had intercourse with the same wife (St. Alphonsus, III, 658).

III. What has been said about the doubtful damager should also be applied both to him who doubtfully or doubtfully unjustly impeded another from obtaining a good, and to him who doubtfully or doubtfully unjustly cooperated in injustice.

Scholion II. On Juridical Fault; Likewise on a Contract or Law Intervening

1009 **I. Juridical fault is present:** 1° when someone posits an action harmful to another, either prohibited by law or not permitted by it; 2° when someone omits diligence owed by force of contract, law, or office. Furthermore, present laws, neglecting the distinction of the ancients between grave, light, and very slight juridical fault, commonly demand the care of a good father of a family; this nevertheless, with attention paid to the nature of the contract, extends more or less widely. Thus, for example, greater diligence is required in drivers, shipmasters, and administrators of railways.

II. He who with merely juridical fault inflicted damage is not held to restitution by force of natural law, as was proved in n. 995; nor is he held to it by force of positive law before the sentence of a judge;

nevertheless he can be held by force of a special contract. It is said:

1. **Nor is he held by force of positive law before the sentence of a judge.** The reason is that the legislator in causes of this sort, which are commonly very uncertain, is not considered to obligate unless juridical fault has been proved. There is added that, apart from a judge's sentence, the quantity of damage to be repaired will be difficult to determine practically (St. Alphonsus, III, 554; I, 100). After the sentence of a judge there is an obligation,[2] and indeed, as it seems, of commutative justice. Namely, the legislator by force of high dominion can establish an obligation of repairing juridical fault. But that an obligation of commutative justice is imposed or had is sufficiently suggested by the very matter of the law, which is compensation to be imposed for damage inflicted; and the judge applies the law.

Corollary. He who has received damage from another's action, merely juridical fault having been posited, can safely use the concession of the law and invoke the sentence of a judge.

2. **Nevertheless he can be held by force of a special contract,** namely of answering even for merely juridical fault. For anyone can obligate himself to restoring damage which he inflicted with merely juridical fault, indeed which he inflicted without any fault.

Corollary. Those undertaking an office, for example advocates, physicians, etc., parish priests, confessors, etc., are not considered by the very fact that they undertake the office to have obligated themselves by tacit contract to restoring damages inflicted with merely juridical fault. Thus also the timorous think. For the rest, if the contrary opinion were admitted, very many would be deterred from undertaking offices (St. Alphonsus, III, 555).

[1] For the sake of practice we speak first about the measure, then about the order.

[2] If, however, the sentence of the judge rests on a false presumption of fact, per se the obligation is absent; nevertheless it will commonly be present per accidens on account of scandal to be avoided (St. Alphonsus, I, 100, at the end).

Article III. The Person to whom Restitution Is to Be Made

1010 **I.** Restitution per se must be made to the injured person, or to him who has succeeded to his rights, whether as owner, or as administrator or possessor (St. Alphonsus, III, 596). I have said **per se,** because sometimes, from the presumed will of the owner, it can be assigned to the poor; thus, for example, alms received under the fictitious title of poverty can be granted to the true poor. For the rest, you should especially conclude and note:

1. If a moral person has been injured, whether it is a universitas of things or a universitas of persons, restitution is to be made to it. But if a society pursues only a dishonest end, and therefore lacks the right of existing, possessing, etc., restitution per se and pro rata is to be made to the individual members. Since this can scarcely be done in practice, there will easily be reason to spend the sum to be restored, for example, on the poor or on a pious cause; all the more because the individual members, for the most part, do not suffer grave damage. I have said "only a dishonest end"; for otherwise the answer must be different, if the society also pursues a legitimate end.

2. What has been said, which it is especially useful to note, is also to be applied to an insurance society; and this holds even if that society has shareholders, or has reinsured its damages with another society. For it, as voluntarily injured by you, has a strict right to restitution; all the more because a contract has often also been added, which you would not call unjust.

Objection. In determining the price to be paid annually, the society also takes account of damages voluntarily to be inflicted, so that it has already provided for itself.

Response. That, considering both the latitude admitted in prices and the aleatory character annexed to the contract, does not prevent the price from being called just.

3. Damages unjustly inflicted on the republic can be restored to causes, for example Catholic schools, etc., which receive or have received subsidies less than just.

1011 **II.** In doubt as to whom restitution ought to be made, the following rules hold:

1. If it is unknown to which one out of a few the thing belongs, let it be handed over to those few, who may divide it among themselves according to the proportion of the doubt. If something prevents it from being handed over in that way, let the possessor himself divide it among those few. The reason is that each one has a truly probable right in the thing (St. Alphonsus, III, 589).

2. If it is unknown to which one out of many the thing belongs, the possessor can retain it. For since, in the case supposed, no determinate person has a truly probable right in the thing, and since, as is supposed, there is no hope of acquiring further knowledge, that thing can be held as a thing belonging to no one, or at least be treated as such (n. 798). And this is so not only by a possessor in good faith, which all concede, but, as it seems, also by a possessor in bad faith; for no reason appears why he should seem to be excluded. Nevertheless it is praiseworthily advised that a possessor of this sort spend the thing so possessed on pious causes.

Objection 1. Let no one take advantage from a possession formally unjust.

Response. From a possession formally unjust as such, I concede; from the fact that, on the occasion of such a possession, the thing has now been placed in that condition in which it has become no one's, or in which it can be treated as no one's thing, I deny.

Objection 2. Canon Law[1] prescribes that things accepted through usury or simony be spent on pious causes; and this by custom has been extended to all things accepted from delict.

Response. The new Law is silent about that disposition; this being so, even the custom which extended the disposition of the law, granting that it truly had place, now no longer seems to be binding.

What the law is if the injured owner later appears, see n. 798.

3. If it is unknown precisely to whom, out of many, restitution is to be made, or if many of some commune have been defrauded, for example by a merchant, innkeeper, or baker who sold adulterated merchandise or diminished measures or weights, and it is not known precisely to whom damage was inflicted, restitution per se ought to be made to the ordinary buyers, not to the poor. And restitution can be made, for example, by selling better merchandise or by increasing measures or weights. But if the buyers are not judged to have been gravely injured, the seller is not held under grave sin to restore to the ordinary buyers, but satisfies the grave obligation by restoring to the poor of the place; and he is even excused from venial sin if there is a reasonable cause for restoring to the poor, for example because he cannot restore to the ordinary buyers without suspicion arising about past frauds, or because some poor are in great need, in which case it is licit to presume that the owners are not unwilling. But if the ordinary buyers are judged to have been gravely injured, restitution must be made to them under grave sin, unless again either a

proportionate cause is present for restoring to the poor, or the owners, even in the case, are reasonably presumed not to be unwilling (St. Alphonsus, III, 589, 595, with 534, question 2).

4. If it is entirely unknown to whom the thing belongs, the possessor, even in bad faith, can retain it, as was said about the case in which it is unknown to whom out of many the thing belongs.

Corollary I. What was said under 1, 2, and 4 about the possessor is also to be applied to a mere damager. Therefore: 1° if it is unknown to which one out of a few damage was inflicted, restitution is to be made to each according to proportion; 2° if it is unknown to which one out of many, and likewise if it is entirely unknown to whom damage was caused, there is no obligation of restoring.

Corollary II. In the case in which restitution can or must be made to the poor, the debtor himself, if he is poor, can prefer himself (St. Alphonsus, *Praxis confessarii,* n. 24).

[1] Alexander III, cap. V, *De usuris.*

Scholion. On the Case in which Someone Cannot Satisfy All Creditors

Preliminary Note. We suppose that the debtor has not yet made cession of goods or cession in court. Now:

1012 **I. With regard to natural law:**

1. Another's thing existing in itself must be returned to the owner (St. Alphonsus, III, 690).
2. Those who enjoy a hypothec or pledge have preference with respect to the thing obligated to them, unless and insofar as law establishes the contrary.
3. There follow creditors endowed by law with a privilege in certain determinate goods, namely insofar as the law truly grants the privilege.
4. Then come creditors endowed with a privilege in all the goods of the debtor, namely again insofar as the law truly assigns the privilege.
5. Then follow common creditors, to whom, as regards the debtor's obligation, privileged creditors are equated so long as the privilege has not yet become available for execution. Now the debtor, with regard to them, can either satisfy each according to proportion, or make full payment either to the creditor who was earlier in time, or to the creditor asking for full payment, or to both; and divide what remains according to proportion (St. Alphonsus, III, 688, 690-693). Thus we resolve practically; but theoretically:

Disputation 1. Whether the creditor who is earlier in time must be preferred. Some affirm it, because the earlier creditor, although he directly has the person of the debtor obligated, nevertheless indirectly has also the debtor's goods obligated, in which he ought not to be prejudiced by a subsequent creditor. There is added the ancient Rule of Law 54 in the Sext: he who is prior in time is stronger in right. But this is denied sufficiently probably, because not the debtor's goods, but only his person, is obligated to the creditors, and equally to all. Nevertheless, the creditor who is earlier in time can sufficiently probably be preferred, namely with regard to the argument alleged above, which indeed does not prove an obligation of preferring him, but nevertheless argues so strongly on its behalf that one may conclude to liceity (St. Alphonsus, III, 690; cf. St. Thomas, *Opusc.* 73, chap. 18, at the end).

Disputation 2. Whether the creditor asking for payment can be preferred. Per se it seems this must be denied, because on the one hand the said creditor has only an equal right with the others, and on the

other hand, for him as such there is not present, as there is for the earlier creditor, a special title not altogether to be rejected. Appeal is indeed made to ecclesiastical positive law;[1] but that law, even if perhaps formerly it favored the opposite opinion, after the Code of Canon Law can no longer be urged. Nevertheless per accidens the creditor asking for payment seems able to be preferred, because approved custom in commerce so holds. For the same reason it is licit for the creditor to ask for full payment; but the debtor cannot warn some creditor to ask, because on his part he cannot bring it about that the other creditors, who have a right equal to that of the one to be warned, become of worse condition; nor do men who admit payment to one asking approve that someone be warned to ask.

Disputation 3. Whether a poor creditor can be preferred to a rich one; likewise, whether a creditor by reason, for example, of theft committed by the debtor, can be preferred to a creditor from contract.

Response. It seems this must be denied, because the said creditors have only an equal right with the others, nor is there present for them as such, as for the creditor earlier in time, some special title not altogether to be rejected (cf. St. Alphonsus, III, 691). Make exception if the poor man is in grave necessity, because then the consent of the other creditors seems able to be presumed (cf. St. Alphonsus, III, 691).

Objection 1. A poor man suffers greater damage than a rich man. But restitution is ordered to repairing damage.

Response. I distinguish the major: he suffers greater damage subjectively, because he is poor, I concede; but this is per accidens to restitution. For just as on that account you are not held to restore more to him, so neither are you held to restore sooner to him than to others enjoying an equal right. He suffers greater damage objectively, that is, a violation of a greater and stronger right, I deny. But restitution is ordered to repairing the violated right, or the damage inflicted, objectively.

Objection 2. The owner suffers a greater injury (and therefore has a greater right to restitution) from theft or robbery than from an unobserved contract.

Response. The obligation of restoring does not arise from the personal injury, but from the unjust detention of the thing; and the detention in a contract, once the term of payment has elapsed, is equal and equally unjust as in theft or robbery.

Disputation 4. Whether certain creditors must be preferred to uncertain or unknown creditors, that is, to the poor, etc., who come in place of the uncertain creditors.

Response. Many affirm it, because certain creditors have an immediate right, whereas uncertain creditors have only a remote right, namely insofar as they succeed to unknown creditors. Others deny it, because, as succeeding to unknown creditors, they have a right equal to that of certain creditors. Thus the authors; but we have denied the very obligation of restoring if the creditors are unknown (n. 1011).

Disputation 5. Whether a creditor to whom the debtor has unjustly made full payment is held to restitution.

Response 1. Theoretically it must be affirmed, if the creditor accepted the restitution in bad faith, because he culpably cooperated in an unjust action. Likewise it seems theoretically to be affirmed if he accepted the restitution in good faith, because by retaining the things restored he continues or confirms the unjust act (although not culpable) of accepting full payment (St. Alphonsus, III, 693).

Response 2. Practically he is not held to restitution, because he can ask for the full payment already made; this being posited, he can retain what he received.

6. Finally come creditors by gratuitous title, or, "debts from onerous title must be paid before those which are owed gratuitously, for example from a promise; because these include a tacit condition, unless something stands in the way. Hence the debts of the deceased must be paid before all legacies, even pious ones" (St. Alphonsus, III, 689, 4°).

[1] *Pupillus*; l. *Si non,* 6, § 2, ff. *de bonis auctoritate iudicis possidendis.*

1013 **II.** Whether and how far civil law tempers natural law, see in the Code of the country. Yet note this: 1° another's thing existing in species is to be returned to the owner; 2° debts from onerous title are to be preferred to debts from gratuitous title.

Article IV. The Time of Restitution

1014 **I.** Restitution is to be made as soon as it can morally be made. He who cannot restore the entire damage should restore a part, if he can, and should strive according to his powers that he may be able to restore the remaining part. Delay of restitution, if there is question of a grave thing, is a grave sin from its genus, that is, he sins gravely who postpones the restitution of a grave thing for a long time, and he sins lightly who postpones it for a short time, unless grave damage to the owner would follow from the short delay (St. Alphonsus, III, 676, 679; *Praxis confessarii,* n. 43). A delay, for example, of three weeks is certainly brief (St. Alphonsus, loc. cit.).

II. He who has delayed restitution (or payment) is held to repair the emergent damage and ceasing profit which have followed from the delay and were foreseen at least confusedly, as follows:

1. He is held if he delayed without a legitimate cause, because by illegitimately delaying he placed or continued an unjust cause of damages.
2. He is not held if he delayed from a just cause, with the exception, more probably, of a debtor from delict; because although in the case the delay is not the unjust cause of damages, nevertheless the unjust cause was and remains the delict itself (St. Alphonsus, III, 680, 703, doubt 2).

Corollary. A dying person who is held to restitution (or payment) must be treated in this way:

1. If the dying person is in good faith, he must be warned, unless there is no time for warning, or it is feared that the warning will not be useful.
2. If the dying person was not in good faith, or has been deprived of it by the warning, let him wisely be induced to fulfill the obligation, and indeed immediately, if this can conveniently be done.
3. If the obligation cannot conveniently be fulfilled immediately, then:

a) If the obligation is public, let the dying person take care that it be fulfilled by the heirs, for example by handing over to the creditor a private written instrument completed in legitimate form.

b) If the obligation is hidden, let the sick person either hand over the sum owed to a prudent man, who may remit it to the creditor; or let him bequeath it to the creditor in his testament, if this can be done under some plausible pretext.

Article V. The Place of Restitution

1015 **I.** He who possesses another's thing in good faith satisfies by returning it where it is; a fortiori he is not held to transmit it elsewhere at his own expense.

II. He who possesses another's thing in bad faith is held to restore it where the owner would have it if it had not been possessed in bad faith; for he must preserve the owner entirely unharmed. Moreover, he is held to transmit it at his own expense, although he can deduct those expenses which the owner also would have made. If the expenses of transmission would be great, the price of the thing can be transmitted from the presumed consent of the owner; indeed they can be so great that transmission of the thing would be demanded irrationally by the owner (St. Alphonsus, III, 598).

III. If another's thing, or its price sent, does not reach the owner, whether because it has perished or for another reason, the following must be said:

1. A possessor in good faith, provided he has used due diligence, is freed; for he is no longer bound either by reason of the thing, which he no longer possesses, or by reason of the transmission, which was owed and, as is supposed, was duly carried out.
2. A possessor from delict per se is not freed, because by force of the delict he is held to render the owner unharmed. Per accidens he is freed if he transmitted the thing in the mode assigned by law or by the judge; likewise if the owner took the danger of the thing upon himself, which happens if he himself received the thing through an intermediary person; if he indicated the mode of transmitting; if he approved the mode proposed by the debtor or prudently to be chosen (St. Alphonsus, III, 704).

Question 1. Whether a debtor from delict is freed who entrusts the things to be restored to the confessor, even if they do not reach the owner.

Response. Many affirm it, because in law the confessor is held as quasi-mandatary of the creditor and therefore can accept the thing in the creditor's name. But St. Alphonsus (III, 704) deservedly prefers the contrary opinion, because the confessor, just as another person, cannot accept the thing in the creditor's name unless the creditor has granted that faculty to him. That he would grant it if asked does not suffice for him to enjoy it here and now.

Question 2. Whether a debtor from delict is freed who, by the counsel or precept of the confessor, has spent the thing to be restored to the owner on the poor or on pious causes.

Response. Negatively, because he has not preserved the creditor unharmed, to which he is held by force of the delict (St. Alphonsus, loc. cit.). This nevertheless does not prevent that sometimes, on account of the known liberal disposition of the creditor, his consent or condonation can be presumed.

Article VI. The Mode of Restitution

1016 **I.** In general, any mode is sufficient by which the owner is rendered unharmed. Hence:

1. It is all the same whether restitution is made while the owner notices it or while he does not notice it, for example by increasing the measure or by decreasing the price of merchandise.
2. Restitution can more probably also be made through a simulated donation, that is, by which someone gives under the appearance of giving, but intends to satisfy the debt. If, however, the

creditor would give it back, being otherwise not about to give, this donation would be invalid (n. 837) and therefore would have to be restored. A non-simulated donation, that is, one by which someone truly intends to give, does not suffice if someone gives while mindful of the debt, because then he wills that the creditor's right endure. If he gives while forgetful of the debt, it does not suffice if it is evident that the debtor, even if he had been mindful of the debt, would nevertheless have given. Otherwise the matter is disputed. St. Alphonsus and many other authors hold the opinion which affirms it as sufficiently founded, relying on this reason, that each person is presumed to have the habitual will of first satisfying debts from justice (St. Alphonsus, III, 700, question 2). There is added that at least condonation on the part of the donee is reasonably presumed.

3. A debt is also satisfied through restitution (or payment) made by the debtor to the creditor of his own creditor. Make exception if the debtor must restore a determinate thing or a debt of a different species to his creditor; for example, if the debtor owes wheat to his creditor, but the creditor owes money to his own creditor. Besides, restitution (or payment) made in this way, that is, to the creditor of one's creditor, per se seems to be opposed to the order of law.

II. In particular note:

1. Restitution to be made to the republic should be transmitted to the Minister of Finance, who should be asked to announce the restored sum in some public newspaper. Restitution can also be made by burning either obligations of the public treasury, or notes of the public bank, or stamps to be affixed to letters being transported. But if no mode exists by which it is certain that the restitution truly comes to the republic, it can be made to the poor or to other pious causes, for example Catholic schools, to which equitable subsidies are unjustly denied by the republic.
2. Restitution to be made to a municipality, institute, or association should be assigned to the administrators of the goods of the municipality or association.
3. As regards the mode by which household members, that is, spouse, children of the family, and servants, are held or are able to restore, note:

a) Per se they are held to restore from their own goods, if they have any.

b) If they lack goods of their own, or cannot conveniently restore from them, let them restore, for example, by frugality or by extraordinary services; likewise, if there is question of a spouse, by testament, or, if there is question of children of the family, by contributing the sum to be restored into the inheritance to be divided. Nevertheless, there is no obligation to the latter means unless there is question of a large quantity (St. Alphonsus, III, 546).

Article VII. Causes Extinguishing or Suspending the Obligation of Restitution

§ I. Causes Extinguishing the Obligation

The causes which, besides the very fulfillment of the obligation, extinguish it are:

1017 **I. Remission or condonation made by the creditor,** provided, of course, those things required for valid condonation are present (St. Alphonsus, III, 700, 1°).

Presumed remission for the future suffices, that is, that the creditor would remit it if he were asked, provided he would not do this on account of the petition alone, but on account of, or also on account

of, a good affection toward the debtor. The reason is that, in the hypothesis posited, the owner, morally speaking, is now not unwilling with respect to the omission of restitution. If, however, he is unwilling with respect to the mode, that is, with respect to the omission of restitution without express pardon, you are not excused from venial sin (St. Alphonsus, III, 700, question 1).

1018 **II. Compensation properly so called, or legal compensation,** has place when two persons who are debtors between themselves oppose and extinguish a mutual debt. But what is required by law in the case, see in the Code of the country.

There will be discussion later about compensation improperly so called, or hidden compensation, which can likewise extinguish the obligation of restitution.

1019 **III. Composition made by public authority;** namely:

1. A sentence of a judge obtained without fraud frees, if the cause was truly doubtful, whether by doubt of law or of fact. Likewise a punitive sentence which, as a punishment for a delict committed by the creditor, absolves the debtor from restitution, is valid also for the internal forum.

2. The Supreme Pontiff can condone restitution owed to pious causes.

In fact, the Roman Pontiffs have not rarely granted condonation of this sort concerning those goods which had been unjustly confiscated by the Government, or had been occupied by private persons and then passed into the hands of the Government. But if there is question of those goods which were usurped by private persons, or even by public authority but in those places where the aforesaid condonation has not been made, Catholic acquirers will not be safe in conscience unless, for the individual case, they have recourse to the Holy See to obtain sanation.[1] The Supreme Pontiff can also remit uncertain spiritual debts, or even certain ones, to be paid by someone, for example Masses to be said. He can remit them, I say, by compensating from the treasury of the Church the detriment which the creditor is going to suffer. Indeed, sometimes he has granted a general faculty of satisfying, by one Mass, for several Masses owed from a stipend accepted. Recourse is made to the Sacred Congregation of the Council; but if the case is hidden, to the Sacred Penitentiary.

3. Prescription can also be referred here, since it sometimes extinguishes the debt itself; it can be referred here, I say, insofar as it receives force from public authority.

[1] Sweens, n. 415.

1020 **IV.** As to how far the destruction of the thing excuses from restitution, see nn. 983, 990.

Question 1. Whether he is still held to restore or pay who doubts whether he has restored or paid.

Response 1. He who thinks that he has restored or paid is held to nothing. Now he who is generally diligent in paying can, in doubt, rightly think that he has satisfied the obligation. On the contrary, he who thinks that he has not restored or not paid is held to the whole debt (cf. n. 229).

Response 2. It is disputed to what he is held who, all things considered, strictly doubts whether he has restored or paid. Some deobligate him entirely; a few bind him to a part, others to the whole debt; and this opinion seems to have to be admitted. For 1° in doubt the condition of the possessor is better, that is, of that which is prior and continues to persist with equal probability (n. 229). But the creditor's right to restitution or payment is prior to the restitution or payment itself, and in the hypothesis posited persists with equal probability. 2° Natural equity demands that he who is in doubt whether he contracted an obligation of restoring or paying be obligated to nothing; and, I say, that he who is in

doubt whether he has satisfied a contracted obligation be bound to the whole debt (St. Alphonsus, III, 700, question 2; *Homo Apostolicus,* tr. 1, n. 20).

Objection 1. It is not equitable that the whole debt be paid to him who indeed had a certain right, but here and now has only a doubtful right.

Response 1. I turn the argument back; since with the same right it can be said: it is not equitable that nothing be paid by him who doubtfully did not contract the debt.

Response 2. That is equitable, provided it is admitted that nothing is to be paid by the same person if he only doubtfully contracted the debt. Once this is admitted, and it is now commonly admitted, equity precisely demands that he pay the whole if he certainly contracted the debt and only doubtfully satisfied it.

Objection 2. In doubt the condition of the possessor is better. But the debtor possesses the thing, for example his own money. Therefore in doubt his condition is better.

Response. I distinguish the major: in doubt as to whose some thing is, the condition of him who possesses it is better, I concede (n. 777). In doubt whether the one possessing the thing has satisfied the obligation of yielding it to another, posited that the said obligation certainly existed and with equal probability continues to persist, the condition of the possessor is better, I deny, on account of the reasons given.

§ II. Causes Suspending the Obligation

1021 The causes which suspend the obligation of restoring are enumerated:

I. The impotence of the debtor, whether physical or moral. As regards physical impotence, the matter is clear; as regards moral impotence, it is deduced from the fact that the creditor in the case would demand restitution irrationally. To impotence belong:

1. The necessity of the debtor or of his own, that is, of wife, children, parents, or, as others add, of the other ascendants and descendants, indeed of brothers and sisters. Necessity excuses: 1° when the debtor lacks the means with which he can satisfy; 2° when by restoring the debtor would be cast into extreme or quasi-extreme necessity. Make exception if the creditor is already in the same necessity, and "precisely by reason of that subtraction or taking away has been cast into extreme necessity, because to take from someone a thing necessary for life itself is the same as killing him; whence in the case the condition of the owner who possessed first ought to be better" (St. Alphonsus, III, 701); 3° when by restoring the debtor would be cast into grave necessity. Make exception if the creditor is already in necessity of this sort, or in graver necessity, because then the condition of the creditor ought to prevail; 4° when both creditor and debtor are already in grave necessity; for then the debtor, by restoring, would be cast into a much worse condition than the creditor. Make exception if the thing taken away exists in species, or if the creditor precisely through that taking away has come into grave necessity (St. Alphonsus, III, 701, 702, 703).
2. Damage in his own affairs much greater than that which will follow for the creditor from the delay. Hence, for example, you are not held to sell your things for much less than they are worth. But ceasing profit is not a cause for delaying restitution; for it is not equitable that the creditor be deprived of his thing or his debt so that the debtor may gain profit from them. Make exception if the creditor would suffer no damage from the delay, or if there is founded hope that by delaying

restitution the debtor could so gain that he would satisfy all the creditors; for then it seems that the creditor ought to suffer some delay (St. Alphonsus, III, 697).

3. Damage to himself or to his own in goods of a higher order, such as infamy, imprisonment, etc., unless the loss of the higher good is minimal with respect to the damage which the creditor undergoes (St. Alphonsus, III, 698). Hence, for example, a notary is not held, with danger of infamy, to disclose a false instrument made by himself in order to repair the damage which followed from it for another. An adulterous woman ought not, with danger to reputation, confess adultery in order to prevent the damage which threatens legitimate children from illegitimate offspring born. A spouse, in order to restore, is not held to reveal to the other spouse what things he or she has unjustly usurped from common goods. A debtor who has made cession of goods, but has unjustly concealed certain things, is not held afterward to reveal this to the creditors, because on account of the fraudulent cession of goods he would expose himself to danger of a very grave punishment. Nevertheless, he is held in another way, if he can, to repair the damage given.

4. Ejection from a justly acquired status. According to many, this reason excuses even then when someone by his own vice, for example by feasting, gaming, etc., has come to such necessity. I have said, however, **justly acquired;** for no one is excused from restitution on account of the loss of a status unjustly acquired, unless the injustice is hidden, in which case he is excused by reason of infamy. For the rest, ejection from a justly acquired status is nowadays to be urged somewhat less than before; both because ejections of this sort occur much more frequently, and because more people can more easily turn aside to another place, there to bear a lower status without confusion. Gluttons and gamblers also are not worthy of such great commiseration. Moreover note that even those who have justly acquired a status have the obligation of abstaining from superfluous expenses, indeed also of procuring for themselves, with some diminution of status, the faculty of restoring gradually and in parts (St. Alphonsus, III, 702).

1022 **II. Damage that will follow either to the creditor himself or to a third party,** namely from the fact that the creditor is going to abuse the thing restored, whether for sinning or for harming another. "When the thing to be restored," says St. Thomas, "appears to be harmful to him to whom restitution is to be made, or to another, it ought not then to be restored to him; because restitution is ordered to the utility of him to whom it is restored: for all things that are possessed fall under the aspect of the useful; nor nevertheless ought he who detains another's thing to appropriate it to himself, but either to reserve it so that he may restore it at a fitting time, or even hand it over to another to be kept more safely" (II-II, q. 62, a. 5, ad 1). Indeed, in the case there is per se an obligation of delaying restitution, an obligation, I say, either of charity, if there is question of the creditor himself, or of justice, if there is question of a third party, because in the case restitution would take on the character of cooperation toward the damage of the third party (St. Alphonsus, III, 697).

Scholion. On Juridical Delay of Payment, on Voluntary Cession of Goods, and on Cession in Court

1023 **I. Juridical delay of payment** consists in this: once it has been pronounced and while it endures, the debtor cannot be forced to pay debts; yet some of these are usually excepted by law. Now juridical delay of payment, as is clear from the nature of the matter, does not excuse from payment to be made afterward, if it can be made; nor from the obligation of applying means, if there are any, by which the

debtor may be made capable of paying the debts. For the rest, one must stand by the dispositions of the law and of the judge.

1024 **II. Voluntary cession of goods** consists in this: that the debtor, with the creditors consenting, cedes his goods so that the debts may be paid from them. It does not transfer ownership of the goods to the creditors, but gives them the right of selling them. For the rest, note:

1. The obligations of him who has made cession of goods are usually determined by the agreement itself.
2. To judge whether or not cession of goods frees from payment of the residue, the agreement should be inspected, and that agreement as ordered by law, and usage. If, after these have been inspected, it is sufficiently evident that the debtor is not freed, neither can condonation be presumed. If law, agreement, or usage does not settle the matter, let it be seen whether condonation by all or some of the creditors can be presumed. If doubt persists, the obligation of paying persists, because in doubt the condition of the creditor is better.

1025 **III. Cession in court** consists in this: that the goods of the debtor are juridically seized, so that they may finally come to the creditors. For the rest, note:

1. The obligations of him who has made cession in court are determined by the judge in conformity with law.
2. To judge whether or not one who has made cession in court is freed from the residual debt, again the agreement should be inspected, if any has been entered into, and that agreement as it has been ordered by law, and usage. If, after these have been considered, it is sufficiently clear that the debtor is not freed, neither can condonation be presumed. If law, agreement, or usage does not settle the cause, again let it be seen whether condonation by all or by some can be presumed. If doubt persists, the obligation of paying persists.

Corollary I. He who foresees that he will be unable to satisfy his creditors sins against justice by squandering goods, by neglecting means of improving the state of his fortune, and by contracting new debts without necessity.

Corollary II. Likewise he injures justice who by fraud or by other unjust means induces creditors to a composition, or to one more favorable than just.

Corollary III. He who has made cession in court is held to stand by the dispositions of the law and of those who apply the law; and this from commutative justice, because the law justly determines the rights of creditors. Hence, for example, he sins who reserves for himself part of his goods besides those which are granted by the judge. If, however, he justly judges that the law does not sufficiently provide for him, namely so that he and his own may be able to live sparingly, he can secretly retain something for himself, and to the judge interrogating him he can respond that he has concealed nothing, understanding: nothing which it is illicit to conceal; indeed it is also lawful to confirm the assertion with an oath. But here one must proceed cautiously, because those who make cession of goods or cession in court easily exaggerate their necessities; for this reason others should not easily concur with them in concealing goods. Finally note canon 122, which establishes concerning clerics: for clerics who are forced to satisfy creditors, those things necessary for their honorable support, according to the prudent judgment of the ecclesiastical judge, are to be preserved, while nevertheless their obligation of satisfying creditors as soon as possible remains firm.

Chapter III. On Injustice and Restitution in Particular Cases

Injustice and restitution can regard: 1° goods of fortune; 2° goods of the body; 3° goods of the soul; 4° the good of modesty and chastity; 5° the good of reputation; 6° the good of honor; 7° the good of secrecy. Each must be discussed.

Article I. On Goods of Fortune

Goods of fortune can be injured both by theft and by mere damaging. An unjust or unfulfilled contract and the taking away of a thing from a legitimate possessor can be added. It suffices to speak of the first two, because enough has been said about the others in their own place. For the rest, all these modes of injuring goods, as such, do not differ in species.

§ I. On Theft

Point I. On Theft in General

1026 **I. Notion.** Theft, taken in the broader sense, is taken for every unjust injury in goods of fortune. Taken in the stricter sense it is defined: the occupation of another's thing while the owner is reasonably unwilling. It is said:

1. **Occupation,** that is, taking away with the intention of making the thing one's own, or at least of treating it as one's own. Hence he is not guilty of theft who takes wine away from someone so that he may not become drunk, or a sword so that he may not kill someone.
2. **While the owner is unwilling,** namely with respect to the occupation. Therefore I note that, morally speaking, he is now not unwilling if, being asked, he would consent, provided he would not do this on account of the petition alone, but on account of, or also on account of, a good affection toward the person taking it away. If, however, the owner is unwilling with respect to the mode, that is, with respect to occupation without express permission, you are not excused from venial sin (St. Alphonsus, III, 700, question 1).
3. **While reasonably unwilling,** again with respect to the occupation. Moreover, in general the owner is irrationally unwilling if he refuses to yield a thing which is owed either from justice or from piety (n. 779); otherwise, if it is owed from charity alone. Hence a poor man is guilty of theft who, placed in necessity that is simply grave, occupies the owner's thing; but not a wife who, placed in a similar necessity, against her husband's will takes goods necessary for herself (St. Alphonsus, III, 519).

1027 **II. Division.** Theft is distinguished into simple theft and robbery. Simple theft is when a thing is taken away while the owner is ignorant of it, or at least without physical or moral force. Robbery is when theft is committed while the owner is present and positively resisting, with force being employed, whether physical or moral, for example unjust fear. Each is called sacrilegious if a sacred thing is taken away.

1028 **III. Morality.** 1. Theft is a grave sin from its genus, or grave or light according as it regards grave or light matter. Theft which regards grave matter is a grave sin, as is clear both from Sacred Scripture[1] and from the reason alleged where injustice in general was discussed (n. 978; cf. St. Thomas, II-II, q. 59, a. 4; q. 66, a. 6; St. Alphonsus, III, 518). Nevertheless:

a) "It is not mortal, speaking per se, to steal any sum whatever with the intention of restoring immediately, for example within a quarter of an hour" (St. Alphonsus, III, 531). But

b) "It is grave, although not in the species of theft, if the thief knows that from the loss of a small thing a very great annoyance will follow for the owner; for example, because he was greatly attached to it, and a similar thing cannot be recovered: unless, however, the thing is of no importance at all" (St. Alphonsus, III, 526).

2. Simple theft and robbery differ in species, since robbery adds to theft the species of personal injury. Sacrilegious theft adds to both the species of sacrilege[2] (St. Thomas, II-II, q. 66, a. 4; St. Alphonsus, III, 518).

3. It remains to determine what matter is grave. Now:

a) Matter both relatively grave and absolutely grave must be established. It is said:

α) **Matter relatively grave,** that is, matter which is grave considering the condition of him from whom it is taken away. For the gravity of theft also depends on the gravity of the damage which is inflicted on someone. But the gravity of damage is different according as the condition of him on whom it is inflicted is different (St. Alphonsus, III, 527). Here, however, it can be asked whether, in establishing matter relatively grave, account must also be taken of the owner's special and reasonable affection toward some thing which in itself is of lesser value, for example toward a collection of letters from a dear person. Now it seems this must be affirmed, because on account of the special affection the thing is of greater value to the owner, so that for this reason it could be sold for more, and therefore greater damage is inflicted on him.

β) **Matter absolutely grave** regards the quantity by which the thief is enriched, rather than the damage inflicted on the neighbor. It is called absolutely grave because it is always held as grave, even with respect to the very rich. And it must be admitted, because the act of occupying and having another's thing as such, according to its proper concept, that is, with abstraction made from the damage which is inflicted on the neighbor, involves disorder; in a word: justice forbids inflicting damage on someone and occupying and having another's thing, or, to use the words of St. Alphonsus, "the precept of not stealing obligates not only that grave damage not be inflicted on the neighbor, but also that no one be enriched from another's thing" (*Homo Apostolicus,* tr. 10, n. 28). Moreover, if the aforesaid act involves disorder, with abstraction made from the damage inflicted, one must finally arrive at grave matter, even if the individuals from whose goods someone is enriched do not suffer grave damage.[3]

b) For matter grave, whether relatively or absolutely grave, a greater sum is required the smaller the value of money is; hence for grave sin a greater quantity is required now than formerly, and a greater quantity, for example, in North America than in Europe. Finally a greater quantity is required the less unwilling the owners are judged to be.

c) Considering the things we have just noted, the matter can be more determinately stated for our regions in this way:

α) With respect to a poor person: 1 florin; with respect to workers: 3 florins; with respect to citizens of middle fortune: 5 florins; with respect to the rich: 10 florins. The reason is that the assigned sums, with respect to the assigned persons, are judged to inflict grave harm. With respect to the very rich, absolutely grave matter holds; but the sum of 25 florins can be held as absolutely grave matter.

If there is question of a sacred thing, the gravity of the matter must be judged from the dignity and rarity of the thing. Hence, as regards relics, grave matter is lacking "if someone steals some very small thing, not deforming the relic itself, nor diminishing its esteem: unless it is some notable or rare relic, as for example of the Holy Cross" (St. Alphonsus, III, 532).

β) For spouses and children of the family, a sum twice as great can be established, so that, for example, the child of rich parents would sin gravely if he stole 20 florins from his parents. Indeed, if there is question of spouses, a latitude somewhat greater than for children is admitted. The reason for these things is "that the parent (and spouse) is less unwilling, and the child is something of the father" (St. Alphonsus, loc. cit.; *Homo Apostolicus,* tr. 10, n. 32), and spouses constitute one thing. Moreover, sometimes they are in no way unwilling, or are unwilling only about the mode, so that there can be no question of theft. Finally spouses and parents easily condone thefts committed by the spouse and by children if they have been consumed, so that there is no obligation of restoring (St. Alphonsus, loc. cit.). If there is an obligation, compare what was said about the mode of restoring in n. 1016.

Note moreover that a wife and children of the family do not steal by taking secretly what is necessary for food and clothing, if the father refuses to grant these things. But as regards those things which are judged to be required by children for recreations fitting to their condition, great prudence is needed if these are denied by the parents. For children are usually more inclined to squander money, whereas parents often have excellent reasons for denying what is desired.

γ) As regards servants, if there is question of money or of a thing carefully guarded, the same quantity as for outsiders suffices. But it is commonly admitted that, by stealing eatables and drinkables, they do not easily arrive at grave sin, provided they themselves consume them, and do not sell them or carry them out of the house, and there is no question of a thing diligently guarded (St. Alphonsus, III, 545; *Homo Apostolicus,* tr. 10, n. 34).

δ) As regards religious, in eatables and drinkables what was said about servants holds; in other thefts from the goods of the monastery, a greater quantity is required for grave matter than in thefts by outsiders, but a lesser quantity than in thefts by children (St. Alphonsus, IV, 24).

Here, however, note that the diverse opinions of theologians about the quantity required for grave sin are not to be explained to the people or to penitents.

Corollary I. Considering the notion of theft, sometimes very small things can be secretly taken without sin, for example one apple or another from an orchard by someone passing by, etc.; as regards very small things, owners for the most part are not judged to be unwilling. If, however, the orchard, etc., is fenced in, the owner is reasonably unwilling with respect to entrance into his territory.

Corollary II. He who cuts wood in another's forest or pastures animals in another's pastures:

1. Does not sin if the forests or pastures belong to some commune, and there is question of inhabitants of that commune, unless, as regards forests, great devastation is done. Otherwise the prohibition can be held as merely penal, and even as such it is not judged to extend to dry branches.
2. Sins if the forests or pastures belong to some private person, or at least have been leased by a private person. Nevertheless, commonly owners are judged to grant that dry branches may be collected (St. Alphonsus, III, 529). For the rest, in these matters custom must also be attended to.

Corollary III. He who, from money entrusted to him by a society, steals a sum with the intention of returning it, sins, because the owners, on account of the danger of damage, are reasonably gravely unwilling. But what quantity is required for grave sin depends in great part on the gravity of the danger.

[1] Zech. 5:3; Hab. 2:16; Exod. 20:15; 1 Cor. 6:10.

[2] According to others, both robbery and sacrilege constitute one species of sin, as if coalescing from two, yet distinct from simple theft.

[3] Others argue from the grave damage which, according to the contrary opinion, would threaten society or even individual persons; but an intrinsic reason of strict injustice is lacking. Others judge that in the case posited the right of the republic is gravely injured. But the private owner alone, and not the republic as such, enjoys a strict right in the goods of others.

Point II. On Minor Thefts in Particular

1029 **I.** One sins gravely by minor thefts:

1. When someone commits a light theft with the intention of committing a grave one if the occasion were present (St. Thomas, II-II, q. 66, a. 7, ad 3).
2. When someone steals light things with the intention of arriving gradually at grave matter. In the case the thief already sins gravely by the first theft; namely, although the execution of the individual thefts is externally light, nevertheless insofar as it is subject to a gravely evil intention, it is gravely evil. Nonetheless, those several little thefts seem to be morally united from that intention and therefore to coalesce into only one sin in number (St. Alphonsus, III, 533).
3. When someone, after minor thefts retained either in themselves or in equivalent, finally and advertently completes grave matter; and it is all the same whether the retained thefts were committed against the same owner or against diverse owners. The reason is that the act of retaining another's thing in itself contains disorder, and therefore, if there is question of grave matter, grave disorder (n. 1028). In this hypothesis the thief sins gravely by that very theft which completes grave matter, unless he has the intention of restoring at least the last little theft quickly. But if, after grave matter has been completed, he again commits a minor theft, according to some he increases and continues the prior mortal sin and therefore sins gravely; according to St. Alphonsus and others, he does not sin gravely unless he reaches another new grave quantity (III, 538). In the case, however, it is posited that the new little theft was not intended from the beginning; but if this had happened, there would indeed be an increase and continuation of the prior mortal sin.
4. When someone, after minor thefts not indeed retained, but following at a brief interval and committed against the same owner, completes grave matter. I have said **at a brief interval,** because then they are apt to inflict grave damage and therefore the owner is gravely unwilling; not so if they are separated by a longer interval. For the rest, the greater the quantity taken away on individual occasions is, the greater the interval required so that they do not coalesce (St. Alphonsus, III, 530).

If there is question of a quantity which is near to grave matter, St. Alphonsus requires an interval of at least two months (III, 530).

5. When several, by conspiracy, each take light things from someone, which together constitute grave matter. The reason is that the total damage is imputed to each one (St. Alphonsus, III, 535, 536).

But "if several, either simultaneously or successively, commit several small thefts against someone, which taken together gravely harm him, then, if one does not know about the other, no one sins gravely" (St. Alphonsus, III, 535). If each one is moved by the example of another, by reason of scandal they sin against charity, and indeed gravely if the matter is grave. Moreover, more probably they also sin against justice, insofar as they cooperate in injustice by giving an example that will be followed, as was said about indirect scandal (n. 548). But by reason of this injustice one is not held to restitution, because for this it is required that someone have been an efficacious cause, not merely an occasional cause, of the damage.

6. Finally, as is clear, theft light in itself can become grave by reason of damaging, as if someone steals an instrument of lesser value, for example a tailor's needle, which someone needs in order to be able to support himself.

1030 **II.** As regards the quantity required in minor thefts for grave sin, the following rules hold:

1. First note in advance that in the cases related under 1, 2, 3, and 5, the general doctrine set forth on p. 676 holds.

2. But if there is question of minor thefts not retained, but following at a brief interval, a greater quantity is required, both because the owners are less unwilling, and because they commonly suffer less damage in the case. It can be established with St. Alphonsus: 1° one and a half times the amount, if the little thefts are made at different times against the same owner, or at the same time against diverse owners; 2° a double sum, if they are made at different times against diverse owners (III, 530). For the rest, theoretically, further degrees can still be distinguished between these rules, considering the person of the thief and the end by which he is led, the nature of the things taken away, and finally the greater or lesser interval.

1031 **III.** He who, after minor thefts retained, finally completed grave matter, or who by minor thefts not indeed retained, but following at a brief interval and committed against the same owner, arrived at grave matter, is held under grave sin to restitution, at least to such an extent that there no longer remains grave matter to be restored (St. Alphonsus, III, 533, 534). If, however, the little thefts were committed against diverse owners, the thief is not held under grave sin to restore to those owners themselves, because the individual owners were injured only lightly; according to the authors he satisfies the grave obligation if he restores to the poor or to other pious causes, indeed he also does this without sin if there is a reasonable cause for doing so (St. Alphonsus, III, 534, question 20).

Question. How great is the obligation of restoring if a thief, by minor thefts retained neither in themselves nor in equivalent, but following at a brief interval and committed against the same owner, did indeed arrive at grave matter, but subjectively sinned only venially?

Response. The obligation of restoring does not seem to be grave; not by reason of matter retained, because it is posited as not retained; nor by reason of the acts which were posited, because, as merely venial, they do not induce a grave obligation (n. 995). It remains, therefore, that we say the thief is held under venial sin to restore each little theft.

Corollary. "Confessors are to be warned by me that they should not easily dissemble even in minor thefts, and those which do not reach mortal sin; but according to the condition and capacity of the persons, they should always impose some restitution, which may be made either by returning the same thing, if it exists, or a thing of the same species, or the price of the thing, or by compensating with

greater service than they are held to by contract; or, if they cannot restore to the creditors, by contributing the same amount to the poor. For in this way, when they do not pass away unpunished, they are deterred from sins of this sort more than by other little penances; otherwise they become more ready for little thefts of this sort, and make a step toward greater ones."[1]

[1] Lessius, l. 2, c. 12, n. 50.

Point III. On Causes Excusing the Taking Away of Another's Thing

The causes which excuse the taking away of another's thing are necessity and hidden compensation.

1032 **I. Necessity excuses,** as follows:

1. **Extreme necessity** excuses to this extent, that it is licit to take away what is necessary for succoring the necessity, even a thing of great or extraordinary value. For the division of things proceeding from a human fact can have force only to the extent that it does not prejudice the primary end of things, which is to provide for the life of men. But it would prejudice that end if it were illicit, in extreme necessity, to consume another's thing, or, if only use is necessary, to use it (St. Thomas, II-II, q. 66, a. 7; St. Alphonsus, III, 520).
2. **Quasi-extreme necessity** excuses to this extent, that it is licit to take away ordinary things, but not extraordinary and choice things. The reason is that such necessity differs little from extreme necessity. Many exclude extraordinary and choice things, because otherwise the character of private ownership seems to be too much restricted, and public order to be exposed to danger more than is fitting (St. Alphonsus, III, 520; cf. St. Thomas, loc. cit., ad 2).

Corollary I. He who is in extreme or quasi-extreme necessity is per se held to ask for another's thing before he occupies it. For the rights of private ownership ought to be judged restricted only to the extent that the primary end of things demands it. But that end does not demand that the owner lack the faculty of assigning the thing by which the necessity of the neighbor may be relieved; but given that faculty, the petition of the neighbor must precede. There is added that otherwise all beggars who lack necessary things could steal what belongs to another, without acquiring it for themselves by begging; and this would necessarily harm order (St. Alphonsus, III, 520, question 2). Make exception: 1° if a determinate thing is absolutely necessary for someone, either because another cannot be obtained, or because another would not suffice; for then there can be no question of assigning the thing, since it has already been assigned. Make exception 2° if the owner is foreseen as about to refuse the petition, because no one is held to what is useless (St. Alphonsus, loc. cit.).

Corollary II. What is licit for relieving one's own necessity is also licit for succoring another's necessity. Yet if someone can succor the needy person from his own goods, he is held to that from charity, rather than to steal another's goods (St. Alphonsus, *Homo Apostolicus,* tr. 10, n. 15).

Corollary III. If it is asked from what virtue someone is held to succor one who is in extreme or quasi-extreme necessity, I respond: he is held from charity to succor him spontaneously; if he does not succor him spontaneously, he is held from justice not to impede the needy person from providing for himself (St. Alphonsus, III, 520, question 3).

3. **Grave necessity** (a fortiori common necessity) does not excuse. This is clear first from proposition 36 condemned by Innocent XI: It is permitted to steal, not only in extreme necessity, but also in grave necessity. The reason, moreover, is that the primary end of things, which is that life be

provided for, does not demand such a restriction of private ownership. There is added that the contrary doctrine would give occasion to innumerable takings away of another's things. Nevertheless, it is licit for a poor man, for relieving grave necessity, to steal some light thing, "judging probably that the wealthy owner, from mercy, is not unwilling, at least with respect to the substance. But the use of this epikeia ought not to be easy, nor in grave matter; because then the rich would also be reasonably unwilling with respect to the substance" (St. Alphonsus, III, 520, at the end).

4. **An obligation of restoring after the necessity has passed** is present as follows:

a) If the occupied thing still exists, it must be restored, because only the use, not ownership, was necessary (St. Alphonsus, III, 520, question 5).

b) If the thing has been consumed, the one taking it away is held to restitution if he was not absolutely poor, that is, if he had goods of his own or hope of obtaining them; for it sufficed to receive the thing as a loan. The contrary must be said, for the contrary reason, if he was poor both in thing and in hope. And this holds sufficiently probably even if someone had unjustly stolen the thing before the necessity. The reason is that the obligation of restoring contracted from unjust acceptance is extinguished by the very fact that the thief makes the stolen thing simply his own and consumes it (St. Alphonsus, III, 520, questions 4 and 5).

1033 **II. Hidden compensation** consists in this: that the creditor, without the debtor's knowledge, procures for himself from the debtor's goods that to which he has a right. It is just and licit, provided the due conditions are observed. It is required:

1. **That there be a strict right,** and that it be liquid or exigible.
2. **That there be a certain right.** If it is doubtful, the condition of the possessor is better. Yet some judge that compensation has place when the doubt regards not the fact, for example injury to reputation, which is supposed to be certain, but the right, namely, in the hypothesis posited, the right to compensation through goods of fortune, so that, for example, someone certainly defamed could compensate himself with money for reputation not repaired (cf. St. Alphonsus, III, 544, with the editor's note).

He who has secretly compensated himself with a doubtful right is held to restore the thing if he began to possess in doubtful faith; otherwise, if he proceeded in good faith and cannot overcome the doubt (n. 992).

3. **That the debt cannot conveniently be obtained by another way.** Namely, one secretly compensating himself per se, although only venially, "sins against common justice, while he usurps for himself judgment of his own thing, with the order of law passed over" (St. Thomas, II-II, q. 66, a. 5, ad 3). He sins only venially because, provided the thing is owed, public order is not gravely disturbed.

Moreover, insofar as it can be done, a thing of the same species as the thing owed is to be taken; likewise, insofar as it can be done, care should be taken that another, for example a servant, not come under suspicion of theft; finally one must beware lest the debtor pay again, for example by remitting the debt, as it were (St. Alphonsus, III, 521; *Homo Apostolicus,* tr. 10, n. 21).

Corollary. Hidden compensation is often illicit, namely because the required conditions are lacking. Hence the confessor should be very prudent in permitting it; wherefore proposition 37 condemned by Innocent XI is to be noted: "Male and female domestic servants can secretly steal from their masters to compensate their labor, which they judge greater than the wage which they receive."[1] This proposition was deservedly condemned, both because sometimes they so judge too lightly, and because a wage per se less than the work rendered can per accidens be just (n. 917), and because, even if the wage is less than just, there is not always a just cause for obtaining what is owed to oneself by this reason, but per se a greater wage ought first to be asked (St. Alphonsus, III, 522-524).

[1] Denzinger-Bannwart, n. 1187.

Point IV. On Mere Damaging in Goods of Fortune

1034 What has been said about theft in general and about minor thefts in particular is also to be applied to damaging in general and to minor damages in particular. Nevertheless, in particular:

Question 1. Whether even in mere damaging there must be admitted matter absolutely grave, that is, matter which even with respect to the very rich must be held as grave.

Response. It must be affirmed, because the act, for example, of destroying another's thing as such, according to its proper concept, that is, with abstraction made from the damage which is inflicted on the neighbor, involves disorder. But if it involves disorder, one must finally arrive at grave matter (p. 676).

Question 2. How great is the obligation of restoring if someone, through several minor damages following at a brief interval and done against the same owner, finally arrived at grave matter, but subjectively sinned only venially?

Response. The obligation is not grave in practice, because venial sins sufficiently probably do not induce a grave obligation (p. 649). It remains, therefore, that we say the damager is held under venial sin to restore each minor damage.

Article II. On Goods of the Body

Goods of the body are injured through homicide and mutilation. But damages that will follow from these can be distinguished into spiritual, corporal, and temporal damages. Each must be discussed.

1035 **I. Spiritual damages** consist in this: that the one killed is deprived of the last sacraments, of time for meriting, etc. Moreover, they must be restored only if both the damage that followed is certain and the damage can truly be compensated; for example, if the killer prevented Masses from being celebrated which the one killed certainly would have taken care to have celebrated for his soul.

1036 **II. Corporal damages** consist in deprivation of life, of a member, of health, and in the endurance of pain. There is no obligation of restoring these through goods of fortune (n. 980). Nevertheless, there is an obligation, not indeed by way of restitution for the lost member, but for the expenses that followed from it, of assigning goods of fortune to the injured person insofar as he wishes to substitute an artificial member for the member taken away.

1037 **III. Temporal damages** are distinguished into damages inflicted on the injured person himself and damages inflicted on third parties.

1. Damages inflicted on the injured person himself consist in the expenses of treatment, yet with those things deducted which he, if healthy, would have had to spend on food; likewise in emergent damage or ceasing profit for the time in which the injured person still lived and had to cease from labor. Restitution must be made according to the valuation of the hope of obtaining the goods, and indeed to the injured person himself or, if he has died, to his heirs. But if the killer does not restore these things, his heirs are held to restitution, unless the injured person has condoned them. "When remission of the injury has been made, remission of the damages is not understood to have been made" (St. Alphonsus, III, 630, 631).

Question 1. Whether something can be deducted from restitution of ceasing profit for the labor which the injured person would have had to spend in order to obtain the profit.

Response. Some affirm it; others seem rightly to deny it, for by his unjust action the killer caused the deprivation of the whole profit; hence he is also held to restore the whole profit. Yet in practice "Bonacina reasonably reconciles the opinions, saying that only that should be subtracted which the one killed is presumed to have been willing to give for the redemption of the labor" (St. Alphonsus, III, 639).

Question 2. Whether the heirs of the killer are freed from the obligation of restoring if the killer is punished with death.

Response. It seems this must be denied, because the penalty is judged to have been imposed only to satisfy vindicative justice, not commutative justice. Nevertheless, the heirs are excused from restitution if compensation for damages is not sought, because then the parties are presumed to condone, unless the thing still existed, or unless the damage was very grave (St. Alphonsus, III, 705).

2. Damages inflicted on third parties can chiefly regard the family, that is, parents, wife, and children; other blood-relatives; those to whom the one killed was doing good; and the creditors of the one killed. Now:

a) Damages inflicted on the family consist in deprivation of the support which the one killed was procuring for it, and likewise of the profit which he would still have procured for it. By the consent of all, these must be restored. The reason is deduced from the fact that the killer injured not merely a physical person, but, as it were, a moral person; a moral person, I say, which the others constituted with the person killed. Hence restitution is to be made to them (St. Alphonsus, III, 631). Nevertheless, "nothing is restored for funeral expenses, because those eventually would have had to be made at some time; unless perhaps, on the occasion of the death inflicted, for example outside the homeland, it was necessary for greater expenses to be made" (St. Alphonsus, III, 631). For the rest, restitution again must be made according to the valuation of the hope of obtaining those goods (St. Alphonsus, III, 631, question 2). A right norm will be the one which insurance societies follow on the occasion of an adverse event.

Question 1. Whether restitution is to be made to the family if it can conveniently provide for itself.

Response. Affirmatively; since the fact that the family can provide for itself does not prevent its right from having been injured; but from an injured right there arises the obligation of restoring. Yet the killer is not held to restore if the family receives from another what it would have received from the injured person, for example, "if the wife (and the same would have to be said of children and parents)

afterward has married equally conveniently, nothing is to be restored to her; because then in reality she does not suffer damage" (St. Alphonsus, III, 631, question 1).

Question 2. Whether the injured person can remit the restitution owed to the family.

Response. Many deny it, because no one can remit restitution owed to another; but with St. Alphonsus and others it seems this must be affirmed, because the right of the family is entirely subordinated to the right of the father. Hence just as the father can validly transfer goods into another's ownership, so too he can validly remit restitution for them. But here again note: "When remission of the injury has been made, remission of the damages is not understood to have been made" (St. Alphonsus, III, 630).

b) Damages inflicted on other blood-relatives do not have to be restored: neither by reason of the good from the obtaining of which he impeded them, because they did not have a strict right to it; nor by reason of the means employed, since it would be unjust only with respect to the one killed. For the same reason the same must be said about the poor to whom the one killed was doing good, and about others who would have received certain things from the testament (St. Alphonsus, III, 632).

c) Damages inflicted on creditors likewise do not seem to have to be restored. It is indeed true that they are impeded, as we suppose, from obtaining a good in which they had a strict right; but they are not impeded by the killer, but by the heirs or by the law exempting the heirs, while the killer is only an occasional cause (St. Alphonsus, III, 634).

Nevertheless, St. Alphonsus and others judge that the enumerated damages must be restored if the killer acted with the intention of harming the enumerated persons (n. 996).

Corollary I. He who provokes another to a duel and kills or wounds the provoked man, who freely accepts the contest, is not held to restitution, neither toward the injured person, because he consented to the damage in fortune that would follow, nor toward the family, because the injured person, from whom the family would have received goods, by his own consent prevented him from acting unjustly toward it, since it had only a consequent right in the goods (St. Alphonsus, III, 638).

Corollary II. The one attacked, who deliberately exceeded the measure of blameless defense, seems to be held to restitution for the damages that followed from the excess, because the excess was truly unjust (St. Alphonsus, III, 637).

Objection. The attacker knowingly and willingly exposed himself to the danger that the one attacked would exceed the measure of blameless defense; but no injury is done to one who knows and wills.

Response. He who knowingly and willingly exposes himself to the danger that his right be injured is not therefore judged to yield his right.

Corollary III. What has been said about damages following from homicide is also to be applied to damages arising from wounding and other injuries of the body.

Article III. On Goods of the Soul

1038 Goods of the soul are distinguished into natural and supernatural goods.

I. Natural goods are: intellect, will, memory, sciences, arts, and the use of these. In this matter, injustice is committed either by unjustly harming someone in the said goods or in their use, for

example by inducing someone unwilling or ignorant into drunkenness or by casting him into a hypnotic state; or by unjustly impeding someone from obtaining a good of this sort, for example knowledge; or by not procuring for someone a good, for example an art, although one is held from justice to procure it. Now:

1. He who has committed injustice according to what has been said is held from justice: 1° to remove the cause of the damage, for example fear that has been instilled, and to prevent, insofar as can be done, damages threatening from it; 2° to restore damages or ceasing profit that have followed or will follow for the injured person, for example ceasing profit from the fact that someone is unfit for his office; 3° to return, according to the proportion of negligence, the stipend agreed upon and accepted, if someone, for example, has not duly performed the office of teaching.

Corollary. He who harmed someone only by persuasion, entreaties, or example is commonly not guilty of injustice, and therefore contracts only an obligation of charity. I have said **commonly,** because he who by persuasion or entreaties led another into a sin of injustice is held from justice to restitution with respect to the injured person.

1039 **II. Supernatural goods are:** grace, virtues, vocation to the religious state, etc. Now:

1. He who unjustly, for example by lies or fear, led another into a harmful error or into sin, or led him away from a good work, for example from Religion, is held as was said under I about him who unjustly harmed someone in the natural goods of the soul.
2. He who only by persuasion or example led another to evil, or led him away from good, is not held to restitution; nevertheless he is held from charity, more than others, to promote his conversion. There are some who judge that he is held to this from justice; but because he did not sin against justice, no obligation of justice can arise.

Article IV. On the Good of Chastity and Modesty

The goods of chastity and modesty are injured through *stuprum* and adultery.

§ I. On Stuprum

By the name *stuprum* here is understood intercourse with an unmarried woman, whether a widow or not a widow, whether honorable or corrupt.

1040 **I. If the young woman freely consented,** the man committing *stuprum* per se is held to nothing. He is not held with respect to the young woman, because no injury is done to one who knows and wills, if there is question of a right which someone can validly renounce. But the young woman could validly renounce the right that no one use her body. Nor is he held to anything with respect to the parents, even if, so that the daughter may marry equally well, they must increase the dowry. The reason is that the young woman herself, since with respect to marriage she is in her own right, can close off for herself access to more honorable marriages without being unjust with respect to her parents; but of the damage which the parents perhaps will suffer from the fact that they increase her dowry, she is the occasion rather than the cause. Therefore, if the young woman, consenting to the man committing *stuprum,* does not act unjustly with respect to her parents, neither does the man committing *stuprum,* who enticed her to consent (St. Alphonsus, III, 641, doubt 2).

I have said **per se;** for if the man committing *stuprum* has divulged the hidden *stuprum,* he is held to repair the damages that will follow from his unjust detraction, whether toward the young woman or toward the parents, for example by increasing the dowry so that the daughter can marry equally well, or by procuring honorable marriage.

II. If the young woman was unjustly violated, by fraud, fear, or force, he is held to compensate all damages that will follow from the injustice, except the damage of perhaps injured virginity, which cannot be repaired. Hence he is held either to marry the young woman or, if she rejects marriage, which is free to her, to take care in some way that she can marry equally well as if she had not been violated (St. Alphonsus, III, 641, doubt 2).

Corollary I. Entreaties and gifts do not bring with them the obligation just mentioned. But the obligation follows: 1° "if threats or reverential fear are joined with the entreaties; 2° if the entreaties were so importunate and frequent that the young woman judged that harassment a greater detriment than the loss of virginity: for then solicitation so importunate is compared to force ... this nevertheless happens very rarely, since a woman can easily, by conceived anger or otherwise, free herself from the one soliciting her. ... 3° if a man begins by touches and kisses to bring force upon the young woman, even if afterward she freely consents to be deflowered; because through that antecedent violence the man placed her in proximate danger of consenting to intercourse; ... 4° if the man is unwilling to leave, and the virgin consents because otherwise she fears being defamed if she is found alone with him by others. Yet in these and similar cases, the Salmanticenses say that the violator is held only to a part, not to the whole reparation of damages" (St. Alphonsus, III, 641, question 2).

Corollary II. If the man committing *stuprum* is going to compensate the damages inflicted with money, let him enter into a contract with those who have suffered the damage, and let him pay the established sum at one time, lest dangerous intercourse be continued.[1]

Corollary III. The man committing *stuprum* is held to nothing, or to restoring only a part, if damages have followed in no way or only partially, as if the young woman can now marry equally well, or if offspring has not followed (St. Alphonsus, III, 641, question 1).

III. If the young woman was led to intercourse by a promise of marriage, the following must be said:

1. If the promise was made seriously, the man committing *stuprum,* according to what was said in n. 833, sufficiently probably is not held from justice to contract marriage, because a contract of this sort, namely about base matter, is sufficiently probably invalid and remains invalid even if the other party has furnished her part (St. Alphonsus, III, 712). I have said **from justice,** because per se he is held from piety toward the offspring, if perhaps one has been conceived, as will be explained in the scholion. Moreover, if it is evident that the promise was made under a suppositive condition, the man committing *stuprum,* according to what was said in n. 849, once the condition has been fulfilled, or intercourse granted, seems to be held from justice to marriage.
2. If the promise was made fictitiously, the man committing *stuprum* is held to prevent or compensate all damages arising from the intercourse; indeed he is held to fulfill the fictitious promise, or to marry the young woman. For the deceiver is held to furnish that for which the deceived party so furnished her part that the matter can no longer be reduced to its former state; otherwise the injury inflicted is not repaired. But in our case the deceived party furnished her part for obtaining

marriage, and the matter can no longer be reduced to its former state. Therefore it remains that the deceiver offer marriage to the deceived party (St. Thomas, Supplement, q. 46, a. 2, ad 4; St. Alphonsus, III, 642). Besides, note:

a) True deception, and consequently the obligation of entering marriage, is lacking if the young woman could easily have understood from the circumstances that the promise was not serious; for example, "if the betrothed man is of much better condition, or if there was some evident sign of fraud; because it can probably be presumed that the betrothed woman was not deceived, but feigned that she was being deceived" (St. Thomas, loc. cit.; St. Alphonsus, loc. cit.). But if in the case the young woman was ignorant of the man's condition, not even then does the one promising seem to be held to marriage, because the young woman did not think of a promise of such value, and sought only consent of lesser value. "And therefore he who promised is not held to marry her; but it suffices if he repairs the damage by endowing her or by providing for marriage" (St. Alphonsus, III, 642, doubt 2). Finally, the man committing *stuprum* is not held by the fictitious promise if the young woman also deceived him, for example by pretending that she was a virgin when she was not such; in that case injury is compensated by injury.

b) If the young woman refuses the offered marriage, the man committing *stuprum* is held to nothing. If only the parents contradict it and are unwilling to hand over the young woman, it is disputed whether the man committing *stuprum* is freed. Some affirm it, because then he is not held by reason of the fictitious promise, since by it he is held only to marriage; because then the damage does not arise from his fraud, but from the opposition of the parents. Others with St. Alphonsus deny it, because the fictitious promise of marriage was made for this sole end, that the damage be compensated; hence, if marriage cannot be entered, the damage must be compensated in another way (St. Alphonsus, III, 647).

Corollary. The man committing *stuprum,* in the case in which per se he is held to marriage, is excused from marrying the young woman: 1° "if the worst outcome is feared from the marriage, as if the young woman is known to be too inconstant ... if great scandals or quarrels are feared among the blood-relatives of those contracting ...; 2° if from such a marriage disgrace would come upon the man's family, by reason of disparity of condition" (St. Alphonsus, III, 644); 3° "if the man knew the woman, thinking she was a virgin, but found her corrupt" (St. Alphonsus, III, 646). But much more probably he is not excused on account of a vow of chastity or another similar thing, nor generally on account of another dispensable canonical impediment. In the case he is held to take care that the impediment be removed, since a means of this sort is ordinary and therefore does not bring with it a cause of excusing (St. Alphonsus, III, 649, 650).

What if the young woman was induced by a promise of marriage only to touches?

Response. If the promise was serious, the seducer is not held to marriage, unless again it is evident that the promise was made under a suppositive condition; he is held if it was made fictitiously. Or, theoretically, the same things hold as in the case in which the young woman was led to intercourse by a promise of marriage. But in practice, as regards a fictitious promise, note that commonly true deception, and consequently the obligation of marriage, is lacking, namely because the young woman can scarcely admit that the promise of so great a good, made for touches alone, is serious (St. Alphonsus, III, 645).

[1] Aertnys-Damen, I, n.[†].

Scholion. On the Obligation of the Man Committing Stuprum and of the Woman Subjected to It with Respect to Offspring

1041 **I.** The man committing *stuprum* and the woman subjected to it, unless a sufficiently grave impediment stands in the way, are held to legitimate the offspring by a subsequent marriage. If for a just cause they abstain from marriage, per se it should be advised that they legally acknowledge the offspring.

II. They are always held to feed and educate the offspring. Now, with regard to natural law:

1. If the young woman freely consented to the intercourse, each is held to bear expenses for his or her part, until the offspring can provide for itself.
2. If the young woman was violated by fraud, fear, or force, the man committing *stuprum* alone must bear the aforesaid expenses: from piety toward the offspring, from justice toward the young woman. Let it also be seen what civil law establishes.

Corollary. Parents can hand over an illegitimate child to be educated by a foundling hospital, provided that both a grave cause, for example infamy to be avoided, is present, and the foundling hospital is going to furnish a Catholic education. It is disputed whether parents who are not truly poor are held to restore the expenses to the institute. Moreover, it seems this must be affirmed if, as has place among us, the institutes were erected in favor of the poor; otherwise, if they were expressly erected in favor of abandoned offspring (St. Alphonsus, III, 656). Nevertheless, it should strongly be advised that something be assigned to the hospital.

§ II. On Adultery

Adultery: 1° injures the conjugal right of the legitimate spouse; 2° if it becomes known, inflicts a grave insult on that same spouse; 3° finally brings with it damages in goods of fortune.

The injury to conjugal right cannot be repaired; the insult is compensated by showing sorrow, etc. But especially the damages in goods of fortune must be discussed.

1042 **I. Damages to be restored with respect to goods of fortune** are distinguished into damages inflicted:

1. **On the legitimate husband.** They consist in this: that offspring belonging to another is supposed to be fed and educated by the husband. These do not have to be restored if the husband consented to the adultery; otherwise, they do.
2. **On legitimate children or other heirs.** They consist: 1° in this, that the illegitimate child will share the inheritance of the putative father with the legitimate children; these likewise do not have to be restored if the husband consented to the adultery. Yet if the legitimate portion is injured, the legitimate children can appeal to the law; 2° in this, that the illegitimate child will divide the inheritance of the mother with the legitimate children; these things per se are not to be restored, since the mother can freely dispose of her own goods. Yet if the legitimate portion of the legitimate children is injured, they enjoy the right of appealing to the law; 3° in this, that through error about their condition, testamentary dispositions, inheritances ab intestato, or donations come to illegitimate children, which otherwise would have come to legitimate children or others. Moreover, since these things rest on error, they are invalid, and therefore must be restored by the illegitimate child if he has been convicted of his illegitimacy. I have said: if he has been convicted of his

illegitimacy; wherefore note that the spurious child is not held to give credence to his mother, unless proving indications are present (St. Alphonsus, III, 654). The adulterers must restore these things to the legitimate children insofar as their adultery must be called a cause per se; but this must be said of testamentary dispositions and inheritances ab intestato, not always of donations.

1043 **II. Persons restoring.** 1. If each voluntarily consented to the adultery, each must restore a part;[1] but if one fails, the other is held to the whole, while recourse against the partner remains (St. Alphonsus, III, 651).

2. If the woman was led to adultery by fear or fraud, the adulterer is obligated to restore the whole damage; if he fails, the adulteress is. But the adulterer is held to restore the whole damage even if he did not persuade the woman to substitute the adulterous offspring for the husband. "The chief reason is that although the adulterer merely permits his son to be substituted, nevertheless by begetting the son he is the proximate and direct moral cause of all the damages, since he places the adulteress in the moral necessity of substituting the offspring; from this it is morally impossible for her to cast the offspring out of the house because of the infamy she would undergo. But the contrary must be said ... if the adulteress, without her own infamy and danger of substitution, can keep and feed the offspring outside the house" (St. Alphonsus, III, 659, question 30).

3. If the woman was overcome by physical force, the adulterer is held to repair the whole damage; nor, if he fails, is the woman held.

[1] Others obligate the seducer to the greater part, because he is a cause both moving and executing.

1044 **III. Time of restoring.** If the damage has already actually followed, it is to be repaired as soon as possible, like any other damage. If it has not yet been inflicted, the guilty person must so arrange matters that at the opportune time he may restore to the one to whom he ought whatever the spurious child is going to acquire unjustly by inheritance. But if, in this case, the adulterer were near death, he is held to restore immediately, by himself or by another, according to the probability of the life of the spurious child, taking into account his age and strength.[1]

[1] Aertnys-Damen, I, n. 825.

1045 **IV. Mode of restoring.** The adulteress, if she has goods of her own, should restore from these. If not, she should strive to satisfy in another way, if it can be done, for example by working more diligently, etc. Nevertheless, the adulteress, even if she cannot restore otherwise, is scarcely ever held to reveal her crime, namely on account of the infamy and other evils threatening from it (St. Alphonsus, III, 652, 653).

Note. What the law is in doubt whether the offspring is adulterous, or of which adulterer it is, see n. 1008.

Article V. On the Good of Reputation, Honor, Secrecy, and Truth

Cf. Part VIII, on the eighth precept, where the injury of reputation is treated, and, because of the connection of the matter, also the injury of the other goods enumerated is discussed.

Appendix I. On Distributive Justice in Particular

1046 **I.** Distributive justice requires that the ruler of a society justly distribute offices and other goods among its members (n. 381). It is said:

1. **The ruler;** namely, "the act of distribution, which concerns common goods, belongs only to him who presides over common goods; but nevertheless distributive justice is also in the subjects, to whom distribution is made, insofar, namely, as they are content with a just distribution" (St. Thomas, II-II, q. 61, a. 1, ad 3).
2. **Of a society;** under this name here come both perfect societies, namely the Church and the State, and those which are subject to them and are organic parts of them.
3. **Offices and other goods,** for example the distribution of taxes received, the guardianship of minors, the regulation of hereditary succession, and other things, although at times it can be doubted whether they pertain to distributive justice or to legal justice.

1047 **II.** To distributive justice is opposed the acceptance of persons, as it is called.

"For the equality of distributive justice consists in this, that different things are assigned to different persons according to proportion to the dignities of persons. Therefore, if someone considers that property of the person on account of which that which is conferred on him is owed to him, there will not be acceptance of the person, but of the cause. ... For example, if someone promotes another to a teaching office on account of sufficiency of knowledge, here the due cause is considered, not the person; but if someone considers, in him on whom he confers something, not that on account of which what is given to him would be proportionate or due to him, but only this, that he is this man, for example Peter or Martin, there is here acceptance of person, because something is attributed to him not on account of some cause which makes him worthy, but is attributed simply to the person.

"Moreover, whatever condition does not make toward the cause on account of which he is worthy of this gift is referred to the person: for example, if someone promotes another to prelacy or to a teaching office because he is rich, or because he is his blood-relative, there is acceptance of person. Yet it happens that some condition of a person makes him worthy with respect to one thing, and not with respect to another; as blood-relationship makes someone worthy that he be appointed heir of an estate, but not that an ecclesiastical prelacy be conferred on him. And therefore the same condition of person, considered in one matter, makes acceptance of person, but in another does not make it.

"Thus, therefore, it is clear that acceptance of persons is opposed to distributive justice in this, that action is taken apart from proportion" (St. Thomas, II-II, q. 63, a. 1).

1048 **III.** An unjust distributor of offices also injures commutative justice, as follows:

1. With respect to the society he injures commutative justice by conferring an office on an unworthy person, because he cooperates toward damages that will come upon the society; upon the society, I say, which has the right that the distributor not cooperate toward its damages. He does not injure commutative justice by conferring an office on a worthy person, even though less worthy, because the society does not have a strict right, but only a broad one, that the distributor cooperate toward its greater good; nor is the distributor judged by a tacit contract to have bound himself to confer the office on the more worthy person (St. Alphonsus, III, 342).
2. With respect to those to be nominated, he sins against commutative justice when the election is made after a competition has been established, because then a contract intervenes. For all receive it in this way, because the general conditions under which the competition is held require that expenses be incurred for the competition itself. If a competition is not established, a contract is

lacking, and therefore the distributor is held only from distributive justice with respect to the one to be nominated.[1]

[1] As to the distribution of ecclesiastical offices it is established: 1° To a vacant office there must be promoted a cleric endowed with those qualities which are required for the same office by common or particular law or by the law of foundation (can. 153, § 1). 2° The local Ordinary, with his conscience gravely burdened, is held by the obligation of conferring a vacant parish on him whom he shall have judged more suitable for ruling it, without any acceptance of persons (can. 459, § 1). 3° Clerics or laymen who knowingly have presented or nominated an unworthy person lack, by the law itself and for that turn, the right of presenting or nominating (can. 2391, § 3).

Appendix II. On Legal Justice

1049 **I.** To legal justice there pertains, on the part of the ruler, determining and establishing those things which are to be furnished by subjects in relation to the common good. Thus, for example, he is held to do the following, although with respect to certain things it can be doubted whether they pertain to legal justice or to distributive justice:

1. **To impose taxes;** yet "private property must not be exhausted by the immensity of taxes and duties. For since the right of privately possessing goods was given not by the law of men but by nature, public authority can not abolish it, but only moderate its use and harmonize it with the common good. Therefore it would act unjustly and inhumanely if it took away from private goods more than is equitable under the name of taxes."[1]
2. **To provide for the defense of the republic;** cf., however, what was said about war (n. 751).
3. **To enact laws which protect and promote temporal prosperity,** for example by taking care that, insofar as it is necessary and can be done, opportunity for working be provided,[2] and that in working account be taken of strength; by taking care that children not work too early nor women to the detriment of their sex or home; by preventing labor from being deprived of a just wage, etc., etc. Yet public power should take care not to thrust itself importunately into these matters.[3]
4. **To enact laws which protect and promote religious and moral prosperity,** by protecting public morality; by procuring rest from works and labors on feast days,[4] etc., etc.
5. **To recognize, or even to take care that there be instituted and furnished with the necessary authority, orders,** as they are called, i.e. public institutions which regulate matters pertaining to economic life and consist of deputies of the classes to which the matters to be regulated pertain.[5]

[1] Encyclical *Rerum novarum*.

[2] Encyclical *Quadragesimo anno* (*Acta Apostolicae Sedis* 1931, p. 201).

[3] Encyclical *Rerum novarum*.

[4] Encyclical *Quadragesimo anno* (*Acta Apostolicae Sedis* 1931, p. 204).

[5] Wagner, *Die sittlichen Grundsatze bezuglich der Steuerpflicht*.

1050 **II.** To legal justice on the part of subjects there especially pertains observing those things which have been established by the ruler in order to the common good, for example by paying taxes justly imposed, by furnishing military service justly established, etc. But we shall speak specifically about taxes and about military service, and we shall likewise add certain things about the observance of other social laws.

I. On Taxes

1051 **I. Notion.** Taxes are goods which the competent Authority imposes as to be contributed for assisting the common necessity or utility. That an authority of this sort has this right is clear from what was said in n. 764. Moreover, it is said:

1. **Goods;** by which are understood real burdens, whether in kind or, as commonly obtains, in money.
2. **Competent Authority,** whether ecclesiastical or civil; wherefore canons 1504-1506 and the Civil Code of the country should be consulted.
3. **For assisting, etc.;** these matters may be seen explained in n. 1053.

1052 **II. Division.** Taxes are especially distinguished into direct and indirect. Direct taxes are those which are founded on stable possession or use of goods, and are demanded at stated times; by authors they are said directly or immediately to affect persons.[1] Indirect taxes are those which, when some fact occurs, must be paid; they are said directly to affect things,[2] and are called indirect because sellers, on account of the taxes imposed, increase the price, so that they fall indirectly upon buyers.

[1] Such are, for example, taxes on persons, lands, buildings, capital. Succession tax is counted by some among direct taxes, by others among indirect taxes.

[2] Such as customs and tolls.

1053 **III. Requisites for the justice of a tax law.** The following are required: 1° a just cause, namely of common necessity or utility (764); 2° the proportion of the tax to the cause or to the causes, so that a greater burden not be imposed than the causes require. I have said **or to the causes,** because today it is not so strictly determined which taxes precisely serve for such an object; 3° a just distribution, namely such that each person must pay according to his economic strength (St. Alphonsus, III, 615).

Corollary. Taxes should not too easily be regarded as unjust, as, for example, taxes imposed for maintaining armies (n. 1059), or for constructing certain luxurious buildings, since these bring some social good with them. Yet other taxes, for example those to be spent on bad schools, must be condemned; and taxes to be spent on useless or dangerous things, such as theaters, etc., are even less pleasing.

1054 **IV. The obligation of a tax law** is explained in different ways by different authors. Some hold all tax laws to be merely penal; others judge that tax laws which impose direct taxes are mixed, and that those which prescribe indirect taxes are merely penal. Then it is disputed whether mixed penal laws oblige from commutative justice or from another virtue.[1]

Now, first, the natural law dictates that taxes must be paid so that the common necessity may be assisted (St. Alphonsus, III, 616). Positive and just laws determine this natural law further. But with respect to these laws it seems this must be said:

1. The law of paying a tax, after the amount to be paid has been legally defined, seems mixed, or to oblige to the act. And first, indeed, Sacred Scripture seems to favor this opinion: "Render therefore the things that are Caesar's to Caesar, and the things that are God's to God."[2] And: "Wherefore be subject of necessity, not only for wrath, but also for conscience' sake. For therefore also you pay tribute: for they are the ministers of God, serving unto this purpose. Render therefore to all men their dues: tribute, to whom tribute; custom, to whom custom."[3] These, in their obvious sense, impose the act of paying, not only the penalties to be undergone after neglected payment. Then, the

legislator is judged to make laws in the manner which is especially suited to the matter of the laws. But to the matter of tax laws it is especially suited that the very act of paying the tax be prescribed. For tax laws further determine the natural law itself of paying tax; and it is fitting that, through laws which further determine the natural law, the act itself also be prescribed, just as that is done through the law itself which is further determined.

Objection 1. Modern legislators do not intend to oblige or truly command; indeed, they neither acknowledge nor care for obligation, or the power of obliging, or any morality.

For the response, see n. 162.

Objection 2. Common estimation holds tax laws to be merely penal.

Response. I deny that, from common estimation, the just law of paying tax, after the amount has been legally defined, is merely penal. The estimation involves at most: 1° that the taxes imposed are greater than just, and therefore that there is no obligation of paying all; 2° that the law of declaring things subject to indirect tax is merely penal.

2. The law of declaring things subject to tax, if perhaps such a law exists:[4]

a) It seems mixed, if there is question of direct taxes. The reason is that the legislator is presumed to make in the same way the law which concerns the means by which the amount to be paid can be defined, as the law of paying the defined amount; and this presumption is not overthrown by contrary arguments. Yet he does not sin who follows the received custom of somewhat diminishing the value of things to be declared; nor is he to be rebuked who, in a personal tax, does not declare everything to the exact measure.

b) Practically it can be held as merely penal, if there is question of indirect taxes. The reason is that, what cannot be said about the law of declaring things subject to direct tax, a fairly common estimation holds this law as merely penal. There is added that an exorbitant penalty threatens those who defraud, i.e. one which, considering only the gravity of the act, is graver than is fitting; now, to many it seems less suitable to oblige both under fault and under the threat of an exorbitant penalty (cf. St. Alphonsus, III, 616). Therefore he does not sin who, by declaring nothing or even by hiding things, defrauds indirect taxes.

To what extent foreigners are held by laws, including tax laws, see n. 133.

3. Tax laws which we have said are mixed, sufficiently probably do not oblige from commutative justice, but from legal justice or another virtue distinct from commutative justice. The reason is taken from the fact that an obligation of commutative justice is not proved, as will be clear from discussing the arguments of the contrary opinion. Therefore, when the law has not been fulfilled, there is no obligation of restitution. Yet note that the obligation of paying the tax persists until that time for demanding it has passed.

Objection 1. The legislator, by imposing taxes, disposes of part of the goods of his citizens, and assigns a strict right in it to the treasury; this he can do by virtue of eminent domain.

Response. That the legislator, by a direct disposition, establishes a strict right is not clear. With equal right it is admitted that the legislator, by imposing a tax, disposes of part of the goods only in this sense, that he imposes on the citizens an obligation, for example of legal justice, to yield part of their goods to the treasury.

Objection 2. Legal justice can indeed regard all honorable acts, but those very acts are imposed from the motive of honesty proper to them, not from the motive of legal justice.

Response. Nothing prevents us from saying that in many acts there is the honesty of legal justice, and that they are imposed from the motive of that virtue. Besides, from the fact that an honorable act is not imposed from the motive of legal justice, it does not plainly follow that it is imposed from the motive of commutative justice.

Objection 3. From the fundamental pact of many kingdoms, the people themselves or the citizens, who are all declared equal before the law, elect deputies as mandataries, who each year decide what public expenses are to be made and how the money for this is to be procured. Therefore the mandating citizens are judged immediately to oblige themselves to furnishing the things which the mandataries have decreed necessary.

Response. The deputies are not mandataries strictly so called, or in no way act in the name of the citizens, but in their own name. Moreover, the deputies concede to the Government the right of procuring the necessary moneys, without establishing that these are to be demanded from the motive of commutative justice.

Objection 4. Taxes must be paid according to equality of thing, i.e. of the tax established, to thing, i.e. the tax to be paid. But equality of thing to thing is regarded by commutative justice.

Response. Taxes must be paid according to a proportionately established equality of thing to thing, I concede; according to equality taken simply, I deny. But proportionately established equality of thing to thing is not regarded by commutative justice (n. 379).

[1] The opinion of some, who assert an obligation of obedience, seems altogether to be rejected (n. 148).

[2] Matt. XXII, 21.

[3] Rom. XIII, 5-7.

[4] Namely, here and there some laws prescribe that citizens declare things subject to tax, others commit this to officials to be investigated, others leave citizens the faculty of choosing either one.

1055 **Corollary I.** A tax law about whose justice there is meritorious and serious doubt per se does not oblige, because there is question of damage to the subject; in which case, in doubt, per se there is no obligation of observing the precept (n. 146; St. Alphonsus, III, 617). But since in doubt it is commonly to be presumed in favor of the justice of the law, the case will not occur so easily with respect to a determinate law. Yet with greater right it is admitted that, in so great a multitude of taxes, certain ones are less just, especially insofar as they are applied to harmful rather than useful things, for example to supporting harmful universities and schools; hence anyone who prudently judges that he has sufficiently contributed to the common good can defraud the other taxes; indeed, practically, it can be said that payment of a third part can be evaded. Yet those are to be disapproved who make a profession of defrauding duties, because they expose their soul and their goods and those of their family to danger.

Corollary II. Those who corrupt tax guards cooperate toward an unjust act, and therefore are held to restore the value of the taxes defrauded; but they are not held to restore the fine which, if caught, they would have had to pay (p. 657). Nor are they held to restitution or do they sin who, by words or little gifts, etc., strive to win the guards over to themselves, so that they abstain from unjust vexation, or so

that they act kindly, though not unjustly, especially by carrying these laws into execution in a human way, as is fitting.

Corollary III. Those who deceive the guards, for example by seriously declaring that nothing subject to tax is present, are held to restitution if the law prescribes declaration, or if the citizen, according to what was said in n. 1054, has chosen declaration. The reason is that the treasury is impeded by an unjust means from obtaining a good (n. 996). But if the Government commits the matter to officials to be investigated, the deceiver sufficiently probably is not held to restore, because in the case the Government seems not to care for the declaration of the citizen, of whatever kind it may be, and therefore not to urge the right which per se belongs to anyone, namely, not to be impeded from obtaining a good by an unjust means. Besides, true deception will not easily be present; indeed, even a lie can be prevented by the use of restriction.

Corollary IV. Finally, observe that those are not taxes which must be paid to the State on account of services which it furnishes in favor of private persons, for example in transporting persons, letters, or goods. Here rather there is a contract. Yet very many things which are established by administrators can sufficiently probably be held as merely penal dispositions, for example, that money not be inserted in ordinary letters, or letters inserted in other things to be transported; that one person not set out with the same ticket and another return with it, etc.

II. On Succession Tax

1056 **I. Notion.** Succession tax is a tax which heirs must pay to the treasury from an inheritance obtained.

1057 **II. Justice of the law.** The law of succession tax, considering the character of the tax, is commonly held to be just; for no reason can be assigned why the State cannot claim for itself a part of goods acquired by inheritance just as it can a part of other goods. I have said **considering the character of the tax,** because many judge that, in many regions, the part to be yielded to the treasury is greater than is just; but I would respond that it matters little whether taxes are imposed on goods acquired by inheritance or on other goods, provided that the taxes taken together are not greater than is just.

1058 **III. Obligation of the law.** The law seems mixed, or to oblige to the act, and this even if succession tax is counted among indirect taxes. For the reasons brought forward in n. 1054 hold; nor can contrary common estimation be opposed. For the aforesaid estimation does not so much hold the law to be merely penal as the part to be assigned to the treasury to be greater than is just.

Corollary I. He who, according to what was said in n. 1055, judges that he contributes sufficiently to the common good, even if he does not declare a part, can swear with a restriction that the declaration issued by him was without reticence or less complete designation, namely by understanding silently: insofar as the omitted things had to be declared in conscience. This also applies to a promissory oath of declaring the things which he will afterwards find not yet to have been declared, or not to have been declared rightly.

Corollary II. He who swore that he had declared all things, knowingly concealing a part that had to be declared in conscience, is guilty of perjury; but he is not held afterwards to declare the concealed part, because by force of the added promissory oath he is held only to declare those things which he will afterwards find not to have been declared, or not to have been declared rightly.

III. On Military Service

1059 **I. Justice of the law.** The law of forced conscription is just. For by those to whom it especially belongs to judge about this matter, especially considering conscription as commonly admitted, it is judged very useful, or rather necessary, for protecting the republic. Nor is injustice present in the fact that families which do not have suitable young men are not held to some compensation, because the burden of military service is not familial but individual; nevertheless it would be equitable for the aforesaid families to contribute in another way. Furthermore, those whom ecclesiastical law exempts are to be exempted from the law of conscription.[1]

[1] Cf. Damen, *De vrijdom der Geestelijken van den krijgsdienst als Kerkelijke en Staatkundige Instelling*.

1060 **II. Obligation of the law.** According to some, the law of military service is merely penal; according to others, it is mixed or obliges to the act of serving. Moreover:

1. First, the natural law dictates that the republic must be protected against unjust aggressors in good time and in a due manner, even with danger of life.
2. The law of military service seems mixed, or to oblige to the act. For the legislator, as we argued in n. 1054, is judged to make laws in that manner which is especially suited to the matter of the law. But to the matter of military law, since it is moral and even determinative of the natural law itself, it is especially suited that the very act of serving be prescribed; as was said about tax laws (n. cited). Nor does common estimation hold that military law is merely penal.
3. The law of military service does not oblige from commutative justice, but from legal justice or another virtue, yet one distinct from commutative justice; this is proved by the same reason by which it was proved in n. 1054 with respect to tax laws.

Corollary. Those sin who neglect registration in order to conscription; likewise those who obtain exemption by illegitimate means; and these indeed sin even apart from the sin which the means themselves contain, such as a lie, corruption of physicians, mutilation of oneself; likewise those who do not obey the precept of mobilization, or desert military service. And this holds even if someone, after the precept has been issued, is staying in another region; for, as common estimation has it, he remains a subject until he has been naturalized in another region, as it is called. Yet deserters are not held to return if a grave penalty threatens them.

Question 1. Whether those act unjustly with respect to those who are substituted in their place, and therefore are held to restore to them: 1° those who render themselves unfit for military service; 2° those who deceive physicians or magistrates, so that they are declared unfit; 3° those who desert military service.

Response. It is disputed; but it seems it must be denied, since those who act thus are not the cause, but only the occasion of the damage. The cause of the damage is the law itself, which orders that a fixed number be called, so that, when one is lacking, another is called.

Objection. Those who draw lots tacitly enter among themselves an aleatory contract, by force of which they are held to leave all things to the lot, and therefore to abstain from deceiving officials.

Response. A contract of this sort is asserted gratuitously; indeed, it would be entered even by those unaware of it.

Question 2. What must be said about those who corrupt magistrates or physicians?

Response 1. Those corrupting certainly act unjustly toward the republic, namely by cooperating toward an unjust act of magistrates or physicians, who with respect to the republic are held from justice to fulfill their office faithfully. Yet the damage which the republic suffers cannot be estimated, nor practically does restitution seem to be imposed on the penitent.

Response 2. It is sharply disputed whether they also act unjustly with respect to those who are called in their place, i.e. in the place of those corrupting. Moreover, sufficiently probably it is denied, because also in this case those corrupting are not the cause, but the occasion of the damage coming upon a third party; nor is it clear that the officials are held by a tacit contract with respect to the third party, namely, to turn the damage away from him.

IV. On the Observance of Other Social Laws

1061 It is enough to have noted these things: other social laws, just as the laws already explained, seem mixed; yet in general they do not oblige from commutative justice, but from legal justice or another virtue, unless they are more determinative of a strict right. We have said:

I. Other social laws seem mixed. For on the one hand the presumption seems to be that the act contained in the law is truly prescribed, if the matter is moral (n. 1054); on the other hand, the aforesaid presumption is not overthrown by common estimation, which holds the laws about which we are speaking to be merely penal.

II. Yet in general they do not oblige from commutative justice, but from legal justice or another virtue distinct from commutative justice. For the obligation of commutative justice is commonly clear from no source, and therefore at least practically can be held not to exist; hence, when the law has not been fulfilled, the obligation of restitution is lacking (cf. what was said p. 696).

III. Unless they are more determinative of a strict right, for example a law which, for the circumstances, determines the price of some things or the wage to be paid; this is sufficiently clear. Yet sometimes even outside the assigned case they establish a strict right, as can be elicited from the nature of the matter or from the tenor of the law (cf. n. 764 and 796).

Part VIII. On the Eighth Precept of the Decalogue

The eighth precept declares: "You shall not speak false testimony against your neighbor";[1] it therefore prohibits a lie by which the neighbor's reputation is injured. It is extended by some to every injury which is inflicted on the neighbor by words or by equivalent signs. Whatever the case may be, at least because of the connection of the matter, we shall speak: 1° of the injury of truth, or of lying; 2° of the injury of reputation, or of detraction; 3° of the injury of honor, or of insult; 4° of the injury of secrecy.

[1] Exod. XX, 16.

Section I. On the Injury of Truth, or on Lying

(St. Thomas, II-II, qq. 110, 111; St. Alphonsus, cf. *Theologia Moralis*, book III, nn. 157-171; *Homo Apostolicus*, tract 5, nn. 15 and 16.)

To truthfulness is opposed every act of manifestation discordant with the internal concept. If that act is contained in words, signs, or writings, it is called a lie; if it consists in deeds, it is called simulation. Hence what we are going to say about lying should also be applied to simulation.

1062 **I. Notion.** A lie is customarily defined: speech contrary to the mind. It is said:

1. **Speech;** by this word is understood the ordering of concepts toward another, by means either of words, which hold the principal place among signs, or of other signs (St. Thomas, II-II, q. 110, a. 1, ad 2).
2. **Contrary to the mind,** i.e. which is opposed to the concept of the mind.

Corollary I. For a lie there are required: 1° the will of saying what is false, i.e., insofar as false is taken here, what is contrary to the concept or what is held as false; 2° speech contrary to the concept. "The account of a lie is taken from formal falsity, namely from this, that someone has the will of uttering what is false; whence also a lie is named from this, that it is said contrary to the mind" (St. Thomas, II-II, q. 110, a. 1). But there are not required: 1° a concept false in reality, hence he lies who holds as false what he says, although what he says is true; 2° the will of deceiving, for "that someone intends to establish falsity in the opinion of another, by deceiving him, does not pertain to the species of a lie, but to a certain perfection of it" (St. Thomas, loc. cit.); nor 3° deception of the neighbor, as is clear in the accused person who, before a judge who was an eyewitness, denies the crime.

Corollary II. It is not a lie: 1° to say what is false, when the speaker holds it as true; 2° to say in jest things which are openly false, because the circumstances remove the ordinary signification of the words; 3° ironic or hyperbolic expressions, by which words are really transferred to another signification; 4° equivocal expressions, or those uttered with a broad mental restriction, as will presently be explained more fully; nor 5° is it a lie if I sufficiently show that I am unwilling to manifest the truth, because then the words from that circumstance again receive another meaning.

1063 **II. Division.** A lie is distinguished as threefold: jocose, officious, and pernicious or damaging, according as it is done for the sake of pleasure or utility, whether one's own or another's, or with damage to a third party (St. Thomas, II-II, q. 110, a. 2). But under the word pernicious lie there can also be comprehended a lie which is done with injury to God (cf. St. Thomas, loc. cit., a. 4).

1064 **III. Morality.** 1. A lie is a sin, and is never licit. It is a sin, which is clear both from Sacred Scripture[1] and from reason. For an act is illicit which is opposed to the end which has been appointed

to the act by nature, i.e. by the Author of nature. But a lie, i.e. speech contrary to the concept, is opposed to the end which has been appointed to speech, i.e. to the ordering of concepts toward another (St. Thomas, II-II, q. 110, a. 3). Then, "because man is a social animal, naturally one man owes to another that without which human society could not be preserved; but men could not live together with one another unless they believed one another as manifesting truth to one another" (St. Thomas, II-II, q. 109, a. 3, ad 1). Nor is it ever licit, because the prior disordering, about which we have spoken, cannot be removed (St. Thomas, II-II, q. 110, a. 3; *Quodlibet* 8, a. 14; St. Alphonsus, III, 171).

Objection. An act with a double effect, when the things to be posited have been posited, is licit. But speech contrary to the mind sometimes becomes an act with a double effect, of which one, namely the defense of a secret, is intended, while the other is permitted.

Response. For an act with a double effect to be licit, it must be at least indifferent in itself, not disordered. But speech contrary to the mind is disordered in itself, or sinful, as follows from what has been said.

What if someone cannot hide without a lie a truth which must be positively hidden?[2]

Response. In the case, the obligation of hiding ceases, and the obligation of not lying prevails, because the intrinsic disordering of a lie cannot cease. But the case scarcely occurs except from the dexterity of the one asking and the weakness of the one responding.

If someone subjectively believes that he must positively hide a secret, and no possibility appears of doing this without a lie, from a perplexed conscience the lesser evil is permitted.

2. A lie as such, or insofar as it is opposed to truth, is only a venial sin. The reason is that the abuse of a sign and the deception to follow from it, as such only, i.e. without bringing damage to the neighbor or injury to God, involve only a slight injury of the social order.

3. A pernicious lie is grave from its kind, i.e. grave or slight according as it brings grave or slight damage to the neighbor. If it is pernicious to God, i.e. if it brings injury to God, it is grave.

Corollary. To lying pertains, as we noted above, simulation, which is had when "someone by certain signs of deeds or things signifies something contrary to that which is in him ... whence simulation is properly a certain lie consisting in exterior signs of deeds; but it does not matter whether someone lies by word or by any other deed whatsoever ... whence, since every lie is a sin, as was said above, it follows also that every simulation is a sin" (St. Thomas, II-II, q. 111, a. 1; St. Alphonsus, III, 171). Moreover, a species of simulation is hypocrisy, "by which someone simulates the person of another, as when a sinner simulates the person of a just man" (St. Thomas, II-II, q. 111, a. 2).

[1] Prov. VIII, 5; Col. III, 9.

[2] With respect to a secret, there is no obligation of positively hiding it, but only the obligation of not manifesting it; yet it can happen that a secret is in some way manifested unless it is hidden. Besides, accidentally there can be an obligation of positively hiding a secret, for example by reason of charity.

1065 **IV. Concealment of truth as such** is not a lie, because it does not involve the will of saying what is false, but only the will of keeping silent about what is true. Moreover, truth is concealed not only by being silent, but also by speaking with some mental restriction; about this more must be said.

1. **Notion of mental restriction.** It is had when the speaker mentally restricts words to a meaning which they have either in no way, or which they have, whether from themselves or from the

circumstances, besides another meaning.

2. **Division of mental restriction.** It is distinguished as twofold, broad and purely mental. It is purely mental when the speaker mentally restricts words to a meaning which they have in no way, so that in no way, i.e. neither from the words themselves nor from the adjuncts or circumstances, can it be perceived; as if, asked whether he had been in Paris, he affirmed it, understanding silently: "in mind." Broad mental restriction is had when the speaker restricts words which have a double meaning to the less obvious meaning, permitting the more obvious meaning to be taken by the hearer; as if, asked whether he knows something, he replies, "No," understanding silently: "with communicable knowledge." Broad mental restriction is also called equivocation or amphibology, which, namely, is had when the words uttered have a double meaning (St. Alphonsus, III, 151, 152; *Homo Apostolicus*, tract 5, n. 15).

3. **Morality of mental restriction.** a) Purely mental restriction is never licit. For it falls into a lie: namely, the words in the case in no way express the meaning which the speaker intends, while the expressed meaning is supposed to be opposed to the speaker's judgment; therefore there is speech contrary to the mind (St. Alphonsus, III, 152). There are added the propositions condemned by Innocent XI, namely:

26: "If anyone, either alone or before others, whether asked or of his own accord, whether for the sake of recreation or for any other end, swears that he has not done something which in reality he has done, by understanding within himself something which he did not do, or another way from that in which he did it, or any other true addition whatsoever, in reality he neither lies nor is perjured";[2]

27: "A just cause of using these amphibologies is present whenever this is necessary or useful for protecting the health of the body, honor, family property, or for any other act of virtue, so that the concealment of truth is then judged expedient and diligent";[3]

b) Broad mental restriction, with which equivocation coincides, is per se illicit; for it is opposed to sincerity, and in fact commonly leads the hearer into error. Yet it becomes licit if a just cause is present, and there is not from some other source an obligation of opening the truth, for example from the precept of a Superior. This is clear both from the example of Christ,[4] and from the fact that in broad mental restriction the words also contain the meaning intended by the speaker, so that there is not speech contrary to the mind, or that intrinsic disordering which inheres in a lie (St. Alphonsus, loc. cit.).

Corollary I. Besides other applications of the doctrine explained which occur in different treatises, it is useful to report certain ones from St. Alphonsus:

1. "One in need, with goods hidden for his sustenance, can respond to the judge that he has nothing. Likewise an heir who has hidden goods, if he is not held from them to satisfy creditors, can respond to the judge that he has hidden nothing, understanding silently: from which he is held to satisfy" (III, 158).

2. "He who accepted a loan, but afterwards satisfied it, can deny that he accepted a loan, understanding silently: so that he must pay" (III, 159).

3. An adulteress, asked by her husband whether she has committed the crime, can deny it, understanding silently: in such a way that she must manifest it (III, 162).

4. A servant by order of his master can respond that he is not at home, understanding silently: for speaking with someone (III, 165).
5. One bound to a secret can respond to the one asking that he knows nothing, understanding silently: for example, with communicable knowledge (III, 153).
6. One asked to give or lend money can respond that he does not have it, understanding silently: money which he wishes to give or lend (III, 163).
7. One invited, who is asked whether the food, which is tasteless, tastes good, can respond that it is good; for responses of this sort need not necessarily be taken in an absolute sense (III, 160).

[1] Cf. Waffelaert, *Dissertation morale sur la malice du mensonge*; Koenraedt, in *N. K. Stemmen*, 1925, p. 297; *Gregorianum*, 1920, pp. 11, 278; A. Kern, *Die Luge*.

[2] Denzinger-Bannwart, n. 1176.

[3] Denzinger-Bannwart, n. 1177.

[4] John VII, 8; Matt. XXIV, 36.

Section II. On the Injury of Reputation

(St. Thomas, II-II, q. 60, a. 3; qq. 72-73; St. Alphonsus, *Theologia Moralis*, book III, nn. 962-1003; *Homo Apostolicus*, tract 11, nn. 1-2 and 7-22.)

Reputation, from speaking, is the common opinion or estimation of many concerning the morals of another. It is called good or bad according as morally good or morally bad things are adjudged to someone. Speech pertains to the perfection of reputation. Reputation is injured externally through detraction, internally through rash judgments. Each must be discussed.

Chapter I. On Detraction

We shall treat first the notion, division, and morality of detraction, then restitution on account of detraction, then the causes excusing detraction, and finally the one hearing detraction.

Article I. On the Notion, Division, and Morality of Detraction

1066 **I. Notion.** Detraction is the unjust denigration of another's reputation. If it is done before the defamed person, there is added insult or injury of honor (St. Thomas, II-II, q. 73, a. 1; St. Alphonsus, III, 966).

1067 **II. Division.** Detraction is distinguished into simple detraction and calumny, according as it is committed by revealing what is true, or by imputing what is false.

1068 **III. Morality.** 1. Detraction, both simple detraction and calumny, is opposed to justice and is grave from its kind. It is opposed to justice because it deprives a man of a good justly possessed. It is grave from its kind, which is clear from Sacred Scripture,[1] and likewise from reason; for "to take away someone's reputation is very grave, because among temporal things reputation seems to be more precious, through the lack of which a man is impeded from doing many good things; on account of which it is said in Ecclesiasticus 41: Have care for a good name, for this will remain to you more than a thousand great and precious treasures; and therefore detraction, speaking per se, is a mortal sin" (St. Thomas, II-II, q. 73, a. 2). Yet they can become venial because of slightness of matter. Finally, that the

aforesaid sins are opposed to justice is sufficiently elicited from what has been said (St. Alphonsus, III, 966). Besides, note:

a) The malice of calumny is graver than the malice of simple detraction; for the former injures an absolute right to reputation, the latter a limited right. For everyone has the right that what is false never be imputed to him; but with respect to revealing what is true, he has only the right that it not be revealed without a relatively grave cause.

b) The gravity of matter, if there is question of injury of reputation, depends: 1° on the gravity of the thing revealed; 2° on the judgment which the hearers make, considering their region and condition; 3° on the greater or lesser authority of the detractor; 4° on the condition of the person against whom detraction is made (St. Alphonsus, III, 967).

Objection. A bad man does not have the right of retaining the reputation of goodness.

Response. I deny the assertion, since on the one hand no one is certainly held to deprive himself of reputation; and on the other hand, per se it belongs to no private person to deprive another of a good which the latter has and possesses without injury to another; nor can public authority do this unless public order demands it.

2. Simple detraction and calumny, insofar as they are opposed to justice, do not differ in species, because they injure the same good or right. But to calumny there is added the species of lying. Furthermore, detractions in different matters seem to be of the same species, because, insofar as they are injurious to reputation, they are not morally diverse, but differ only according to more and less (St. Alphonsus, III, 978).

Objection. Reputation consists of parts distinct in species; for one reputation is that which someone possesses concerning chastity, another concerning justice, and therefore injuries of reputation ought to differ in species according as they violate parts of a different species.

Response. The parts of which reputation consists are indeed diverse in species in themselves, but insofar as they constitute reputation, they differ only according to more and less.

Corollary I. Ordinarily it is venial to reveal: 1° natural defects of mind or body; 2° venial faults; 3° a defect which is indeed grave, but which is sufficiently common in men of such a condition (St. Alphonsus, III, 967).

Corollary II. Generally, unless the matter is known, it is mortal to say of a superior that he is a liar; of a religious or priest, that he has been drunk, or that he is a lover of girls; likewise to use words which provide occasion for suspecting something grave, as if "you should say nothing in particular, but only in general, for example, that you know something about him, which, if you should say it, would affect him with great shame" (St. Alphonsus, loc. cit.).

Corollary III. He who narrates the hidden crime of someone who has already been defamed in other matters sins gravely if the new revelation notably increases the prior infamy, or brings a new grave infamy, for example if about one infamous in one species a crime of another species is narrated, not very connected with the prior one (St. Alphonsus, III, 976).

Corollary IV. He who, in reporting someone's hidden crime, at the same time reports his repentance, is guilty of grave detraction, unless the repentance is so great that it entirely destroys the infamy.

Corollary V. Several slight detractions can coalesce into grave matter, because taken together they can contain a grave injury of reputation.

Corollary VI. What has been said about injury of reputation should also be applied to defamation of the dead, although it is less grave to detract from the dead than from the living, and the detraction is the less, the longer the person has been dead. But what is lawful for historians, see n. 1070.

3. Detraction from some person also contains a graver sin if the infamy of the defamed person redounds to the community, or to the family, to which he belongs; and the sin is graver in proportion as a greater and more common good is injured. Yet note that the defamation of a member commonly redounds into the community the more, the smaller it is in number, and therefore redounds more into a family, which of itself is smaller in number (St. Alphonsus, III, 978; *Homo Apostolicus*, tract 11, n. 16).

[1] Prov. XXIV, 9; Rom. I, 30, 32; 1 Cor. VI, 10; Jas. III.

1069 **Question 1.** How great a sin is it to reveal a grave defect to one or another person who certainly will keep the matter secret?

Response 1. If it is done on account of a just cause, for example for the sake of instruction or counsel, there is no sin. The same seems to be said if it is done only for the sake of consolation, but not from the intention of blackening the neighbor. The reason is that one affected by injury seems to have the right of lessening his grief with some damage to him who inflicted the grief. Hence servants, wives, and children who reveal injuries inflicted on them by a master, by a husband, or by a father seem to be excused (St. Alphonsus, III, 973).

Response 2. If it is done without cause, it is disputed whether it is a grave or slight sin. Now a sufficiently probable opinion recognizes only a slight fault, because, since reputation consists in the common estimation or the estimation of many, it does not appear that it is notably injured by the bad opinion of one person or another (St. Alphonsus, III, 973; cf. St. Thomas, II-II, q. 73, a. 1, ad 2). Nor should it be said that by defamation before one person, just as by one person's rash judgment, reputation is gravely injured. For it is answered that in rash judgment there is an accusation of a false or wholly uncertain crime, but in our hypothesis the revelation of a true crime is supposed. Yet authors except the case in which someone reveals the offense to a person, for example to a superior or master, from whom the delinquent reasonably wishes it to be hidden before others (St. Alphonsus, III, 973). Moreover, the narration of a false crime is always mortal, because I have a firmer right that a false crime not be imputed to me than that a true crime not be revealed to another. Finally, even the revelation of a true crime to one trustworthy man can accidentally be grave, namely if it contains whispering or tale-bearing (n. 1079).

Question 2. Of what kind and how great a sin is it to reveal a defect which per se would constitute grave matter, but as heard from others?

Response 1. If you report it in such a way that others, by force of the narration itself, believe what is reported, there is a grave sin against justice; for example, "if you assert that you heard it from a person worthy of trust, ... because you give a sufficient cause for believing the evil" (St. Alphonsus, III, 977).

Response 2. If you report it in such a way that others are going to believe from their own levity or malice alone, you do not sin gravely against justice, because you are not the cause but only the occasion of grave damage. But you sin against charity, because everyone is held to impede grave

damage to the neighbor as much as he conveniently can (St. Alphonsus, loc. cit.). Indeed, if there is discussion of an enormous crime, there is also grave sin against justice. The reason is that on the one hand even suspicion of such a crime gravely injures reputation; on the other hand the narration must be called at least a cause of suspicion (St. Alphonsus, loc. cit.).

Question 3. To what extent is it a sin to report the crime of a person entirely unknown, or without the person being named?

Response. Per se this contains no detraction. Yet except: 1° if there is danger that the person can afterwards become known or come under suspicion; 2° if a report of this sort redounds to the family, community, etc., of him whose crime is reported; in which case there is grave or slight sin according as that person's reputation is gravely or slightly injured. Hence, for example, he would sin gravely who said that someone from this religious community had committed such a crime (St. Alphonsus, III, 978). "Nevertheless, if the order were large, it should not be considered a grave sin ... to name the order which is not of strict observance" (St. Alphonsus, *Homo Apostolicus*, tract 11, n. 16; p. 9).

Question 4. Whether it is lawful to detract from the deceased.

Response. No, because the soul of the deceased, no less than a living man, has a right to reputation. Yet "to defame a dead person is less grave than to defame a living one," because he has less need of reputation (St. Alphonsus, III, 978).

Question 5. To what extent is it a sin to divulge further a notorious crime?

Response. A crime can be notorious: 1° by law; 2° by fact; 3° by report. It is called notorious by law when it is established by a sentence of a judge. It is notorious by fact when it has been committed before so many persons of the community that it will certainly and quickly be divulged more and more. It is notorious by report when it has been narrated to so many persons of the community that it will certainly and quickly be narrated more and more (St. Alphonsus, III, 975; VII, 141). Furthermore, some crime can be notorious either only relatively, for example with respect to a college, community, family, or neighborhood, or absolutely, with respect to all who inhabit the same region or city. Now:

1. A crime notorious by law can be divulged without injustice in whatever place and time. For the judge by law deprives the accused absolutely of reputation, just as he can deprive him of goods of fortune; indeed public trials are held for this end, that from publicity a partial penalty may be had through defamation. Nor does he who divulges a crime of this sort per se, i.e. unless he acts from evil affection, sin against charity. For the accused has also been condemned for this reason, that others may be deterred from crime; there is added that it has been expedient for the common good that each one be known as he publicly is (St. Alphonsus, III, 974).

2. A crime notorious either by fact or by report may be revealed as follows:

a) It is lawful to reveal it to members of the same convent or college.

b) With respect to revelation in another community, this must be said:

alpha) It is lawful if, considering the circumstances, knowledge of the crime is going to arrive there quickly. Wherefore note that today communications between convents are more frequent, so that revelation will with difficulty be a grave sin. The contrary must be said about a different province and about an autonomous monastery.

beta) If knowledge of the crime is not, or is not quickly, going to arrive in another community, it is illicit and unjust to reveal it there, if there is question of a restricted community, i.e. of a house, convent, or college. The same must be said theoretically if there is question of a city, town, or village, because one defamed in one place still justly possesses reputation in the place to which knowledge of the crime is not going to arrive quickly; therefore he does injury to him and sins against justice who defames him there. Nor is it valid if you say that he no longer has anywhere a right to reputation, from the fact that his crime is public somewhere. For by what reason would he have lost this right? Not through the crime itself according to itself; otherwise whoever had committed a crime, however hiddenly, would no longer have a right to reputation, and no one would sin against justice by spreading it abroad; which no one admits. Not through the crime as public in one place; for it is and will be unknown elsewhere unless you reveal it, and accordingly it is so related there, where it is unknown, as if it were absolutely hidden.[1] I have said **theoretically,** because practically, on account of more frequent communication between different places, a crime public in one place will quickly be divulged in another place. Finally, it is always lawful to divulge crimes which render a man pernicious, because it is expedient for the common good that pernicious men be known by all: such are, for example, murderers, thieves, scandalously lustful persons, etc. (St. Alphonsus, loc. cit.).

Question 6. Whether it is lawful again to reveal a crime which through forgetfulness has become hidden.

Response. Affirmatively, if there is question of a crime notorious by law, as was said above. Otherwise, if there is question of a crime notorious by fact or by report. To manifest this again is certainly opposed to charity; and also to justice, as it seems, because through forgetfulness the matter has been reduced to the state in which it was before publicity (St. Alphonsus, *Homo Apostolicus*, tract 11, n. 13).

[1] Cf. Billuart, *De iure et iustitia*, diss. 15, a. 1, § 5.

Article II. On Causes Excusing Detraction

1070 **I.** Calumny is never licit, as is clear both from what has been said about lying and from proposition 44 condemned by Innocent XI: "It is probable that he does not sin mortally who imputes a false crime to someone in order to defend his own justice and honor."[1]

II. The following can render simple detraction licit:

1. The consent of the delinquent, since he is master of his own reputation, and therefore per se can abdicate himself from that good.
2. The public good to be protected. Hence, if you know that a man given over to lust wishes to receive Sacred Orders, you are held to denounce him to the Superior (St. Alphonsus, III, 968); likewise, per se, you ought to manifest a dishonest physician who is to others an occasion of sinning.
3. The spiritual good of the delinquent himself; hence they rightly excuse "those who indicate to parents the hidden crime of children, or to masters that of servants, or to the prelate of religious as to a father, in order to correction; as also a wife speaking with her husband about the hidden crimes of children or servants" (St. Alphonsus, loc. cit.).
4. A temporal or spiritual good, grave with respect to defamation, whether of the revealer himself or of a third party. Hence it is lawful to manifest the guilty person if an innocent person is accused; likewise to inform a mistress about the bad morals of a maidservant whom she intends to hire;

likewise, sometimes, to indicate a hidden crime to someone for the sake of taking counsel or help, etc. (St. Alphonsus, loc. cit. and n. 969).

5. With respect to historians, I note:

a) It is lawful for them to write down the public things of their own time, even if these, consigned to letters, are transmitted to the knowledge of posterity, and thus injure in perpetuity the reputation of the authors of those deeds.[2]

b) With respect to those things which were public but have been completely obliterated, authors commonly concede more to historians on account of the integrity of history and for the instruction and terror of others. Besides, since archives, even more secret ones, in our age are easily accessible to all students of history, it can be doubted whether hidden crimes which are contained in old documents ought to be called hidden.[3] And this can be urged all the more because it is better that many things, which of themselves would better remain buried in eternal oblivion, be narrated according to truth by an upright historiographer, than that they be mixed with falsehoods by the impious and propagated for wicked ends.[3]

Yet note that, in a historical book which is intended for the common people, many things can be passed over in silence which cannot be passed over in others.

[1] Denzinger-Bannwart, n. 1194.

[2] Sweens, *De virtute iustitiae*, n. 473.

[3] Lehmkuhl, *Theologia Moralis*, I, 1426.

Article III. On Restitution on Account of Detraction

1071 **I. Subject of restitution.** 1. He who unjustly and with grave theological fault has injured the reputation of the neighbor is held under grave obligation to restitution "just as to restitution of any thing taken away" (St. Thomas, II-II, q. 73, a. 2; St. Alphonsus, III, 991).

2. He who with slight fault or inculpably has injured the reputation of the neighbor is held to remove the cause of damage placed by him and morally persevering, i.e. to revoke the detraction or deprive it of force, if he conveniently can.

3. What has been said about the detractor should also be applied: 1° to him who positively influenced an unjust detraction, for example by asking, applauding, etc. (n. 1075); 2° to a Superior, in the case in which from justice he is held to provide for reputation to be restored, according to what is to be said in n. 1075.

1072 **II. Object of restitution.** The obligation is of restoring: 1° the reputation unjustly injured; 2° the real damages following from the injury of reputation and at least confusedly foreseen. Moreover, "the obligation of restoring reputation, since it is purely personal, does not pass to heirs. But the obligation of compensation for the aforesaid damage, since it has respect to the goods of the defamer, passes to heirs" (St. Alphonsus, III, 996).

1073 **III. Mode of restoring.** 1. He who narrated what is false ought openly to retract the false thing imputed, for example by saying that he erred or, if that is not sufficient, that he lied; indeed, if there is need, he should prove the retraction and confirm it by oath or even by witnesses (St. Alphonsus, III, 991).

2. He who revealed what is true ought prudently to correct the opinion of the hearers, for example by saying with equivocation that he erred, etc. If the matter does not succeed in this way, he should strive to furnish an equivalent compensation, for example by praising the defamed person in the same or in a different matter, etc. (St. Thomas, II-II, q. 62, a. 2, ad 2; St. Alphonsus, III, 992).

3. A detractor, in default of the immediate hearers, is held to restore reputation before mediate hearers, as follows:

a) He is not held if he narrated the matter before those whom he thought would hide it, because damage not foreseen is not imputed to him.

b) It is disputed whether he is held if he could foresee that the hearers would not keep the secret. But he seems per se to be held, because in the hypothesis posited the detractor becomes not merely an occasional cause of damage to be inflicted by the immediate hearers, but an occasional cause which puts on the character of culpable cooperation toward that damage. But he who culpably cooperates toward the damage of someone acts formally unjustly, and therefore is held to restitution. I have said **per se,** because practically he will often be excused, either because the immediate hearers will restore the damage, or on account of moral impossibility (St. Alphonsus, III, 991).

1074 **IV. Causes excusing from restitution of reputation** are customarily enumerated:

1. Physical or moral impossibility. But with respect to moral impossibility note that the detractor is not held to restoration of reputation with damage much greater. Damage to one's own reputation does not excuse, unless the reputation of the detractor is necessary for the public good (St. Alphonsus, III, 1002). Yet no one is held to compensate injured reputation with money (St. Alphonsus, III, 1000). But if you ask whether the defamed person can compensate himself with money of the defamer, it seems this must be said: if the defamer unjustly refuses restoration of reputation, the defamed person more probably can compensate himself, relying on the principle: if you unjustly deny me what is owed to me, it is lawful for me to take something from you which is yours; almost as "you are not compelled to restore his right to another if he refuses to restore yours to you" (St. Alphonsus, IV, 999). If the defamer is excused from restoring reputation, it seems it must be denied, because on the one hand the right to money is doubtful, and on the other hand compensation on account of a doubtful right is not admitted (n. 1033; cf. St. Alphonsus, III, 1001).

2. Cessation of damage; as if someone has already from elsewhere, for example by sentence of a judge or by forgetfulness, been purged from infamy. In doubt whether the crime of the neighbor has been given over to oblivion, ordinarily the obligation of restoring will cease, both because there will be danger of harming the defamed person more, and because restitution cannot be made without one's own damage, which no one is held to suffer for repairing an already doubtful damage of the neighbor (St. Alphonsus, III, 997, 998).

3. Condonation by the defamed person, whether express or presumed. Yet damage of reputation cannot be presumed to be condoned as easily as damage in goods of fortune. Condonation is prohibited if the infamy redounds to others, or harms the common good, as if there is question of a priest or religious (St. Alphonsus, III, 1003).

4. Compensation, understood in this sense, that after injury has been inflicted on both sides, you can sufficiently probably defer restitution until the other is prepared to make satisfaction. Yet from these things do not conclude that the defamer can likewise be defamed (St. Alphonsus, III, 999).

Yet that is lawful, that you may lessen belief in the defamer, or that you may lead him, unwilling, to restore reputation or to omit further detraction.

Note. Excuse from restitution of reputation per se does not bring with it excuse from repairing real damages following from the injury of reputation.

Article IV. On the One Hearing Detraction

1075 **I.** He who positively influences detraction, for example by asking, laughing, or applauding, sins against justice. Yet sufficiently probably he sins only slightly who fishes out the crime of the neighbor without the intention of divulging it (n. 1069; St. Alphonsus, III, 979).

II. He who only internally rejoices over detraction sins against charity with respect to the defamed person; likewise with respect to the defamer, insofar as he omits fraternal correction in a case in which he is held to it (St. Alphonsus, loc. cit.).

III. He who does not rejoice over detraction as such, but over the hearing of a new thing, or over curious knowledge of the crimes of others, or over the witty manner of narrating, or over the thing narrated as amusing, is excused at least from mortal sin (St. Alphonsus, loc. cit.).

IV. He who does not impede detraction which he can easily impede sins against charity. But practically the obligation at least grave of positively impeding often is absent, "because in this matter of detraction it can be most difficult to establish that correction would be profitable, and from another source detractors corrected before others are very easily offended; indeed there is danger that they would rather increase or confirm the detraction. ... But according to all, those are excused even from venial sin who, noticing the detraction, either depart, or divert the conversation, or turn away the face or show it sad" (St. Alphonsus, III, 981). The contrary must be said about a Superior who does not impede detraction, namely:

1. The Superior of the defamer per se is held from charity, even more than others, to correct the subject; indeed even from justice, if he is the pastor, although he is not the Superior, or the Bishop of the defamer. But with respect to a defamer who is not a subject he is held no otherwise than others are.
2. The Superior of the defamed person likewise per se is held, even more than others, from charity to impede the evil of the subject; not, however, from justice, even if he is his pastor or Bishop, because from that virtue he is not held to attend to the temporal good of the subject (St. Alphonsus, loc. cit.).

But what if the Superior has not impeded the detraction?

Response 1. The Superior of the defamer is held from charity to compel the subject to restore reputation; indeed from justice, if he is pastor or Bishop.

Response 2. The Superior of the defamed person likewise per se is held from charity to provide for the restitution of reputation; not, however, from justice, even if he is pastor or Bishop, because from that virtue he is not held to provide for the temporal good of the subject.

Response 3. If there is question of the Superior of both, and the defamed person implores the authority of the Superior, more probably he is held from justice to take care of the restitution of

reputation, because in the case he seems to act as a judge, who from justice speaks the law (St. Alphonsus, III, 980).

Chapter II. On Rash Judgment, Opinion, and Doubt

1076 **I. Notions.** Judgment or certitude, opinion, and doubt respectively involve firm assent, weak assent, and suspension of assent concerning the truth of some proposition. Suspicion is reduced to doubt (n. 215). They are called rash here if they are made without sufficient foundation and regard the evil of the neighbor (St. Alphonsus, III, 962).

1077 **II. Morality.** 1. Judgment, opinion, and doubt, rashly conceived, are sins, and indeed against justice. This is clear both from Sacred Scripture, which at least teaches that they are sins,[1] and from the fact that he inflicts injury on the neighbor who holds him to be evil without sufficient reason.

2. With respect to the gravity of the sin, receive these things:

a) A rash judgment is a grave sin if the conditions to be explained are present; if any of these is lacking, there is only a slight sin. The conditions are:

alpha) That judgment is truly present, or that the assent is firm or quasi-firm; in other words, it is required that the matter be held as certain or morally certain (St. Thomas, II-II, q. 60, a. 3; St. Alphonsus, III, 962).

beta) That the judgment is about grave matter, i.e. about matter which, if it were revealed, would contain grave detraction (St. Alphonsus, loc. cit.).

gamma) That the judgment rests on reasons which do not suffice for conceiving an opinion. If they suffice for opinion, there is no grave sin, even if the judgment is wholly firm (St. Alphonsus, III, loc. cit.).

delta) That the judgment is about a determinate and known person. Therefore grave sin is absent if you rashly judge that in some place some crime has been committed by someone indeterminate; or if you judge the same thing about a man who meets you, but is unknown to you (St. Alphonsus, loc. cit.).

Now, when these conditions have been fulfilled, there is grave sin, because there is grave injury; otherwise, if any of them is lacking.

b) Rash opinion, suspicion, and doubt ordinarily are only slight sins, because the injury, and consequently the sin, is only slight (St. Alphonsus, III, 963). Many make an exception if someone, on account of the slightest reason, should suspect or hold as probable that a grave and honorable person is guilty of an enormous crime: "as it would be, to suspect about a pious religious that he is a heretic, or that he has committed incest with his mother; or about a man commonly held as Catholic, that he is a Jew or an atheist. The reason is that perhaps a greater injury is inflicted on them by suspecting such things than if a certain judgment were had about them concerning ordinary grave offenses" (St. Alphonsus, III, 964; St. Thomas, II-II, q. 60, a. 3).

c) It is disputed whether or not detraction and rash judgment differ in species. Some deny it, because by detraction reputation is injured before others, by rash judgment before ourselves; which difference seems merely material. Others affirm it, because by detraction there is taken away before others the knowledge which they have of someone's goodness; by rash judgment I do not take away from myself

the knowledge of someone's goodness, but I deny the assent of the intellect due to the knowledge had; which difference seems formal to the patrons of this opinion.

Corollary I. Since rash judgment, etc., are opposed to justice, they oblige to a certain species of restitution, namely that one lay aside the aforesaid judgment, etc., and judge better about someone.

Corollary II. Doubts about the uprightness of the neighbor are to be interpreted in the better part, unless someone prefers to abstain from judging. It can indeed "happen that he who interprets in the better part is more often deceived; but it is better that someone more frequently be deceived, having a good opinion about some bad man, than that he be deceived more rarely, having a bad opinion about some good man; because from the latter injury is done to another, but not from the former" (St. Thomas, II-II, q. 60, a. 4, ad 1).

Yet these things do not prevent someone, if there is question of avoiding damage, from conducting himself as if the other were harmful; for prudence advises this.

[1] Luke VI, 37; Matt. VII, 1-2; Rom. XIV, 4; 1 Cor. XIII, 5.

Scholion. On Whispering

1078 (St. Thomas, II-II, q. 74; St. Alphonsus, *Theologia Moralis*, book V, n. 72.)

I. Notion. Whispering is evil backbiting directed to dissolving true or ordered friendship. The whisperer and the detractor intend to take away reputation.

"They differ," says the Angelic Doctor, "in the end, because the detractor intends to blacken the reputation of the neighbor; whence he chiefly brings forward those evils about the neighbor from which the neighbor can be defamed, or at least his reputation diminished; but the whisperer intends to separate friendship ... and therefore the whisperer brings forward such evils about the neighbor as can move the mind of the hearer against him, according to that saying of Ecclesiasticus 28: 'A sinful man will trouble friends, and in the midst of those having peace he will cast enmity'" (St. Thomas, II-II, q. 74, a. 1; St. Alphonsus, V, 72).

1079 **II. Morality.** 1. Whispering is opposed to charity and is a grave sin; indeed it is graver than detraction and insult. It is opposed to charity because it deprives the neighbor of a good. It is a grave sin, which is clear both from Sacred Scripture,[1] and from the fact that it deprives the neighbor of a grave good. It is graver than detraction and insult, because it takes away from the neighbor a good which is greater than reputation and honor (St. Thomas, II-II, q. 74, a. 2; St. Alphonsus, V, 72). Yet it can be venial on account of slightness of matter, for example if it is apt only to lessen friendship a little.

2. To whispering there is added a sin of injustice if it is done by an unjust means, as by detraction or unjust revelation of a secret; but in that case it obliges to restitution properly so called, as is clear (St. Alphonsus, V, loc. cit.).

What if someone deprives another of acquired friendship, using a means not unjust in itself, for example by manifesting natural defects publicly known?

Response. Many judge that in the case there is sin only against charity, not against justice; neither by reason of the good, i.e. friendship, since it is not owed from justice; nor by reason of the means, for in this case this is not unjust. But with St. Alphonsus and others it seems it must be said that there is sin also against justice, because if there is question of a good already acquired, no one, as it seems, can

without injustice cooperate in any way toward deprivation of the good; to deprive him of such a good belongs only to him who continuously and gratuitously grants that good (St. Alphonsus, V, loc. cit.).

[1] Ecclus. VI, 15; XXVIII, 15; Rom. I, 29, 30.

Section III. On the Injury of Honor, or on Insult

(St. Thomas, II-II, qq. 72, 75, 105; St. Alphonsus, *Theologia Moralis*, book III, nn. 966, 984-990; *Homo Apostolicus*, tract 11, nn. 3-6.)

1080 Honor is a testimony concerning someone's excellence, in his presence (St. Thomas, II-II, q. 103, a. 1; St. Alphonsus, III, 966). It is said:

1. **Testimony;** namely, either through words, or through actions, for example genuflection, etc., or through honorific things, for example through the erection of a statue, etc.
2. **Concerning excellence,** i.e. concerning superiority in some perfection, whether with respect to the one honoring, or with respect to others (St. Thomas, II-II, q. 103, a. 2). Moreover, "in anyone there is found something from which someone can reckon him superior, according to that saying in Philippians 2: in humility, considering others superior; and according to this also all ought to anticipate one another with honor" (St. Thomas, loc. cit., ad 3).
3. **In his presence;** these things will be clearer from the notion of the opposite, or insult, about which something must now be said.

1081 **I. Notion.** Insult is an undue dishonoring of someone, or an undue testimony concerning someone's baseness, in his presence. It is said:

1. **Undue;** i.e. one which is made without a just cause.
2. **Testimony;** this can be made both by words and by deeds, insofar as they are signs or have the force of signifying words (St. Thomas, II-II, q. 72, a. 1), as if you strike someone with a slap, thereby signifying that he is base.
3. **Concerning someone's baseness,** or concerning this, that someone is unworthy of honor and worthy of contempt.
4. **In his presence.** "The insulting person," says St. Thomas, "speaks to a man to his face; whence if someone speaks badly about another before many people, with him absent, it is detraction; but if with him alone present, it is insult (II-II, q. 73, a. 1, ad 2); if with others present together with him, it is detraction and insult." But it suffices that someone be present through a representative; likewise, that someone should write injurious things to another.

Insult differs from that disordering which is called negative insult, and which consists in this, that someone merely omits to furnish due honor; this is opposed to observance. But the omission of due honor accidentally rather often contains true insult, namely if, considering the circumstances, it involves a signification of contempt, as if someone, meeting several equal superiors, shows honor only to one.

1082 **II. Morality.** 1. Insult is a grave sin from its kind, and indeed against justice. It is said to be grave from its kind; this is clear both from Sacred Scripture[1] and from the fact that it contains a sin of injustice, which is grave from its kind (n. 978). It is opposed to justice; for everyone has the right that

another not illegitimately signify to him that he is unworthy of honor and worthy of contempt (St. Alphonsus, III, 966).

The gravity of matter depends: 1° on the matter considered in itself, with attention both to the native signification of the words and to the affection from which they proceed, since this can temper the signification not a little. "Signification," says Aquinas, "proceeds from the interior affection; and therefore in sins of words it seems especially to be considered from what affection someone utters the words" (St. Thomas, II-II, q. 72, a. 2). The gravity of matter depends 2° on the condition of the person injuring and the person injured; 3° on the common judgment of men in that region concerning the injury. Hence, for example, men of the lowest condition, who affect one another with insults, ordinarily do not sin gravely (St. Alphonsus, *Praxis Confessarii*, n. 37).

2. The diverse modes by which insult is inflicted, as such, seem to be of the same species, because, insofar as they are injurious to honor, they are not morally diverse, but differ only according to more and less.

3. The mere omission of due honor, or negative insult, which I have added because of the affinity of the matter, is opposed to observance, as we have already noted, and per se and for the most part is venial; yet accidentally, as was likewise noted, it rather often is equivalent to true insult.

Corollary I. "Since the sin of abusive speech or insult depends on the mind of the one speaking, it can happen that it is a venial sin, if it is a slight abusive speech, not greatly dishonoring the man, and is uttered from some levity of mind or from slight anger, without a firm purpose of dishonoring someone; for example, when someone intends to sadden someone slightly through a word of this sort" (St. Thomas, II-II, q. 72, a. 2, ad 3).

Corollary II. "Just as it is lawful to strike someone, or to damage him in his things, for the sake of discipline, so also for the sake of discipline someone can say some abusive word to another whom he ought to correct; and in this way the Lord called the disciples fools, and the Apostle called the Galatians senseless. Yet, as Augustine says in book 2 *On the Sermon of the Lord on the Mount* (ch. 19), 'rebukes are to be employed rarely and from great necessity'" (St. Thomas, loc. cit., ad 2).

Corollary III. "To eutrapelia it pertains to say some slight abusive speech, not for the dishonoring or saddening of him against whom it is said, but rather for the sake of delight and jest; and this can be without sin, if due circumstances are observed" (St. Thomas, loc. cit., ad 1).

[1] Matt. V, 22; Rom. I, 30.

1083 **III. Restitution on account of insult.** Insult always injures the honor of him against whom it is inflicted. Besides, if it is inflicted before others or afterwards becomes known to others, it can also have other connected damages, namely both a diminution of good estimation and the omission of due honor on the part of others. Now:

1. The insulting person is held to furnish satisfaction for the injured honor; but the damages perhaps connected with the insult, and at least confusedly foreseen, he is held to repair or avert.

2. With respect to the mode of making satisfaction and restoring, there is required such a mode as, considering the circumstances of the person injured and the person injuring, the gravity of the injury, the custom of the place, etc., suffices for repairing honor (St. Alphonsus, III, 986). Hence:

a) If the one dishonoring was a superior, it will suffice if he honorably greets the dishonored person, invites him home, shows benevolence, etc. The contrary holds if he was an equal or inferior; then greater satisfaction is required, namely that he anticipate him in greeting, yield place, ask pardon. This mode indeed is more apt for compensating insult. Besides, such a request for pardon is not necessary except when satisfaction cannot be made otherwise; hence a prelate is not held to ask pardon from a subject, a master from a servant, or a husband from a wife (St. Alphonsus, loc. cit.).

b) If honor has been taken away publicly through insult, it must also be restored publicly before those who were present at the dishonoring, or at least in a mode by which the satisfaction can easily come to their knowledge (St. Alphonsus, III, 984). But if the dishonored person is judged rather to refuse than to desire that public satisfaction, lest the memory of the injury received return among others, or lest he himself be affected with more shame, another way of making satisfaction should be sought, for example by honoring the dishonored person with extraordinary actions (St. Alphonsus, III, 988).

3. The same things which excuse from restitution of reputation exempt from restitution of honor (n. 1074). Moreover, many times it will happen to be expedient that the confessor omit warning a penitent existing in good faith, who has dishonored another, about furnishing satisfaction, for example: 1° if he foresees that the warning will not be profitable; for experience establishes that penitents easily promise such satisfactions, but with difficulty actually fulfill them, on account of the shame which they afterwards feel or apprehend in this; 2° if there is danger lest, in the act of satisfaction, hatreds between the offended person and the offender be renewed (St. Alphonsus, III, 988).

Scholion. On Derision

1084 (St. Thomas, II-II, q. 75.)

I. Notion. Derision occurs when someone, by jesting, objects something vicious to another, for this end, that he blush or be confounded; by jesting, i.e. by turning someone's defect into laughter.

Derision differs from insult, detraction, and whispering, because derision intends someone's blushing; insult, the injury of honor; detraction, the injury of reputation; whispering, the dissolution of friendship.

"Sins of words," says St. Thomas, "are principally to be weighed according to the intention of the one uttering them; and therefore sins of this sort are distinguished according to the diverse things which someone intends when speaking against another. For just as someone by abusing intends to depress the honor of the one abused, and by detracting to diminish reputation, and by whispering to take away friendship, so also by mocking someone intends that he who is mocked should blush; and because this end is distinct from the others, therefore also the sin of derision is distinguished from the aforementioned sins" (II-II, q. 75, a. 1).

1085 **II. Modes of deriding.** Derision can be done: 1° by the mouth, namely by words and laughter, and it is called mockery; 2° by wrinkling the nose, sticking out the tongue, etc., and it is called scoffing; 3° by deeds, for example by bending the knee, etc., and it is called ridicule. But the aforesaid modes, as is clear, do not differ in species.

1086 **III. Morality.** 1. Derision is a grave sin when someone's defect grave in itself is turned into laughter; for true or grave contempt is had in this, that someone is so little esteemed and held so base

that his grave defects are turned into sport, as if they were the defects of a child or a fool (St. Thomas, II-II, q. 75, a. 2). But if a defect slight in itself is turned into laughter, there is not true or grave contempt, and therefore only a slight sin.

2. Derision "is a sin so much the graver, as greater reverence is owed to the person who is mocked" (St. Thomas, loc. cit.).

"Whence it is most grave to mock God and the things which are God's, according to that saying of Isaiah 37: Whom have you reproached? and whom have you blasphemed? and against whom have you exalted your voice? and afterwards it is added: Against the Holy One of Israel. Next place is held by mockery of parents; whence it is said in Proverbs 30: The eye that mocks his father and despises the birth of his mother, let the ravens of the torrents pluck it out and the young of the eagle eat it. Next, the derision of the just is grave; because honor is the reward of virtue, and against this it is said in Job 12: The simplicity of the just is derided; and this derision indeed is very harmful, because through this men are impeded from doing well" (St. Thomas, loc. cit.).

3. Derision is free from fault: 1° if it is done so that the one derided may recover from sin; 2° if friends, without danger of offense, for the sake of recreation, jokingly object certain slight things to one another.

Section IV. On Injury of a Secret

1087 **I. Notion.** A secret is a hidden matter which cannot be manifested.

1088 **II. Division.** A secret is distinguished into natural, promised, and entrusted. A natural secret is one which, from the nature of the matter, must be kept, namely because it cannot be revealed without damage or grief to one's neighbor; as if you know where someone has hidden his money, and you reveal this to a thief. A promised secret is one which someone, after receiving knowledge of it, has freely promised to keep; it can at the same time be natural. An entrusted secret is one which has been communicated to someone who did not know it, and who expressly or tacitly promised that he would keep it. By force of a tacit pact, for example, physicians, advocates, theologians, religious superiors, and others to whom recourse is had because of the office which they discharge, for the sake of seeking counsel, are bound to an entrusted secret (St. Alphonsus, III, 970). I said by force of a tacit pact; for by undertaking the office they undertake an obligation without which, if it had not been undertaken, subjects and clients would not approach them with sufficient security for the sake of seeking counsel or imploring help.

1089 **III. Obligation of keeping a secret.** 1. A natural secret obliges from charity if the revelation merely creates sorrow; from justice if it creates damage for one's neighbor. Hence the said obligation is grave from its kind.

A proportionate cause excuses from the obligation, as was said concerning manifestation of a hidden crime or defect (n. 1070). Yet it is clear that a secret cannot be revealed if common damage would be imminent from the revelation (St. Alphonsus, III, 970).

2. A promised secret obliges from fidelity or from justice, according as was said concerning a promise in general (n. 864).

The obligation of a promised secret ceases or does not subsist: 1° by the consent, even presumed, of the promisee; 2° if from another source there was, or there arises, an obligation of revealing the secret,

as if you are legitimately questioned by a judge or by a superior (St. Alphonsus, III, 970; IV, 268); 3° if it cannot be kept without such inconvenience that the one promising cannot be judged to have wished to bind himself with so great a burden. Moreover, these statements hold even if the promise was confirmed by oath.

Sometimes a promise is added to a natural secret; in that case the added promise is judged to be merely confirmatory of the obligation already existing, so that it stands or falls with the latter. Yet it is not repugnant that an obligation independent of the existing obligation be intended and assumed. Apply the same to an oath, if perhaps it is added to a natural secret.

Question. To what extent is he obliged who expressly promised that he would keep a secret of very great importance even with the loss of life? I said of very great importance, because otherwise the promise would certainly be prodigal and therefore invalid.

Response. Some say that he is not obliged, because from the precept of charity each person is bound to prefer his own life to another's good, however very grave. Others maintain the obligation, because every promise of an honorable object obliges. But the promise about which we are speaking regards an honorable object; since it is permitted "for an honorable end to omit the preservation of one's own life in order to save another's life... because this is not directly to bring death upon oneself, but not to protect life, which is permitted for a just cause: therefore very probably the doctors... say that in the proposed case you are sufficiently obliged to keep the secret even with danger of life, if you promised it" (St. Alphonsus, III, 971). Yet note that the words even with danger of life must more often be taken less strictly according to the mind of the one promising.

3. An entrusted secret obliges from justice, and therefore by an obligation grave from its kind (n. 978). Moreover, the said obligation is stricter by reason of the onerous contract intervening. With respect to the promise at least tacitly made by the adviser, there is added the fact that it is of the greatest interest to the common good that the secret entrusted to him bind most strictly, namely so that men may be able to seek counsel without fear of revelation. Yet it is sufficiently probable that it is not a grave sin to reveal an entrusted secret to one or another person who will certainly keep it and will not even reveal it to one or another person. Moreover, this is sufficiently probable because in that case the secret remains safe as to its substance. Except, however, if the secret is revealed to him from whom the one entrusting it wishes it to be hidden before all others; in that case it would be a grave sin (St. Alphonsus, III, 971). I said sufficiently probably, because a contract is involved, and it is doubtful whether that more benign interpretation is valid; with respect to a natural secret, the matter is certain.

The obligation of an entrusted secret ceases: 1° by the consent, even reasonably presumed, of the one entrusting the secret; 2° if, from the secret being kept, grave damage is imminent either to the common good, or to the one entrusting the secret himself, or - provided he accepted the secret without force or fraud - to the one accepting the secret. The first two are sufficiently clear; the latter is drawn from this, that "no one is presumed to have obliged himself to such a burden, unless this certainly appears from the circumstances" (St. Alphonsus, III, 971). The obligation of an entrusted secret does not cease from the questioning of a judge or superior; and "you can respond that you know nothing, namely nothing to be revealed" (St. Alphonsus, III, 970). Except if the obligation of the secret has already ceased from another heading (St. Thomas, II-II, q. 70, a. 1, ad 2; St. Alphonsus, III, 970, 971; IV, 49, 248, 268).

What if grave damage is imminent to a third party from an entrusted secret being kept?

Response 1. If the damage is neither created nor culpably permitted by the one entrusting the secret, it is not lawful to reveal the secret; suppose that an advocate knows that an innocent man will be condemned, but the guilty man will be freed. If, because of special circumstances, the guilty man can permit the damage of the innocent man, the advocate also is bound to keep the secret entrusted to him.

Response 2. Outside the aforesaid case, I distinguish between those who are not bound by force of office and those who are bound by force of office to keep the secret. Now:

1. One who is not bound by force of office to keep the secret can certainly reveal it: 1° if the damage to the third party is created by the one entrusting the secret himself; as if a syphilitic, who pretends that he is healthy, intends to marry a bride ignorant of the bridegroom's disease; 2° if the damage to the third party is not indeed created by the one entrusting the secret, but nevertheless is culpably permitted by him; as if the guilty man mentioned above would culpably permit the damage of the innocent man. The reason for both is that charity demands that the secret be disclosed in order to avert damage to one's neighbor, unless the common good stands in the way. But the common good does not require that one who is not bound by force of office to be silent should be obliged to be silent, if a grave cause for speaking, i.e. for revealing the secret, exists (St. Alphonsus, III, 971).
2. The same, with St. Alphonsus and others against many, seems to be admitted if there is question of those who are bound by force of office to keep a secret; as if a physician knows that the bridegroom is afflicted with a contagious disease, and nevertheless does not wish to abstain from marriage. For on the one hand the reason just given is valid; on the other hand, the common good in this case does not demand that secrets of this sort be kept even with grave damage to a third party. For it is more in the interest of the common good that provision be made for the innocent person than for the harmful one, i.e. for him who wishes to inflict unjust damage on an innocent person, or who does not wish himself, by manifestation of the secret, to avert the damage to be inflicted on the innocent person (St. Alphonsus, III, 971). Yet the physician, etc., would be excused if grave damage to himself, for example hatred of citizens, a penalty to be imposed, etc., would be imminent from the revelation.

Objection 1. The common good demands that each person be able, without fear of revelation, to entrust a secret to those who furnish counsel by reason of office.

Response. On account of the reason just given, I deny the assertion with respect to those about whom the discussion is here. Nor, for that reason, will others to whom these things cannot be applied reasonably seek counsel with fear.

Objection 2. One who knows an impediment of marriage under an entrusted secret is not bound to reveal it, although there is question of averting damage.

Response. I deny the assertion taken generally; namely, one is bound to reveal an impediment, however known under an entrusted secret, if it is supposed and known that the impediment is known to one of the persons about to marry and unknown to the other, and therefore that formal injustice will be committed by one of the persons about to marry. And a case of this kind is especially intended by us.

Note 1. To an entrusted secret also belongs what is called a quasi-sacramental secret, namely one which arises from the manifestation of conscience to a superior or spiritual director, for the sake of

seeking counsel or obtaining spiritual direction. Before this secret can be revealed, or even merely used, to avert some damage, even common damage, generally the one seeking counsel should first be warned concerning his obligation of preventing that damage by spontaneous manifestation or use of the secret; if he refuses, it should be well weighed whether in the case the gravity of the damage in question is not to be postponed to the gravity of that common damage which arises from the fact that, at least apparently, faith is broken in this matter.[1]

Note 2. In some kingdoms a promissory oath concerning keeping a secret must be made by physicians; this oath, as is clear, is not valid insofar as you suppose that in some respect it is opposed to the law of nature.

[1] Aertnys-Damen, *Theologia Moralis*, I, n. 1004.

1090 **IV. Investigation of a secret.** 1. Per se it is illicit and unjust to seek out another's secret against his will, for example by questioning deceitfully, reading letters, spying on the things which someone purposely does secretly, or by extorting a secret by a certain force. The reason is that one acting thus deprives another of his own thing; since a secret or hidden matter is most proper to a man. Moreover, it is a grave or light sin according as there is question of a grave or light matter. Except, with respect to a grave matter, if someone fishes out another's secret with the intention of keeping it to himself; this is sufficiently probably only light (n. 1069).

2. It is lawful to seek out a secret if there is at least presumed permission of the owner, or a proportionate cause, of which sort is damage to be averted, whether common damage, or grave damage to oneself or one's own. The reason is that there is no injury if the other consents or is bound to consent to the investigation itself of the secret.

Corollary I. It is lawful to read another's letters (i.e. whether written by subjects or sent to subjects): 1° as was said, from consent, even presumed, either of the writer or of the recipient; 2° if from the secret of the letters common damage, or damage to oneself or a third party, is feared; 3° if the rule of a religious institute prescribes or permits this, namely for the common good. Besides, parents, guardians, and superiors of institutes generally can read the letters of subjects, namely lest some evil befall them. A husband, however, per se cannot inspect letters given to his wife, since she is not plainly a subject but a companion. Often there will be consent at least presumed. For the rest, what a religious superior can do should be drawn from the rule and from custom (St. Alphonsus, III, 969; V, 70).

Corollary II. It seems illicit to join and read fragments of letters that have been torn very small and thrown away, because the owner, by tearing the letters, sufficiently signifies that he does not wish them to be read. The contrary must be said if the owner tore them into larger parts and voluntarily threw them into a place accessible to all (St. Alphonsus, loc. cit.).

1091 **V. Use of a secret.** 1. Use of a secret communicated as such, which takes place without revelation of the secret - suppose if someone uses knowledge of a secret to direct others in the way of perfection - is lawful if it is done without damage to him whose secret it was; for what does not harm you is, with the required suppositions in place, lawful for me. If it is done with damage, it is illicit, unless there is added the consent, at least presumed, of the one communicating the secret, or a proportionate cause for allowing the damage; for a secret is judged to have been communicated with the burden of not harming the one communicating the secret.

2. Use of a secret not communicated, but investigated by just industry - suppose an invention publicly displayed and attentively inspected by an expert - is lawful; since the one investigating by his own industry made the secret his own, and therefore he can use it; except if a monopoly of using it had already been granted to another by the State.
3. Use (whether revelation, or use without revelation) of a secret unjustly extorted, with damage to him whose secret it was, is lawful for averting damage to oneself or to others only when the matter has been brought to that state in which it would be lawful to seek out the secret; otherwise it is illicit, because it would be a continuation of the injustice (St. Alphonsus, III, 969).

Dissertation II. On the Precepts of the Church

1092 The principal precepts of the Church, common to all, are: 1° the sanctification of Sundays and feast days; 2° abstinence and fasting; 3° annual confession; 4° Easter communion; 5° the censorship and prohibition of books. Concerning the sanctification of certain days we spoke in Part III, concerning the third precept of the Decalogue (n. 701 ff.). It remains for us to treat the last four precepts, with a scholion on the forbidden cremation of bodies added.

Part I. On Abstinence and Fasting

(St. Thomas, II-II, qq. 146-147; St. Alphonsus, *Theologia Moralis*, book III, nn. 1004-1050; *Homo Apostolicus*, tract 12, nn. 2-34.)

From history it is established that the law of abstinence and fasting is merely ecclesiastical; likewise, that the said law was introduced by custom rather than by law properly so called. From this it follows that it must be explained especially by custom. Having noted these things, receive the law of abstinence and fasting as it has now also been established by written law.

1093 **I.** The law of abstinence alone is to be observed on each Friday (can. 1252, § 1).

II. The law of abstinence and fasting together is to be observed on Ash Wednesday, on the Fridays and Saturdays of Lent and of the Ember Days, on the vigils of Pentecost, of the Mother of God assumed into heaven, of All Saints, and of the Nativity of the Lord (can. 1252, § 2).[1]

III. The law of fasting alone is to be observed on all the remaining days of Lent (can. 1252, § 3).

IV. On Sundays or feasts of precept the law of abstinence, or of abstinence and fasting, or of fasting alone ceases, except on a feast during the time of Lent, nor are vigils anticipated; likewise, it ceases on Holy Saturday after midday (can. 1252, § 4). Moreover:

1. In view of can. 6, 6°, the following have been abrogated: 1° the law of abstinence on Saturdays outside Lent and the Ember Days;[2] 2° the law of fasting and abstinence on Wednesdays and Fridays of Advent, outside the Ember Days.[3]
2. The law of fasting persists if the feast of St. Joseph (19 March) falls on Monday, Tuesday, Wednesday, or Thursday of Lent; the law of fasting and abstinence persists if it falls on Friday or Saturday.[4]
3. If some feast day to be observed under precept in the universal Church has been suppressed in some region, the law of abstinence persists;[5] it likewise persists, if in some region or diocese a habitual dispensation has been granted by the Holy See, say for five years, from a feast day not suppressed; because the foundation of cessation falls away.
4. If some feast day which has a fast attached on the vigil falls on Monday, the fast ceases, so that it no longer has to be anticipated on the preceding Saturday, without prejudice, however, to particular law.[6]

Having noted these things concerning the time at which the laws mentioned oblige, we shall set forth each law distinctly.

[1] By force of an Apostolic Indult, the law of abstinence in the dioceses of Belgium is to be observed not on Saturday, except for the Ember Days, but on Wednesday and Friday through the time of Lent.

[2] Although it is not altogether established that the said law was universal in the full sense, nevertheless certainly in the places where it was in force it bound after the manner of a universal law, so that even travelers in those places were bound by it (S. Off., 10 June 1855). Hence can. 6, 6°, which speaks about universal laws, should be applied to it.

[3] This law also possessed a universal character, both because it was once universal, and because, having fallen into desuetude, it was introduced anew by Clement XIV in many regions in place of a universal law, namely that of the abrogated Vigils (Brief *Paterna caritate*, 1771).

[4] P. C., 24 Nov. 1920 (*A. A. S.* 1920, p. 573).

[5] P. C., 17 Feb. 1918 (*A. A. S.* 1918, p. 170).

[6] P. C., 24 Nov. 1920 (*A. A. S.* 1920, p. 573).

Section I. On the Law of Abstinence

1094 **I. Object of the law.** The law of abstinence forbids eating meat and broth from meat, but not eggs, dairy products, and any condiments whatever, even from the fat of animals (can. 1250). It is said:

1. **Meat;** wherefore observe these things:

a) By the word meat are included not only flesh taken more strictly, but also other constitutive parts of an animal, such as blood, bacon, marrow, etc. Yet the following are permitted: 1° a thing not prohibited in itself which has been mixed with meat, provided that only a little of the meat has remained in it. The reason is that a little is reputed as nothing. Therefore oil in which meat has been fried is permitted.[1] Some concede the same with respect to vegetable fat and Palmin,[2] in which meat has been fried.[3] But this seems doubtful to others, because in that case too much meat remains in the fat. The same reason for doubting holds with respect to butter in which meat has been fried. 2° Peptones which are obtained from pepsin and vegetable albumin; but not those which are prepared from pepsin and animal albumin. "To take" the latter, Antonelli says, "is the same as to eat the more principal substance of meat already wholly digested";[4] the fact that they are not called meat, but have a special name, and do not have the taste of meat, does not prevent them from being judged meat.

b) Rules for discerning whether animals are meat or fish, or at least whether they are prohibited or permitted.

alpha) Before all else, common estimation and custom should be attended to (St. Alphonsus, III, 1011).

beta) If common estimation and custom are lacking, these things should be observed: 1° those animals are judged meat which are accustomed to live on land, or at least for a long time outside water; 2° amphibians are counted with those animals to which they bear the greater likeness[5] (St. Alphonsus, III, 1011; *Homo Apostolicus*, tract 12, n. 2).

gamma) If, considering the things said above, the matter is doubtful with respect to certain animals, it is lawful to eat them until a declaration of the Church removes the doubt.

c) Applications. With attention to the rules set forth:

alpha) Among others, birds are counted as meat, although some are nourished in water, such as divers and ducks.

beta) Frogs, snails, turtles, oysters, shellfish, and lobsters are counted as fish, or are equated with fish with respect to our matter; the same must be said about caviar, as the Sacred Penitentiary declared.[6]

gamma) With respect to otters, beavers, coots, etc., custom should be attended to.

2. **And broth from meat;** by the name of broth from meat is understood the water in which meat - to which bones also pertain - has been boiled. Moreover, it is prohibited absolutely, so that it cannot even be used after the manner of a condiment. But if it could be taken in such a mode, the legislator certainly would have signified this, just as he did with respect to a condiment from fat. Add that even previously the use of fat after the manner of a condiment had been conceded, but not truly the use of broth from meat.

Hence liquid foods prepared from meat broth, bouillon, are prohibited; likewise those prepared from Liebig. Foods prepared from Maggi are some prohibited, others not prohibited, according as the Maggi used consists of elements of meat or of others; namely, each case occurs.

3. **But the law of abstinence does not forbid using eggs, dairy products** (milk, butter, cheese), **and any condiments whatever** (butter, margarine,[7] etc.), **even from the fat of animals.** With respect to animal fat observe:

a) By the name of fat is understood not only swine fat, but the fat of any animal whatever;[8] likewise fat extracted from bacon, for it can come under the name of fat.[9] Likewise those bits of bacon which remain whole from the same rendered bacon can be eaten, provided they continue to be part of the condiment.[10] From what has been said it also follows that it is lawful to eat bread spread with fat: both because it can be said that not only that which is cooked with food is taken after the manner of a condiment, but also that which is added to it merely for the sake of increasing flavor; and because the law, if taken more severely, would harm the poor especially.

b) Fat - just like butter, margarine, and similar things - seems lawful, even if it is not used after the manner of a condiment. The reason is that it seems to be equated by the legislator with other condiments which are certainly lawful. The fact that the law uses the word condiment is explained from this, that the aforesaid things are accustomed to be used only after the manner of a condiment.

[1] S. Poenit., 17 Nov. 1897.

[2] These, of themselves, consist only of plant elements.

[3] *N. K. Stemmen*, 1909, p. 126.

[4] *Medicina Pastoralis*, II, 868.

[5] Benedict XIV, *De Synodo*, book II, ch. 5, n. 12.

[6] 16 Jan. 1834.

[7] Cf. S. Off., 5 Sept. 1906 (*A. S. S.* XXXIX, p. 455).

[8] S. Off., 1 May 1889; 25 March 1895.

[9] Cf. S. Off., 25 March 1895 (*A. S. S.* III, p. 276), and S. C. C., 29 April 1911 (*A. S. S.* XXVIII, p. 570).

[10] S. Poenit., 17 Nov. 1897.

1095 **II. Subject of the law.** All who have completed the seventh year of age are held by the law of abstinence (can. 1254, § 1). Therefore one who has not yet completed the seventh year of age is not held, even if he has arrived at the use of reason. Likewise, in view of can. 12, one is not held who, although the seventh year of age has been completed, has not yet attained the use of reason. One who completes the seventh year of age on a day of abstinence seems not yet to be held to abstinence on that day, but only from midnight of the following day (cf. can. 34, § 3, 3°).

1096 **III. Obligation of the law.** It is grave from its kind. Practically, however, it can be said that grave matter is 20 grams.[1]

Besides, observe: 1° small quantities coalesce; 2° sin is committed as often as prohibited food is eaten. The reason is that the essence of the precept consists in abstinence from meats as long as the day lasts; hence one who has violated the precept at some time of the day violates it again if at another time of the day he again eats meats (St. Alphonsus, III, 1030, q. 1). But it is another question whether, after

grave matter has been completed, new acts of eating - abstracting from a retracted will - are sins new in number, or the same continued sin. The latter opinion does not lack foundation, because there is one precept for each whole day (cf. n. 254).

[1] Some think - but without sufficient reason - that on days of abstinence alone a larger quantity is required for grave matter than on days of fasting and abstinence.

1097 **IV. Excusing causes.** "Many," as Aertnys-Damen rightly note, "need more than one meal on a day of fasting; but few need forbidden foods, at least in our time, in which the law of abstinence has been greatly mitigated in the Code of Canon Law."[1] Yet the following are excused:

1. The sick, or those so weak that they cannot digest fasting foods. Likewise pregnant or nursing women, if they are weak, if their infant is sick or danger of sickness threatens the infant; likewise if they vehemently desire meat (St. Alphonsus, III, 1033).
2. The poor who beg - likewise those who would beg, unless shame prohibited them - can eat what they receive, and this even if on that day they have fasting foods, because the Church is not judged to prohibit them from enjoying an advantage unusual for them.
3. The poor who have nothing else except a small piece of fat or bacon for seasoning porridge or lettuce.
4. Workers who daily devote themselves to labors so arduous and so fatiguing to the stomach that, after the manner of the sick, they do not experience hunger and have an aversion to foods; of this sort are those who pass their life in mines, or in glass or iron foundries.
5. Travelers who, for example in inns, cannot have lawful foods without great difficulty.
6. Children of the household, male servants, and maids who are in the same condition as the said travelers. With respect to persons who are in the power of a father of a family to whom a legitimate faculty of eating meats has been granted, the Sacred Penitentiary[2] declared that "permission made by a simple confessor suffices," if the father cannot or will not prepare two meals; the sense of this declaration seems to be that the confessor can practically declare, in the supposed hypothesis, that a case of inability is present.
7. A guest who finds a meal furnished with prohibited foods and cannot easily obtain other dishes; for by departing, or by eating only lawful things, he would for the most part provoke a notable disturbance or even enmity. If someone must attend a meal which he foresees will be prepared with meats, he should ask for a dispensation in time. If time is not available, he should proceed as was just said. But if someone spends several days among relatives or very close friends who do not observe the law, permitted foods are more easily obtained without grave inconvenience.
8. If prohibited condiments have been used in good faith, and the error is discovered only when the meal is imminent, it is lawful to take foods seasoned in this way. - If an entire meal has been prepared with meats, it can be taken if it cannot be left without grave inconvenience; suppose if time is lacking for preparing another suitable meal, or if anger and quarrels are feared.

[1] Aertnys-Damen, *Theologia Moralis*, I, n. 1065.

[2] 27 May 1863.

1098 **V. Dispensation.** 1. Not only the Ordinaries of places, but also pastors, in individual cases and for a just cause, can dispense individual faithful subject to them, or individual families, even outside

the territory, and in their own territory also travelers, from the common law concerning the observance of feasts and likewise from the observance of abstinence and fasting, or even of both (can. 1245, § 1); suppose on the occasion of marriage, or funerals, or golden weddings.

The same, in view of can. 1368, seems to have to be said concerning the rector of a seminary with respect to all who are in the seminary; this, at least with the Church supplying, is practically certain.

2. Ordinaries, from a special cause of a great concourse of the people or of public health, can also dispense the whole diocese or place from fasting and from abstinence, or even from both laws together (can. 1245, § 2). And the P. C.[1] declared that a great concourse of the people is had even through an extraordinary concourse of the faithful of only one parish to a feast to be celebrated in a church.

3. In an exempt clerical religious institute, Superiors have the same power of dispensing after the manner of a pastor, so far as concerns professed members, novices, or others dwelling in the religious house day and night by reason of service, education, hospitality, or ill health (can. 1245, § 3).

4. Finally note the dispensation, both from the law of abstinence and, if ever it occurs, from the law of fasting, granted on 7 March 1924 by Pius XI to all who have attended a Eucharistic Congress, whether international, or of one nation, region, or diocese, also on the occasion of the journey.[2]

Note 1. One who is not held by the law of fasting - whether because he has not yet attained the required age, or because he has been dispensed from the law, or is excused from it - can, on those days on which the law of fasting alone is in force but not that of abstinence, eat meats as often as he eats during the day. Others can eat meats only at the full meal, while preserving morning and evening the approved custom of places concerning the quantity and quality of foods.

Note 2. It is lawful, as it seems, on Holy Saturday - just as on other days (n. 1099) - to begin the full meal after the eleventh hour; likewise to eat meats in it; since, in view of the obvious sense of can. 1252, § 4, both laws cease at the same moment. Therefore the word midday, which the canon uses, should be taken in a broad sense. However, on Holy Saturday it is not lawful to take breakfast, even if the law of fasting ceases after midday. The reason is that the law commands the continuation of the fast until midday.

Note 3. The obligation of almsgiving or prayers which Bishops are accustomed to impose in a dispensation from the law of abstinence is certainly only light, if the work imposed is light; nor does the matter, as imposed for individual days, coalesce. If the work is grave, nevertheless, considering the character of a dispensation - otherwise than of a commutation - the obligation seems light.

[1] 12 March 1929, ad III (*A. A. S.* 1929, p. 170).

[2] *A. A. S.* 1924, p. 157.

Section II. On the Law of Fasting

1099 **I. Object of the law.** The law of fasting prescribes that only one meal be taken during the day; but it does not forbid taking some food in the morning and evening, while preserving the approved custom of places concerning the quantity and quality of foods. Nor is it forbidden to mix meats and fish in the same meal; nor to exchange the evening refection with the dinner (can. 1251). Besides,

drink is never prohibited, nor certain things which are not taken after the manner of nourishment. We shall explain the several points.

1. **One refection,** which is called dinner. Moreover:

a) The full refection, which originally could begin only at a later hour, can now by custom be begun about midday, and indeed, by the same custom broadly interpreting the midday hour, at the eleventh hour. In calculating the hour it is lawful to follow the common usage of the place; likewise the time of the place, whether local, true or mean, or legal, whether regional or some other extraordinary time (can. 33, § 1; n. 167).

Besides, the determination of the hour no longer pertains to the substance of the precept, so that even a notable anticipation is not prohibited under grave sin. This can be deduced both from the fact that the law makes no mention of the hour of the one meal, and from the fact that, considering changed customs, the law has already for a longer time been accepted by more recent authors in that sense. Yet the determination of the hour pertains to the integrity of the law, so that anticipation per se involves venial fault; for the law permits only taking some food in the morning and exchanging the small supper with the dinner (can. 1251, § 2). Hence per se it is illicit to take dinner in the morning; but it is lawful to take the small supper at the eleventh hour and dinner in the evening (can. cited); likewise, for a reasonable cause, to take the small supper in the morning, dinner at midday, and a little piece in the evening (St. Alphonsus, III, 1024).[1]

b) The full refection can be prolonged for two hours (St. Alphonsus, III, 1020, question 5). Besides, St. Alphonsus neither approves nor reproves the custom, if it is in force somewhere, of placing on the table, notably beyond two hours - namely for another hour or two - only sweetmeats or lighter foods, provided the little evening refection is omitted (loc. cit.).

c) The full refection, by the very fact that only one is permitted, must at least be morally continued. Wherefore observe:

alpha) An interruption made for a reasonable cause does not prevent one from returning to dinner (St. Alphonsus, III, 1020, questions 3 and 4).

beta) An interruption of a quarter hour or even half an hour does not prevent returning to dinner, even if it was already regarded as finished (St. Alphonsus, III, 1020). After the full refection has been taken, to eat again after an hour is a grave sin. If the refection has not yet been completed, an interruption of two hours is required for grave fault.

d) One who, whether culpably or inculpably, has taken a double refection does not sin gravely by refreshing himself a third time or more often. The reason is that the substance of the precept consists in abstinence from a second refection; hence, once the second refection has been taken, the substance of the precept no longer subsists, and therefore it can no longer be violated (St. Alphonsus, III, 1030, questions 1 and 2). Yet according to St. Alphonsus and others he sins venially, "because to act contrary to the end of the law is a certain disorder which does not seem to be excused from all fault" (III, 1030, question 1). But one who, whether culpably or inculpably, has injured the law of fasting only in accidental things is per se bound to keep it according to its substance. Hence, for example, one who has breakfasted in the morning, if the breakfast is equivalent to the small supper, should take dinner in the customary way and a little piece in the evening, or arrange the matter in some other way so that the substance of the law is preserved. If the breakfast is equivalent to a full refection, afterwards he can

take only the small supper and a little piece, unless, because of inconvenience, a full refection must again be conceded to him (St. Alphonsus, III, 1020, question 4). Others, however, think that one who from inadvertence, and therefore inculpably, has breakfasted can thereafter fast as others fast, and consequently take dinner and the small supper.

2. The little morning refection is permitted, while preserving approved custom concerning the quantity and quality of foods. Now, half an ounce of denarius weight, or 60 grams, is permitted, whether of bread or of a nourishing drink, such as chocolate, etc.; in some regions even stronger foods - not, however, meats[2] - are permitted.

It is also permitted that one, repeatedly during the day, take a little bit of food for this purpose, lest drink harm him; likewise that he take certain electuaries in a small quantity, not indeed after the manner of nourishment, but, for example, to preserve the voice, remove bad odor of the mouth, or assist digestion (St. Thomas, II-II, q. 147, a. 6, ad 3; St. Alphonsus, III, 1018, 1019; *Homo Apostolicus*, tract 12, n. 11).

3. The small supper, or evening refection, is likewise permitted, while again preserving approved custom concerning the quantity and quality of foods. With this considered, the following can be established:

a) With respect to quantity. About 2 1/2 ounces of denarius weight, or about 250 grams, of foods not very nourishing are permitted to all, even to those who are plainly refreshed by the quantity to be assigned; but 300 grams are permitted in northern regions, and if someone needed more abundant food (St. Alphonsus, III, 1025). If the food is very nourishing,[3] only about 1 1/2 ounces of denarius weight, or 140-150 grams, can be taken. Besides, the assigned quantities can be increased a little if a just cause is added; indeed they can be increased as much as is necessary for duly carrying out the duties of one's state. Finally, if somewhere there exists a custom, on the Vigil of the Nativity or others, of doubling the quantity of the small supper, the "joyful fast," this can be observed, even if the chief reason, namely assistance at the nocturnal office, is not present (St. Alphonsus, III, 1025).

b) With respect to quality. Considering custom, in most regions nothing except meats is prohibited. Yet, as was said above, if the small supper consists of stronger foods - such as eggs, larger fish - only a smaller quantity is permitted (cf. St. Alphonsus, III, 1026-1028).

4. Drink always permitted is understood as that which per se and ordinarily is used to extinguish thirst, refresh nature, and foster digestion, such as wine, beer, water, or coffee mixed with a small quantity of sugar, and this even if they nourish to some degree. Milk, meat broth, chocolate, and similar things are excluded, since they have rather the character of food; this also holds of fruits, such as apples, melons, etc., even if only the juice is swallowed (St. Thomas, II-II, q. 147, a. 6, ad 2; St. Alphonsus, III, 1022, 1023).

[1] Cf. S. Poenit., 19 Jan. 1834.

[2] The President of the Pontifical Commission, to the doubt whether on days of fasting alone meats can be taken several times, responded on 29 Oct. 1919: Negative (*A. A. S.* 1919, p. 480).

[3] From precisely the fact that food is cooked, for example into porridge, at least nowadays the quantity does not seem to be diminished. But in some dioceses cooked foods seem to be prohibited.

1100 **II. Subject of the law.** All are bound by the law of fasting from the completed twenty-first year of age to the begun sixtieth year (can. 1254, § 2).

Corollary I. In view of the cited canon, the opinion once defended by some, which exempted women in their fiftieth year from fasting, can no longer be sustained.

Corollary II. One who completes the twenty-first year on a day of fasting seems not yet to be held to fasting on that day, but only from midnight; one who begins the sixtieth year of age on a day of fasting seems exempt from fasting on that day, so that the obligation of fasting ceases once the fifty-ninth year of age has passed (cf. can. 34, § 3, 3°).

Corollary III. It is commonly admitted that religious who have begun the sixtieth year are exempt even from the fasts to which they are bound by force of profession, because the rules of religious are judged to oblige after the manner of ecclesiastical laws. It is disputed, however, whether the same can be said of robust young religious who have not yet completed the twenty-first year. Most deny it, because young men are presumed to have bound themselves also for a younger age. To this it can be answered that young men have bound themselves according to the mind of the rule. Hence, if it is doubted whether the rule comprehends them, in practice they are excused from the regular fast.

1101 **III. Obligation of the law.** On this point, first note proposition 23 condemned by Alexander VII: "One breaking the fast of the Church to which he is bound does not sin mortally unless he does it from contempt or disobedience, for example because he does not wish to subject himself to the precept."[1] Now the law of fasting obliges under grave sin insofar as it prohibits a second full refection. In addition, he sins gravely who, besides the full refection, whether in the small supper or otherwise, reaches grave prohibited matter. Moreover, according to St. Alphonsus, grave matter in violation of fasting is a quantity exceeding 30 grams of denarius weight (III, 1029). Hence he sins gravely who, for example, in the small supper adds to the permitted quantity a quantity greater than 30 grams. But if there is question of prohibited food, suppose meat, or eggs in a region where eggs are prohibited in the small supper, even a smaller quantity suffices. Besides, observe:

1. Small quantities coalesce, as is deduced from proposition 29 condemned by Alexander VIII: "On a day of fasting, one who more often eats a small amount of something, even if at the end he has eaten a notable quantity, does not break the fast"[2] (St. Alphonsus, loc. cit.).
2. It is the same whether the permitted quantity is exceeded in the small supper or at another time.

[1] Denzinger-Bannwart, n. 1123.

[2] Denzinger-Bannwart, n. 1129.

1102 **IV. Causes excusing from the law** are infirmity, bodily labor, and spiritual labor.

1. Infirmity excuses: 1° not only the sick, but also those recovering; 2° the weak, who cannot take sufficient food in one refection; 3° those who from fasting suffer dizziness or notable pain of the head or stomach, or cannot sleep through a great part of the night; 4° pregnant or nursing women, which Capellmann-Bergmann[1] extends also to the time of menstruation; 5° the poor, who lack a sufficient dinner (St. Alphonsus, III, 1033-1036).
2. Bodily labor excuses if it is both necessary or useful to oneself or others, and grave and prolonged through a great part of the day. It is said:

a) Labor whether necessary or useful to oneself or others. Concerning this, note that the Church does not require that, in order to observe the fast, one abstain from necessary or useful labor; and this holds even if there is question of the rich, because it is of interest to the common good that useful labors not

be interrupted (St. Alphonsus, III, 1042). It is disputed, however, whether it is lawful for the sake of pleasure alone to assume labor which cannot morally be combined with fasting. Moreover, some think that this can be done once or twice. But I rather adhere to the opinion which teaches that pleasure alone, not even once or twice, is a reason why it is lawful to place an impediment to a grave law that must be observed.

b) Grave labor, and prolonged through a great part of the day; otherwise, for the most part, it is compatible with fasting. Moreover, grave labor is the labor: 1° of farmers; 2° of workmen and artisans, except those who perform quiet works, such as barbers, tailors, and painters; 3° of male servants and maids, whether in a private family or in an institute or monastery, unless they perform only light services. To these also are to be counted those who make a laborious journey, suppose a journey on foot of 4-5 leagues, although it can happen that even a journey made by horse or carriage must be called laborious (St. Alphonsus, III, 1041, 1047); likewise those who use a bicycle for a long time. For the rest, note proposition 30 condemned by Alexander VII: "All officials who labor bodily in the State are excused from the obligation of fasting";[2] likewise proposition 31 proscribed by the same Pontiff: "All those who travel by riding are absolutely excused from the precept of fasting, however they make the journey, even if the journey is not necessary, and even if they complete a journey of one day."[3]

3. Grave spiritual labor likewise excuses, provided the conditions required with respect to bodily labor are also present in the case, in other words, provided the labor is necessary or at least useful, and is prolonged through a great part of the day. For this reason the following are commonly excused: 1° preachers who preach five or six times a week; 2° teachers of the higher sciences, who are almost continually intent upon study; 3° teachers of a lower science or art, who teach daily for several hours and therefore are fatigued by study and speaking; 4° confessors who hear confessions through the greater part of the day; 5° scholastics continually occupied with study (cf. St. Alphonsus, III, 1049).

Corollary I. From what has been said it follows that grave labor, provided it is at least useful, can for the most part be undertaken, even if it is morally incompatible with fasting. Yet this should not be extended to all works, especially religious works and those useful only to the one acting. For many works of this sort are rather to be omitted or deferred than undertaken with injury to the fast, suppose - at least per se - a pilgrimage (St. Thomas, II-II, q. 147, a. 4, ad 3; St. Alphonsus, III, 1049).

Corollary II. Bodily labor, about which there has been discussion, is such that each person is presumed to be excused from fasting because of it; but if there is question of spiritual labor, it can more easily happen that someone is so robust that he is not excused because of it, but needs a dispensation (St. Alphonsus, loc. cit.).

Corollary III. One who in Lent performs labor which excuses from fasting is not bound to fast on one or another day on which perhaps he is free from labor, unless it is manifest that this can be done without danger of grave inconvenience. For the most part he will be excused either for restoring or for preserving his strength.

4. Labor not so grave in itself will rather often excuse when some infirmity is added.

[1] *Pastoral-Medizin*, 10th ed., p. 245.

[2] Denzinger-Bannwart, n. 1130.

[3] Denzinger-Bannwart, n. 1131.

1103 **V. Dispensation.** The same persons who can dispense from the law of abstinence can dispense from the law of fasting (n. 1098). Those who can dispense should generally acquiesce readily to the one seeking dispensation, and should remember that even in doubt whether there is a sufficient cause for dispensing, they can dispense.

Note. Canon 1253 establishes: By these canons, that is, by the canons explained by us, nothing is changed concerning particular indults, concerning vows of any physical or moral person, or concerning the constitutions and rules of any approved religion or institute of men or women living in common even without vows.

Part II. On Annual Confession

(St. Alphonsus, *Theologia Moralis*, book VI, nn. 662-674; *Homo Apostolicus*, tract 12, nn. 35-38.)

1104 **I. Existence of the precept.** The precept of annual confession, enacted by the Fourth Lateran Council in 1215,[1] confirmed by the Council of Trent,[2] is stated thus by can. 906: "Every one of the faithful of either sex, after he has reached the years of discretion, that is, the use of reason, is bound faithfully to confess all his sins at least once a year." For the rest, note that the precept of confessing is divine, as will be said in the treatise on the sacrament of Confession, but the precept of annual confession is ecclesiastical.

[1] Chapter *Omnis*.

[2] Session 14, *De Poenitentia*, canon 8.

1105 **II. The subject of the precept** is those who have sinned mortally, and indeed - as is clear from can. 12, compared with can. 906 - even if they are not yet seven years old (St. Alphonsus, III, 270; VI, 686). It has been disputed whether those who have sinned only venially are held by the precept. This must be denied, considering, namely, the tenor of the law, which requires that the faithful "confess all their sins," so that if the aforesaid were held by the law, they would have to declare all venial sins; this cannot be admitted. It is confirmed by the fact that the Council of Trent[1] testifies that "nothing else is required in the Church from penitents than that... they confess those sins by which they remember having mortally offended their Lord and God" (St. Alphonsus, VI, 667).

Corollary. One who committed only venial sins and confessed them has not satisfied the precept for that year, since he was not bound by it. Yet sufficiently probably, by epikeia, he is not bound to confess again, even if during the same year he has committed a mortal sin: namely, the Church is not judged to oblige him to that. This is confirmed by the fact that otherwise he who had confessed only venial sins would be in a worse condition than he who had confessed a mortal sin. The same must be said about him who committed and confessed only doubtfully mortal sins.

[1] Session 14, *De Poenitentia*, chapter 5.

1106 **III. Time of fulfilling the precept.** The precept obliges each year, but not at a determined time. Moreover, some compute the year from 1 January to 31 December;[1] others from Easter to Easter;[2] others say that it suffices that no greater interval of time than twelve months intervene between successive confessions.

In the internal forum the confessor can as it were extend the time of annual confession, and this for a reason which pertains to confession, for example if he judges that absolution must be deferred.

Corollary I. One who, once the useful time has begun, foresees that an obstacle will be placed to fulfilling the law is bound to anticipate (n. 167; St. Alphonsus, *Homo Apostolicus*, tract 12, n. 40).

Corollary II. One who has not satisfied the precept is more probably still bound to confess for the elapsed year, and indeed as soon as possible, because the time affixed seems to be for urging the obligation, not for ending it (St. Alphonsus, VI, 297, 668).

Corollary III. One who has confessed for the elapsed year is more probably bound to confess again in the same year if he again falls into mortal sin. The reason is that by the prior confession he satisfied a

fulfillment affixed per se to the elapsed year, and a man of this sort cannot by epikeia be judged immune from the burden of confessing again (St. Alphonsus, VI, 669).

[1] With the year understood in this way, per se someone who confessed on 1 Jan. 1915 could postpone confession until 31 Dec. 1916.

[2] With the year understood in this way, one who confessed at Easter of the year 1915 could per se defer confession until the Saturday before Easter of the year 1917.

1107 **IV. Mode of fulfilling the precept.** 1. It is open to any one of the faithful to confess his sins to any legitimately approved confessor, even of another rite, whom he prefers. So says can. 905. For the rest, the obligation concerning which Lateran spoke, of confessing to one's own pastor or of asking permission from him so that confession could be made before another, has long since ceased.

St. Thomas had already written in his own time: "Moreover, a priest would sin if he were not ready to grant permission to confess to another, because many are so weak that they would rather die without confession than confess to such a priest. Hence those who are too solicitous to know through confession the consciences of their subjects cast many into a snare of damnation, and consequently themselves also... And therefore, if it seems expedient to superior prelates for promoting the salvation of the people and the honor of God, that they commit to others things which are of jurisdiction, no prejudice is done to inferior prelates, except to those who seek the things that are their own, not the things that are Jesus Christ's, and who preside over the flock not that they may feed it, but that they may be fed by it" (*Supplementum*, q. 8, arts. 4 and 5).

2. One who makes a sacrilegious or voluntarily null confession does not satisfy the precept of confessing sins (can. 907): sacrilegious, as if someone conceals sins; voluntarily null, suppose if a penitent, having confessed sacramentally and having been instructed by the confessor concerning a grave obligation, does not wish to fulfill it, so that he cannot be absolved.

Part III. On Easter Communion

(St. Alphonsus, *Theologia Moralis*, book VI, nn. 295-301; *Homo Apostolicus*, tract 12, nn. 39-42.)

1108 **I. Existence of the precept.** The precept of Easter communion, just like that of annual confession, was enacted by the Fourth Lateran Council[1] in 1215, and confirmed by the Council of Trent.[2] It is presented thus by the Code of Canon Law: "Every one of the faithful of either sex, after he has reached the years of discretion, that is, the use of reason, must once a year, at least at Easter, receive the sacrament of the Eucharist, unless perhaps, by the counsel of his own priest, for some reasonable cause, he has judged that he should abstain for a time from receiving it" (can. 859, § 1). That the prescription obliges under grave sin follows from the nature of the matter, which is grave. Finally, it is clear that the precept is not satisfied by a sacrilegious communion (can. 861); hence proposition 55 condemned by Innocent XI: The precept of annual communion is satisfied by a sacrilegious eating of the Lord.[3]

[1] Chapter *Omnis, De poenitentia et remissione*.

[2] Session 13, canon 9, *De Eucharistia*.

[3] Denzinger-Bannwart, n. 1205.

1109 **II. The subject of the precept** is all who have been baptized and enjoy the use of reason. It is said:

1. **Have been baptized;** both because infidels cannot sacramentally receive Holy Communion, and because they are not subject to the power of the Church.
2. **And enjoy the use of reason,** so that little children and the perpetually insane are excluded, but not children below the seventh year who have reached the years of discretion. Hence the decree *Quam singulari*: The age of discretion, both for confession and for Holy Communion, is that in which a child begins to reason, that is, around the seventh year, whether above or even below. From this time begins the obligation of satisfying each precept, of Confession and Communion.[1] So also the President of the P. C. to the Bishop of Valleyfield.[2]

In doubt whether a child has attained the use of reason, before the completion of the seventh year he is judged not to be in possession of himself; but after the seventh year has been completed, he is presumed to have the use of reason (can. 88, § 3).

Note. The obligation of the precept of receiving communion, which burdens those under puberty, also and especially falls back upon those who ought to have care of them, that is, upon parents, guardians, the confessor, teachers, and the pastor (can. 860).

[1] S. C. de Sacr., 8 Aug. 1910 (*A. A. S.* 1910, p. 577).

[2] 3 Jan. 1918; cf. *Linzer Quartalschrift* 1922, p. 113.

1110 **III. Time of fulfilling the precept.** 1. Easter communion is to be made from Palm Sunday to Low Sunday, unless the time has been legitimately anticipated or extended (can. 859, § 2), or in a particular case deferred. Note, however:

a) With respect to anticipation. Local Ordinaries can, if circumstances of persons and places so require, anticipate the time of Easter communion even for all their faithful, but not before the fourth Sunday of

Lent (can. 859, § 2). Travelers also can use the anticipated time (n. 131). The pastor and confessor lack the faculty of anticipating the time.

b) With respect to extension. Local Ordinaries enjoy the same faculty with respect to extension as with respect to anticipation; yet they cannot extend the time beyond the feast of the Most Holy Trinity (can. 859, § 2). The pastor and confessor are without the said faculty.

c) With respect to deferral. In particular cases, communion can be deferred for a time, for a reasonable cause, according to the judgment of one's own priest (can. 859, § 1). Under the name of one's own priest come the pastor or the confessor (St. Alphonsus, VI, 297). For the rest, the circumstance of time also obliges under grave sin.

Corollary. One who, when the useful time, that is, the time established by law or by the local Ordinary, has not yet begun, foresees that he will be impeded during the aforesaid time is not bound to anticipate. The reason is that he cannot yet satisfy the precept, so that the communion received would not be a fulfillment of the precept (St. Alphonsus, VI, 298; n. 167). But one who, once Easter time has begun, sees that afterwards he will not be able to satisfy the precept, is bound to communicate now (St. Alphonsus, loc. cit.; n. 167).

2. The precept of Easter communion still urges if someone, for whatever reason, has not fulfilled it at the prescribed time (can. 859, § 4). Moreover, the obligation of supplying seems to urge not only until the end of the civil year, as some think, but until the following Easter. The reason is that, as Eugene IV declared in the constitution *Fide digna*,[1] the year within which, before the Code, communion was to be received ran "from Easter to Easter." But the Code repeats the ancient law, and indeed in the same words (St. Alphonsus, VI, 297). Finally, with St. Alphonsus (loc. cit.) against others, we judge that the obligation of supplying must be fulfilled as soon as morally possible. That this is the mind of the legislator seems to have to be deduced from the end of the law, which is that reception of the Holy Eucharist not be deferred longer than is fitting.

[1] 8 July 1440.

1111 **IV. Place of fulfilling the precept.** The faithful should be advised that each satisfy this precept in his own parish, and those who satisfy it in another parish should see to it that their own pastor is informed concerning the fulfilled precept (can. 859, § 3). Notification of one's own pastor is judged to be of counsel rather than of precept.

1112 **V. Counsels.** 1. It is expedient that on Thursday of Holy Week all clerics, even priests who abstain from celebrating Mass on that day, be refreshed with the most holy Body of Christ in the solemn or conventual Mass (can. 862).

2. The faithful should be encouraged to be refreshed frequently, even daily, with the Eucharistic bread according to the norms handed down in the decrees of the Apostolic See; and those assisting at Mass, if rightly disposed, should communicate not only by spiritual affection, but also by sacramental reception of the Most Holy Eucharist (can. 864). More will be said about these things in the treatise on the Most Holy Eucharist.

Part IV. On the Prior Censorship of Books and their Prohibition

(St. Alphonsus, *Theologia Moralis*, book I, Appendix III.)[1]

[1] Cf. Hilgers, *Der Index der verbotenen Bücher*; Wernz, *Ius Decretalium*, III, nn. 96-131; Sleutjes, *De prohibitione et censura librorum*; Vermeersch, *De prohibitione et censura librorum*.

1113 **I.** The Church has the right: 1° of requiring that the faithful not publish writings which she herself, by her judgment, has not previously reviewed; 2° of prohibiting, for a just cause, writings published by anyone from being read or retained. This is clear both from can. 1384, § 1, and from the end of the Church, which was instituted so that she might lead the faithful to God and the heavenly fatherland; hence she has the right and duty of removing dangers to faith and morals from her own. There is added the fact that the Church has continually used the said rights, especially after the invention of the art of printing. Namely, several Supreme Pontiffs established several rules by which that matter would be ordered, until Leo XIII, by the constitution *Officiorum ac Munerum*,[1] thoroughly ordered that subject anew; the new Code of Canon Law, title XXIII, canons 1384-1405, retained and presents that constitution in inverted order and with a few changes.

[1] 25 Jan. 1897.

1114 **II.** The Code, just like the constitution *Officiorum ac Munerum*, distinguishes two things, censorship and prohibition of books. The former regards writings to be published by the faithful, and is the review of a writing to be published by ecclesiastical authority; as such it regards primarily persons, namely the faithful, and secondarily things or books. The latter concerns writings already published by anyone, and therefore directly refers to the things themselves or writings, and forbids reading and other acts about which something will be said later. For the rest, with respect to the interpretation of this title of the Code, observe:

1. There is question only of writings to be published or already published, or rather to be multiplied or already multiplied by type or other means; and indeed, if there is question of prior censorship, to be multiplied for common use, so that they are truly going to be made public, but not for private use, even of many. For the rest, it does not matter whether the work has been multiplied by type or by polygraph or lithography. It suffices - and this is the criterion - that it can be bought by all.

2. The things prescribed under this title concerning books are applied to daily publications, periodicals, and any other published writings, unless something else is clear (can. 1384, § 2). But something else is clear if, for example, the canon expressly distinguishes books from other writings, as happens in can. 1386. Moreover, in the case in which it is clear that there is discussion of books as distinct from other writings, under the name of book comes a literary work multiplied by type, as was explained under 1, and which is of a certain bulk, suppose 160 pages in octavo. Therefore a letter or sermon published separately, small pamphlets, and daily papers or journals are excluded; but not periodical publications, whether taken separately, provided they are of sufficient bulk, or bound into fascicles and thus constituting the required unity.

3. The interpretation of laws concerning censorship and prohibition of books should be made as in other laws, that is, neither broadly as in privileges, nor strictly as in penalties. There are indeed some who think that a broad interpretation is required, so that doubts are to be resolved in favor of the law; but this is clear from no source. Yet observe that many things can be prohibited by natural law which are not prohibited, or are only doubtfully prohibited, by positive law.

With these things premised, we shall speak first about prior censorship, then about prohibition of books, and finally about penal sanctions.

Section I. On the Prior Censorship of Books

1115 **I. Prescripts of the law.** 1. No one may publish without prior ecclesiastical censorship and due permission the books and images soon to be assigned (cf. can. 1385). It is said:

a) **No one,** not even a layman.

b) **May publish,** i.e. may make public, as was explained in n. 1114. Therefore the law does not regard the case in which a book is multiplied only for limited use.

c) **Without prior ecclesiastical censorship,** i.e. without a prior review of the book made by ecclesiastical authority, namely by the competent Ordinary or his delegate. Religious superiors, considered under common law alone, in order to give the permission required by the Code, are not bound themselves to subject books or images to censorship; to what extent they must grant permission will be said under 2.

d) **And due permission.** Besides censorship, permission to publish these things is required. Now, permission to publish the books and images soon to be assigned can be given either by the local Ordinary proper to the author, or by the Ordinary of the place in which the books or images are made public, or by the Ordinary of the place in which they are printed, yet in such a way that, if one of these Ordinaries has denied permission, the author cannot ask it from another Ordinary unless he has informed him of the permission denied by the other (can. 1385, § 2). For religious, the proper local Ordinary is the Ordinary of the place in which the religious house to which the religious belong is situated. Besides, religious must also obtain beforehand the permission of their own major Superior (can. 1385, § 3).

e) **Books and images;** to this category, from can. 1385, § 1, belong:

alpha) Books of the Sacred Scriptures, or annotations and commentaries on them (can. 1385, § 1, 1°).

beta) Books which regard the divine Scriptures, sacred theology, ecclesiastical history, canon law, natural theology, ethics, or other religious and moral disciplines of this sort; books and booklets of prayers, devotion, or religious, moral, ascetical, mystical teaching and instruction, and other things of this sort, although they may seem to conduce to fostering piety; and generally writings in which there is something which is of particular concern for religion and the honesty of morals (can. 1385, § 1, 2°). Since books, booklets, and writings are distinguished, in the first series the word books should be taken in the strict sense; in the second series there is discussion of books and booklets, with separate sheets excluded; in the third series there is discussion of writings of any kind.

With respect to the first series, note that periodical publications can indeed constitute a book according to what was said in n. 1114; but they do not constitute a book which regards, for example, ecclesiastical history or canon law, unless the periodical itself is destined for cultivating ecclesiastical history or canon law.

With respect to writings of any kind, note that it especially depends on the circumstances of time and place whether something contained in them is of particular concern for religion or the honesty of morals.

gamma) Sacred images to be printed in any way whatever, whether they have prayers attached or are published without them (can. 1385, § 1, 3°). To this do not belong statues and paintings; nor images which are multiplied only for the sake of art, not for pious use, and therefore are not called sacred; nor finally, as it seems, medals, since these are said to be struck, not printed.

2. Secular clerics are forbidden without the consent of their Ordinaries, and religious without the permission of their own major Superior and the local Ordinary, to publish even books which treat of profane matters, and to write in daily papers, sheets, or periodical booklets, or to direct the same (can. 1386, § 1). Moreover:

a) The word books should be taken for books strictly so called and for booklets.

b) By local Ordinary is understood the Ordinary proper to the author.

c) One or another minor essay in daily papers, etc., does not seem to be comprehended under the word writing; since, where there is discussion of evil daily papers, etc., the Code speaks more severely by saying: nor may they write anything.

d) Finally, with respect to directing daily papers, sheets, or periodical booklets, the President of the P. C.[1] declared that the canon also prohibits a cleric or religious without due permission from being a member of a commission for editing, or of a supervisory council, or of similar councils connected with political daily papers.

3. Nor may Catholic laymen, a fortiori clerics and religious, write anything in daily papers, sheets, or periodical booklets which are accustomed to attack the Catholic religion or good morals, unless a just and reasonable cause advises it and has been approved by the local Ordinary (can. 1386, § 2), the local Ordinary being taken as was said under 2. These things do not touch so-called advertisements, which are left to be judged according to the general rules of cooperation.

4. Things which in any way pertain to the causes of beatifications and canonizations of Servants of God cannot be published without the permission of the Sacred Congregation of Rites (can. 1387). And this permission suffices; the permission of the local Ordinary is no longer required.

5. All books of indulgences, summaries, booklets, sheets, etc., in which grants of them are contained, are not to be published without the permission of the local Ordinary (can. 1388, § 1). Note that images published in memory of some deceased person, jubilee, etc., are not called sheets of indulgences, even if they contain little prayers endowed with indulgences. But express permission of the Apostolic See is required so that it may be lawful to publish in print, in any language whatever, both an authentic collection of prayers and pious works to which the Apostolic See has attached indulgences, and an index of apostolic indulgences, and a summary of indulgences either previously collected but never approved, or now for the first time to be gathered from diverse grants (can. 1388, § 2). What apostolic indulgences are, see in the treatise on Indulgences.

6. Collections of decrees of the Roman Congregations cannot be republished unless permission has first been obtained and the conditions prescribed by the Moderators of each Congregation have been observed (can. 1389). By Moderator of the Congregation is understood the Cardinal Prefect together with his Congress.

7. In publishing liturgical books and their parts, and likewise litanies approved by the Holy See, their agreement with approved editions must be established from the attestation of the Ordinary of the

place in which they are printed or made public (can. 1390).

8. Versions of the Sacred Scriptures into the vernacular language cannot be printed unless they are approved by the Apostolic See, or unless they are published under the vigilance of Bishops and with annotations drawn especially from the holy Fathers of the Church and from learned and Catholic writers (can. 1391).[2] Paraphrastic versions seem to be equated with versions with annotations. Besides, without annotations there are permitted certain parts of Scripture which are rather often inserted into prayer booklets. Finally, books which, for the benefit of youth, present the history of both Testaments are immune from this special censorship and are subject only to the common censorship.

9. Finally note with respect to all the writings enumerated above: the approval of the original text of some work benefits neither translations of the same into another language nor other editions; wherefore both translations and new editions of an approved work must be fortified by a new approval (can. 1392, § 1). But chapters excerpted from periodicals and published separately are not judged new editions and therefore do not need a new approval (can. 1392, § 2).

[1] 3 Nov. 1928; cf. *Commentarium pro Religiosis* 1929, p. 24.

[2] Versions with annotations must be published, even if they are published under the vigilance of Bishops (P. C., 20 May 1923; *A. A. S.* 1924, p. 115).

1116 **II. The appointment and office of censors.** 1. In all episcopal Curias there should be censors ex officio who examine things to be published (can. 1393, § 1). Moreover, censors should be chosen from either clergy, commended by age, learning, and prudence, who in approving and disapproving doctrines proceed by a middle and safe way (can. 1393, § 3).

2. In carrying out their office, examiners, laying aside all acceptance of persons, should have before their eyes only the dogmas of the Church and the common doctrine of Catholics, which is contained in the decrees of general Councils or the constitutions or prescriptions of the Apostolic See and the consensus of approved doctors (can. 1393, § 2). Therefore the censor must per se judge only about doctrine; this nevertheless does not prevent him from being able, and sometimes according to the circumstances even obliged, if the writing seems inopportune, to signify this to the competent authority.

3. The censor must give his opinion in writing (can. 1393, § 4).

1117 **III. Granting of permission.** 1. If the judgment of the censor is favorable,[1] the Ordinary should grant the power of publishing, to which, however, the censor's judgment should be prefixed, with his name inscribed. Only in extraordinary circumstances, and very rarely, according to the prudent judgment of the Ordinary, can mention of the censor be omitted (can. 1393, § 4). But the name of the censor should never be known to authors before he has issued a favorable judgment (can. 1393, § 5).

2. The permission by which the Ordinary grants the power of publishing should be granted in writing, to be printed at the beginning or end of the book, sheet, or image, with the name of the one granting it expressed, and likewise the place and time of the grant (can. 1394, § 1). If the judgment of the censor was favorable, this judgment, with his name inscribed, together with the granted power of publishing, must indeed be made known to the author, but it is not prescribed that these be printed in the writing to be published. But if this is omitted, it is useful to preserve the judgment and the name of the censor in the archive.

3. If permission seems to have to be denied, the reasons should be indicated to the author asking for it, unless a grave cause demands otherwise (can. 1394, § 2).

Corollary. From what has been said it follows that sometimes, for publishing writings, the permission of the competent Authority suffices, without its being required per se that the things to be published be subjected to censorship.

[1] This is commonly expressed by these words: *Nihil obstat*.

Section II. On the Prohibition of Books

We shall speak first about the prohibition itself, then about prohibited books, and finally about exemption from the prohibiting law and about permission to use prohibited books.

Chapter I. On the Prohibition Itself

1118 **I. Power of prohibiting.** The right and duty of prohibiting books for a just cause belongs:

1. To the supreme ecclesiastical authority for the universal Church (can. 1395, § 1). By supreme ecclesiastical authority are understood the Supreme Pontiff, who uses his right by himself or through the Sacred Congregations, and Ecumenical Councils. Moreover, books condemned by the aforesaid are to be judged prohibited everywhere and into whatever language they are translated (can. 1396).[1]
2. To particular Councils and local Ordinaries for their subjects (can. cited). Under the name of subjects of the local Ordinary do not come exempt religious, about whom something is said specifically (cf. under 3). For the rest, let them beware of scandal arising for the faithful.

From a prohibition made by a particular Council or local Ordinary there is recourse to the Holy See, but not in the suspensive effect (can. 1395, § 2), i.e. one is held by the established prohibition until the Holy See has decided the case in his favor.

3. Also the Abbot of a monastery sui iuris and the supreme Moderator of an exempt clerical religion, with his Chapter or Council, can prohibit books to his subjects for a just cause; and the same, if there is danger in delay, can be done by other major Superiors with their own Council, but under this law, that they refer the matter as soon as possible to the supreme Moderator (can. 1395, § 3).

Corollary I. It belongs to all the faithful, especially clerics and those constituted in ecclesiastical dignity and those who excel in doctrine, to refer books which they have judged pernicious to local Ordinaries or to the Apostolic See; but by a particular title this belongs to Legates of the Holy See, local Ordinaries, and Rectors of Catholic Universities (can. 1397, § 1). Moreover, it is expedient that in the denunciation of evil books not only the title of the book be indicated, but also, as far as possible, the causes be set forth why the book is judged to be prohibited (can. 1397, § 2). Let it be sacred to those to whom the denunciation is referred to keep secret the names of those denouncing (can. 1397, § 3).

Corollary II. Local Ordinaries, by themselves or, where there is need, through suitable priests, should keep watch over books which are published or offered for sale in their own territory (can. 1397, § 4).

Corollary III. Books which require a more subtle examination, or about which the judgment of the supreme authority seems to be required for attaining a salutary effect, Ordinaries should refer to the

judgment of the Apostolic See (can. 1397, § 5).

[1] Orientals also are held by decrees of condemnation of books and daily papers issued by the Sacred Congregation of the Holy Office (S. C. for the Eastern Church, 26 May 1928; *A. A. S.* 1928, p. 195).

1119 **II. Effects of prohibition.** 1. Prohibition regards the whole book, so that even an innocuous part falls under the prohibition. The contrary must be said, as seems sufficiently probable, if the part which gave occasion to the prohibition is separated from the innocuous parts or so expunged that it can no longer be read (St. Alphonsus, VII, 283). The contrary must also be said sufficiently probably if, when a book consists of several volumes, the volumes which were the cause of the prohibition are rendered unfit for use; likewise if an innocent part of a prohibited book is published separately. Nor is it prohibited that innocent parts of a prohibited book be inserted into literary miscellanies.

2. The prohibition of books effects this, that without due permission the book can neither be published, nor read, nor retained, nor sold, nor translated into another language, nor communicated in any way to others (can. 1398, § 1). Besides, a book prohibited in any way whatever cannot again be brought to light unless, after corrections have been made, permission has been given by him who prohibited the book, or by his Superior or successor (can. 1398, § 2). Of these things the following must be explained more:

a) **Publication.** Under the name of publisher here come: 1° the publisher properly so called, i.e. the one who commits a book to the owner of a printing house to be printed and takes care that it be made public; 2° the owner of the printing house, who accepts the book to be printed; 3° the author of the book, not indeed as such, but insofar as he acts as publisher properly so called or hands the book over to the owner of the workshop or to the publisher for this end, that it be published. Typesetters and other workers, however, are not touched by positive law, but are touched by natural law insofar as they cooperate in evil.

b) **Reading.** Formal reading is understood, so that the law does not regard him who merely hears someone reading (St. Alphonsus, VII, 292), or recites from memory things once read, or, ignorant of the language, reads through the book; but it does regard the blind person who perceives the type with his fingers.

Grave matter can exist either by reason of quantity, as if, in one at least morally continuous stretch, you read two or three pages; or by reason of quality, i.e. of danger. In this case even a few lines can suffice, because in them there can be danger of perversion (St. Alphonsus, VI, 284, 292). Nor does there seem to be reason for establishing another norm with respect to daily papers.

c) **Retention.** It is the same whether someone retains his own book or another's; whether he retains the book with himself or with another who does not have the faculty; whether he understands the retained book or not. But he is excused who deposits the book with another who has the faculty, and this with an express agreement that he will not ask for it back except after permission has been obtained; likewise he who retains the book because he awaits either the required permission or an occasion to hand it over to a Superior (St. Alphonsus, VI, 295-298). A bookbinder is indeed counted among those retaining, but he is easily excused if he binds books for one having the faculty of reading them, or if he has another just cause. Likewise the keeper of another's library is not numbered among those retaining, unless he retains prohibited books in his own room or house. Finally, where, as in religious houses, there is a common library, it is permitted that prohibited books be kept in a locked cabinet.

There is grave matter if a book, or, if there is discussion of daily papers, a notable number of sheets, is retained for a notable time, suppose for three or four days (St. Alphonsus, VI, 295). For the rest, if the intention of retaining prohibited writings for a notable time is present from the beginning, one sins gravely at once.

d) **Sale.** Although sale is prohibited, nevertheless a prohibited book can be sold to him who enjoys the faculty of reading it. Specifically, with respect to sellers of books, can. 1404 establishes: Sellers of books are not to sell, lend, or retain books treating professedly of obscene things; other prohibited books they are not to have for sale unless they have obtained due permission from the Apostolic See, nor may they sell them to anyone unless they can prudently judge that they are legitimately sought by the buyer.

e) **Communication.** Any communication is forbidden; hence a prohibited book cannot be exchanged with others, nor read aloud to others, nor transcribed for others.

Chapter II. On Prohibited Books

Books can be prohibited under a twofold aspect, either insofar as they fall under a general rule prohibiting books of some kind, or insofar as they are proscribed by a particular decree. The former are said to be prohibited by the law itself.

Article I. On Books Prohibited by the Law Itself

1120 By force of can. 1399, the following are prohibited by the law itself:

I. Editions of the original text and of ancient Catholic versions of Sacred Scripture, even of the Eastern Church, published by any non-Catholics whatever; and likewise versions of the same into any language, made or published by the same.

II. Books of any writers whatever which defend heresy or schism, or strive in any way to overthrow the very foundations of religion. It is said:

1. **Which defend,** i.e. which maintain by reasons.
2. **The very foundations of religion,** i.e. the foundations either of natural religion or of revealed religion as such, or the truths which must be admitted so that one may be led either to the religious worship of God or to admitting revealed religion. That only the foundations of natural religion are not understood follows from the fact that the legislator, in place of natural religion, which the rule of the Council of Trent has, uses the broader expression religion.

Moreover, the foundations of natural religion are: the existence of a personal God, the spirituality of the soul, free will, etc.

The foundations of revealed religion as such are the motives of credibility, such as the force of proving which is present in miracles, etc.; but not the fundamental truths of faith itself, concerning which, as also concerning others, see under VI.

3. **Strive in any way to overthrow,** whether by arguing or by deriding, whether directly or indirectly.

III. Books which deliberately attack religion or good morals.

1. **Religion,** namely taken generally, whether natural or revealed.

2. **Deliberately,** i.e. intentionally, by design, or with the intention of attacking them. This differs from the expression professedly; in the former, everything depends on the intention of the writer; in the latter, on the subject of the book. But since each condition must be judged from the book itself, it comes to almost the same thing.

IV. Books of any non-Catholics whatever which professedly treat of religion, unless it is clear that nothing against the Catholic faith is contained in them.

1. **Professedly,** i.e. not incidentally but in the whole writing, or in a notable part of it, or throughout.
2. **Of religion;** this word is commonly taken in a broad sense. "Of religion," says St. Alphonsus, "namely of Sacred Scripture, or of scholastic, dogmatic, or moral theology, or the mysteries of faith, of the worship of God or of the Saints, of the rites of the Church, of canons, of spiritual things and the like" (VII, 283).
3. **Against the Catholic faith,** i.e. as we judge it should be interpreted, either against dogmas of faith or against those truths which cannot be called into doubt by Catholics without temerity.

V. If they have been published without observing the prescriptions of the canons: books of Sacred Scripture or annotations and commentaries on them; likewise books and booklets which recount new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext that they are private.

VI. Books which attack or deride any one of the Catholic dogmas; which defend errors proscribed by the Apostolic See; which detract from divine worship; which contend to overthrow ecclesiastical discipline; and which deliberately heap reproaches upon the ecclesiastical hierarchy, or the clerical or religious state.

1. Under the name Apostolic See come also the Congregations (cf. can. 7).
2. **Detract;** namely notably, so that one or another word of detraction does not suffice.
3. **The clerical or religious state;** hence it does not suffice that particular clerics or religious, or even a determined order or congregation, be affected with reproaches, unless one proceeds in such a way that the state also, as such, is attacked and affected with reproaches.

VII. Books which teach or commend superstition of any kind, sorceries, divination, magic, evocation of spirits, and other things of that kind.

VIII. Books which establish as lawful duel, suicide, or divorce; books which, treating of Masonic sects or other societies of the same kind, contend that they are useful and not pernicious to the Church and civil society.

Societies of the same kind are those which are both secret and, whether openly or clandestinely, plot against the Church or legitimate civil powers.

IX. Books which professedly treat, narrate, or teach lascivious or obscene matters. Books are understood which of themselves tend to corruption of morals, not merely scientific or classical books.

X. Editions of liturgical books approved by the Apostolic See in which anything has been changed, so that they do not agree with the authentic editions approved by the Holy See.

XI. Books by which apocryphal indulgences, or indulgences proscribed or revoked by the Holy See, are publicized.

XII. Images printed in any way whatever of Our Lord Jesus Christ, the Blessed Virgin Mary, Angels and Saints, or other Servants of God, alien from the sense and decrees of the Church.

Article II. On Books Prohibited by Particular Decree

1121 What authority can prohibit books, we said in n. 1118. But here there is discussion only of books which are prohibited by the Apostolic See, and so are inserted into what is called the Index of Prohibited Books. Moreover, that Index, revised by Leo XIII and promulgated in the year 1900, was published several times and again in the year 1929. For the rest, note:

I. The Apostolic See prohibits books either by itself, i.e. through Apostolic letters of the Roman Pontiff, or with the help of a Congregation. Moreover, formerly this business belonged to the Congregation of the Index, but now to the Congregation of the Holy Office, which undertook that function after the prior Congregation was suppressed[1] (can. 247, § 4).

II. With respect to the interpretation of particular prohibitions, note:

1. Whenever all the writings of some non-Catholic author are prohibited, only those works are understood which either treat of religion, or have been proscribed by some general or special decree. Whenever all the writings of some Catholic writer are forbidden, only those works are touched by the prohibition which are prohibited by some general or special decree.[2]
2. If the first or earlier volumes of some work are placed in the Index, and the later volumes have followed that decree of prohibition into public light; or if periodical booklets are proscribed which afterwards have been continued again and again; or if all the works of some writer are prohibited, and he has published other works after the decree was issued: in all these cases the volumes or booklets or works made public after the last special decree, although they are not comprehended by that special decree, nevertheless are held suspect, and are deservedly presumed to fall into the prohibition of some decree from the general ones, unless perhaps the author's recovery of sound sense is established.[3]

[1] Motu proprio, 25 March 1917 (*A. A. S.* 1917, p. 167; cf. p. 162).

[2] Cf. Preface of the Index of the year 1924, p. XIV.

[3] Cf. Preface of the Index of the year 1924, pp. XVI-XVII.

Chapter III. On Exemption from the Prohibiting Law, and on Permission to Use Prohibited Books

1122 **I.** Those who in any way devote themselves to theological or biblical studies can use even prohibited texts and versions of Sacred Scripture, provided the said texts and versions have been published faithfully and integrally, and the dogmas of the Catholic faith are not attacked in their prolegomena or annotations (can. 1400). It is said:

1. **Those who... in any way devote themselves,** i.e. both clerics and laymen who not merely incidentally or passingly, but habitually for some time, are especially intent upon those studies.

2. **Dogmas of the Catholic faith;** under this name do not come other truths, however theologically certain.

II. Cardinals of the Holy Roman Church, Bishops, even titular Bishops, and other Ordinaries, with the necessary precautions employed, are not bound by the ecclesiastical prohibition of books (can. 1401).

1123 **III.** With respect to the faculty of granting permission, note: the following can grant it:

1. The Supreme Pontiff, who grants it through the Holy Office (can. 247, § 4). Yet those who have obtained an apostolic faculty of reading and retaining prohibited books cannot therefore read and retain any books whatever proscribed by their Ordinaries, unless in the apostolic indult the power of reading and retaining books condemned by anyone whatever has been expressly given to them (can. 1403, § 1).
2. Ordinaries, namely both local Ordinaries and major Superiors of an exempt clerical religion, are able, with respect to books prohibited by the law itself or by decree of the Apostolic See, to grant permission to their subjects only for individual books and only in urgent cases (can. 1402, § 1). But if they have obtained from the Apostolic See a general faculty of permitting their subjects to retain and read proscribed books, they should grant it only with choice and for a just and reasonable cause (can. 1402, § 2).

Note that local Ordinaries can also grant to subjects permission, but only in particular cases and for a just cause, to use books prohibited by a plenary or provincial Council (can. 82; 291, § 2).

The petition by which permission is sought must be recommended by the local Ordinary if there is question of a secular cleric, and by his own Superior if there is question of a religious. For a layman, generally the recommendation of the confessor suffices.

1124 **IV.** With respect to permission granted, observe:

1. Those who have obtained permission are held by a grave precept to guard prohibited books in such a way that they do not come into the hands of others (can. 1403, § 2).
2. Permission obtained from anyone in no way exempts a person from the prohibition of natural law against reading books which present a proximate spiritual danger to him (can. 1405, § 1).

Add the warning of the Code: Local Ordinaries and others having care of souls should opportunely warn the faithful concerning the danger and harm of reading bad books, especially prohibited books (can. 1405, § 2).

Section III. On Penal Sanctions

1125 **Preliminary Note.** The word books in what follows must be taken strictly, so that small booklets, daily papers, etc., are excluded (n. 1114). The reason is that only those things which are said in book III, title XXIII, of the Code, and not those which are said in book V concerning books, are to be applied also to other publications (can. 1384, § 2). There is added that penal law must be interpreted strictly (can. 19).

I. They incur by the fact itself excommunication reserved to the Apostolic See in a special manner, once the work has been made public: publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism; and likewise those defending the same books, or other books

prohibited by name through apostolic letters, or knowingly reading or retaining them without due permission (can. 2318, § 1). Cf. the treatise on ecclesiastical penalties.

II. Authors and publishers who, without due permission, see to the printing of books of the Sacred Scriptures, or annotations or commentaries on them, incur by the fact itself excommunication reserved to no one (can. 2318, § 2). Cf. the treatise on ecclesiastical penalties.

Scholion. On the Cremation of Bodies

1126 **I. The Prohibition of Cremating Bodies.** The bodies of the faithful departed are to be buried, the cremation of the same being reprobated (can. 1203, § 1). The Church forbids the cremation of the bodies of the faithful, both because the custom of cremating bodies is pagan, and because this custom is promoted as a certain protest against the resurrection and the immortality of the soul. Moreover, that the ecclesiastical prohibition obliges under grave sin is clear both from the fact that the Holy Office[1] calls the cremation of bodies a detestable abuse, and from the penalties established against transgressors; concerning these there will be discussion immediately.

Corollary I. It is unlawful "to give one's name to societies whose purpose is to promote the practice of burning human corpses";[2] likewise "to order that one's own corpse or those of others be burned."[3]

Corollary II. If anyone has in any way ordered that his body be cremated, it is unlawful to carry out this will; and if it has been added to a contract, testament, or any other act whatsoever, it is to be regarded as not added (can. 1203, § 2).

[1] 19 May 1886 (*A. S. S.* vol. 19, p. 46).

[2] Holy Office, 19 May 1886 (*A. S. S.* vol. 19, p. 46).

[3] 27 July 1892.

1127 **II. Cooperation in Cremation.** 1. The Holy Office[1] decreed that in cremation "it is never lawful to cooperate formally by command or counsel. But material cooperation can sometimes be tolerated, provided that: 1° the cremation is not held as a protest-sign of the Masonic sect; 2° there is not contained in it anything which of itself, directly, and uniquely expresses reprobation of Catholic doctrine and approval of the sect; 3° nor is it established that Catholic officials and workers are bound or called to the work in contempt of the Catholic religion. For the rest, although in these cases they are to be left in good faith, they are nevertheless always to be admonished that they not intend to cooperate in cremation."[2]

2. The Apostolic Vicar of Vizagapatam asked the Sacred Congregation de Propaganda Fide: 1° what was to be done there, where the bodies of Christians were sometimes cremated by pagan relatives; whether resistance was to be made, with harm to the propagation of the faith, or whether one should proceed passively, and meanwhile, by instructing the people, promote the abolition of the abuse; 2° what should be done where a dying pagan asks for baptism, but it is foreseen that the body will be cremated. To these things the Sacred Congregation replied:[3] "The question ... was submitted to the judgment of the Supreme Inquisition. The response which I received from that venerable Congregation concerning this matter is contained in the following decree, which I communicate to you, namely: 'You must not approve cremation, but conduct yourself passively, always conferring baptism, and take care that the peoples be instructed according to those things which are set forth by you.'"

[1] 27 July 1892.

[2] Cf. Holy Office, 10 June 1926 (*A. A. S.* 1926, p. 282).

[3] 27 September 1884 (*Collectanea*, n. 1626).

1128 **III. The Established Penalties.** 1. Those who have ordered their body to be given over to cremation are deprived of ecclesiastical burial, unless before death they have given some signs of repentance (can. 1240, 5°). Moreover, "those are to be deprived of ecclesiastical burial who have ordered their body to be given over to cremation and have remained in this will up to death, even if cremation does not follow according to the norm of can. 1203, § 2."[1] Finally, neither is it lawful "to bestow ecclesiastical burial upon the ashes of one cremated, or in any way to preserve them in a blessed cemetery."[2]

2. It is unlawful "publicly to offer the Sacrifice of the Mass for the faithful whose bodies have been cremated not without their own fault ... and likewise to accept foundations for this purpose."[3] Besides, those err who, "from the specious reason that the deceased, while he was living, had been accustomed to perform some act of religion, or that perhaps at the last moment of life he could have retracted his depraved will, judge it lawful to perform for him, in the presence of the corpse, ecclesiastical funeral rites according to custom, although this corpse afterwards, by the deceased's own arrangement, is to be handed over to fire. For since nothing can be certainly established concerning this conjectured retraction, it is plain that no account can be taken of it in the external forum."[4]

[1] Pontifical Commission, 10 November 1925 (*A. A. S.* 1925, p. 583).

[2] Holy Office, 19 June 1926 (*A. A. S.* 1926, p. 282).

[3] Holy Office, 27 July 1892.

[4] Holy Office, 19 June 1926 (*A. A. S.* 1926, p. 282).

1129 **IV. Notes.** 1. If some member of the faithful has ordered that his body be cremated after death, he has indeed sinned gravely. But if he is in good faith, with respect to admonition "the rules handed down by approved authors are to be observed, especially taking account of avoiding scandal."[1]

2. "Whenever there is question of those whose bodies are subjected to cremation not by their own will but by the will of another, the rites and suffrages of the Church can be used both at home and in church, but not as far as the place of cremation, scandal having been removed. Scandal, moreover, can also be removed if it is made known that cremation was not chosen by the will of the deceased himself."[2]

[1] Holy Office, 27 July 1892 (*Collectanea*, n. 1808).

[2] Holy Office, 15 December 1886 (*A. S. S.* vol. 25, p. 63); cf. Sacred Congregation de Propaganda Fide, 26 January 1911.

Dissertation III. On the Precepts or Duties of the States of Life

We shall speak first of the duties of certain secular persons, then of the duties of clerics, and finally of the duties of religious.

Part I. On the Duties of Certain Secular Persons

Section I. On Judges

(St. Thomas, II-II, qq. 60, 67; St. Alphonsus, *Theologia Moralis*, book IV, nn. 192-217; *Homo Apostolicus*, tract 13, nn. 63-67.)

1130 A judge is a public person constituted for this end, that he may pronounce right according to law. He differs from an arbiter, who is a private person to whom litigants commit a dispute to be settled, either according to the rules of law, or according to what is equitable and good, as it is said.

1131 **I.** A judge, in order to carry out his office licitly, must be furnished with due knowledge, i.e. at least moderate knowledge, and even greater knowledge if he is sole judge. Besides, knowledge of the question being treated is required more than knowledge in general. If he lacks due knowledge, he is bound, even by commutative justice, either to resign the office or to acquire the due knowledge for himself; by commutative justice, I say, because otherwise he exposes himself to grave danger of wounding that virtue by his sentences (St. Alphonsus IV, 192, 195).

1132 **II.** A judge, in order to act validly, must be furnished with jurisdiction both over the matter and over the persons whom the trial concerns.

1. With respect to the matter, note these things from the Code of Canon Law: The Church by her proper and exclusive right takes cognizance: 1° of causes which concern spiritual things and things annexed to spiritual things; 2° of the violation of ecclesiastical laws, and of all things in which there is a character of sin, as regards the definition of guilt and the infliction of ecclesiastical penalties (can. 1553, § 1, 1° and 2°) ... In causes in which both the Church and the civil power are equally competent, and which are called causes of the mixed forum, there is place for prevention (can. cited, § 2).
2. With respect to persons, according to can. 120, clerics in all causes, whether contentious or criminal, must be summoned before an ecclesiastical judge, unless something else has been legitimately provided for particular places. If nevertheless they are summoned by one who had no prior permission, they can, by reason of necessity and to avoid greater evils, appear, but with notice having been given to the Superior from whom permission was not obtained; these individual points are explained more fully in n. 1153.

1133 **III.** A judge is bound to treat causes diligently, and, insofar as it can morally be done, to dispatch them promptly; nor can he ever refrain from judgment because of the silence or insufficiency of the law, but he must either draw out the mind of the legislator from the law, by arguing by analogy or from the contrary, or pronounce according to prevailing custom or according to natural equity. In a penal matter indeed there is no difficulty, since there the rule is applied: no penalty without law; and therefore, in silence or obscurity of law, the accused is to be absolved.

1134 **IV.** A judge is bound to judge according to the things alleged and legally proved; and therefore he must rely only on proofs recognized by law, not on private knowledge. For "to judge belongs to the judge insofar as he exercises public power; and therefore in judging he ought to be informed not according to that which he knows as a private person, but according to that which becomes known to him as a public person" (St. Thomas, II-II, q. 67, a. 2). Hence, for example, "one whom the judge by

private knowledge knows to be guilty, if he has been juridically proved innocent, cannot be condemned" (St. Alphonsus IV, 207).

1135 **V.** A judge is bound to give sentence according to the laws, except in a case in which it is established that the law is iniquitous. The reason is that a judge has been constituted for this, that he may execute or apply the laws. With respect to right laws St. Thomas observes: "Even laws which have been rightly established fail in some cases; and if they were observed in those cases, they would be contrary to natural right; and therefore in such matters judgment is not to be made according to the letter of the law, but recourse is to be had to the equity which the legislator intends" (II-II, q. 60, a. 5, ad 2). But recourse to equity today is impossible, at least with respect to the substance of the sentence; in other words, it is not admitted that the judge gives a sentence not according to the law itself. But he can preserve equity in the penalty to be inflicted, and in this respect he enjoys a greater liberty than formerly, insofar as conditional condemnations are sometimes admitted, i.e. in the case of relapse within a determined space of time.

Corollary I. If someone has juridically proved that he has a right, while the judge holds as certain that this is false, the judge seems able to adjudge the right to him. For "the state has power over the goods of its citizens when the public good requires it, as in this case, lest the form of public trials be overturned with scandal to the people" (St. Alphonsus IV, 208). The same, for the same reason, holds if there is question of lesser penalties, for example of imposing a fine, or even of a penalty of imprisonment or chastisement (St. Alphonsus, loc. cit.).

But it is more disputed whether a judge can condemn to mutilation or death someone who has been juridically convicted of a crime, but whom the judge knows by private knowledge to be innocent. According to St. Thomas and others, the judge is bound to condemnation, because, as a public person, he must be led by public knowledge alone. Nor does he sin in giving sentence according to the things alleged, because "he himself does not kill an innocent man, but those who assert him to be guilty" (II-II, q. 64, a. 6, ad 3). They add, however, that the judge must attempt everything in order to free the innocent man. But others teach the contrary, because in their opinion to public right there does not belong the right of depriving someone of a primary right, i.e. of life and integrity, although there does belong, as was said, the right of depriving him of a secondary right, namely by force of high dominion. St. Alphonsus, loc. cit., holds each opinion to be sufficiently founded, so that the judge can, but is not bound to, condemn the accused. For the rest, in many kingdoms there is no difficulty, because according to the laws a judge cannot condemn someone unless he is inwardly convinced of his guilt. Therefore both legal proof and inward conviction are required.[1]

Corollary II. If the cause is doubtful, the judge should proceed thus:

1. In a criminal cause, one must stand for the accused, whether the crime is doubtful or the law imposing the penalty seems obscure.

2. In a civil cause, a distinction must be made between doubt of fact and doubt of law.

a) In doubt of fact, i.e. if the fact on which the plaintiff's right rests - for example, a right of possession, ownership, etc.[2] - is doubtful, his cause falls; for it belongs to the plaintiff to prove the said fact, and to do so by legal proofs.

b) In doubt of law, i.e. if it is doubted whether the fact on which the plaintiff relies juridically founds a right of possession, ownership, etc., the judge cannot follow the opinion less probable to himself; since

this was proscribed by Innocent XI, proposition 2: "I think it probable that a judge can judge according to an opinion even less probable."[3] If the judge is strictly in doubt, he can either induce the parties to a settlement, or, if they refuse and the dispute is about possession, compel them to contend about ownership, or, if the litigation is about ownership, he can choose the party he prefers.

Corollary III. A judge, at least considering present-day morals, cannot use the means of hypnotism for investigating the truth - the means of hypnotism, I say, which inflicts force on the accused; nor can a confession so extorted be held as certainly true, although sometimes it can provide elements for further proving the matter.

[1] Thus, for example, the Dutch Code of Criminal Procedure, arts. 216, 391, 395.

[2] A twofold cause is distinguished, possessory and petitory. The former is when the plaintiff asks for possession of a thing; the latter, when he asks for ownership of the thing or another right.

[3] Denzinger-Bannwart, n. 1152.

1136 **VI.** A judge, in giving sentence, should be free from acceptance of persons; nor must he ever be bent by gifts. Indeed the acceptance of gifts must be altogether reprobated according to these words: "You shall not accept a person, nor gifts; because gifts blind the eyes of the wise, and change the words of the just."[1]

Corollary. One who has accepted gifts: 1° if indeed from a liberal donation, is not bound to restitution before the sentence of a judge; 2° if by way of a price for giving sentence, is bound to restitution if he accepted it for giving a just sentence, for to this he is already obliged by strict justice; if he accepted it for giving an unjust sentence, he is bound to abstain from a sentence of this kind and to restore the gift. After an unjust sentence has been given, he can retain the gift accepted, as was said concerning a contract in a shameful matter (St. Alphonsus IV, 216, 196).

[1] Deut. XVI, 19.

1137 **VII.** A judge who has failed in his office, whether by omitting the acquisition of due knowledge, or by treating causes negligently, or by delaying their treatment without a just cause, or by giving an unjust sentence, is bound to restore the damages following from his manner of acting, if he foresaw them at least confusedly and was gravely culpable. The reason is that by strict justice he is bound to perform his office rightly (St. Alphonsus IV, 195, 196, 214). But if the judge "has erred from human fragility, he is not obliged in conscience to restitution from his own goods ... since he did not commit theological fault" (St. Alphonsus IV, 214); if nevertheless afterwards "the judge recognizes an error committed by himself (even without grave fault) to the prejudice of a litigant, he is bound, if he can without infamy, to impede the error, for example by secretly warning the injured party to look after himself by appeal or otherwise" (St. Alphonsus IV, 195).

Whether he is bound to restore to the treasury a monetary fine which he has unlawfully not imposed on someone, see p. 657.

Finally I note with St. Alphonsus: "A judge is bound under grave sin to grant the accused sufficient time for confession ...; he is also bound to grant time for receiving Communion (unless grave harm is feared), since the accused is then at the article of death, in which the precept of Communion obliges by divine law ... But if the accused refuses to confess, after exhortation he can licitly be killed by the executioner, because then his damnation is attributed to his own fault" (III, 379).

Section II. On Jurors

1138 **I.** Jurors are called citizens constituted for giving judgment concerning the guilt of some accused person, especially concerning a more serious crime. When this judgment has been given by the jurors, ordinarily judges properly so called (that is, if the jurors have declared someone culpable) determine the penalty according to law. They are called jurors from the oath which they must swear concerning faithfully carrying out their office.

II. The institution of jurors, though not to be condemned in itself, is nevertheless less recommended; both because they are not bound to bring forward the reason for the judgment given by them, and because generally they are more easily moved than constituted judges by political passions, gifts, etc.

III. Many of the things which have been said concerning judges apply to jurors. I observe especially: Jurors are bound to give judgment according to inward persuasion. Thus the law establishes in regions in which jurors are used. Therefore they are bound to absolve the accused of whose crime and guilt they are not inwardly convinced, even if according to the things alleged and proved the accused appears guilty. It is disputed, note, whether they can declare guilty one whom by private judgment they hold as guilty, but who was not convicted in court. Some deny it, because the law which orders them to judge according to inward persuasion certainly understands this of inward persuasion drawn from the things brought forward and proved. Others affirm it, because such a law in its obvious sense understands inward conviction obtained in any way whatever.

[1] Cf. Groeken, *Lijkverbranding*.

Section III. On the Accuser and Denunciator

(St. Thomas, II-II, q. 68; St. Alphonsus, *Theologia Moralis*, book IV, nn. 234-254; *Homo Apostolicus*, tract 13, nn. 73-78.)

1139 **I. Judicial Accusation.** 1. Judicial accusation is the denunciation of someone's crime to a competent judge, for the sake of public vindication, with the burden of proving the crime. It is said:

a) **The denunciation of a crime;** and thus the accuser is distinguished from the actor or petitioner, who moves a lawsuit against another in a civil matter. The one who is accused, or against whom a lawsuit is moved in a civil matter, is called the defendant.

b) **With the burden of proving the crime;** and thus the accuser is distinguished from the denunciator, and accusation from denunciation; for the latter does not carry with it the burden of proving (St. Alphonsus IV, 235).

2. Judicial accusation for the most part belongs to those officials to whom this has been committed by law; primarily indeed to those who are customarily called the public ministry (St. Alphonsus IV, 236). To whom besides them it has been committed, see in the law of one's country.

1140 **II. Denunciation.** 1. Denunciation is the denunciation of a crime to officials deputed for this, without the burden of proving it.

2. The following are bound to denunciation:

a) By office, those who have been expressly deputed to this by law, and generally all who, while carrying out a public office, detect some delict in the exercise of their office.

b) By precept of law, in many kingdoms even private persons who perhaps have been witnesses of certain graver crimes are obliged.

c) By natural law, everyone is obliged who knows some crime whose denunciation is necessary for the common good or for averting grave harm from a private person (St. Alphonsus IV, 236).

3. From the obligation of denouncing, if indeed there is question of the common good, a private cause does not excuse; otherwise, a proportionately grave cause excuses. A graver cause is required for those who are bound by office than for those who are bound only by law or by natural right. The principal causes are notable harm to be feared for oneself or one's own from the denunciation, and connection with the delinquent himself. Finally, an entrusted secret not only excuses from the obligation, but even prohibits one from denouncing someone. Except if, from omitted denunciation, grave harm threatens either the common good - in which case there is an obligation not to preserve the secret - or the one accepting the secret (St. Alphonsus IV, 236); if from omitted denunciation grave harm threatens a third person, the things said on p. 720 hold.
4. One who has falsely denounced (or accused) is bound, if he was gravely culpable, to restitution of the damages that followed. Besides, he is obliged to retraction, even with equal harm to himself, but not with much greater harm. If he was not gravely culpable, he is not bound to restore damages; nevertheless he ought to retract the testimony, if this can be done conveniently enough (n. 994).

Section IV. On Advocates

(St. Thomas, II-II, q. 71; St. Alphonsus, *Theologia Moralis*, book IV, nn. 218-226; *Homo Apostolicus*, tract 13, nn. 69-72.)

1141 Under the name of advocates come: 1° those who in a civil or commercial matter argue the client's cause before a judge, and in a criminal matter defend the accused; 2° those who before a tribunal act in place of the litigating parties, by petitioning, concluding, etc., for them; the latter are more often called procurators. Therefore:

I. An advocate ought, by justice, to have or to acquire for himself knowledge congruent with the cause which he undertakes.

II. He can undertake causes as follows:

1. With respect to criminal causes, he can defend the accused even if he is certain concerning the crime committed, for "the accused is not bound to the penalty unless convicted; therefore he can by himself or by another avert it until he is convicted" (St. Alphonsus IV, 220). Nevertheless it is lawful to use only just means; therefore he cannot defend depraved theories, for example determinism, by which all freedom and guilt would be taken away. He can, however, in individual cases gather together whatever could lessen responsibility or even show irresponsibility.
2. As regards civil causes:

a) He can also undertake a doubtful cause, even though perhaps less probable, provided there is a prudent hope of winning, and the client is warned about the doubt (St. Alphonsus IV, 222). "The reason: both because an opinion less probable can in the course of time become more probable, and because many times an opinion which appears less probable to the advocate seems more probable to the judge himself" (St. Alphonsus IV, 222).

b) He cannot undertake a manifestly unjust cause. If, in the course of the lawsuit, he comes to know that the cause is certainly unjust, he is bound to abandon it. If he does not warn the client about the injustice of the cause, he sins against justice toward him; if he has warned him and goes on, he sins by furnishing him counsel and recourse (St. Thomas, II-II, q. 71, a. 3; St. Alphonsus IV, 220).

III. An advocate is bound by justice to treat diligently the cause undertaken; not to abandon it against the will of the client, except in the case just assigned under b); nor to draw it out longer, so that he may receive a greater fee. Finally, he should not demand a richer honorarium than law or custom, with account taken of the labor, permits. If he excels in skill, he can ask what the most skilled would ask in circumstances of this kind; for the service furnished can be said to be worth so much, and the client is to be said to have consented to such a price. If the client departs from the lawsuit for a just cause, the advocate does not have a right except to the price of the labor performed. If without sufficient reason he abandons it, the advocate can demand the whole fee about which they agreed; but commonly the price is not customarily established from the beginning for the whole lawsuit (St. Alphonsus IV, 225; *Homo Apostolicus*, tract 13, n. 70).

To what extent he is sometimes bound to defend a cause gratuitously was said in the treatise on charity (n. 535; cf. St. Thomas, II-II, q. 71, a. 1 and 4, ad 1).

IV. An advocate who has failed in his office is bound to restore the damages that followed, if he was gravely culpable and insofar as he foresaw them at least confusedly.

Here note well that an advocate sometimes sins against justice with respect to the adversary of his client, for example: 1° if he undertakes a manifestly unjust cause; in which case, if he wins, he is bound to restore all damages to the defeated party (St. Thomas, II-II, q. 71, a. 3; St. Alphonsus IV, 223); if he is defeated, he ought at least to restore the expenses which the victor cannot recover from the party; 2° if he produces false writing or false witnesses, or adulterates harmful instruments. One who would bring forward truthful instruments, yet drawn up either to supply ones that had been lost or to pursue a certain right, would not act against commutative justice, although he would sin;[1] 3° if, convinced of the injustice of the cause undertaken by him, he drives the adversary to a settlement (St. Alphonsus IV, 226).

[1] Sweens, n. 610.

Scholion I. On the Accused

(St. Thomas, II-II, q. 69; St. Alphonsus, *Theologia Moralis*, book IV, nn. 272-290; *Homo Apostolicus*, tract 13, nn. 82-87.)

The discussion is only about the accused in criminal matters.

1142 **I.** The accused, according to present-day law,[1] is not bound to confess the crime. Therefore, even if he is questioned about it by the judge, he can answer, with a broad mental restriction, that he did not commit it, understanding: in such a way that I am bound to confess it. Likewise, using the same restriction, he can deny those things which could harm him, i.e. could lead to proof of the crime, provided he does not inflict injury on others. Nor is an oath now demanded from the accused; and if it were demanded, he could confirm by oath the broad mental restriction used by him, or to be used in the course of the trial. The things said do not prevent the accused, if the common good requires it, from being able and obliged to betray his associates (St. Alphonsus IV, 278).

According to ancient law, these things held: The accused, legitimately questioned, is bound to confess the truth; for it belongs "to the debt of justice that someone obey his superior in those matters to which the right of prelation extends. But the judge ... is superior with respect to the one who is judged; and therefore from debt the accused is bound to set forth to the judge the truth which he demands from him according to the form of law" (St. Thomas, II-II, q. 69, a. 1; St. Alphonsus IV, 274). Moreover, in order that he be legitimately questioned, at least probable indications of the crime must have preceded. The accused is excused: 1° if the judge "indeed questions the accused juridically, but only from a false presumption of delict" (St. Alphonsus IV, 273), as if someone is questioned about a homicide which he committed because of just defense of himself; 2° quite probably, if otherwise a most grave penalty threatens him (St. Alphonsus IV, 274).

[1] Cf. *Staatslexikon*, word *Strafprocess*, V, 604.

1143 **II.** The accused can break the force of testimonies brought forth against him by disclosing the crimes of the witnesses, provided the revelation of the crimes is both necessary and efficacious for his defense. But "to oppose a false crime to a witness or accuser for defending one's own cause is always unlawful and a grave fault" (St. Alphonsus IV, 277).

1144 **III.** The accused can decline the penalty as follows:

1. If he is innocent, he can flee both before and after sentence; he can also resist positively, for example by driving away the officers, frightening them, wrenching himself from their hands, indeed even by going further. The reason is that in the case the execution of the sentence involves an unjust aggression. Nevertheless, accidentally, positive resistance, especially graver resistance, is for the most part unlawful, because commonly it is not only useless, but also causes greater evils and gives occasion for scandal (St. Thomas, II-II, q. 69, a. 4; St. Alphonsus IV, 279).
2. If he is guilty, he can flee: 1° before he has been condemned; 2° after he has been condemned, if prison has been assigned not for punishment but for custody - that is, until the execution of the sentence. "The reason: because the sentence does not condemn the accused to not fleeing, but only to not resisting the ministers when they execute the sentence" (St. Alphonsus IV, 280, question 2; St. Thomas, II-II, q. 69, a. 4, ad 2). "But if prison has already by the sentence been assigned as a punishment, even perpetually, then one must deny that it is lawful for the accused to flee from prison; because in the execution of a just sentence the accused is certainly bound to obey ... Some except, however, if in prison necessities for sustenance are not given to him ..., or if the prison were excessively grievous, because it seems beyond human strength that someone should be obliged not to free himself, when he can do so without force and resistance, from a very hard penalty" (St. Alphonsus, loc. cit.; cf. St. Thomas, II-II, q. 69, a. 4, ad 2).

Besides, one who can flee can also remove impediments which stand in the way of flight, for example by breaking the prison. But if damage comes to the guards from this, that can be permitted. He can also deceive the guard by artifice, or make him drunk or put him to sleep when he is not paying attention. But he cannot corrupt him if he has been justly condemned, since there would be formal cooperation in the guard's sin (St. Alphonsus IV, 282).

1145 **IV.** The accused, as is clear, is not bound per se by an unjust sentence, whether because of a neglected order of law or because of the intrinsic character of the cause. Accidentally, commonly it must be observed, namely lest public order be disturbed and scandals arise (St. Alphonsus IV, 215).

In doubt concerning the justice of the sentence, it is to be presumed just; nevertheless it is lawful to appeal to a higher tribunal.

Note. With respect to ecclesiastical law, observe these things:

1° The accused, legitimately summoned, ought to respond (can. 1646); to respond, i.e. as juridical interpretation has it, is to present himself before the judge.

2° The accused is not bound to confess his own crime, according to these things: Parties are bound to respond to a judge legitimately questioning them and to confess the truth, unless there is question of a delict committed by themselves (can. 1743, § 1).

Scholion II. On Witnesses

(St. Thomas, II-II, q. 70; St. Alphonsus, *Theologia Moralis*, book IV, nn. 255-271; *Homo Apostolicus*, tract 13, nn. 79-81.)

1146 **I. The Obligation of Testifying.** The following are bound to testify and to confess the truth:

1. By charity one is bound if his testimony "is necessary for averting a great evil of a neighbor or of the state" (St. Alphonsus IV, 264).
2. By office, and by justice, the same persons are bound who by reason of office are bound to denunciation (n. 1140).
3. By precept, one is bound who is legitimately cited and questioned. One who flees when legitimately cited, or who does not confess the truth when legitimately questioned, sins, but does not wound commutative justice, and therefore is not bound to restore to him in whose favor he could have testified (St. Alphonsus IV, 264).

To what extent a cleric can be cited and questioned by a civil judge, see n. 1153.

1147 **II. Excusing Causes.** A witness is excused from testifying and manifesting the truth (or even, according to circumstances, is bound to abstain from them):

1. If he has known the matter under sacramental secrecy, or has acquired knowledge of the matter for himself through injury, for example by opening letters. If he has received knowledge of the matter under an entrusted secret, the things said concerning denunciation hold (n. 1140; St. Alphonsus IV, 268). For the rest, the law itself also commonly exempts doctors, advocates, priests, etc., from testifying with respect to those things which have been manifested to them in view of their office.
2. "If from the testimony notable harm threatens you or yours, unless nevertheless public harm or another's private harm prevails" (St. Alphonsus, loc. cit.).
3. "If you received it from men not sufficiently worthy of faith; for then you can conduct yourself as if you knew nothing" (St. Alphonsus, loc. cit.).
4. If someone is brought before the judge without probable indications of a crime. For injury is done to such an accused person (cf. St. Thomas, II-II, q. 69, a. 2; St. Alphonsus, loc. cit.), which the witnesses should not increase by testifying against him; but this excusing cause will scarcely obtain.
5. If the accused is probably immune from grave theological fault (St. Alphonsus, loc. cit.); in which case the witness ought to respond that he knows nothing, or even that the accused did not commit

the crime. If, however, there is question of a civil cause, the witness ought to confess the fact, even if only juridical fault was present.

6. A spouse and near blood relatives are often excused because of grave inconvenience; indeed civil laws generally exempt them.

Corollary I. One who is exempted or excused can also licitly use a restriction that is not purely mental. Moreover, the more obvious restriction is that by which the witness, when questioned, says that he knows nothing, understanding: which I am bound to manifest. And this holds even if he has sworn an oath to tell the whole truth; nevertheless he should proceed prudently.

Corollary II. A witness who is bound to testify and to confess the truth sins by merely concealing the truth: 1° against a just precept, which is grave from its kind; 2° against religion, if he swore that he would tell the whole truth. If, after this oath has been sworn, he lies or uses a purely mental restriction, he is guilty of perjury; if he is silent or uses a broad mental restriction, he is not indeed guilty of perjury, but he wounds the oath insofar as it is promissory; this is a sin grave from its kind (n. 689); 3° against commutative justice, if he is bound by reason of office; otherwise not, if he is bound only either by charity or by reason of the precept of the judge (St. Alphonsus IV, 270).

Corollary III. A witness "who knowingly has testified falsely, through which he was an efficacious cause of harm to another, is bound to the prevention or reparation of all damages which are caused. Likewise he is bound to retract with equal harm to himself, and even with danger of life, if the accused is endangered in it and he is thought by retracting to be about to accomplish something" (St. Alphonsus IV, 269). If he was not gravely culpable, he is not bound to restitution; nevertheless he ought to retract the testimony, if this can be done conveniently enough (St. Alphonsus, loc. cit.; n. 994).

III. With respect to ecclesiastical causes to be treated before an ecclesiastical judge, observe these things:

1. A witness duly cited ought to appear or make known to the judge the cause of his absence (can. 1765, § 1).

2. A disobedient witness, namely one who without legitimate cause does not appear, or even if he appears refuses to respond or to take an oath or to sign the attestation, can be coerced by the judge with suitable penalties and moreover fined in proportion to the harm which comes to the parties from his disobedience (can. 1765, § 2).

3. Witnesses must respond to a judge legitimately questioning them and confess the truth (can. 1755, § 1).

4. From the obligation assigned under 3 are exempted: 1° pastors and other priests as regards those things which have been manifested to them by reason of the sacred ministry outside sacramental confession; magistrates of states, doctors, midwives, advocates, notaries, and others who are bound to secrecy of office even by reason of counsel furnished, as regards matters subject to this secret; 2° those who fear that from their testimony infamy, dangerous vexations, or other very grave evils will come upon themselves or upon blood relatives or relatives by affinity in any degree of the direct line and in the first degree of the collateral line (can. 1755, § 2).

Section V. On Physicians and Notaries

1148 (St. Alphonsus, *Theologia Moralis*, book IV, nn. 291, 230 and 231.)

I. A physician is bound to possess sufficient knowledge, and in the exercise of his office to apply diligence proportionate to the gravity of the illness or operation. Hence he ought to furnish the sick person the remedy which seems safer to him. "But if there is no hope concerning the health of the sick person, nor is there present any remedy except a doubtful one, namely one concerning which it is doubted whether it will be useful or harmful, they can, indeed they ought to, apply it. The reason is that thus the business of the sick person is managed usefully; and if death follows, it will not be imputed to them, since otherwise he has no hope of life" (St. Alphonsus IV, 291).

Corollary. It is unlawful to use a means solely for the sake of experiment, except in the case in which the means to be applied is certainly not going to be harmful, and the consent of the sick person is added.

II. A physician should abstain from useless visits and remedies. Observe, however, that those are not plainly useless if they conduce in some way to consoling the sick person or alleviating his pains; nevertheless he should take care that the expenses do not become greater than is just.

III. He can ask the honorarium which, considering the labor and condition of the sick person, is customary to be asked in those regions. If he excels in skill, he can ask what the most skilled are accustomed to ask in circumstances of this kind. The reason is that the service furnished is deservedly said to be worth so much, and that those whose interest it is consent to an honorarium of this kind.

IV. Finally, the physician is also bound, either by himself or through another, to warn the sick person in a timely way concerning danger to life, so that he can provide for the salvation of his soul, receive the sacraments rightly, and arrange temporal affairs. If, however, he is morally certain either that the sick person is in the state of grace, or that the warning will not be useful, at least a grave obligation under this heading is not had (St. Alphonsus VI, 664).

I add these grave words of St. Alphonsus: "O how miserable it is to see so many sick persons (and especially you who are of distinguished dignity) reduced to the final straits of death, so that they may prepare the accounts of life soon to be rendered to God, at a time when they are almost lifeless, when they can scarcely then form words, scarcely hear others, scarcely conceive the state of their own conscience and sorrow for their sins! And all this happens through the fault of those physicians who, lest they displease the sick or their relatives, do not make them certain concerning the danger; indeed they go on flattering them until they themselves altogether despair of life" (*Praxis Confessarii*, n. 57).

1149 **V.** With respect to notaries it suffices to treat the question insofar as a notary is bound to restitution toward the treasury if, with the parties consenting explicitly or implicitly, he writes down a price of the thing lower than the true one for this end, that the tax to be paid may be diminished.

Response 1. If there is a custom of writing down a lesser value, and the notary follows that custom, he is not bound to restitution, nor does he sin; indeed, by oath he can affirm that all things have been duly declared.

Response 2. If the notary goes beyond the custom, and deprives the treasury of a tax to which the client is not obliged, likewise he is not bound to restitution; nor does he sin by writing down the lesser

value, because he can use a broad mental restriction: Such is the value, insofar as it is subject to a just tax.

Response 3. If the notary goes beyond the custom, and deprives the treasury of a tax (or part of a tax) to which the client is bound, he is obliged to restitution, because by an unjust means, namely a lie, he impedes the state from a good legitimately to be obtained (n. 996). Note, however, that the obligation of restoring belongs primarily to those in whose name the notary acted.

Part II. On the Duties of Clerics

Section I. Preliminary Notes

1150 **I. The Notion of Clerics.** Those who have been dedicated to the divine ministries by at least first tonsure are called clerics (can. 108, § 1). Besides, note:

1. Clerics are not all in the same grade, but among them there is a sacred hierarchy in which some are subordinated to others (can. 108, § 2). With these things considered, the sacred or ecclesiastical hierarchy can be defined: the body of clerics who, according to various grades, enjoy sacred power in the Church. It is distinguished into the hierarchy of Order and the hierarchy of jurisdiction, according as sacred power is concerned with the ministry of divine worship (for example, the dispensation of the sacraments, etc.) or with the governance of the faithful (cf. can. 948).
2. By divine institution the sacred hierarchy, by reason of order, consists of Bishops, presbyters, and ministers; by reason of jurisdiction, of the supreme pontificate and the subordinate episcopate; but by the institution of the Church other grades have also been added (can. 108, § 3).
3. Those who are enrolled in the ecclesiastical hierarchy are not chosen by the consent or calling of the people or of secular power; but in the grades of the power of order they are constituted by sacred ordination; in the supreme pontificate, by divine law itself, once the condition of legitimate election and acceptance of the same has been fulfilled; in the remaining grades of jurisdiction, by canonical mission (can. 109). This mission is called canonical because it is required precisely for having canonical, i.e. ecclesiastical, jurisdiction, just as civil mission is required for having civil jurisdiction. It is said: **in the remaining grades of jurisdiction;** hence, although the episcopate together with the papacy was instituted by Christ, individual Bishops nevertheless also need canonical mission on the part of the Roman Pontiff (cf. can. 329), not only so that territory may authoritatively be marked out for them and subjects assigned to them, as all concede, but also - according to the opinion today at least most common and certain - so that they may directly acquire their jurisdiction.

1151 **II. The Enrollment of Clerics in Some Diocese or Religion.** Every cleric ought to be enrolled in some diocese or religion, so that wandering clerics are in no way admitted (can. 111, § 1).

1. **Enrollment in some diocese.** By reception of first tonsure a cleric is enrolled, or, as they say, incardinated, in the diocese for whose service he was promoted (can. 111, § 2). Moreover, in order that a cleric already enrolled in some diocese may be incardinated into another diocese, he must obtain: 1° from his own Ordinary letters of perpetual and absolute excardination, signed by the same; 2° from the Ordinary of the other diocese letters, likewise perpetual and absolute, of incardination, signed by the same (can. 112). Besides, there is excardination and incardination if the cleric has obtained a residential benefice from the Ordinary of the other diocese with the consent of his own Ordinary given in writing, or with permission granted by the same in writing to depart from the diocese in perpetuity (can. 114).
2. **Enrollment in some religion.** One professed with perpetual vows, whether solemn or simple, loses by the law itself the proper diocese which he had in the world (can. 585). If a religious constituted in sacred orders has lost his proper diocese through perpetual profession, and afterwards departs from the religion, he cannot exercise sacred orders outside the religion until he

has found a Bishop benevolently receiving him, or the Apostolic See has otherwise provided. But if some Bishop has received such a religious, by that very fact he is incardinated in his diocese (can. 641).

1152 **III. The Rights of Clerics.** Rights here are called those things which are founded in the very nature of the clerical state. Therefore:

1. Clerics alone can obtain ecclesiastical power, whether of order or of jurisdiction (can. 118).
2. All the faithful owe reverence to clerics, according to their diverse grades and offices, and they stain themselves with the delict of sacrilege if at any time they have inflicted a real injury on clerics (can. 119; cf. n. 614).

1153 **IV. The Privileges of Clerics.** Privileges are those things which have been added to rights by positive law. They are: the privilege of the canon, the privilege of the forum, the privilege of exemption, and the privilege of competency.

1. The privilege of the canon is that by which a cleric is protected against every real or bodily injury by the penalties established against those who commit them. It is called the privilege of the canon because it was contained in the celebrated canon of Lateran Council II (1139).
2. The privilege of the forum is that by which a cleric is exempted from lay jurisdiction according to the norm of can. 120, soon to be cited. It is called the privilege of the forum, for forum (from *fero* or *foris*) according to the first imposition of the name signifies a public place to which goods for sale are brought; here, however, it chiefly signifies the place in which lawsuits and trials are carried on. Therefore, according to can. 120, clerics in all causes, whether contentious or criminal, must be summoned before an ecclesiastical judge, unless something else has been legitimately provided for particular places, or special permission has been obtained to summon them before a lay judge. If nevertheless they are summoned by one who had no prior permission, they can, by reason of necessity and to avoid greater evils, appear, but with notice having been given to the Superior from whom permission was not obtained. It is said:

a) **In all causes;** whether contentious or criminal, whether civil or ecclesiastical. Moreover, exemption from the jurisdiction of secular judges with respect to ecclesiastical causes is rather from native right than from privilege, even taken broadly; with respect to civil causes, exemption is from privilege. Nevertheless that privilege does not prevent clerics from generally being subject to civil laws; but if a cause is instituted, for example if there is question of punishing a transgression of civil law, the matter is to be referred to the ecclesiastical judge. Hence it is also said that clerics are subject to civil laws with respect to the directive part, but not with respect to the coercive part.

b) **Must be summoned,** i.e. cited as defendants, not as witnesses.

c) **Unless something else has been legitimately provided for particular places.** Thus, for example, in Austria, Bavaria, and Colombia, by concordats, the privilege of the forum has partly been derogated. Whether this privilege can also be derogated by way of custom, at least centenary custom, is disputed among canonists.

d) **Or special permission has been obtained to summon them before a lay judge.** Moreover, Cardinal Fathers, Legates of the Apostolic See, Bishops even titular, Abbots or Prelates nullius, supreme Superiors of religions of pontifical right, and major Officials of the Roman Curia, on account

of affairs pertaining to their office, cannot be summoned before a lay judge without permission of the Apostolic See; others enjoying the privilege of the forum cannot be summoned without permission of the Ordinary of the place in which the cause is conducted. Yet the Ordinary should not deny this license without a just and grave cause, especially when the plaintiff is a layman, and most of all when he has fruitlessly given effort to settling the controversies between the parties (can. 120, § 2).

3. **The privilege of exemption.**[1] All clerics are immune from military service, from offices and public civil duties alien to the clerical state (can. 121). Duties and offices are understood: 1° those which are repugnant to the dignity of the clerical state, such as sordid duties; 2° those which can be composed with difficulty with the duties of the clerical state, such as offices for preserving public security, for keeping watches, for averting fires, and similar things.

4. **The privilege of competency.** It is the privilege by which a cleric burdened with debt and called into court by creditors cannot be deprived of those goods which are required for his honorable support; according to these words of can. 122: Clerics who are compelled to satisfy creditors are to have safe those things which, by the prudent judgment of the ecclesiastical judge, are necessary for their honorable support, while nevertheless their obligation of satisfying the creditors as soon as possible remains firm.

A cleric cannot renounce the privileges mentioned; but he loses them if he is reduced to the lay state,[2] or is punished with perpetual privation of the right of wearing ecclesiastical habit, according to the norm of can. 213, § 1 and can. 2304. But he recovers them if this penalty is remitted or he himself is again admitted among clerics (can. 123).

[1] Cf. Damen, *Vrijdom der Geestelijken van krijgsdienst*.

[2] Cf. scholion.

Scholion. On the Reduction of a Cleric to the Lay State

1154 **I. Modes of Reduction.** 1. A minor cleric returns to the lay state:

a) By the fact itself: 1° if he has entered marriage, except in the case in which the marriage was null because of force or fear inflicted on him (can. 132, § 2); 2° if by his own authority and without legitimate cause he has put aside ecclesiastical habit and tonsure, and, when warned by the Ordinary, has not amended himself within a month (can. 136, § 3); 3° if of his own accord he has given his name to military service, except in the case in which he did this with the permission of the Ordinary, so that he might become free more quickly (can. 141).

b) By his own will, after the local Ordinary has been forewarned (can. 211, § 2).

c) By decree of the Ordinary issued for a just cause, namely if the Ordinary, all things having been weighed, has prudently judged that the cleric cannot, with the decorum of the clerical state, be promoted to sacred orders (can. 211, § 2).

2. A major cleric is reduced to the lay state:

a) By rescript of the Holy See (can. 211, § 1).

b) By decree or sentence according to the norm of can. 214 (can. 211, § 1); this can. 214 establishes: A cleric who, compelled by grave fear, received a sacred order and afterwards, once the fear was removed, did not ratify that same ordination at least tacitly by the exercise of the order, while nevertheless

willing by such an act to subject himself to clerical obligations, is to be reduced to the lay state by sentence of the judge, after the coercion and the lack of ratification have been legitimately proved, without any obligations of celibacy and canonical hours.

c) By the penalty of degradation (can. 211, § 1).

1155 **II. Effects of Reduction.** All who have legitimately been reduced from the clerical state to the lay state, or have returned to it, by that very fact lose offices, benefices, clerical rights and privileges, and are forbidden to go about in ecclesiastical habit and to wear tonsure (can. 213, § 1); nevertheless a major cleric is held by the obligation of celibacy, except in the case of which there was discussion under 2, b.

1156 **III. Cessation of Reduction.** 1. For one constituted in minor orders who has returned to the lay state for any cause whatever to be admitted again among clerics, permission of the Ordinary of the diocese to which he was incardinated by ordination is required; this is not to be granted except after a diligent examination concerning life and morals, and a suitable trial, according to the judgment of the Ordinary himself (can. 212, § 1).

2. A major cleric who has returned to the lay state, in order to be admitted again among clerics, needs permission of the Holy See (can. 212, § 2).

Section II. On the Duties of Clerics

(St. Thomas, II-II, q. 184, a. 8; St. Alphonsus, *Theologia Moralis*, book IV, nn. 83-191; *Homo Apostolicus*, Appendix 3.)

We shall speak first of the duties of clerics generally, then of the duties of some clerics specifically.

Chapter I. On the Duties of Clerics Generally

1157 Can. 124 establishes generally: "Clerics ought to lead an interior and exterior life holier than laymen, and to excel them in virtue and right deeds as an example." Therefore they are bound to a holier life than laymen both by reason of the offices to which they are deputed, and by reason of the example to be furnished by them.

By reason of offices; concerning which St. Thomas says: "For the suitable execution of Orders, goodness of whatever sort is not sufficient, but excellent goodness is required, so that just as those who receive Order are constituted above the people in the grade of Order, so also they may be superior in the merit of holiness" (*Supplementum*, q. 35, a. 1, ad 3). And concerning the Priest in II-II, q. 184, a. 8, he says: "Through sacred Order someone is deputed to the most worthy ministries, by which Christ Himself is served in the Sacrament of the Altar; for this a greater interior holiness is required than even the religious state requires."

By reason of example; concerning which the Council of Trent says:[2] "There is nothing which more continually instructs others unto piety and the worship of God than the life and example of those who have dedicated themselves to the divine ministry. For since they are lifted from the things of the world into a higher place, the rest cast their eyes upon them as upon a mirror, and from them take what they may imitate. Wherefore it is altogether fitting that clerics called into the lot of the Lord so compose their whole life and morals that in habit, gesture, gait, speech, and all other things they display nothing

except what is grave, moderate, and full of religion; and that they avoid even slight things, which in them would be very great, so that their actions may bring veneration to all."

After these things have been noted generally, following the Code of Canon Law we shall speak first of positive duties, then of negative duties, and finally specifically of the duty of reciting the canonical hours.

[1] Cf. Code of Canon Law, cann. 124-144; Decretals, book III, title 1, *De vita et honestate clericorum*; Council of Trent, session 22, decree on reform, c. 1; Exhortation to the clergy of Pius X, 4 August 1908; Wernz-Vidal, *Ius canonicum*, II, n. 87 sq.; Gasparri, *Tractatus de sacra ordinatione*, I, n. 1 sq.; Vermeersch-Creusen, *Epitome Iuris Canonici*, I, n. 214 sq.; Vlaming, *Institutiones iuris ecclesiastici*, part III, n. 489 sq.

[2] Session 22, decree on reform, c. 1.

Article I. On Positive Duties

1158 To these pertain:

I. Penance and Prayer. 1. Let local Ordinaries take care: 1° that all clerics frequently wash away the stains of conscience by the sacrament of penance; 2° that the same daily devote themselves for some time to mental prayer, visit the Most Holy Sacrament, honor the Virgin Mother of God with the Marian rosary, and examine their conscience (can. 125).

2. All secular priests ought at least every third year to give themselves to spiritual exercises, for a time to be determined by their own Ordinary, in some pious or religious house designated by the same; nor is anyone to be exempted from them except in a particular case, for a just cause and by express permission of the same Ordinary (can. 126).

Pius XI, in the encyclical on spiritual exercises,[1] greatly commends to clerics a recollection to be made every month or at least every third month.

[1] 20 December 1929 (*A. A. S.* 1929, p. 689).

1159 **II. Obedience.**[1] 1. All clerics, but especially presbyters, are held by a special obligation each to show reverence and obedience to his own Ordinary (can. 127).

2. As often and for as long as, in the judgment of one's own Ordinary, the necessity of the Church requires it, and unless a legitimate impediment excuses, clerics must undertake and faithfully fulfill the office which has been committed to them by the Bishop (can. 128).

Priests are held to obedience by a further special title, by force of the promise which they made on the occasion of ordination into the hands of the consecrating Bishop.

Exempt religious promise reverence and obedience anew by this promise to their own Ordinary Prelate, i.e. to their major religious Superior.

[1] Cf. *Ned. Kath. Stemmen*, 1910, p. 143; 1912, pp. 9, 67; 1914, pp. 100, 130.

1160 **III. Cultivation of the Sciences.** 1. Clerics, after receiving the priesthood, should not interrupt studies, especially sacred studies; and in the sacred disciplines they should follow that solid doctrine handed down by the elders and commonly received by the Church, avoiding profane novelties of words and knowledge falsely so called (can. 129).

2. Once the course of studies has been completed, all priests, even if they have obtained a parochial or canonical benefice, unless they have been exempted by the local Ordinary for a just cause, are to undergo an examination every year for at least a full three years in the various disciplines of the sacred sciences, previously opportunely designated, according to the manner to be determined by the same Ordinary (can. 130, § 1). In the conferral of ecclesiastical offices and benefices, account should be taken of those who, other things being equal, have excelled more in the aforesaid examinations (can. 130, § 2). Add can. 2376: Priests who, neither dispensed by the Ordinary nor detained by a legitimate impediment, refuse to make the examination mentioned in can. 130, are to be compelled to it by the Ordinary with suitable penalties.

a) Priests who study in lay universities are not exempted from the examination of which there was discussion.[1] Nothing prevents, however, the threefold annual examination from being deferred until they have completed their studies.[2]

b) Religious pastors or religious vicars with care of souls are not bound to undergo that examination if they have undergone before the religious Superior or his delegate the examination of which there is discussion in can. 590.[3] But in the case of negligence of religious Superiors concerning that examination, recourse is to be made to the Sacred Congregation of Religious.[4]

c) What has been said about religious pastors or religious vicars with care of souls is to be said by the same right about other religious.

3. In the episcopal city and in each vicariate forane, more often in the year, on days to be fixed beforehand by the judgment of the local Ordinary, meetings are to be held which they call collations or conferences, concerning moral and liturgical matters; to these can be added other exercises which the Ordinary has judged opportune for promoting the knowledge and piety of clerics (can. 131, § 1). If it is difficult to hold meetings, written solved questions are to be sent, according to norms to be established by the Ordinary (can. 131, § 2). Unless they have previously expressly obtained exemption from the local Ordinary, all secular priests are bound to attend the meeting, or, if the meeting is lacking, to send a written solution of the cases; and likewise religious, even exempt, who have care of souls, and also, if the collation is not held in their houses, other religious who have obtained the faculty of hearing confessions from the Ordinary (can. 131, § 3). Add can. 2377: Priests contumacious against the prescription of can. 131 are to be punished by the Ordinary according to his prudent judgment; but if they are religious confessors not bearing care of souls, he is to suspend them from hearing confessions of seculars.

[1] Sacred Consistorial Congregation, 30 April 1918 (*A. A. S.* 1918, p. 237).

[2] Vermeersch-Creusen, *Epitome*, n. 218.

[3] Pontifical Commission, 14 July 1922 (*A. A. S.* 1922, p. 526).

[4] Pontifical Commission, 14 July 1922 (*A. A. S.* 1922, p. 526).

1161 **IV. Chastity;** concerning which several things must be noted.

1. **The obligation of celibacy and perfect chastity.** Clerics constituted in major orders are kept from marriage and are held by the obligation of preserving chastity in such a way that those sinning against it are also guilty of sacrilege, saving the prescription of can. 214, § 1[1] (can. 132, § 1). The aforesaid clerics attempt marriage not only illicitly but also invalidly (can. 1072). The obligation of

perfect chastity also binds a married man who has been initiated into sacred order with apostolic dispensation.

The said obligation of preserving perfect chastity certainly arises from the solemn vow of chastity, which is plainly made tacitly in the reception of major order, from Boniface VIII,[2] from John XXII,[3] and from the Constitution of Benedict XIV *Inter praeteritos*, § 41 (St. Alphonsus VI, 808). Likewise it arises from ecclesiastical law, insofar as perfect chastity regards external and mixed acts, so that a major cleric who had entirely been ignorant of or had excluded the vow of chastity would nevertheless, through an external violation of perfect chastity, sin both against chastity and against religion, namely because the ecclesiastical law was passed from the motive of this virtue; in a word, he would become guilty of carnal sacrilege (cf. can. 132, § 1). With respect to merely internal acts, the matter is deservedly called into doubt, since ecclesiastical law more probably cannot, and in fact is not presumed to, regard acts of this kind. Besides, note:

a) Married men, while the wife is living, are kept from receiving orders (can. 987, 2°). A married man who without apostolic dispensation has received major orders, even in good faith, is prohibited from the exercise of those orders (can. 132, § 3).

b) Minor clerics can indeed enter marriage, but unless the marriage was null by force or fear inflicted on them, they fall by the law itself from the clerical state (can. 132, § 2).

c) From can. 188, 5°, any offices of clerics are vacant by the fact itself and without any declaration, even if they have contracted only civil marriage, as they say.

d) With respect to the Eastern Church these things hold: 1° Clerics who contracted marriage before the subdiaconate can receive the remaining orders and continue married life, except Bishops, who are bound to bid farewell altogether to married life. 2° Clerics once initiated into the subdiaconate are prohibited from contracting marriage; not indeed by vow, but by prescription of the Church. Indeed, "the marriage would be not only illicit, but also invalid."

2. **Means of preserving chastity;** to which can. 133 refers: Clerics should take care not to keep with themselves or in any way frequent women concerning whom there could be suspicion (§ 1). It is lawful for them to cohabit only with those women in whom a natural bond allows nothing evil to be suspected, such as mother, sister, paternal aunt, and the like, or from whom proven honesty of morals joined with more advanced age removes every suspicion (§ 2). Judgment whether keeping or frequenting women in some particular case can be a scandal or bring danger of incontinence belongs to the local Ordinary, whose duty it is to prohibit clerics from this keeping or frequenting (§ 3). The contumacious are presumed concubinarians (§ 4).

3. **Penal sanctions.** a) Clerics constituted in minor orders, guilty of some delict against the sixth precept of the decalogue, are to be punished according to the gravity of the fault, even by dismissal from the clerical state if the circumstances of the delict advise this, besides the penalties threatened by can. 2357 for some delicts even against laymen (can. 2358).

b) Clerics in sacred orders, whether secular or religious, who are concubinarians, after warning has been issued uselessly, are to be compelled to withdraw from illicit cohabitation and to repair scandal, by suspension from divine things and by privation of the fruits of office, benefice, or dignity, with observance of cann. 2176-2181 concerning the manner of proceeding against concubinary clerics. If they have committed a delict against the sixth precept of the decalogue with minors below the age of

sixteen years, or have committed adultery, defloration, bestiality, sodomy, pandering, or incest with blood relatives or relatives by affinity in the first degree, they are to be suspended, declared infamous, deprived of any office, benefice, dignity, or function which they have, and in graver cases deposed. If they have offended otherwise against the sixth precept of the decalogue, they are to be restrained with suitable penalties according to the gravity of the case, not excluding privation of office or benefice, especially if they have care of souls (can. 2359).

c) Clerics constituted in sacred orders, or regulars or nuns after a solemn vow of chastity, and likewise all who presume to contract marriage, even only civilly, with any of the aforesaid persons, incur excommunication *latae sententiae* simply reserved to the Apostolic See. Besides, clerics, if after warning they have not come to their senses within the time fixed beforehand by the Ordinary according to the diversity of circumstances, are to be degraded (can. 2388, § 1). Finally, as has already been noted, any offices of clerics are vacant by the fact itself and without any declaration, even if they have contracted only civil marriage, as they say (can. 188, 5°).

[1] Can. 214, § 1 establishes: A cleric who, compelled by grave fear, received a sacred order and afterwards, once the fear was removed, did not ratify that same ordination at least tacitly by the exercise of the order, while nevertheless willing by such an act to subject himself to clerical obligations, is to be reduced to the lay state by sentence of the judge, after the coercion and the lack of ratification have been legitimately proved, without any obligations of celibacy and canonical hours.

[2] *C. unic., De voto*, III, 15.

[3] *C. unic., Extravagantes*, I, 6.

1162 **V. Common Life.** The custom of common life among clerics is to be praised and recommended, and where it flourishes, it is to be preserved as far as can be done (can. 134).

1163 **VI. The Divine Office.** Clerics constituted in major orders, except those mentioned in cann. 213 and 214, i.e. those who have been legitimately reduced to the lay state, are held by the obligation of reciting the canonical hours completely every day according to their proper and approved liturgical books (can. 135); concerning these, see Article III.

1164 **VII. External Gravity.** To this pertain those things which regard ecclesiastical habit, hair and tonsure, and the rest of the apparatus of external things.

1. **Ecclesiastical habit.** a) All clerics are to wear decent ecclesiastical habit, according to legitimate customs of places and the prescriptions of the local Ordinary (can. 136, § 1).

b) A cleric who, with no necessity compelling, does not wear the prescribed habit sins generally gravely, as is clear from the gravity of the penalty soon to be reported, and also from the doctrine of the Council of Trent,[1] which charges with temerity and contempt of religion clerics who, valuing their proper dignity and clerical honor lightly, wear lay clothing even publicly. A cleric sins only lightly if, without a just cause, for a brief time, without a depraved end and without grave scandal, he puts off the habit. He does not sin if he does this even for a long time but with proportionate cause, for example to avoid danger of death or grave harm (St. Alphonsus VI, 825; *Examen Ordinandorum*, n. 49).

c) Minor clerics who by their own authority and without legitimate cause have put off ecclesiastical habit and tonsure, and when warned by the Ordinary have not amended themselves within a month, fall by the law itself from the clerical state (can. 136, § 3). Major clerics, after a month has passed uselessly from the warning, are to be suspended from the orders received; and if they have notoriously

passed over to a kind of life alien to the clerical state, and, after being warned again, have not come to their senses, they are to be deposed after three months from this last warning (can. 2379). Any offices are vacant by the fact itself if a cleric by his own authority and without just cause has laid aside ecclesiastical habit, and, when warned by the Ordinary, has not resumed it within a month from receiving the warning (can. 188, 7°).

2. **Hair and tonsure.** The meaning of this crown is disputed; for they narrate that Blessed Peter was shaved on the head by pagans for the sake of mockery, and was shorn around in a circle, and that from this the use of wearing the crown was introduced into the Church. Others derive it from symbolic reasons, either insofar as this crown or shaving of the head, already among Greeks and Romans and so among monks and clerics, though with a higher meaning, would be a sign of servitude,[2] or as an imitation of the thorny crown of Our Lord, or on the contrary as a sign of reign or royal dignity (cf. St. Thomas, *Supplementum*, q. 40, a. 1).

a) All clerics are to wear the tonsure or clerical crown, unless the received customs of peoples bear otherwise, and are to use a simple style of hair (can. 136, § 1). It is said "unless the received customs of peoples bear otherwise," because the custom of wearing the crown has not been received in some regions, or at least has fallen into desuetude, which desuetude is now recognized in the Code itself. A wig can licitly be used from a just cause with the permission of the Bishop. But it is not lawful to celebrate with it except with the permission of the Supreme Pontiff, or of another endowed with the faculty of granting permission; a faculty of this kind has been given, for example, to Nuncios, provided true necessity is present (St. Alphonsus VI, 398).[3]

b) The gravity of the obligation of wearing the tonsure is not established, unless it is omitted from contempt, or someone constituted in sacred orders neglects it for a very long time, for example for many months (St. Alphonsus VI, 826; *Homo Apostolicus*, Appendix 3, n. 50).

c) With respect to the penal sanction, cf. can. 136, § 3, reported above.

Note. Formerly in the Western Church it was forbidden to wear a beard, except in a case of necessity, with the permission of the Bishop being added, or from privilege (as for Capuchins), or from particular usage.[4] But the Code is silent concerning this matter; therefore a general prohibition is no longer had, although neither has positive license been given. Hence the Sacred Congregation of the Council, in the Wroclaw case,[5] responded that the Code had not conceded the wearing of a beard, and that Ordinaries have the right to keep in force, each for his own diocese, the prohibition in force before the Code.

3. **The rest of the apparatus of external things.** Concerning the ring, can. 136, § 2 says: Let them not use a ring, unless this has been conceded to them by law or apostolic privilege. Thus, for example, from liturgical laws the ring belongs to Bishops because of spiritual marriage with the Church (can. 349, § 1, n. 2). In the Code it is also conceded to Abbots (can. 325) and Doctors (can. 1378); from privilege, sometimes to certain canons. Nevertheless, with respect to the wearing of a ring in Mass, can. 811, § 2 establishes: "(A priest about to celebrate Mass) should abstain ... from zucchetto and ring, unless he is a Cardinal of the Holy Roman Church, a Bishop, or a blessed Abbot, or unless an apostolic indult permits him the use of the same in celebrating Mass."

For the rest, attention must be paid to the general principles and obligations connatural to clerics, taken from the character of the clerical state itself (can. 124). Thus in general, luxury of every kind is always to be prohibited to clerics.[6] Under this name come, for example, boasting and the use of

perfumes, concerning which c. 1, causa 21, qu. 4; likewise c. 1, c. 21, q. 4: display and sumptuousness in furnishings, concerning which, among other things, Trent[7] declares: "not only does [the Council] command that bishops be content with modest furnishings ..., but also that in the rest of the manner of life and the whole household, they take care that nothing appear which does not display simplicity, zeal for God, and contempt of vanities ... What has been said concerning Bishops, it determines that the same is to be observed, according to the condition of their grade, in all who hold any ecclesiastical benefices."

[1] Session 14, chapter 6, on reform.

[2] Vlaming, n. 514; Gasparri, I, n. 38.

[3] Cf. Sacred Congregation of Rites, n. 2027, ad 5; Benedict XIV, *De Synodo*, book 11, c. 9.

[4] Cf. response of the Nuncio of Munich, given on 4 May 1863 to the Archbishop of Munich.

[5] 10 January 1920.

[6] Cf. Trent, session 22, on reform, chapter 1.

[7] Session 25, on reform, chapter 1.

Scholion. On Celibacy

(St. Thomas, II-II, q. 152, aa. 1-5; *Supplementum*, q. 41, a. 2; *Contra Gentiles*, book 3, c. 136 sq.; on book 4 of the *Sentences*, dist. 26, q. 1, a. 2; Opusc. 18, *De Perfectione vitae spiritualis*, c. 8; St. Alphonsus, *Theologia Moralis*, book VI, nn. 806-812.)

1165 **I. Notion.** Celibacy is understood as the state of major clerics, insofar as they are bound to abstain from entering marriage, or, if perhaps before the reception of the subdiaconate they entered it, from the use of it. Sometimes celibacy is taken for the state of perfect chastity, to which major clerics are bound.

1166 **II. Origin.** The author of the law of celibacy is the Church, not Christ. This is already deduced from the fact that the Church tolerates the practice of the Greeks, and also in the Latin Church has several times dispensed in celibacy; indeed, it even concedes to inferior ministers the faculty of dispensing in some cases, except nevertheless if there is question of the presbyterate (cf. cann. 1043-1045).

1167 **III. History.** In both the Greek and Latin Church it has always been prohibited that a cleric enter marriage after receiving the diaconate.[1] Leo I extended the same thing to subdeacons.[2] Besides, from the beginnings of the Church the practice was that major clerics abstain from the use of a marriage perhaps contracted previously.[3] But in the Greek Church the contrary practice gradually prevailed to such a degree that the Trullan Synod, also called Quinisext, issued a decree by which the use of a marriage previously entered is conceded to Subdeacons, Deacons, and Presbyters.[4] The Holy See tolerated that decree, although it desires that perfect chastity be observed by clerics also in the Greek Church.[5] For the rest, major clerics cannot enter marriage, and Bishops are bound to perfect chastity.

[1] Cf. Thomassinus, *Vetus et nova Ecclesiae disciplina*, part I, book 2, c. 60 sq.; Vlaming, *Institutiones iuris ecclesiastici*, part 3, n. 495 sq.

[2] De Jong, *Handboek der Kerkgeschiedenis*, vol. I, § 14, 50.

[3] De Jong, loc. cit.; witnesses are Origen (*Homily* 23 on Numbers, n. 3), Eusebius (*Demonstratio Evangelica*, book 1, c. 9), St. Cyril of Jerusalem (*Catechesis* 12, n. 24 sq.).

[4] Canon 13.

[5] Constitution *Etsi pastoralis*, 26 May, § 7, n. 25.

1168 **IV. Suitability.** Celibacy is especially fitting for clerics: 1° because a more perfect state, such as celibacy is, is fitting for those who excel others in dignity; 2° because the state of continence is especially desired in those who are bound to be occupied continually with holy and pure mysteries; 3° because one who is free from the cares of marriage better can fulfill his duties of praying, preaching, teaching, administering the sacraments, visiting the sick, etc.[1]

Objection 1. Celibacy is opposed to the precept of preserving and propagating the human species; therefore it is dishonorable.

Response 1. If the conclusion were valid, all who, being capable of entering marriage, refused to enter it would act dishonorably.

Response 2. The precept of preserving and propagating the human species does not oblige individual persons, because that precept alone obliges individual persons which first of itself regards the good of individuals. But the precept of preserving and propagating the human species does not first of itself regard the good of individuals, but the good of the multitude or species (St. Thomas, *Contra Gentiles*, book 3, c. 137; II-II, q. 152, a. 2). For the rest, even if the said precept does not regard individual persons, no danger from it threatens the propagation of the species or the end intended by God instituting marriage; for, considering the very great inclination of men toward the act of generation, the number of those who will remain in celibacy will always be relatively very small.

For the rest, note that the common good consists not only in a number raised to the highest point, but in the happiness of the multitude, which indeed is promoted more by clerics who observe celibacy than by those who are entangled in the cares of marriage and family (St. Thomas, II-II, loc. cit.).

Objection 2. The law of celibacy does injury to clerics.

Response. I deny the assertion, since the Church does not impose the burden of celibacy on the unwilling, but on those freely embracing the clerical state.

Objection 3. The law of celibacy involves what seems morally impossible.

Response. Experience proves the contrary. Then, the adversaries do not think about the special grace of state. Further, the obligation of celibacy is undertaken at that age and after such a testing of life that it is lawful to hope safely that, with divine grace assisting, it can be observed without difficulty.

Objection 4. Celibacy provides occasion for sins of lust.

Response. The said sins are first indeed exaggerated; then they are compensated by the countless goods arising from celibacy.

Finally, experts testify that celibacy also does not harm health.[2]

[1] Cf. 2 Tim. II, 3; 1 Cor. VII, 32.

[2] Cf. our little work *De virtute castitatis et de vitiis oppositis*, n. 18.

1169 **V. Excellence.** Celibacy is preferred to the matrimonial state.[1] It is **de fide** from the Council of Trent: If anyone says that the conjugal state is to be placed before the state of virginity or celibacy, and that it is not better and more blessed to remain in virginity or celibacy than to be joined in Matrimony, let him be anathema.[2] This is established first from Sacred Scripture: "His disciples say to him: If the

case of a man with his wife is so, it is not expedient to marry. He said to them: Not all receive this word, but those to whom it has been given. For there are eunuchs ... who have castrated themselves for the kingdom of heaven. He who can receive it, let him receive it."[3] Then it is proved from this, that celibacy, that is, immunity from spouse and family with the things annexed to them, when undertaken with a right intention, favors a more intense service of God and neighbor.

[1] Cf. our little work *De virtute castitatis et de vitiis oppositis*, n. 18.

[2] Session 24, can. 10.

[3] Matt. XIX, 10-12.

Article II. On Negative Duties

Several things are prohibited to clerics, either because they bring with themselves a danger of harm, such as suretyship (can. 137); or because they are unbecoming to the clerical state, such as unbecoming arts, games of chance, etc. (can. 138); or because they are alien to the clerical state, such as the medical art, notariate, etc. (can. 139 sq.).

1170 **I. Suretyship.** A cleric is prohibited from standing surety, even with his own goods, without the local Ordinary having been consulted (can. 137). The reason is evident; for experience establishes that suretyships, even when made with due prudence, often create harm or at least danger of harm for those who have aided others in such a way. There is added that, even if the surety can fulfill the obligations which he has taken upon himself - which is required in every suretyship - nevertheless often from those financial vicissitudes there arise dissensions and contentions which can be an impediment to the fruitful ministry of clerics. A fortiori it is not lawful for clerics to stand surety with goods not their own, or goods in any way pertaining to the Church, since they are not owners of those goods, but only administrators (cf. can. 1523, 1° and 1527).

1171 **II. Unbecoming or Base Arts** (can. 138), of which kind are, for example, the offices of butchers, innkeepers and tavern-keepers, actors and comedians, shoemakers, lay service or servitude, etc. (St. Alphonsus IV, 189).[1]

[1] Cf. c. 3, D. 44; c. 1, Clem. III, 1; Trent, session 22, on reform, c. 1.

1172 **III. Games of Chance, with Money Staked** (can. 138). Games are distinguished into games of chance, games of skill, and mixed games, according as they are governed by fortune alone, or by skill alone, as playing chess, or by fortune and skill, as playing cards. Therefore:

1. It is prohibited only to give oneself to games of chance with money staked (can. 138). Other games are not prohibited of themselves; nevertheless, accidentally they can become sinful, for example through excessive frequency, through neglect of the sacred ministry, and so forth.
2. Clerics sin gravely by giving themselves to games of chance: 1° if they play with grave scandal; 2° if they play frequently and for a long time. Moreover, sufficient frequency is present sooner if one plays for a great sum of money than if for a moderate sum (St. Alphonsus III, 896-898).
3. Religious, both because of their state and because of scandal, more easily sin gravely than secular clerics, and the more easily according as they profess stricter observance, especially if by acting so they would open a way for such games in their Order, or would play for a notable sum; in the latter case they would also sin against poverty (St. Alphonsus III, 901; V, 32).

Corollary. A prohibition of a Bishop would not seem equitable by which, in general, all games even privately exercised would be forbidden to clerics; for unless particular circumstances advised such a prohibition, such a prohibition would have to be called too severe and alien from the mind of the Church.[1] Moreover, although the game of dice remains prohibited to clerics, nevertheless a constitution of a Bishop would have to be criticized by which at once a grave penalty, for example excommunication, would be imposed on violation of this law. Thus the secretary of the Sacred Congregation of the Council[2] wished mitigated a decree of the Bishop of Vaison by which priests playing dice were struck with excommunication *latae sententiae*. The prohibition indeed was held valid, but the penalty had to be mitigated.[3]

[1] Cf. Benedict XIV, *De Synodo dioecesana*, book XI, c. 10, n. 4.

[2] 20 December 1687.

[3] Cf. Benedict XIV, *De Synodo dioecesana*, book X, c. 2, n. 2; book XI, c. 10, n. 5; cf. also c. 1, D. 35; c. 15, X III, 1; c. 11, *De excessibus praelatorum*, V, 37; Trent, session 22, on reform, c. 1.

1173 **IV. Carrying Arms.** They should not carry arms unless a just cause for fearing is present (can. 138). For it is fitting that a cleric, a minister of the peaceful God, express in his external conduct the spirit of Christ's gentleness and meekness, with which spirit the apparatus of arms, especially when carried publicly, can with difficulty be combined. Here also attention should be paid to civil laws, which commonly impose similar prohibitions on all citizens indiscriminately.

1174 **V. Hunting.** They should not indulge in hunting, and should never exercise noisy hunting (can. 138). Hunting - by which bird-catching is also comprehended - is distinguished as twofold, noisy and quiet. Noisy hunting is that which is done with great tumult and noise of weapons, dogs, and beaters; quiet hunting is that which is done with snares and nets, or even with a shotgun, but without the aforesaid noise. Therefore:

1. Noisy hunting is forbidden simply; but quiet hunting, if it is done moderately and without scandal, is not prohibited. Nevertheless, particular statutes or precepts should be attended to; since the Ordinary, if a just cause is present, can altogether prohibit hunting with a shotgun, though not with a censure added, unless for grave and special causes.[1]

2. Noisy hunting exercised without grave scandal and not frequently is not mortal (cf. St. Alphonsus III, 606; *Homo Apostolicus*, tract 10, n. 72).

3. Finally note that fishing is forbidden by no canon.

[1] Cf. Sacred Congregation of the Council, Gnesen and Posen, 11 June 1921 (*A. A. S.* 1921, p. 498).

1175 **VI. Entrance into Taverns.** They should not enter taverns and other similar places without necessity or another just cause approved by the local Ordinary (can. 138).

1176 **VII. The Medical Art.** Without an apostolic indult they should not exercise medicine or surgery (can. 139, § 2).

Except if in some region - as can happen in mission lands - physicians are lacking, while observing what must be observed (St. Alphonsus VII, 384).[1] Attention should also be paid to civil laws, which commonly establish penalties against physicians practicing the medical art without examination and public certificate.

[1] Cf. Sacred Congregation de Propaganda Fide, 28 November 1641 (*Collectanea*, n. 334).

1177 **VIII. Notariate.** They should not act as tabelliones or public notaries, except in an ecclesiastical Curia (can. 139, § 2). The office of notary, actuary, or tabellio, from writing up "acts" or recording them on "tablets," is permitted to clerics only in ecclesiastical Curias; not as though this office would otherwise be unbecoming to them, but because it can with difficulty be combined with ecclesiastical duties, on account of the continual attention of mind which it requires.

1178 **IX. Lay Jurisdiction.** They should not assume public offices which carry with them the exercise of lay jurisdiction or administration (can. 139, § 2). Offices are understood which refer proximately to the government of a state, province, or kingdom, such as, for example, the offices of President of the republic, Minister, Syndic, and so forth. But there are not comprehended in this paragraph offices which pertain only remotely to government, but in themselves properly constitute a certain council, such as, for example, the office of deputy, councillor, senator, etc. But observe the things which follow:

1179 **X. The Office of Senator or Deputy.** They should not solicit nor accept the office of senators or of orators for making laws, whom they call deputies, without permission of the Holy See in places where a pontifical prohibition has intervened; in other places, they should not attempt the same thing without the permission both of their own Ordinary and of the Ordinary of the place in which the election is to be held (can. 139, § 4).

Moreover the Commission of the Code declared: "If by force of the constitution of the state Cardinals, Archbishops, and Bishops are senators by law, and the Holy See in some way has approved this, the same can fulfill an office of this kind without special permission of the Holy See, provided they satisfy their obligations through a Vicar General or in another way. In any other case they need the permission of the Holy See. But Ordinaries, in granting permission to priests who desire to present themselves as candidates for elections of deputies, should show themselves rather difficult than easy."[1]

[1] *A. A. S.* 1922, p. 313.

1180 **XI. Administration of Goods.** Without the permission of their own Ordinary they should not enter upon managements of goods pertaining to laymen, or secular offices which carry with them the burden of rendering accounts (can. 139, § 3). Of this kind are, for example, the offices of tutors, curators, administrators, and executors of testaments.

As regards the administration of goods pertaining to laymen, it will not be useless to recall to memory the decree of the Sacred Consistorial Congregation,[1] which indeed praised the zeal of clerics in founding and protecting money chests or savings banks for the temporal assistance of the faithful, but nevertheless prohibited them from fulfilling in them the offices of president, director, secretary, treasurer, and offices very similar to these, without permission of the Holy See. Today, of course, according to the tenor of can. 139, § 3, permission of the Ordinary will suffice.

[1] 18 November 1910.

1181 **XII. The Office of Advocate.** They should not exercise the office of procurator or advocate, except in an ecclesiastical tribunal, or in a civil one when there is question of their own cause or that of their church (can. 139, § 3). A procurator is understood as one who conducts the parts of the parties before the judge, by petitioning, concluding, etc., for them. An advocate strictly so called, or causidicus, is one who argues the cause of a client before the judge. An advocate differs from a jurisconsult, who only gives counsel, explains the way to the process, but does not defend the client in judgment. An advocate could have fulfilled the parts of a jurisconsult.

Note the things which are had at the end of can. 139, § 3: "In a lay criminal trial pursuing a grave personal penalty, let them have no part, not even giving testimony without necessity." By a grave personal penalty is understood not only capital punishment or mutilation, but every penalty by which the personal or bodily integrity of the delinquent is injured. It is said "let them have no part"; therefore every intervention is denied to them, whether as judge, or as advocate, or as notary. Indeed, as is said at the end of this paragraph, they should not even give testimony in such trials without necessity.

1182 **XIII. Use of Public Amusements.** They should not be present at spectacles, dances, and processions which are unbecoming to them, or at which it would be a scandal for clerics to be present, especially in public theaters (can. 140). Therefore, by common law the aforesaid amusements are prohibited insofar as the presence of clerics would be unbecoming, or would be a scandal to the faithful; this can easily occur in public theaters. But particular statutes are also to be attended to.

Corollary I. The things which are said here about spectacles and theaters must also be applied to our modern bioscopes. Indeed, in Rome it has been prohibited not only to both clergy, even pilgrims, to attend public cinematographs, even if they treat of a sacred object, but canonical penalties have moreover been threatened, not excluding suspension from divine things.[1]

Corollary II. To attend a certain musical work is not prohibited by common law, unless because of circumstances it would fall under the general prohibition by which clerics ought to avoid those things which are a scandal to the faithful, or which generally are unbecoming to their state (cf. can. 124).

[1] *A. A. S.* 1918, p. 300.

1183 **XIV. Military Service.** They should not enter secular military service voluntarily, unless they have done this with the permission of their own Ordinary, so that they may become free more quickly; nor should they assist in any way in civil wars and disturbances of public order (can. 141, § 1). A minor cleric who, against the prescription of § 1, has of his own accord given his name to military service, falls by the law itself from the clerical state (can. 141, § 2). Besides, with respect to every cleric, any offices are vacant by the fact itself if against the prescription of can. 141, § 1, he has of his own accord given his name to secular military service (can. 188, 6°).

1184 **XV. Trading.** Clerics are prohibited from exercising trading or commerce by themselves or through others, whether for their own advantage or that of others (can. 142). Clerics or religious exercising commerce or trading by themselves or through others against the prescription of can. 142 are to be restrained by the Ordinary with suitable penalties according to the gravity of the fault (can. 2380). Commerce coincides with trading properly so called; but the word trading extends more broadly, as will be clear from what is to be said.

1. **Notion.** Trading properly so called, or commerce, is the buying or exchange of merchandise with the intention of selling it more dearly, not changed for the better (St. Alphonsus III, 837). For it there are required: 1° that a thing be bought and sold; 2° that it be sold more dearly; 3° that it be sold not changed for the better; 4° that it was bought with the intention of selling it more dearly and not changed for the better (St. Thomas, II-II, q. 77, a. 4, ad 1; St. Alphonsus III, 331, 330).

Trading improperly so called is the buying or exchange of a thing made with the intention of selling it more dearly after it has been changed by art or industry. Moreover, someone can change a thing either by himself, or through his own servants, or through workers hired for this.

2. **Prohibition.** a) Trading properly so called is prohibited to clerics (can. 142). It is the same whether they exercise it by themselves or through others, for their own advantage or for the advantage of others (can. cited).

The reason of the prohibition is explained thus by St. Thomas: "Clerics ought to abstain not only from those things which are evil according to themselves, but also from those things which have the appearance of evil; and this indeed happens in trading, both because it is ordered to earthly gain, of which clerics ought to be despisers, and also because of the frequent vices of traders ... There is also another reason, because trading too greatly involves the mind in secular cares, and consequently draws it back from spiritual things; hence also the Apostle says in 2 Timothy 2: 'No one serving God entangles himself in secular business'" (II-II, q. 77, a. 4, ad 3; St. Alphonsus III, 831).

b) Trading improperly so called is prohibited to clerics if the thing to be sold is changed through workers hired for this. For trading of this kind, by which another's labor is bought and from it gain is taken, was equated in the ancient law with trading properly so called, nor is there reason for interpreting trading, concerning which can. 142 speaks, otherwise (cf. can. 6, n. 2). The same, for the same reason, must be said about exchange,[1] if someone exercises it by way of habit or art, by doing banking.[2]

c) Trading improperly so called is not prohibited to clerics if they change the things to be sold by themselves or through their own servants. One who by himself changes things and sells them more dearly does nothing other than receive the just reward of his labor. Moreover this, provided that the craft is fitting for them, considering the circumstances, and is done without neglect of their own ministry, must be called equally lawful for clerics as for laymen, because it contains nothing disordered, as is clear from the example of St. Paul;[3] therefore it was never prohibited by any law. And to him who changes the things to be sold by himself, there is equated in law one who changes them through his own servants, i.e. through labor already owed from elsewhere.

Formerly stricter dispositions and penal sanctions had been established for missionaries of the East Indies, China, Japan, and America, both South and North, exercising illicit trading.[4] But because these laws seemed to pertain to the common law and today have not been taken up in the Code, they seem to have been abolished by can. 6, n. 6; certainly with respect to the penal sanction, by the same can. 6, n. 5.

d) The obligation of the prohibition is grave from its kind. Therefore one who frequently trades sins gravely; moreover, sufficient frequency is present sooner if someone trades in a great quantity. One who rarely trades sins only lightly, because the canon speaks of exercising trading (St. Alphonsus III, 831).

e) Not only extreme necessity, but even grave necessity excuses from the obligation, namely if it is necessary for the sustenance of the cleric or the family living with him. Nevertheless, in a case of grave necessity, so that the danger of illusion may be avoided, outside Italy permission of the Ordinary is required; within Italy, permission of the Holy See. Thus, considering the Constitution of Clement XIII *Cum primum*,[5] which from can. 6, n. 2 seems still to be in force (St. Alphonsus III, 833).

Corollary I. It is lawful "1° to sell fruits gathered from one's own fields; 2° to buy livestock, and sell them after they have been fattened on one's own estates, or to feed flocks so that offspring, wool, etc., may be sold; 3° to exercise an art fitting to one's own state, and to sell the works; 4° to buy fruits and

sell animals fattened on them, since properly the labors for taking gain are sold rather than things not changed; 5° to buy for one's own uses, even broadly, and afterwards to sell what remains; indeed, when the price rises, even by purposely using more sparingly, to preserve things for the sake of sale."[6] 6° To buy, for example, grapes and grain, and from them, either by oneself or through one's own servants, but not through hired workers, to make wine and bread, and sell them with profit. But it is unlawful to buy materials and from them, through hired workers, to manufacture any things which are sold with profit (St. Alphonsus III, 836).

With respect to establishing a printing press, hold these things: It is lawful: 1° if printing is done either through members of the Order or through one's own servants; nor is it prohibited that a hired servant be used, both because a little is reckoned as nothing, and because the accessory follows the principal; 2° if printing is indeed done through hired servants, but there is question of printing one's own works; for it is lawful to make these fruitful just like one's own land. It is unlawful if a printing press is established for printing the works of others, and this through hired servants.

Corollary II. It seems lawful for religious houses to buy things pertaining to devotion and sell them with some profit to guests, provided the profit is received as just compensation of expenses and labor expended, or as a stipend. The reason is that, in the case, the things, strictly speaking, are not sold more dearly. Nor is prohibited trading had if, for example, a missionary quasi-sells depicted or photographically printed cards of his mission to his benefactors, even if at a dearer price than he bought them, because from the circumstances the profit obtained assumes the character rather of alms made to the Mission than of price.

Corollary III. Trading which is called by some political, by which namely someone buys necessary things and sells them to the state or army, that trading, I say, is prohibited to clerics from can. 139, § 2, insofar as it would involve a public office which would carry with it the exercise of lay jurisdiction or administration. If somewhere from charity this were necessary, for example if a missionary in time of famine buys grain for his neophytes, practically no profit will be present, or there will be a case of excuse; nevertheless, it is expedient that the permission of the Bishop be sought.

Corollary IV. To this also pertains the buying of bonds and shares; but concerning it there will rather be distinct discussion in the scholion, after we have briefly noted the remaining things to be noted concerning the obligations of clerics.

[1] Concerning exchange, cf. n. 938.

[2] Benedict XIV, Constitution *Apostolicae*, 25 February 1741; Clement XIII, Constitution *Cum primum*, 17 September 1759.

[3] Acts of the Apostles XVIII, 3; XX, 34; 2 Thess. III, 8.

[4] Constitutions of Urban VIII *Ex debito* (1633); of Clement IX *Sollicitudo* (1669).

[5] 17 September 1759.

[6] Lehmkuhl, *Theologia Moralis*, II, n. 774.

1185 **XVI.** Can. 143 declares: Clerics, although they do not have a residential benefice or office, should nevertheless not depart from their diocese for a notable time without at least the presumed permission of their own Ordinary.

1186 **XVII.** Can. 144: One who with the permission of his own Ordinary has passed into another diocese, while remaining incardinated in his own diocese, can be recalled for a just cause and with

natural equity preserved; and also the Ordinary of the other diocese can for a just cause deny to him permission of further staying in his own territory, unless he has conferred a benefice.

[1] Cf. our little work *De virtute castitatis et de vitiis oppositis*, n. 18.

Scholion. On the Buying and Selling of Bonds and Shares

1187 **I. Notions.** Bonds are monetary certificates by which someone lends his money to some company, with this agreement, that each year he receive a determinate interest.

Shares are monetary certificates by which someone hands over his money to some company, so that in a certain way he becomes a member of this company and thus receives a variable interest, a dividend, according to the greater or lesser success of the company.

1188 **II. Morality.** 1. **With respect to bonds.** It is lawful for clerics equally as for laymen to buy bonds, because clerics equally as laymen can freely lend their money to others and receive a just interest from it. But by buying bonds they do nothing else. Nor is it prohibited to sell them at an opportune time, because this pertains to the economic administration of goods. Nevertheless, clerics should take care not to sin in the manner, for example by personally going to the stock exchange, or by taking part in lucrative trades and speculations, concerning which below.

2. **With respect to shares.** It is lawful for clerics to buy and sell shares concerning fruitful things. Thus it is lawful, for example, to buy lands together with several persons, or to take shares in them, for this end, that from the fruits sold by the company they may take profit.

Likewise it is lawful to take shares in industrial companies, where a change of matter occurs through hired labor, for example in factories; likewise in commercial companies, where goods are bought in great quantity so that they may be sold in smaller amounts with profit. It is lawful to take the aforesaid shares, I say, provided the conditions soon to be reported are observed. For the single reason on account of which some deny this does not hold. They object, namely, that by buying shares a cleric exercises trading through an interposed person, which is prohibited by law. Now, if the matter is well examined, this reason does not proceed. For a shareholder properly does not influence the trading exercised through others, or influences it so remotely that this ought not to be attended to in law. For others, with the money received, trade for themselves rather than the shareholder for himself. Hence shares today are almost equated with bonds, with only this difference, that in shares, in place of determinate interest, variable interest is received. There are added responses of the Holy Office,[1] from which it is deservedly deduced that the buying of shares is lawful for clerics, provided they are prepared to stand by the commands of the Holy See, and the following conditions are observed:

a) Let them know certainly that those companies have no illicit or suspect end.

b) Let them undertake no part of the administration. Therefore let them not be reckoned among the primary associates, who can have a part in the direction of the company; but secondary associates or simple shareholders are excluded from every direction.

c) Nor should they exercise trading in the shares of those same companies. Therefore:

a) It is certainly lawful to buy shares at a low price and to sell them at a dearer price, if just economy demands this. Likewise it is lawful to buy them even with the intention of selling them more dearly at an opportune time, if just economy will demand this. Nor does it seem to be disapproved if someone

does this more often, indeed even habitually, whenever he actually needs money. The reason for all these things is that trading strictly so called is not present.

b) It is not lawful to buy shares and bonds[2] with the intention of selling them more dearly, even if just economy will not demand this; for in this case strict trading in them is present.

c) Let them abstain from every contract which has the appearance, as it is commonly called, of "games of the stock exchange"; concerning these, see the things said in n. 955.

d) Besides the conditions required by the Holy See, others are commonly assigned by authors, at least by way of prudence. Namely: 1° Let them take bonds and shares by means only of their own money,[3] not because otherwise they offend against the trading forbidden to them, but because otherwise they expose themselves to danger of harming others in their goods.

2° Let them take care not to give their name to companies still to be constituted or recently constituted, because then there is easily the danger that they may be too much absorbed by desire for profit.

3° Let them not go to general meetings, in which commissioners are appointed and an account is given of business transacted.

4° The greatest solicitude is required concerning ecclesiastical goods, which must be placed altogether safely, as various canons declare (cf. can. 1516, § 2; 1523, nn. 3 and 4; 1547).

[1] Holy Office, 17 November 1875; 15 April 1885.

[2] Although ecclesiastical documents speak only about trading in shares, it is nevertheless manifest that the same must be applied also to bonds.

[3] Holy Office, 1 April 1857.

Article III. On the Duty of Reciting the Canonical Hours Specifically

1189 The canonical hours are the complex, chiefly of psalms, readings, and chants, by which ecclesiastical persons, in the name of the Church, daily offer liturgical worship to God. They are distinguished as seven, namely Matins with Lauds, Prime, Terce, Sext, None, Vespers, and Compline, in conformity with these words of Ps. CXVIII, 164: "Seven times in the day have I spoken praise to Thee." They are called "canonical hours" because from their primitive institution they were, as it were, annexed to determinate hours, namely Matins to midnight, Lauds to the beginning of dawn, Prime to the sixth hour, Terce to the ninth, Sext to midday, None to mid-afternoon, Vespers to the time which precedes sunset, and Compline to the time which follows sunset.

The canonical hours are also called the divine office: office, because it is imposed; divine, because it is destined for the worship of God. It is divided into the nocturnal office, to which Matins with Lauds pertains, and the diurnal office, which the other hours constitute. Finally the canonical hours are called the breviary; according to some, because they contain Sacred Scripture and the writings of the Holy Fathers compendiously; according to others, because they are a certain abbreviation of the longer office which formerly was in use. According to others, under the name of breviary there first came a little book containing the rules for ordering the divine office through the course of the year, into which afterwards the diverse parts of the divine office itself were inserted, such as psalms, readings, etc. And thus it happened that finally the office itself was called the breviary.[1]

Moreover can. 135 prescribes the canonical hours in these words: "Clerics constituted in major orders ... are held by the obligation of reciting the canonical hours completely each day according to their proper and approved liturgical books." We shall speak first about the object, then about the subject, then about the obligation of the precept, and finally about the causes excusing from the obligation. Moreover we shall chiefly keep solitary recitation before our eyes; nevertheless at the end, for the sake of completeness, we shall speak in one scholion about recitation with a companion, and in another about choral recitation.

[1] Baümer, loc. cit., Appendix I.

§ I. On the Object of the Precept

The object of the precept is constituted both by the matter to be recited and by the time and manner of reciting. Hence:

Point I. On the Matter to Be Recited

1190 Each day the canonical hours must be recited according to proper and approved liturgical books. Besides, the Litanies are to be recited on the feast of St. Mark and on the three days of Rogations. It is said:

I. The canonical hours must be recited according to proper and approved liturgical books. Namely:

1. Of itself there is an obligation of reciting the canonical hours according to the form and rite of the Roman Breviary, issued by St. Pius V, revised by Clement VIII, Urban VIII, and Leo XIII, and reformed by Pius X in the Constitution *Divino afflatu*, 1 November 1911. But those who do not use this order of the Psalter "should know that they are not going to satisfy so grave an office."[2]

I said **of itself,** for Churches and Religions which in the year 1568 used another breviary, approved by a custom of at least two hundred years, could retain it.[3] Nevertheless, with due observances preserved, it is lawful to assume the Roman Breviary;[4] but once assumed it can no longer be abandoned.[5] I said **with due observances preserved,** namely:

a) If a Church or Religion retained a legitimate breviary of another form, the public office of choir must be made from that particular breviary, unless the Bishop with the consent of the whole chapter, or the Prelate with the consent of the community, has assumed the Roman Breviary.[6]

b) Individual clerics who are not bound to choir can of their own accord, after renouncing the particular breviary, assume the Roman; but offices "proper to the diocese or order," although conceded by indult, must be recited by individuals when they have been accepted by the diocese or order.[7]

c) If a particular breviary legitimately prescribed is changed or altered, the breviary so changed becomes illegitimate, and, the prior privilege having been taken away, the Roman Breviary must be assumed.[8]

2. Besides these things, the proper calendar of the diocese or Religion obliges, if it has been approved by the Sacred Congregation of Rites; likewise particular offices permitted to a particular Church or Religion and once received by use oblige.[9] Therefore:

a) A Bishop, both secular and regular, is bound to recite the office of the Church over which he presides. One who governs several dioceses can recite the office either of the diocese in which he habitually dwells, or of that in which he is actually staying.[10]

b) Priests must recite the office of the Church to which they are assigned.[11]

c) Those staying outside their own domicile are bound thus:

a) Bishops and "beneficiaries are always bound to the office of their own Church; but simple priests can conform themselves to the Office of the place where they are staying."[12]

b) Religious bound by canon law to choir are bound, if they recite in choir, to stand by the calendar of the monastery in which they are guests. Reciting privately, they ought to follow the calendar of their own house if they are staying for a few days in another house; if for a longer time, they can at will follow the calendar of their own or of the other house.[13] On a journey, they should follow the calendar of their own house.[14] If nevertheless they are staying outside monasteries for a longer time, for example during Lent, they ought to conform themselves to the calendar of the Province, extended without any diversity for all in each year.[15] Finally, religious not bound by canonical title to choir, if for a few days they are staying outside their own house, whether in another house or elsewhere, should recite the office of their own house; if they are staying outside their own house for a longer time, let them at will follow the calendar of their own house or of the other house, when in another house, but the calendar of their own house or of the province, if they are staying elsewhere, for example on a journey or in a hospital.

Corollary I. The obligation of following a determined calendar carries with it the obligation of obtaining for oneself new approved offices, and likewise readings notably changed.

Corollary II. If in useful time you lack the proper office of some Saint, you ought to recite the common office of Saints of the same class; and if you also lack that, another office from the breviary of the same rite, not of a different rite, must be recited.

II. Besides, the Litanies are to be recited on the feast of St. Mark and on the three days of Rogations. "Those," so the rubric says,[16] "who are not present at the Procession of the Litanies should say them privately after Matins with their prayers and collects." Moreover, that there is an obligation, the Sacred Congregation of Rites has declared several times;[17] that a grave obligation is present is deduced from the fact that there is question of grave matter (St. Alphonsus IV, 161, question 1).[18]

[1] As regards the history of the canonical hours and the legislation concerning it, compare S. Baümer, O.S.B., *Geschichte des Breviers*; Batiffol, *Histoire du Bréviaire Romain*; Baudot, *Le Bréviaire Romain*.

[2] Constitution of Pius V *Quod a nobis*, 9 July 1568.

[3] Constitution cited.

[4] Sacred Congregation of Rites, 10 May 1608, n. 249.

[5] Constitution *Quod a nobis*.

[6] Cf. Sacred Congregation of Rites, 6 September 1738, n. 2338; 24 November 1883, n. 3597, ad 1.

[7] Response of the Holy See to the Archbishop of Besançon, 28 August 1856.

[8] Sacred Congregation of Rites, 6 September 1738, n. 2338; 24 November 1883, n. 3597, ad 1.

[9] Sacred Congregation of Rites, 6 September 1738, n. 2338; 24 November 1883, n. 3597, ad 1.

[10] Sacred Congregation of Rites, 11 June 1605, n. 181; 17 January 1880, n. 3508; 28 May 1898, n. 3993, ad 1.

[11] Sacred Congregation of Rites, 4 February 1898, n. 3979, ad 7.

[12] Sacred Congregation of Rites, 12 November 1831, n. 2682, ad 46.

[13] Sacred Congregation of Rites, 27 June 1896, n. 3919, ad 13.

[14] Sacred Congregation of Rites, 31 August 1839, n. 2801, ad 1.

[15] Sacred Congregation of Rites, 31 August 1839, n. 2801, ad 2.

[16] Breviary, after the second Sunday after Easter.

[17] Sacred Congregation of Rites, 12 March 1836, n. 2740, ad 8; 4 August 1877, n. 3428.

[18] The precept of adding the Office of the Dead on the day of the Commemoration of All Saints to the office of the octave of All Saints was removed by the Bull of Pius X *Divino afflatu*, letter 8, n. 2. The Office of the Dead is already proper to the said day.

Point II. On the Time and Manner of Reciting

1191 Besides at the due time, the canonical hours must be recited in order, continuously, vocally, and devoutly. It is said:

I. At the due time; wherefore note:

1. The useful time, both for the valid fulfillment of the precept and for satisfying the grave obligation, is: for the whole office, from midnight to midnight; for Matins with Lauds, moreover, by indult or quasi-indult, from 2 p.m. on the preceding day.[1] Moreover priests of various societies enjoy, by quasi-privilege, the faculty of reciting Matins and Lauds from 1 p.m.; the Sacred Congregation of Rites easily grants this permission. Legates of the Roman Pontiff can grant the faculty of anticipating from noon; this permission is also contained in the faculties of the Sacred Congregation for the Propagation of the Faith. Indeed the members of the Missionary Union for the Clergy enjoy the faculty of reciting the office from noon; and because all missionaries, whether dwelling in missions of the Sacred Congregation for the Propagation of the Faith, or compelled to leave them because of health, old age, or obedience, enjoy all the privileges and graces granted to the Pious Union, the faculty of the Sacred Congregation now has practically little value.[2]

2. Under venial sin it is required that Matins and Lauds be recited on the preceding day or in the morning time, and Prime and Terce in the forenoon. Sext and None can be said at pleasure before or after midday. Vespers and Compline must be recited after midday; nevertheless in the time of Lent, except for the first triduum and Sundays, Vespers can also be recited before midday, and are laudably so recited. Moreover from observing the time "any useful or honorable cause excuses, namely a sermon to be prepared or heard, the danger of a supervening occupation or labor, greater devotion or rest, a more suitable time for studying, and similar things" (St. Alphonsus IV, 173). It is said **any** cause, even the least, on account of the latitude which has more and more been admitted in interpreting custom. The holy Doctor adds, however, "that mere greater convenience, without another honorable motive, is not sufficient for excusing" (loc. cit.).

It is disputed whether Matins with Lauds must be recited before Mass. Now some have taught that this is prescribed under grave obligation; yet that opinion is now commonly rejected. Others deny every obligation; but with St. Alphonsus (V, 347) a light obligation seems to have to be admitted, because neglect of this rubric is enumerated in one series with other defects certainly sinful.[3] So also Benedict XIV:[4] "But any moderate reasonable cause will excuse from this kind of venial fault; for instance, if the one giving the alms asks that Mass be celebrated at once, if the people or some grave person is waiting, if a superior commands it, if the time for celebrating is passing, or the convenience of study, journey, and similar things is pressing" (St. Alphonsus, loc. cit.). If, however, there is question

of a conventual and solemn Mass, the obligation of reciting Matins with Lauds before Mass is grave, unless a grave and public cause intervenes. "The reason is that such is the custom received in all churches where public prayers are said; so that, by acting otherwise, the public worship of God, the common good, and the fitting governance of the Church would be gravely harmed" (St. Alphonsus VI, 348).

3. The Litanies for the feast of St. Mark and the days of Rogation cannot be recited on the preceding evening.[5]

4. In the private recitation of the canonical hours it is lawful to follow: 1st, usual time; 2nd, local time, both true and mean; 3rd, legal time, both regional and any other extraordinary time (can. 33, § 1; n. 167).

Corollary I. One who has not recited the hours or litanies within the useful time is still bound to recite them until midnight; after midnight he is no longer bound, because the useful time has passed by (St. Alphonsus IV, 155).

Corollary II. One who, once the day of obligation has begun, foresees that later he will not have the possibility of discharging the office is bound to recite the hours now; but "one who cannot recite Matins on the following day is not bound to anticipate it on the preceding day. For then there is an obligation of anticipating the Office when the obligation of the precept has already begun; but that Matins can be said on the preceding day is not from precept, but from a privilege introduced by custom, which no one is bound to use" (St. Alphonsus IV, 155).

II. In order. First the order of the Offices must be observed, so that the Office assigned to each day is completed in the useful time. Then the order of the Hours and the order among the different parts of the Hour must be observed. These, however, oblige only under venial sin, because they touch rather the accidents than the substance of the precept. Hence a reasonable cause excuses, as if you are invited to pray by a friend who has already completed the greater part of the office; if now you lack a breviary and, for example, retain in memory the psalms of a Nocturn; if you come late to choir, when the office has already begun (St. Alphonsus IV, 170).

III. Continuously, or in such a way that within the hours themselves there is no notable interruption; this, however, is only venial, so that a reasonable cause excuses. Moreover note:

a) Matins can be separated from Lauds; but if they are separated, Matins should be concluded with the Prayer of the office, which is followed by the verse *Dominus vobiscum*, the verse *Benedicamus Domino*, and the verse *Fidelium animae*, etc., and the *Pater*.

Afterwards Lauds are begun by the verse *Deus in adiutorium*, etc., with *Pater* and *Ave* having been first said. Thus the Ordinary of the divine office in the breviary. Likewise one Nocturn can be separated from another, at least by the space of three hours (St. Alphonsus IV, 167).

b) "Just causes for interrupting the Office are ... any utility, one's own or another's, which would inconveniently be deferred. Likewise, civility or devotion, as to say Mass, to execute the commands of superiors; if you hear the confession of someone who would not willingly wait; if you wish to do or note something, so that you may remove distraction or anxiety lest you forget: provided, as Gobat well notes, that this is not done frequently. - Also some brief prayer or affections can lawfully be inserted while praying" (St. Alphonsus IV, 168).

c) Even if an interruption has culpably occurred, nevertheless there is no obligation of repeating the things recited, "because the individual psalms and the individual verses have a complete meaning; and they are sufficiently united either by the intention of continuing or by the very recitation joined to them" (St. Alphonsus IV, 168). Nevertheless, if the interruption is longer and not much has been recited, it is fitting to resume the hour, or at least the psalm.

IV. Vocally; this pertains to the substance of the precept. It is sufficient, however, to have formed the words with one's proper organs, that is, the tongue and lips; when this has been done, some sound is necessarily produced; but it does not matter whether or not the one reciting hears himself (St. Alphonsus IV, 162, 163).[6]

Moreover note that complete pronunciation is required, so that words are neither omitted, nor mutilated, nor cut off by halves. If these things are done in such a way that the meaning of the words is lost, and this in a great quantity, it is a grave sin, and it induces the obligation of repeating; otherwise it is venial, and does not bring with it the obligation of repeating. Someone can also be excused because of stammering or a custom which he is trying to lay aside (St. Alphonsus IV, 164, 165).

V. Devoutly;[7] that is, there are certainly required: 1st, the intention of worshiping God; 2nd, external attention. It is doubtful whether internal attention is required, so that in practice this is not required for fulfilling the precept.

a) The intention of worshiping God is demanded, because otherwise there would be an act entirely profane; and it cannot be admitted that only such an act is prescribed by the Church. But the said intention, at least in an exercised act, is always present, since it is enough that in the usual way you take up the breviary in order to fulfill the daily obligation (St. Alphonsus IV, 176).

b) External attention is that by which someone avoids external acts which cannot be combined with internal attention, such as writing, painting, attentively listening to others speaking, attentively looking through pictures; but not walking, looking at hills, meadows, fields, slowly putting on or taking off clothes, gathering a few flowers or herbs. Some things are very distracting with respect to one person but not with respect to another, such as dressing oneself quickly, washing oneself, or preparing a pen (St. Alphonsus IV, 176). Moreover, that external attention is required is drawn both from chapter *Dolentes*, question *De celebratione missarum* (III, 41), and from the common consent of authors, and from the fact that it is with difficulty admitted that the Church does not require a manner of reciting the office which, at least for the external forum, also indicates internal worship.

c) In practice, by force of ecclesiastical law, internal attention is not required. Theoretically some affirm and others deny this, according as they affirm or deny that internal attention pertains to the essence of prayer; concerning this controversy see n. 583. While the doubt stands, the more benign opinion is safe in practice (St. Alphonsus IV, 177). Moreover, with due pronunciation and attention being posited, some internal attention, at least very slight, will scarcely, or scarcely at all, be lacking. Those who require internal attention say that virtual attention suffices. But since there is not question of intention, but of attention, that virtual attention is understood with difficulty, unless there is question of a most slight attention.

Note. "The more suitable remedies for repelling distractions of mind are: 1st, at the beginning to form the intention of praising God; 2nd, to renew the intention at the *Gloria Patri* or at the beginning of each

psalm; 3rd, to represent to oneself some mystery of the Passion; 4th, carefully to guard the senses; and other things of this kind" (St. Alphonsus IV, 177).

[1] Sacred Congregation of Rites, 12 March 1905, n. 4158, ad I.

[2] Cf. *Acta Apostolicae Sedis* XVIII, p. 235.

[3] Roman Missal, *De Defectibus*, X, 1.

[4] *De Sacrificio Missae*, book 3, chapter 13, n. 4.

[5] Sacred Congregation of Rites, 28 March 1775, n. 2503, ad 4.

[6] There are those who think that regulars have the privilege of reciting entirely mentally; either the whole Office, as others say, or only those things which in the ordinary are ordered to be said secretly in silence, as others think. Concerning this privilege compare St. Alphonsus, *Theologia Moralis*, book I, Appendix II, n. 107; IV, 643, with the notes of Gaude compared; *Analecta ecclesiastica*, 1910, p. 417 sq.; 1911, p. 419; *Ami du Clergé*, 1924, p. 129.

[7] Fourth Lateran Council, chapter 7.

§ II. On the Subject of the Precept

1192 The following are bound to the recitation of the breviary:

I. Clerics constituted in major orders, except, however, those who have legitimately been reduced or returned to the lay state (can. 135, 213, 214). Since the obligation begins with a major order, a subdeacon on the day of ordination is bound to that hour which corresponds to the moment of ordination; hence one who, for example, is ordained between the hour of Sext and None is bound to begin from None (St. Alphonsus IV, 140). Moreover, although the obligation does not yet subsist before the order has been received, nevertheless the cleric seems able to render the fulfillment already then; for since it is the burden of the day, by the will of the Church legitimately interpreted he is presumed already before ordination to have been deputed to discharge the said burden on the day (St. Alphonsus, loc. cit.).

II. Beneficiaries from the day possession of the benefice has been taken, provided they receive the fruits (can. 1475, § 1). If a beneficiary, detained by no legitimate impediment, has not satisfied the obligation of reciting the canonical hours, he does not make the fruits his own in proportion to the omission, and he should hand them over to the fabric of the church or to the diocesan Seminary, or distribute them among the poor (can. 1475, § 2). It is said:

1. **He does not make the fruits his own.** Therefore he does not acquire ownership of the fruits, and so before the sentence of a judge (cf. can. 2232) and, as it seems, by justice, he is bound to restitution, although d'Annibale[1] thinks that restitution is imposed after the manner of a conventional penalty.
2. **In proportion to the omission,** that is, according to the Constitution of Pius V *Ex proximo*:[2] One who has omitted the whole office on one day is bound to restore all the fruits corresponding to that day, or the 365th part of the annual revenue; one who has omitted either Matins with Lauds or the remaining hours, half the fruits of one day; one who has omitted one of the said remaining hours, a twelfth part. Moreover one who receives the fruits of a benefice on account of other burdens also is bound only to that extent to restore the fruits insofar as they correspond to the burden of the canonical hours. "Wherefore they say that a bishop or pastor is bound to restore a third or fourth part of the fruits, retaining the others for the other burdens which they satisfy; canons, half; those

having a chaplaincy, half or a third part" (St. Alphonsus III, 673). Finally, from the Constitution of Leo X *Supernae dispositionis*, the fruits received in the first six months are remitted.

3. **He should hand them over to the fabric of the church or to the diocesan Seminary, or distribute them among the poor.** "By the name of the poor, however, are understood the poor of any place whatsoever; and the deceased themselves are also understood. - And also the cleric himself can apply the said fruits to himself, if he is truly poor" (St. Alphonsus III, 672). Besides, if someone ignorant or forgetful of the debt has distributed alms, he can quite probably reckon these for restitution (St. Alphonsus III, 700, question 2). But proposition 33 was condemned by Alexander VII:[3] "Restitution of fruits on account of omission of the hours can be supplied by any alms whatsoever which the beneficiary had previously made from the fruits of his benefice."

III. The solemnly professed in religions, whether of men or women, which have the obligation of choir. Therefore the solemnly professed in religions of this kind, if they have been absent from choir, must recite the canonical hours privately (can. 610, § 3). But professed religious of temporary vows are not bound to private recitation of the office, unless they have been constituted in sacred orders or perhaps are obliged by their own constitutions (can. 578, 2nd; 610).[4]

Corollary. If someone is bound to the divine office under different titles, "because he owes praises to God as one man, it is enough that he say the office once" (St. Thomas, *Quodlibet* 1, article 13).

[1] *Summula Theologiae Moralis* III, 65.

[2] 20 September 1571.

[3] Denzinger-Bannwart, n. 1133.

[4] Cf. Sacred Penitentiary, 24 November 1852.

§ III. On the Obligation of the Precept

1193 **I.** The obligation of the divine office is grave of its own kind; hence an omission is grave or light according as there is question of grave or light matter. Now:

1. The omission of one hour, even a little hour, seems to be grave; both because there is question of worship to be offered in the name of the Church, and therefore of a matter of greater moment, so that in this case a smaller quantity than in other cases seems to suffice for gravity; and because the deformity of the act seems notable if, in the prayer which the Church wished to be distributed into parts, one whole part among seven is omitted. Likewise he sins gravely who would recite only too little of a little hour, because morally speaking he omits it. Nevertheless the contrary must be said concerning one who would omit the Vespers of Holy Saturday, because the quantity seems too small (St. Alphonsus IV, 147). Moreover, separated parts coalesce.

2. Where a whole hour is not omitted, a greater quantity from different hours seems to be required, because the deformity does not appear so great.

3. Those who mutilate the office, by syncopating, truncating words, or swallowing syllables, also sin according to the quantity of the matter; but in these things, unless the excess is enormous, there is not a grave sin.

Corollary I. One who omits the whole office commits only one sin, because the whole office of one day falls under one precept, or the precept regards one office, which consists of seven hours. "But if,

however, someone were to omit several hours from morally interrupted intentions, then he would commit several sins" (St. Alphonsus IV, 148; n. 254).

Corollary II. One who takes up the purpose of omitting the office for several days perpetrates as many sins as there are days on which he omits the breviary. Likewise one who by one act, for example by throwing the breviary into the sea, renders himself unable to recite, commits as many sins as there are omissions which he foresees, unless he repents of the first sin (St. Alphonsus IV, 149; n. 255).

II. The obligation of the determined office is sufficiently drawn from these things:

1. He sins gravely who recites an office either notably different from his own office,[1] or notably less than his own office;[2] likewise one who rather often, for example five times or more in a year, recites an office different from the office of the day. The reason is that "although any variation taken separately is venial by reason of smallness of matter, nevertheless all within the year coalesce, and gravely disturb the order of the breviary precept for the Offices of the whole year, which taken together make one complex whole" (St. Alphonsus IV, 161, question 3). Outside the enumerated cases it is quite probable that one sins only lightly, and if a just cause is present, not at all. A just cause is, for example, that you recite with a companion; if the possibility of reciting the office is lacking and by reciting later you will be too much wearied or impeded from another useful labor (St. Alphonsus, loc. cit.). But "the office of the breviary is not to be abandoned for an office of devotion."[3]

2. "One who through inadvertence says one office for another is bound to repeat nothing.... The reason is that the Church is not presumed to wish someone to be obliged twice in one day to so great a burden...; but if the office said was notably shorter... compensation must be made" from the omitted office (St. Alphonsus IV, 161, question 3). But the omitted office should rather be entirely omitted than recited on another day, lest you err twice.[4] (St. Alphonsus IV, 161, question 5.) "If you notice that you have erred after you have advanced much in the undue Office, for example if you have said Matins, then you can either continue, or recite the remainder from the due Office; ... but I think ... it is better to recite from the proper one, lest you continue the error.... But if you have forgotten some part of an Hour, it is enough to recite that part without repeating anything else" (St. Alphonsus IV, 161).

III. In doubt whether the office or part of it has been recited, the scrupulous, either on account of the very harms arising from an obligation of repeating, are excused from repetition; indeed they must be forbidden to repeat anything (St. Alphonsus IV, 175). With regard to others it must be said thus: one who, all things considered, strictly doubts, whether the doubt is positive or negative, is bound to repeat (n. 229). But by the aid of the principle of presumption, anyone in doubt commonly and rightly thinks that he has recited that about which he doubts. Hence "you are well excused if you do not remember having said something, and have a just conjecture for believing that you said it, for instance ... if you remember that you began a psalm, reading, or Hour, and afterwards, not distracted deliberately or not interrupted, you find yourself at the end of the Hour, reading or reciting from memory those things in which ordinarily you are not accustomed to err. And this has place ... even if you have a probable reason for omission, because the presumption that you are accustomed to complete what you began brings it about that you are bound to repeat nothing, unless you are morally certain that you did not say it" (St. Alphonsus, *Elenchus* II, reformed questions, question 1; IV, 150, with Gaude's note on this number compared).

[1] Cf. Sacred Congregation of Rites, 27 January 1899, n. 4011.

[2] Proposition 34 was condemned by Alexander VII: "One reciting the Easter Office on Palm Sunday satisfies the precept."

[3] Sacred Congregation of Rites, 13 February 1666, n. 1334.

[4] Cf. Sacred Congregation of Rites, 17 June 1673, n. 1474.

§ IV. On the Causes Excusing from the Obligation

1194 The excusing causes are:

I. Physical inability; to this belong lack of a breviary and blindness. Nevertheless a blind man and one who lacks a breviary is bound to recite the part which he holds in memory, provided it is both notable in itself, or reaches the quantity of a little hour, and can be recited sufficiently according to the prescribed form. Hence proposition 54 was condemned by Innocent XI:[1] "One who cannot recite Matins and Lauds, but can recite the remaining Hours, is bound to nothing, because the greater part draws the lesser to itself." Therefore he is bound to the possible part who holds in memory some morally entire hour, for example with only the little chapter and prayer unknown; or who from a longer hour can recite from memory, in the order of the breviary, a notable continuous part, or even a somewhat continuous part, such as several psalms of the Nocturns; but not one who knows only parts that are not sufficiently connected (St. Alphonsus IV, 158).

[1] Denzinger-Bannwart, n. 1204.

1195 **II. Moral inability,** or such inability that the office cannot be recited without notable inconvenience. For this reason the following are excused:

1. The sick laboring under grave illness; likewise convalescents or those slightly ill, if the illness is joined with weariness of strength or notable heaviness of the head. If a sick man could not celebrate Mass and recite the office, he can celebrate, with the recitation of the office omitted. Moreover it must be noted "that in doubt whether an illness suffices or not for excusing, he can commit himself to the judgment of a physician ... or acquiesce in the judgment of the Superior, who in such a doubt can also dispense; or finally he can remit himself to the probable judgment of a prudent man; ... and he can also stand by his own judgment, if he himself can prudently form such a judgment" (St. Alphonsus IV, 154).

"If there is doubt that recitation would gravely harm him, then certainly he is not bound; indeed he cannot recite, because the natural right of preserving health is to be preferred to the precept of the Church" (St. Alphonsus, loc. cit.).

Finally, "if someone because of his infirmity is certain that he cannot recite the whole Office, and doubts whether he can recite part, he is probably bound to nothing; ... for this man is reasonably excused from the whole Office, lest he be greatly troubled by scruples, not knowing how far he can and is bound to recite. For this anxiety would bring him great inconvenience" (St. Alphonsus, loc. cit.).

2. Those laboring under such weakness of the eyes that recitation becomes hard.

3. The scrupulous; namely, "if someone were suffering grave anxieties, recitation of the Office could sometimes even be forbidden to him, until he seems able to recite without so great an inconvenience; since a great inconvenience excuses of itself from the precepts of the Church" (St. Alphonsus IV, 177 at the end).

1196 **III. An occupation to be preferred,** that is, such an occupation as cannot be omitted without scandal or some other grave inconvenience, whether one's own or another's, and is incompatible with the recitation of the breviary. For this reason someone can be excused who, for example, is called to a sick person toward night, or by reason of hearing confessions, or of offering assistance to the sick, or of preparing a lesson or giving a sermon. Here, however, note: 1st, he sins who, when he can anticipate the business, does not anticipate it, or after the business has been completed does not recite what he can still conveniently recite; 2nd, he who is habitually so occupied with business that opportunity of reciting the Office is not available should either dismiss some labors or seek a dispensation.

It can also happen that an imprisoned cleric is excused from reciting the office in order to avoid disgrace to his state.

If someone cannot recite the Office without a companion, but can with a companion, he is bound to use that means, which is also consonant with the primitive institution, if the companion can be had without great inconvenience both to himself and to the companion (St. Alphonsus IV, 158).

1197 **IV. Dispensation.**[1] 1. The Pope can dispense, even with a beneficiary, since the burden of the office annexed to the benefice must be derived from ecclesiastical law alone.

2. Bishops can dispense when recourse to the Holy See is difficult and at the same time there is danger of grave harm in delay (can. 81); likewise, for a just cause, with some particular person for a brief time, namely from immemorial use or privilege (St. Alphonsus IV, 159).

3. Exempt major superiors, with respect to their subjects, can do the same thing as Bishops (can. 81 compared with can. 198). But regular Prelates can dispense their subjects who are not constituted in sacred orders, for a just cause, from the office as from other things (St. Alphonsus IV, 142).

Note. Clerics constituted in major orders who have legitimately been reduced or returned to the lay state are freed from the burden of the divine office; likewise solemnly professed religious not constituted in major orders who, having obtained an indult of secularization, have left the religion (can. 640).

[1] We add dispensation, although in a particular case it rather relaxes the law than excuses from the obligation.

Scholion I. On Choral Recitation

1198 **I. Existence of the precept.** The canonical precept of reciting the office in choir is in force as follows:

1. Any Chapter is bound by the obligation of duly discharging the divine offices in choir daily, with the laws of foundation preserved (can. 413, § 1). Moreover:

a) The divine office comprehends the psalmody of the canonical hours and the celebration with chant of the conventual Mass, besides other Masses to be celebrated either according to the rubrics of the Missal or from pious foundations (can. 413, § 2).

b) All and each who hold a choral benefice are bound to discharge the divine offices in choir itself on individual days, unless service by turns has been granted by the Apostolic See or by the laws of foundation (can. 414). A canon who without just cause was notably absent from choir, that is, for three or four days beyond the time conceded by law, would sin gravely. By law, however, individuals can be absent only three months in the year, whether continuous or interrupted, provided the statutes of their

own church or legitimate custom do not require longer service (can. 418, § 1). Bishops are not bound to assist at choir, "because they ought to be free for greater affairs, which are incompatible with assistance at choir" (St. Alphonsus III, 675, doubt 1).

2. In religions, whether of men or women, which have the obligation of choir, in individual houses where there are at least four religious bound to choir and actually not legitimately impeded, and even fewer if the constitutions so provide, the divine office must be discharged in common daily according to the norm of the constitutions (can. 610, § 1). The obligation of choir of which the canon speaks is understood as a canonical obligation, which is had only in religions in which solemn vows are in fact emitted, though not in all. Moreover, that obligation being posited:

a) The burden rests upon the community, so that no one individually is bound to assist at choir, provided choral recitation takes place (St. Alphonsus IV, 143); he sins who is the culpable cause why the choir is taken away.

b) The obligation of choir then only actually presses where in the house there are at least four, or fewer if the constitutions so provide, religious who are both bound to choir and actually not impeded. Hence novices and lay brothers are not counted, because they are not bound to choir; nor are those legitimately impeded by illness or occupations, for example care of the sick or hearing confessions (St. Alphonsus IV, 143).

c) Although novices are not counted if there is question of constituting the obligation of choir, nevertheless the constituted obligation is quite probably satisfied even if only novices assist at choir, because in favorable matters they are reputed religious.

Note. As it is useful to note again, in religions, whether of men or women, in which there is the obligation of choir, the solemnly professed who have been absent from choir must, except for lay brothers, recite the canonical hours privately (can. 610, § 3); but in the same religions those professed by temporary vows are not bound by the law of privately reciting the divine office, unless they are constituted in sacred orders or the constitutions expressly prescribe something else (can. 578, 2nd).

1199 **II. Obligation of the precept.** 1. The Bishop, if there is question of canons, or the Superior, if there is question of religious, sins gravely if through negligence he permits the office or a notable part of the office to be omitted; but a notable part, as in private recitation (n. 1193), is that which reaches the quantity of a little hour (St. Alphonsus IV, 143).

2. Even a notable inversion in the order of the hours is quite probably only venial, because it touches an accident rather than the substance (St. Alphonsus IV, 171).

1200 **III. Time for satisfying the precept.** 1. The useful time both for the valid fulfillment of the precept and for satisfying the grave obligation is from midnight to midnight, yet in such a way that Matins and Lauds can be anticipated on the preceding day from the hour of Vespers. For satisfying the light obligation, attending to law alone, Matins must be recited at midnight, Lauds at the beginning of dawn, or Matins with Lauds from dawn until sunrise, Prime at sunrise, Terce in the middle of the morning time, Sext at midday, None in the middle of the afternoon, Vespers before sunset, and Compline after sunset. I said **attending to law alone,** because a reasonable received custom can be observed. This obligation is only light, because there is question only of an accidental circumstance of the precept.

2. In computing the hours of the day, one must stand by the common use of the place (can. 33, § 1).

1201 **IV. The place for satisfying the precept** is the church; nevertheless for a just cause the hours can sometimes be recited in the sacristy (St. Alphonsus III, 675; IV, 143).

1202 **V. Manner of satisfying the precept.** 1. For the psalms the choir must be divided into only two parts, whether there are more on one side or fewer, so that individuals recite alternate verses; for thus the use and practice of the Church has it. Readings, etc., can either be distributed among several persons or said by one (St. Alphonsus IV, 162). One who omits certain things from his own part, whether because he came somewhat late, or because of distraction,[1] or because he is occupied in the office of choir, for example by playing the organ for some moments or transferring books - he, I say, who thus omits certain things, is not bound to supply them, because the choir has supplied them. The same must be said of one "who while others are reciting coughs or spits, even if an entire psalm is said in the meantime," ... likewise of one "who in choir reads through a lesson beforehand, lest he err, when otherwise he would err" (St. Alphonsus IV, 143, note 3), or who, while the others are chanting, prepares himself for this end, that he may complete the lesson with sufficient readiness. The contrary must be said of one who for a long time is occupied by some other business alone, for example merely playing the organ. Likewise, quite probably, one satisfies the office who recites his own part softly and hears the other. Nevertheless canons do not acquire the distributions and fruits of the prebend if they do not sing or chant as the others do; in order to acquire them, they must come together for chanting the office (St. Alphonsus IV, 163, question 1; III, 675, doubts 3 and 4).[2]

2. One who assists at choir must attend to the things which are recited by the others, because by attending to them he must communicate in them. But he satisfies well who does not distinctly perceive the things recited by the others, whether because he is somewhat deaf, or because of the noise of others, or because of the fault of the choir (St. Alphonsus IV, 163, questions 2 and 3). But one who is deaf and recites his own part indeed gains the distributions, but does not seem to satisfy the obligation of the office unless he recites quietly the things which are said by the other side (St. Alphonsus IV, 163, question 3).

[1] Cf. chapter *Dolentes* 9, *De celebratione missarum*.

[2] Constitution of Benedict XIV *Cum semper oblatas*, 19 August 1744; Brief of Benedict XIV *Dilecte Fili*, 19 January 1748.

Scholion II. On Recitation with a Companion

1203 It is enough to note these things:

I. It is lawful, in imitation of choral recitation, to recite the office with a companion, especially because this is conformed to the primitive institution of the Church and to the public rite of praying; and it is lawful even if the companion is not bound to the canonical hours and does not attend to the things recited by the other side (St. Alphonsus IV, 162).

II. In recitation with a companion each one should pronounce his own part. Moreover, as regards the psalms, individuals should recite alternate verses. The readings, responsories, little chapters, and prayers should either be distributed or recited by one alone; indeed quite probably he satisfies "who alone says the psalms and hears the readings; or who says part of the psalms alone and part with a companion" (St. Alphonsus IV, 162). The things which one part recites by beginning too quickly, before the other has completed its own part, are considered omitted; but unless there is too much confusion, an obligation of repeating is not easily had. This also holds if the companion merely cuts off syllables.

Chapter II. On the Duties of Certain Clerics Specifically

For our purpose we shall speak chiefly about the duties of beneficiaries; first generally, then about the duties of parish priests in particular. Finally we shall add what must be observed by the assistants of parish priests.

Article I. On the Duties of Beneficiaries in General

1204 **I. Notion of a benefice.** An ecclesiastical benefice is a juridic entity constituted or erected in perpetuity by competent ecclesiastical authority, consisting of a sacred office and of the right of receiving revenues from an endowment annexed to the office (can. 1409). It is called a juridic entity, that is, a moral person; but the beneficiary is usually a physical person. Moreover, for constituting that juridic entity which is called a benefice, there are required:

1. A sacred or ecclesiastical office, and indeed taken in the strict sense, that is, a function stably constituted by ordination, whether divine or ecclesiastical, to be conferred according to the norm of the sacred canons, carrying with it at least some participation in ecclesiastical power, whether of order or of jurisdiction (can. 145).
2. The right of receiving revenues from the endowment annexed to the office. The endowment of a benefice is constituted either by goods whose ownership is in the juridic entity itself, or by certain and due payments of some family or moral person, or by certain and voluntary offerings of the faithful which pertain to the rector of the benefice, or by the rights, as they are called, of the stole within the limits of diocesan taxation or legitimate custom, or by choral distributions, with a third part of the same excluded,[1] if all the revenues of the benefice consist in choral distributions (can. 1410).
3. Legitimate erection, namely proceeding from competent ecclesiastical authority; hence, for example, a foundation of Masses, even though constituted in perpetuity, is not sufficient, but it is required that competent authority have erected it into the title of a benefice.
4. Erection in perpetuity, so that, when the beneficiary, for example the parish priest, has died or been removed, it persists.

Corollary. Beneficiaries are residential Bishops, canons, parish priests; but not apostolic administrators, confessors, episcopal secretaries, spiritual directors of religious women, assistant vicars, sacristans; nor religious Superiors, because although they discharge an office strictly so called, nevertheless they lack the right of receiving revenues from an endowment annexed to the office.

[1] This third part is to be converted into daily distributions among those present (can. 395).

1205 **II. Division of benefices.** From can. 1411 benefices are distinguished into:

1. Consistorial, which are customarily conferred in Consistory; the rest are non-consistorial.
2. Secular or religious, according as they pertain to secular clerics alone or to religious clerics alone; but all benefices erected outside the churches or houses of religious are presumed, in doubt, to be secular.
3. Double or residential, or simple or non-residential, according as, besides the benefice-office, they have annexed to them the obligation of residing, or not.

4. Manual, temporary or removable, or perpetual or irremovable, according as they are conferred revocably or in perpetuity.
5. With cure or without cure, according as they have the cure of souls annexed or not.

1206 **III. Duties of beneficiaries.** As the title of the article indicates, the discussion is about the duties which are common to beneficiaries, with the special obligations of some being omitted.[1] Moreover:

1. A beneficiary is bound faithfully to fulfill the particular burdens annexed to the benefice and, besides, to recite the canonical hours daily. If, detained by no legitimate impediment, he has not satisfied the obligation of reciting the canonical hours, he does not make the fruits his own in proportion to the omission, and he should hand them over to the fabric of the church or to the diocesan Seminary, or distribute them among the poor (can. 1475); these things were explained more fully in n. 1192.
2. A beneficiary must administer the goods pertaining to his benefice as the curator of the benefice (can. 1476); and in particular he must carry out as soon as possible the lesser repairs which fall upon him, lest the necessity of greater repairs arise (can. 1477, § 3).
3. Expenses connected in an ordinary way with the administration of benefice-goods and the perception of fruits are to be borne by the beneficiary. Expenses for extraordinary repairs of the benefice-house are to be borne by those upon whom falls the burden of repairing the benefice-church, unless the documents of foundation or legitimate agreements and customs provide otherwise (can. 1477, §§ 1 and 2).
4. A beneficiary is bound by the obligation of expending superfluous benefice-fruits for the poor or for pious causes; Cardinals, however, are not bound by this obligation (can. 1473). Since there is question of fruits which he has made his own (cf. can. 1409, 1472, and 1475), the said obligation is not to be judged an obligation of justice; hence a beneficiary who illicitly expends superfluous revenues is not bound to restitution (St. Thomas, *Quodlibet* 6, article 12, ad 3; St. Alphonsus III, 492).

[1] I note, however, can. 2381: One who obtains an office, benefice, or dignity with the burden of residence, if he is illegitimately absent: 1st, by that fact is deprived of all the fruits of his benefice or office in proportion to the illegitimate absence, and must hand them over to the Ordinary, who is to distribute them to the church or to some pious place or to the poor; 2nd, he is to be deprived of office, benefice, or dignity according to the norm of canons 2168-2175.

Article II. On the Duties of Parish Priests in Particular

(St. Alphonsus, *Theologia Moralis*, book III, nn. 357-360; *Homo Apostolicus*, tract 7, nn. 14-17.)

1207 **I. Notion of a parish priest.** A parish priest is a priest or moral person to whom a parish has been conferred in title, with the cure of souls to be exercised under the authority of the local Ordinary (can. 451, § 1). A moral person can be, for example, a chapter, monastery, etc. To parish priests are equated, with all parochial rights and obligations, and they come under the name of parish priests in law: 1st, quasi-parish priests who govern quasi-parishes; 2nd, parochial vicars, if they are endowed with full parochial power (can. 451, § 2; cf. the tract on Matrimony). Moreover in the definition it is said:

1. **Moral person;** now a moral person to which a parish has been united by full right can retain only the habitual cure of souls, with the actual cure committed to a vicar (can. 452, § 2).

2. **Parish;** but a parish is a part of a diocese to which a particular rector is assigned as its proper pastor. Parts of an apostolic vicariate and apostolic prefecture, if a particular rector has been assigned to them, are called quasi-parishes (can. 216).

3. **To whom a parish has been conferred in title with the cure of souls.** From these things it is sufficiently drawn that power belongs to a parish priest by force of his office, and therefore that it is ordinary. Moreover it is proper, not vicarious, or it is exercised in his own name. Besides, the power of a parish priest is only of the internal forum, so that he cannot make laws or censures or institute a canonical trial; nevertheless he has some domestic or economic power over his subjects, and he carries out a public administration by which he fulfills several external functions by force of office.[1]

4. **To be exercised under the authority of the local Ordinary.** Namely, although the power of a parish priest is exercised in his own name, nevertheless it is subordinated to the power of the local Ordinary; nor is that unfitting according to these words of St. Thomas: "It must be said that it would be unfitting if two were constituted equally over the same people; but if unequally, it is not unfitting. And according to this, immediately over the same people there are the parochial priest, the bishop, and the Pope" (*Supplement*, q. 8, article 5, ad 3).

Note. Those who are placed over the administration of a parish as its proper rectors must be stable in it; yet this does not prevent all from being removable from it according to the norms of law. But not all parish priests obtain the same stability; those who enjoy greater stability are customarily called irremovable, and those who enjoy lesser stability, removable (can. 454).

[1] Chelodi, *De personis*, n. 223 b.

1208 **II. The duties of a parish priest** chiefly regard residence, Mass for the people, ministration of the sacraments, catechetical instruction, sacred sermons, custody of ecclesiastical discipline, spiritual care of the sick, and care of the poor.

1. **Residence.** a) A parish priest is held by the obligation of residing in the parochial house near his church; nevertheless the local Ordinary can, for a just cause, permit him to live elsewhere, provided the house in which he lives is not so distant from the parochial church that the performance of parochial duties suffers some detriment from it (can. 465, § 1). However, a parish priest is permitted to be absent for at most two months within the year, whether continuous or interrupted, unless a grave cause, in the judgment of the Ordinary himself, either requires a longer absence or permits only a shorter one (can. 465, § 2). And the days on which once a year he is occupied with pious exercises are not computed in the two months of vacation (can. 465, § 3). Nevertheless it must be noted that a parish priest who is going to depart is bound to these things:

a) When the absence is going to last beyond a week, the parish priest, besides a legitimate cause, must have the written permission of the Ordinary and, unless he habitually has assistants, leave in his place a substitute vicar to be approved by the same Ordinary; but if the parish priest is a religious, he also needs the consent of the Superior, and the substitute must be approved both by the Ordinary and by the Superior (can. 465, § 4).

b) If a parish priest is compelled to depart for a sudden and grave cause and to be absent beyond a week, he should as soon as possible inform the Ordinary by letter, indicating to him the cause of the

departure and the supplying priest, and should stand by his commands (can. 465, § 5).

c) Even for the time of a shorter absence the parish priest must provide for the necessities of the faithful, especially if particular circumstances require this (can. 465, § 6). Finally, it is prohibited to be absent in time of contagious disease;[1] nevertheless it is lawful to leave the care of the sick to the vicar, if the latter is prepared for it, lest both be exposed to danger or lest the faithful, because of fear of contagion, avoid both (St. Alphonsus VI, 233). On the time of persecution see the tract on Faith, n. 500.

b) The obligation of residence is grave of its own kind; and illicit absences coalesce. Neglect is grave if it is extended to three continuous weeks; nevertheless a longer space of time is required if the absences are interrupted; even less can suffice if meanwhile sufficient provision has not been made for the necessity of the faithful.

c) A parish priest who is illegitimately absent is by that fact deprived of all the fruits of his benefice in proportion to the illegitimate absence, and he must hand them over to the Ordinary, who is to distribute them to the church or to some pious place or to the poor (can. 2381, 1st); besides, proceedings must be taken against the delinquent according to the norm of canons 2168-2175 (can. 2381, § 2). It is said **all the fruits;** hence those fruits also are comprehended which correspond to other burdens of the benefice.[2] Then the obligation of handing over the fruits to the Ordinary presses before the sentence of a judge.[3]

2. **Mass for the people,** which obligation is explained in the tract on the Most Holy Eucharist.

3. **Ministration of the sacraments;** concerning this there is enough in the tracts on the Sacraments in general and in particular.

4. **Catechetical instruction.** a) With regard to children, the parish priest must: 1st, at fixed times, by continuous instruction for several days, prepare children each year for receiving the sacraments of penance and confirmation rightly; 2nd, with altogether particular zeal, especially, if nothing prevents, in the time of Lent, instruct children in such a way that they may holily taste for the first time the Holy Things from the altar (can. 1330); 3rd, besides the instruction of children already explained, the parish priest should not omit to cultivate more abundantly and perfectly in the catechism those children who have recently received first communion (can. 1331).

b) With regard to adults, on Sundays and other feasts of precept, at that hour which in his judgment is more suitable for the attendance of the people, the parish priest must moreover explain the catechism to the adult faithful, in speech accommodated to their understanding (can. 1332).

Note 1. In the religious instruction of children the parish priest can, indeed, if he is legitimately impeded, must, make use of the work of clerics dwelling in the territory of the parish, or even, if necessary, of pious lay people, especially those who are enrolled in the pious society of Christian doctrine or another similar society erected in the parish (can. 1333, § 1). Priests and other clerics detained by no legitimate impediment are to be helpers to their own parish priest in this most holy work, even under penalties to be inflicted by the Ordinary (can. 1333, § 2). Here the discussion is about priests and clerics who are not exempt, since exempt clerics do not have a proper parish priest.

Note 2. If, in the judgment of the local Ordinary, the help of religious for the catechetical instruction of the people is necessary, religious Superiors, even exempt, when requested by the same Ordinary, are bound, either by themselves or through their religious subjects, though without detriment to regular

discipline, to hand it on to the people, especially in their own churches (can. 1334). Finally it belongs to the local Ordinary to issue all things in his diocese which regard instructing the people in Christian doctrine; and even exempt religious, whenever they teach the non-exempt, are bound to observe the same things (can. 1336).

c) The obligation of catechetical instruction is grave of its own kind; hence a parish priest who is notably negligent in fulfilling it sins gravely. Nevertheless the obligation of doing this personally is not to be urged in the same way as when there is discussion of sacred sermons; for then, as we shall now say, it is expressly indicated by the Code (can. 1344).

5. **Sacred sermons.** By divine precept it has been commanded to all to whom the care of souls has been committed to feed their sheep by the preaching of the divine word.[4] Moreover:

a) On Sundays and the other feasts of precept through the year, it is the proper office of each parish priest to announce the word of God to the people by the customary homily, especially within the Mass at which there is usually the greater attendance of the people (can. 1344, § 1). A parish priest cannot satisfy this obligation habitually through another, unless for a just cause approved by the Ordinary (can. 1344, § 2). The Ordinary can permit that on certain more solemn feasts, or even, for a just cause, on some Sundays, the sermon be omitted (can. 1344, § 3).

Note 1. It is to be desired that at Masses which, with the faithful present, are celebrated on feasts of precept in all churches or public oratories, a brief explanation of the Gospel or of some part of Christian doctrine be made; and if the local Ordinary has prescribed this, with suitable instructions given, not only priests from the secular clergy are bound by this law, but also religious, even exempt, in their own churches (can. 1345).

Note 2. Let the Ordinaries of places take care that in the time of Lent, and likewise, if it has seemed expedient, in the time of Advent, sacred sermons be given more frequently to the faithful in cathedral and parochial churches (can. 1346, § 1).

b) In sacred sermons those things are chiefly to be expounded which the faithful must believe and do for salvation. The heralds of the divine word should abstain from profane or abstruse arguments exceeding the common understanding of the hearers; and they should exercise the evangelical ministry not in persuasive words of human wisdom, not in the profane display and enticement of vain and ambitious eloquence, but in the showing of spirit and power, preaching not themselves but Christ crucified (can. 1347).[5] Finally, it is illicit to treat certain matters, namely: a determinate time of certain future things, for example of Antichrist or of the last judgment; likewise vain revelations about these or other things; new inspirations or revelations or new miracles, unless they have been approved by competent authority.[6]

c) The obligation of preaching is grave of its own kind; but grave matter seems to be had if a parish priest for one continuous month or for three discontinuous months in the year preached neither by himself nor through others (St. Alphonsus III, 269). A longer space of time is also required for someone to sin gravely for the reason that he preached only through another.

6. **Custody of ecclesiastical discipline.** The parish priest must know his sheep and prudently correct those who err (can. 467, § 1). Besides, he should watch lest anything against faith and morals be handed on in his parish, especially in public and private schools (can. 469; cf. St. Thomas 2-2, q. 33, article 2, ad 4; St. Alphonsus III, 360, doubt 2). Moreover sacred missions contribute greatly to

the custody or restoration of ecclesiastical discipline, concerning which can. 1349 says thus: Ordinaries should watch that parish priests take care that at least every tenth year a sacred mission, as it is called, be held for the flock committed to them. A parish priest, even a religious, must stand by the commands of the local Ordinary in instituting these missions.[7]

7. **Spiritual care of the sick;** these things are explained in the tracts on the Holy Eucharist, on Penance, and on Extreme Unction.

8. **Care of the poor;** concerning this can. 467, § 1 establishes: The parish priest must embrace the poor and miserable with fatherly charity.

[1] Sacred Congregation of the Council, 6 September 1576, in Fagnanus, on chapter *Clericos*, *De clericis non residentibus*, from n. 41 to n. 45; Benedict XIV, *De Synodo dioecesana*, book 13, chapter 19, n. 2.

[2] Sacred Congregation of the Council, 10 July 1920, ad III.

[3] Sacred Congregation of the Council, 10 July 1920, ad VII.

[4] Council of Trent, session 23, chapter 1, on reform.

[5] Cf. Encyclical of Benedict XV *Humani generis*, 15 June 1917.

[6] Cf. Lateran Council V, session 11, constitution 1; Council of Trent, session 25, decree on the invocation of Saints.

[7] Pius VI in the Bull *Auctorem fidei*, 28 August 1794, condemned proposition 65 of the Synod of Pistoia: "The proposition stating that the irregular noise of the new institutions which are called Exercises or Missions perhaps never, or at least very rarely, reaches the point of working absolute conversion, and that those external acts of movement which appeared were nothing other than passing flashes of natural shock, is rash, evil-sounding, pernicious, and injurious to a practice piously and salutarily frequented by the Church and founded on the word of God."

Benedict XIV in the Constitution *Gravissimum*, 8 September 1754, speaks thus: "Taught by long experience, we have perceived that for correcting wicked morals, which either begin to creep in, or have already grown too strong, or finally, confirmed by long duration, have occupied dioceses more widely, nothing contributes more than to implore external help and powers, namely to appoint sacred Missions everywhere (§ 4).... Wherefore this remedy cannot be called new, uncertain, or devised by Us: a remedy most suitable for correcting the corruptions of the people, and perhaps the only one, which so many Bishops distinguished by the glory of piety have used with great utility in their dioceses, which We Ourselves have so often experienced, and which You also, who beyond doubt have at some time refreshed the people committed to you with sacred Missions, have experienced (§ 10)."

Pius IX in the Letter *Singulari quidem*, 17 March 1856, to the Austrian Bishops: "Since sacred Missions carried out by suitable workers conduce exceedingly to exciting the spirit of faith and religion among peoples, and to recalling them to the path of virtue and salvation, We vehemently desire that you take care that they be held from time to time in your dioceses. And We offer deserved and highest praises to all those who from your order have already introduced into their dioceses so salutary a work of sacred Missions, from which, by the breathing of divine grace, We rejoice that abundant fruits have been perceived."

Article III. On the Duties of Assistants of Parish Priests in Particular

Among assistants of parish priests, some are called assistant vicars, others cooperator vicars.

1209 **I.** "To the vicar," that is, the assistant vicar, so says can. 475, § 2, "if he supplies the place of the parish priest in all things, belong all the rights and duties proper to parish priests, except the

application of Mass for the people, which burdens the parish priest; but if he supplies only in part, his rights and obligations are to be drawn from the letters of deputation." With these things premised, certain things remain to be noted with regard to cooperator vicars.

1210 **II. A cooperator vicar:**

1. Is bound by the obligation of residing in the parish according to diocesan statutes or laudable customs or the prescription of the Bishop; indeed the Ordinary should prudently take care, according to the norm of can. 134, that he live in the same parochial house (can. 476, § 5).
2. His rights and obligations are to be drawn from diocesan statutes, from the letters of the Ordinary, and from the commission of the parish priest himself; but, unless something else is expressly provided, he must assist the parish priest in the whole parochial ministry, except the application of Mass for the people (can. 476, § 6). Specifically, with regard to competence for assisting at marriage, see the tract on Matrimony.
3. He is subject to the parish priest, who should instruct him paternally and direct him in the care of souls, watch over him, and at least annually report concerning him to the Ordinary (can. 476, § 7).

Part III. On the Duties of Religious

(St. Thomas, 2-2, qq. 179-189; St. Alphonsus, *Theologia Moralis*, book IV, nn. 1-82; *Homo Apostolicus*, tract 13, nn. 1-29.)[1]

[1] Cf. Code of Canon Law 487-681; Cajetan, *Commentarius* on the cited place of St. Thomas; Billuart, *Tractatus de statu religioso*; Suarez, *De virtute et statu religionis*, tract VII-X; Wernz, *Ius Decretalium* III, n. 586 sq.; Vermeersch, *De religiosis institutis et personis*; Vermeersch-Creusen, *Epitome Iuris Canonici*, 4th ed., I, n. 531 sq.; Peyska, *Ius canonicum religiosorum*; Schafer, *De religiosis ad normam iuris canonici*; Fanfani, *De iure religiosorum*; Chelodi, *Ius de personis*.

Section I. Preliminary Notes

In order that the duties of religious may be better explained and understood, certain things must first be noted concerning the religious state itself, then concerning the society of persons which lives the religious state, or concerning a religion, and finally concerning admission into religion.

Chapter I. On the Religious State

1211 **I. Notion.** The religious state is "a stable manner of living in common by which the faithful, besides the common precepts, also undertake the evangelical counsels to be observed through vows of obedience, chastity, and poverty" (can. 487). It is said:

1. **A stable manner of living.** For a state involves a certain immobility or firmness, that is, a manner of living not easily changeable (St. Thomas 2-2, q. 183, article 1).

2. **In common,** that is, in a society. Hence eremitical life or a private profession of the counsels now does not suffice for the religious state. Nevertheless it is not required that life be spent in a community; for a bond with the other members and dependence upon a Superior suffices. Hence a religious bishop and an exclaustrated religious remain in the religious state (can. 627-629; 638 and 639).

3. **The evangelical counsels,** that is, the counsels of obedience, chastity, and poverty. Namely, the religious state is ordered to perfection, and not to common but to higher perfection; hence it ought to exclude the things which are an impediment to the said perfection, which are comprehended in these words: "All that is in the world is the concupiscence of the flesh and the concupiscence of the eyes and the pride of life."[1] Now the concupiscence of the flesh is healed through chastity, the concupiscence of the eyes through poverty, and the pride of life through obedience. The aforesaid are called simply the evangelical counsels, because not only are they commended in the Gospel like many other things, but they are also universal means which by their nature remove all impediments to evangelical perfection.

4. **To be observed through vows.** For state and stability demand obligation; but there is required an obligation arising from a vow, that is, from a promise made to God, because an obligation of this kind corresponds to the nature of the religious state, by which someone devotes himself to God (St. Thomas 2-2, q. 186, article 6). There are required - which is understood rather than expressed by can. 487 - vows emitted in some religion, and therefore public vows accepted in the name of the Church (can. 488, 1st, and 572). For no one would admit that the Church recognizes as religious those who do not belong to some religion. But it is not required that the vows be solemn or

perpetual; temporary vows suffice, though to be renewed after the time has elapsed (can. 488, 1st); in that case sufficient stability is had.

Moreover, in fact ecclesiastical approval is required for the religious state. For the religious state, as has been noted, is not had except in some religion; but every religion must be approved by ecclesiastical authority (can. 488, 1st). It is disputed, however, whether an approval of this kind is required from the nature of the thing, or from ecclesiastical law alone. Now it must be said that it is required from ecclesiastical law alone. For the religious state from the nature of the thing says only the profession of the evangelical counsels through vows; but ecclesiastical approval does not enter into this profession. The Church merely recognizes what already exists. But the approval of the Bishop according to the norm of can. 492, § 1, concerning which below, suffices. The reason is that these societies are indicated even by the Code itself (can. 488, 3rd) by the name of religion, and the members of these societies are called religious (can. 488, 7th); wherefore the canons, whenever they speak of religious, also understand the members of these societies, unless the contrary is expressly established.

[1] 1 John II, 16.

1212 **II. The end of the religious state** is Christian perfection (can. 488, 1st; St. Thomas 2-2, q. 186, article 2). But perfection consists:

1. Essentially in charity; for "each thing is said to be perfect insofar as it attains its proper end, which is the ultimate perfection of the thing. But charity is what unites us to God, who is the ultimate end of the human mind, because he who abides in charity abides in God and God in him, as is said in 1 John 4; and therefore according to charity especially is the perfection of the Christian life considered" (St. Thomas 2-2, q. 184, article 1). But perfection consists in charity "principally indeed according to love of God, but secondarily according to love of neighbor" (St. Thomas 2-2, q. 184, article 3).

2. Accidentally and instrumentally perfection consists in other virtues, or in the observance of the precepts of other virtues, and in the observance of the counsels, namely insofar as "precepts other than the precepts of charity are ordered to removing those things which are contrary to charity, with which, namely, charity cannot exist; but the counsels are ordered to removing impediments of the act of charity, which nevertheless are not contrary to charity, such as marriage, occupation with secular business, and other things of this kind" (St. Thomas, loc. cit.).

Corollary I. Bishops are said to be in the state of perfection because in a special way they have bound themselves to perfection, not indeed by emitting vows which correspond to the three evangelical counsels, but by assuming the pastoral office, by which they have entered a bond of itself perpetual with their church; for through this, says St. Thomas, they have publicly and perpetually bound themselves to obey that supreme counsel of charity, even of giving their life for their sheep (2-2, q. 184, articles 5 and 7). But they are said to be in the state of acquired perfection, or rather of perfection to be exercised, because of the excellent exercise of charity toward neighbor in the pastoral office. Religious are said to be in the state of perfection to be acquired according to these words of St. Thomas: "It is manifest, however, that for one who works toward an end, it is not of necessity fitting that he has already attained the end, but it is required that by some way he tend toward the end; and therefore he who assumes the state of religion is not bound to have perfect charity, but he is bound to tend to this and to devote effort so that he may have perfect charity" (2-2, q. 186, article 2).

Corollary II. Perfection, as is clear, can also be had without the state of perfection, for example among simple faithful; but a tepid religious, although he is in the state of perfection, is in no way perfect.

1213 **III. Institution.** The religious state according to its substance was instituted immediately by Christ Himself, and thus it is deservedly said to be of divine law, not commanding, but counseling. And indeed Christ is deservedly said to have instituted religion immediately, if He exhorted to the three evangelical counsels and to their being confirmed by vow; for by these the substance of the religious state is constituted. But that this took place is clear: with regard to poverty, from Matt. XIX, 29; 16 sq., and Luke XIV, 26; with regard to chastity, from Matt. XIX, 12, and 1 Cor. VII, 25 sq.; with regard to the three counsels, from those words by which Christ invites to perfection the young man who until then had lived the state of common life: "If thou wilt be perfect, go, sell what thou hast and give to the poor, and thou shalt have treasure in heaven, and come, follow me." Namely, by these words poverty and obedience are directly commended, but chastity implicitly, because without it strict imitation of Christ would be impossible. Besides, Christ counsels a stable manner of acting;[1] this demands obligation, and one founded on a vow (n. 1211). Therefore Christ implicitly also exhorted to vows.

[1] Mark X, 17 sq.; Luke IX, 57 sq.; XVIII, 18 sq.

1214 **IV. The excellence of the religious state** follows from what has been said, and is proved by the praises of the holy Fathers and of other doctors and holy men.

It should also be noted that, according to the common opinion of doctors, the religious state can never fully fail in the Church because of her mark of sanctity; wherefore not even the Roman Pontiff himself could totally suppress all religious families at once.

Therefore can. 487 deservedly declares that the religious state is to be held in honor by all.

Chapter II. On Religion

1215 **I. Notion.** A religion is: A society approved by legitimate ecclesiastical authority, in which the members, according to the proper laws of the society itself, pronounce public vows, perpetual or temporary, though to be renewed after the time has elapsed, and thus tend to evangelical perfection (can. 488, 1st).

1216 **II. Division.** Religions are divided:

1. By reason of vows, into Orders and religious Congregations, or simply Congregations. An Order is a religion in which solemn vows are pronounced. A religious Congregation is a religion in which vows that are only simple, whether perpetual or temporary, are emitted (can. 488, 2nd).
2. By reason of dependence, into exempt and non-exempt. An exempt religion is a religion, whether of solemn or simple vows, withdrawn from the jurisdiction of the local Ordinary. A non-exempt religion is subject to the jurisdiction of the Ordinary (can. 488, 2nd).
3. By reason of approval, into religions of pontifical right and of diocesan right. The former are those which have obtained either approval or at least a decree of praise from the Apostolic See. The latter are those which, erected by Ordinaries, have not yet obtained this decree of praise (can. 488, 3rd).
4. By reason of members, into clerical and lay. A clerical religion is one whose members for the most part[1] are advanced to the priesthood. A lay religion is one which consists uniquely or at least

chiefly of lay members (can. 488, 4th).

5. By reason of the principal work, into contemplative, active, and mixed, according as they are principally devoted to contemplation (Carthusians, Trappists, etc.), to the corporal works of mercy (Camillians, Brothers of St. John of God, etc.), or to teaching and preaching (Friars Preachers, Friars Minor, Society of Jesus, Congregation of the Most Holy Redeemer, etc.). Now "those religions hold the highest grade which are ordered to teaching and preaching" (St. Thomas 2-2, q. 188, article 6); "for just as it is greater to illuminate than only to shine, so it is greater to hand on to others the things contemplated than only to contemplate" (St. Thomas, loc. cit.). "But those which are ordered to contemplation hold the second grade; the third is of those which are occupied with external actions" (St. Thomas, loc. cit.).

"But in each of these grades preeminence can be considered according as one religion is ordered to a higher act in the same genus; just as among works of the active life it is preferable to redeem captives than to receive guests; and in works of the contemplative life, prayer is preferable to reading. Preeminence can also be considered if one of them is ordered to more of these things than another; or if it has statutes more suitable for attaining the proposed end" (St. Thomas, loc. cit.).

Note 1. Diversity of religions provides better: 1st, for the necessity and utility of the Church; 2nd, for the increase of members.[2]

Note 2. "To pass from one religion to another, unless on account of great utility or necessity, is not praiseworthy; both because from this those who are left behind are usually scandalized, and also because someone progresses more easily in the religion to which he is accustomed than in one to which he is not accustomed, other things being equal" (St. Thomas q. 189, article 8).

[1] It is said thus because in a religion of priests and lay members, the former are commonly more numerous. Nevertheless it suffices that the class of laymen be subordinated to the other; hence the Sacred Congregation of Religious has already recognized as clerical a religion in which laymen were more numerous (Vermeersch, *Epitome*, 4th ed., n. 542).

[2] The errors of the Synod of Pistoia concerning the multiplicity of religions were condemned by Pius VI in the Constitution *Auctorem fidei*, 28 August 1794.

1217 **III. Subsidiary notions.** In order that the things which pertain to the law of religious may be better understood, it is pleasing to add the notions which the Code in can. 488, 5th, 6th, 7th, and 8th places first, and which regard: 1st, houses; 2nd, provinces; 3rd, members of religions; 4th, Superiors. Now:

1. A religious house is called a house of some religion in general; a regular house is a house of an Order; a formed house is called a religious house in which at least six professed religious dwell, of whom, if there is question of a clerical religion, at least four are priests (can. 488, 5th).

2. By the name of province is understood the union of several religious houses joined together among themselves under the same Superior, constituting part of the same religion (can. 488, 6th).

3. Under the name of religious come those who have pronounced vows in some religion; under the name of religious of simple vows, those who are in a religious Congregation; of regulars, those who are in an Order; of sisters, religious women of simple vows; of nuns, religious women of solemn vows, or, unless something else is clear from the nature of the thing or from the context of the discussion, religious women whose vows from the institute are solemn but for some places by

prescription of the Apostolic See are simple (can. 488, 7th). To nuns pertain Carmelite religious women, Poor Clares, religious women of the Most Holy Redeemer (Redemptoristines), etc.

4. Under the name of major Superiors come: the Abbot Primate, the Abbot Superior of a monastic Congregation, the Abbot of a monastery sui iuris, even if belonging to a monastic Congregation, the supreme Moderator of a religion, the provincial Superior, their vicars, and others having power after the manner of provincials (can. 488, 8th); likewise probably the superior and superiorissa of a house which is sui iuris (cf. can. 504).

1218 **IV. Solemnity of vows.** 1. A solemn vow is had only when the Church recognizes it as such (can. 1308, § 2).

2. A solemn vow renders acts contrary to the vow, if they are capable of being invalidated, illicit and invalid; a simple vow renders them illicit only, but not invalid, unless something else has been expressly provided (can. 579). Thus, for example, the solemn vow of poverty renders religious incapable of having ownership of goods, whether direct or beneficial, namely independently of Superiors; the solemn vow of chastity renders a marriage to be contracted invalid (can. 1073), and besides dissolves a ratified non-consummated marriage (can. 1119).

3. A solemn vow does not differ from a simple one in such a way that, if it has been violated, the circumstance of solemnity must of itself be expressed in confession. Accidentally, on account of the incapacity annexed, a new sin can arise. Besides, merit of itself is equal; but accidentally, on account of the incapacitating force, greater merit can be had in solemn profession, just as, conversely, in simple profession, for example on account of the greater liberality by which someone hands himself over to an Institute which is not so strictly obliged toward him as he is toward the Institute, or because of greater dependence in common life, and so forth; moreover the merit of a vow of perseverance can be added.

4. A solemn vow as such, or the solemnity of a vow, is an institute of merely ecclesiastical law; this seems altogether to have to be admitted, considering the sole chapter *De voto*, III, 15, in the Sext; Gregory XIII, Constitution *Quanto fructuosius*;[1] Constitution *Ascendente Domino*.[2] Cf. also can. 636.

5. It is disputed in what precisely the nature of solemnity consists.

According to some, it is placed in ceremonies and external rites. But solemn vows can be emitted without ceremonies and rites, as formerly in tacit profession.

According to others, in certain juridic effects. But the aforesaid effects can be removed from solemn vows, as was done for the Regulars of Belgium and Holland.

According to others, in a more perfect handing over of oneself, at least of the body, together with its acceptance made by the Church in the name of God; or, as others refine this opinion, in the conjunction of vows with a more perfect handing over of oneself, together with acceptance by the Church, both perpetual on either side and indissoluble by the ordinary way.[3] I said **at least of the body,** because in the vow of chastity annexed to sacred order, only a more perfect handing over of the body has place. But the solemnity of a vow is an institute of merely ecclesiastical law, as we said under IV; and with that doctrine the opinion just set out is joined with difficulty.

According to others, in a more perfect and of itself immutable handing over, together with a force incapacitating the person for certain moral effects. But to this opinion the same objections are opposed

as to the immediately preceding opinion.

According to others, in a special authenticity of vows, or in a certain special extrinsic juridic quality annexed by the Church to certain vows, to which by the ordinary way there has been added the force of invalidating acts contrary to the vows, if they are capable of being invalidated. But this special authenticity or special quality should not be taken for publicity only, but for greater notability or inviolability. This opinion, since serious difficulties do not seem to stand in its way, is preferred.

[1] February 1583.

[2] 25 May 1584.

[3] According to the supporters of this opinion, a person bound by solemn vows is like a thing consecrated to God; but a person bound by simple vows is like a blessed thing.

Chapter III. On Admission into Religion

We shall speak beforehand about vocation to religion, then about admission itself into religion.

Article I. On Vocation to Religion

1219 **I. Notion.** Vocation, taken generally, is a certain invitation on the part of God to embrace a state of perfection. Universal and particular vocation can be distinguished. Universal vocation is the invitation to embrace the state of perfection, directed by Christ the Lord to all Christians in general. Particular vocation is that by which the religious state is counseled to a particular person, whether in an ordinary or extraordinary manner.

1220 **II. Necessity of particular vocation.** In order that someone may be able to embrace the religious state, or at least that he may embrace it laudably, a particular vocation is required, intimated by God either in an ordinary or extraordinary manner. The reason is that one who embraces the aforesaid state without a particular vocation exposes himself to the danger of not fulfilling the grave obligations annexed to that state. For on the one hand, since God does not will that all, although generally called, enter into religion, He will probably not provide more abundant graces to one called only generally, without which religious obligations will in fact commonly not be fulfilled; this being posited, one who lacks a particular vocation ought at least to fear lest he be deprived of those graces, and therefore transgress the obligations.

1221 **III. Signs of particular vocation.** There are three things which must concur together: 1st, absence of legitimate impediments; 2nd, capacity or fitness of the subject in relation to such an institute; 3rd, right intention (cf. can. 538).

1. **Absence of legitimate impediments;** concerning these there will soon be discussion where the novitiate is treated (n. 1224).
2. **Fitness** consists "in sufficient powers of body and soul, and this according to the diverse ends of diverse orders, namely: sufficient health; right judgment, not singular, which would disturb common life; talent at least moderately good, which is suitable or can be made suitable for exercising the functions of the order itself; a disposition suited to subjection, since the religious state is especially a state of subjection, which does not permit one to follow one's own will and one's own judgment in matters to be done."[1]

3. **Right intention,** or the will of entering into religion with a view to the glory of God and one's own salvation, or also the salvation of souls (St. Alphonsus, *Praxis Confessarii*, n. 92); these indeed can exist without a natural inclination, indeed even with natural repugnance. Moreover it makes no difference whether the said intention or will has been provoked in an extraordinary or an ordinary manner. Moreover:

Note 1. Omnimodal certainty is not required for someone to be able safely to enter into religion. But those who must admit a candidate to religion should carefully see and inquire whether he is truly suitable (cf. can. 571, § 2). "It would be illicit to receive an adolescent into religion if his inconstancy were established or probably believed, or if there were anything else of this kind, which things are diligently considered in well-instituted religions" (St. Thomas, *Quodlibet* 3, article 11).

Note 2. With regard to the office of the confessor, St. Alphonsus observes these things: "If there is question of those who wish to enter religion, before all things the confessor should take care to weigh well into what religion they desire to enter; for if that institute is ever relaxed, it will be better for someone, ordinarily speaking, to remain in the world. For by joining himself to it, he will conduct himself as he has given himself to others.... But if the religion flourishes in observance, let the confessor test well the vocation of his penitent, inquiring whether the penitent has for it some impediment of unsuitability, infirm health, poverty of parents; and specifically let him weigh the end: whether it is right, namely of joining himself more to God, or of correcting the falls of his past life, or of avoiding the dangers of the world. But if the principal end were worldly, to live a more comfortable life, or to free himself from relatives of hard condition, or to please parents who impel him to this, let him take care not to permit him to enter religion. For in that case it is not a true vocation; without it an entrance of this kind will have an evil outcome. But if the end is good, and no impediment is present, the confessor, nor any other, as St. Thomas teaches, neither ought nor can without grave fault impede or dissuade him from the vocation; although he acts prudently sometimes if he delays its execution for him, in order to test better whether the resolution is firm and persevering, especially if he knows that the adolescent is changeable, or if that deliberation was made in the time of a mission or of spiritual exercises; because in occasions of this kind certain resolutions are conceived which afterwards, once the first fervor has passed, fail" (*Praxis Confessarii*, n. 92).

[1] Lehmkuhl, *Theologia Moralis* I, n. 658.

1222 **IV. Obligation of obeying a vocation.** 1. Of itself there is no obligation of following a vocation. "To neglect a religious vocation," says St. Alphonsus, "of itself is not a sin; for divine counsels of themselves do not oblige to fault" (IV, 78).

2. Insofar as there is an obligation accidentally, the holy Doctor explains it thus:

a) "One who does not follow a recognized vocation, by reason of the danger of eternal salvation to which the called person commits himself, making a choice of state not according to the divine good pleasure, cannot be excused from some fault" (loc. cit.). Indeed, "if someone believed that by remaining in the world he would incur damnation, both because of his fragility, which he has experienced amid the occasions of the world, and because of the lack of helps which he would have in religion, he cannot be excused from grave sin, since he casts himself into grave danger of his salvation" (loc. cit.).

b) Outside the hypothesis set out, it is more disputed whether one who neglects a recognized vocation sins gravely. St. Alphonsus inclines to the affirmative opinion, because one who neglects a vocation exposes himself to a great danger of salvation. "But the reason of this danger is that he who remains in

the world against the vocation of God will not have the fitting helps of grace which God prepared for him in religion; and therefore, destitute of these, he will with difficulty resist the temptations of the world, and thus by succumbing will incur damnation" (loc. cit.). Nevertheless the holy Doctor adds: "I do not wish to pronounce an absolute judgment on this point: I remit it to the wise" (loc. cit.). Others deny it, because in their opinion it is asserted gratuitously that an abundance of graces is annexed only to vocation; indeed the nature of counsel demands the contrary. While the doubt stands, since there is question of the mystery of the distribution of graces, the safer part seems to have to be followed in practice, on account of the danger of salvation.

Question. To what is one bound who has vowed religion?

Response 1. One who has vowed religion generally can enter whichever he prefers, provided regular discipline is in force there at least with regard to the more principal observances (St. Alphonsus IV, 72).

Response 2. One who has vowed a special religion is bound to enter it, unless he wishes to choose a stricter one; the latter is lawful, since it is better. If he is not admitted into the religion which he vowed, he is not bound to seek another, unless he had the intention of embracing religion in any way whatsoever (St. Alphonsus, loc. cit.).

Response 3. One who has vowed religion sins gravely if after entrance he leaves the novitiate, unless a just cause for leaving is present, for instance if he finds the religion unequal to his strength. "The reason is that a vow of religion obliges not only to taking up the religious habit, but also to serving God for the whole time of life" (St. Alphonsus, loc. cit.; cf. St. Thomas 2-2, q. 189, articles 3 and 4).

Response 4. One who has vowed religion and enters it, but is dismissed from the novitiate, is bound thus: if he is dismissed through his own fault, he is bound to correct himself and to apply moderate diligence so that he may be able to fulfill the vow. If he is dismissed without fault, and the impediment ceases, he is likewise bound to use moderate diligence so that he may be able to satisfy the vow, at least if there is hope of admission (St. Alphonsus, loc. cit.).

Article II. On Admission Itself into Religion

A twofold admission is distinguished, namely to the novitiate and to religious profession. Now the Code declares these things about each admission: Any Catholic can be admitted into religion who is detained by no legitimate impediment, is moved by a right intention, and is suitable for bearing the burdens of the religion (can. 538). Then it speaks specifically: first about the postulancy which in some religions must be placed before the novitiate; then about the novitiate; then about religious profession.

§ I. On Postulancy

1223 **I.** In religions of perpetual vows, all women and, if there is question of a religion of men, lay brothers, before they are admitted to the novitiate, should complete a postulancy for at least six full months; but in religions of temporary vows, as regards the necessity and time of postulancy, the constitutions must be followed (can. 539, § 1). The major Superior can extend the prescribed time of postulancy, but not beyond another semester (can. 539, § 2).

Corollary I. Postulancy is not required for the validity of the novitiate or profession, but is merely prescribed, as is clear both from the word *complete* and from the fact that there is no discussion of it in

can. 542, 1st.

Corollary II. The constitution of a religion of perpetual vows which prescribes a postulancy, for example, of one year or two years, can but need not be observed. It can be observed, because postulancy must be completed for at least six months; it need not, as it seems, because it is said only of religions of temporary vows that the constitutions must be followed.

II. With regard to the manner of completing postulancy, these things are prescribed:

1. Postulancy must be completed either in the house of the novitiate or in another house of the religion in which discipline is accurately observed according to the constitutions, under the special care of an approved religious (can. 540, § 1).
2. Postulants should wear clothing that is modest and different from the clothing of novices (can. 540, § 2).
3. In monasteries of nuns, aspirants, while completing postulancy, are held by the law of enclosure (can. 540, § 3).

III. Postulants, before they begin the novitiate, should spend at least eight full days in spiritual exercises; and, according to the prudent judgment of the confessor, they should first make a general confession of their past life (can. 541).

IV. Besides the things set out, these things must be noted:

1. Postulants do not enjoy spiritual privileges, nor according to the general laws suffrages after death, since can. 567, § 1 speaks only of novices.
2. Where the Code speaks only of novices, postulants enjoy only the rights of members of the household (can. 514, § 1), for example with regard to confessions (can. 875, § 1), with regard to dispensation from fasting and abstinence (can. 1245, § 3), with regard to Extreme Unction and Viaticum (can. 514, § 4), with regard to burial (can. 1221, § 3), etc. Nor are they exempt (can. 615).
3. The testimonials to be brought before the novitiate (p. 816) are usefully presented already before postulancy.

§ II. On the Novitiate

1224 **I. Requisites for someone to be admitted to the novitiate.** From can. 542, 1st:

1. The following are invalidly admitted to the novitiate:

a) Those who have adhered to a non-Catholic sect. It suffices that they have adhered, even if they do not actually adhere. It is not sufficient that someone was born in heresy or has heretical blood-relations,[1] or that he was baptized outside the Catholic Church; but it is required that after the seventh year he was publicly enrolled in a non-Catholic sect, and - so some say - that he was not converted to the Catholic Church before the fourteenth year.[2] The impediment does not regard one who has been an apostate.

b) Those who do not have the age required for the novitiate. The completed fifteenth year of age is required (can. 555, § 1, 1st). At the beginning of the novitiate, the last day of the fifteenth year should have been completed (can. 34, § 3, 3rd).

c) Those who enter religion induced by force, grave fear, or fraud, or whom the Superior, induced in the same way, receives. Fear merely concomitant is not sufficient; but, considering the word **induced**, such fear is required as was the cause of entrance; likewise grave fear is required, although relatively grave fear suffices, so that reverential fear, at least if importunate prayers, etc., are added, would constitute an impediment.

d) A spouse, while the marriage lasts.

e) Those who are bound or have been bound by the bond of religious profession. It suffices that one be bound or have been bound by temporary profession.

f) Those over whom a penalty is impending because of a grave delict committed, concerning which they have been accused or can be accused.

g) A Bishop, whether residential or titular, even if he has only been designated by the Roman Pontiff.

h) Clerics who, from an institute of the Holy See,[3] are held by oath to devote their work to the good of their diocese or of the missions, for the time during which the obligation of the oath endures.

2. From can. 542, 2nd, the following are illicitly admitted:

a) Clerics constituted in sacred orders, without consultation with the local Ordinary, or with the same Ordinary contradicting it because their departure would result in grave detriment to souls which could in no other way be avoided.

b) Those burdened with debt, who are not able to pay. The debt should not have arisen from a mere promise which obliges from fidelity alone. If someone, with debts not paid, has emitted profession, he is bound to pay, for example when an inheritance has been received, etc.; but he can accept the inheritance even if he has emitted solemn profession, because the ecclesiastical law standing in the way of acceptance seems not to be in force to the harm of a third party having a right.

c) Those liable to render an account or implicated in other secular business, from which the religion could fear lawsuits and troubles.

d) Children who must assist parents, that is, father or mother, grandfather or grandmother, constituted in grave necessity, and parents whose work is necessary for feeding or educating children. Grief to be caused to parents by entrance into religion does not suffice. Some except grief that is very grave because of special circumstances; this, however, is altogether doubtful to me. If there is question of a brother or sister, grave necessity does not constitute an impediment; but extreme necessity, from natural law, requires that entrance at least be deferred (St. Alphonsus IV, 70).

Question. Whether a son ought to leave in order to help parents constituted in grave necessity after his entrance.

Response 1. He should not leave if he can help by remaining in religion; nor should he leave definitively if departure for a time or exclaustration according to the norm of can. 638 suffices.

Response 2. If he cannot help unless he leaves, it must be said thus: 1st, if there is question of a novice, he ought to leave. 2nd, If there is question of a professed religious, he should not leave in order to help a brother or sister even constituted in extreme necessity; in order to help parents, grandfather, or grandmother he is bound to leave if the necessity is extreme; likewise if grave necessity already existed before profession (St. Alphonsus IV, 67).

e) Those destined for the priesthood in religion, from which nevertheless they are removed by irregularity or another canonical impediment.

f) An Oriental in Latin religions without permission given in writing by the Sacred Congregation for the Oriental Church.

3. Things to be noted:

a) The right of admitting to the novitiate and to subsequent religious profession, both temporary and perpetual, pertains to major Superiors with the vote of the Council or Chapter, according to the particular constitutions of each religion (can. 543).

b) With regard to testimonials to be brought, these things have been established:

a) In any religion, all aspirants, before they are admitted, must present a testimonial of baptism and confirmation received (can. 544, § 1).

b) Male aspirants must besides present testimonial letters of the Ordinary of origin and of each place in which, after the completed fourteenth year of age, they have stayed beyond a morally continuous year, every contrary privilege being removed (can. 544, § 2).

c) If there is question of admitting those who have been in a Seminary, college,[4] or in the postulancy or novitiate of another religion, there are required besides testimonial letters, given for the diverse cases by the rector of the Seminary or college, after the local Ordinary has been heard, or by the major Superior of the religion (can. 544, § 3).

d) For clerics to be admitted, besides the testimonial of ordination, testimonial letters of the Ordinaries in whose dioceses after ordination they have stayed beyond a morally continuous year are sufficient, with the prescription of § 3 preserved (can. 544, § 4).

e) For a professed religious passing to another religion by apostolic indult, the testimonial of the major Superior of the prior religion is sufficient (can. 544, § 5).

f) Finally, women should not be received unless accurate investigations concerning their character and morals have first been made, with the prescription of § 3 remaining firm (can. 544, § 7).

c) With regard to things to be observed by the one giving a testimonial, these have force:

a) Those who must give testimonial letters from the prescription of law should give them gratuitously, within the space of three months from their request, not to the aspirants themselves, but to the religious Superiors, closed with a seal and, if there is question of those who have been in a Seminary, college, or in the postulancy or novitiate of another religion, confirmed by the oath of the Superior (can. 545, § 1).

b) If for reasons they have judged that they cannot respond to them, they should set out the causes to the Apostolic See within the same time (can. 545, § 2).

c) If they have replied that the aspirant is not sufficiently known, the religious Superior should supply this by another accurate investigation and a trustworthy report; but if they have replied nothing, the Superior making the request should inform the Holy See concerning the response not received (can. 545, § 3).

d) In their testimonial letters, after they have instituted a diligent investigation, even through secret information, they must report, their conscience being gravely burdened concerning the truth of the things set forth, about the aspirant's birth, morals, talent, life, reputation, condition, knowledge; whether he has been investigated, entangled by some censure, irregularity, or other canonical impediment; whether his own family needs his help; and finally, if there is question of those who have been in a Seminary, college, or in the postulancy or novitiate of another religion, for what cause they were dismissed or departed of their own accord (can. 545, § 4). His own family, that is, parents, grandfather, and grandmother (cf. can. 552, 2nd), likewise brothers and sisters according to the norm of the things said on p. 816.

All who have received the aforesaid information are held by a strict obligation of preserving secrecy concerning the information had and the persons who gave it (can. 546).

d) In monasteries of nuns, the postulant should bring the dowry established in the constitutions or determined by legitimate custom (can. 547, § 1); wherefore the statutes of canons 547-551 should be observed. In religions of simple vows, as regards the dowry of religious women, the constitutions must be followed (can. 547, § 3).

e) The Abbess or Superior of religious women, even exempt, must inform the local Ordinary at least two months before the next admission to the novitiate and to profession, whether temporary or perpetual, solemn or simple. The local Ordinary, or, if he is absent or impeded, the priest deputed by him, should diligently and gratuitously investigate the will of the aspirant at least thirty days before the novitiate and before profession, as above, but not entering the enclosure, as to whether she has been forced or seduced, and whether she knows what she is doing; and if it is plainly established concerning her pious and free will, then the aspirant can be admitted to the novitiate or the novice to profession (can. 552).

[1] Holy Office, 3 February 1898, ad I (*Collectanea*, n. 1990).

[2] Cf. Holy Office, 8 March 1882 (*Collectanea*, n. 1566).

[3] These things do not seem to regard those who have been ordained by title of mission according to the norm of can. 981, because common law is not customarily called an institute of the Holy See.

[4] More probably it is required that the alumnus or girl was in a religious institute, that is, in such an institute in which students are instructed for the priesthood or for religious life or at least also for these; for can. 544, § 3 corresponds to the decrees of the Sacred Congregation of Religious, 5 April 1910 and 4 January 1910, where there is discussion only of institutes of this kind. Hence if someone has been both in a Seminary or college and in the postulancy or novitiate of another religion, testimonials are required both from the Rector of the Seminary or college and from the major Superior of the religion.

1225 **II. Formation of novices.**

1. **Beginning of the novitiate.** The novitiate begins with reception of the habit, or in another manner prescribed in the constitutions (can. 553).
2. **House of the novitiate;** cf. can. 554.
3. **Requisites for the validity of the novitiate.** Besides those things which can. 542, 1st (n. 1224) and can. 543 (p. 816) enumerate for the validity of the novitiate, the novitiate, in order to be valid, must be completed: 1st, after at least the completed fifteenth year of age; 2nd, through an entire and continuous year; 3rd, in the house of the novitiate (can. 555, § 1). If a longer time is prescribed

in the constitutions for the novitiate, that is not required for the validity of profession, unless something else is expressly said in those constitutions (can. 555, § 2).[1]

Note 1. One who begins the novitiate on 29 September cannot emit profession except on 30 September of the following year, because the beginning of the novitiate does not fall, or at least is not considered to fall, at the beginning of the day, that is, at midnight of the day 29 September (can. 34, § 3, 3rd).[2] Nevertheless one who in a leap year begins the novitiate on 29 February can emit profession on 1 March of the following year (can. 34, § 3, 4th).

Note 2. The novitiate is interrupted, so that it must be begun and completed anew, if the novice, dismissed by the Superior, has gone out from the house; or has deserted the house without his permission, not intending to return; or has remained outside the house, even intending to return, beyond thirty days, whether continuous or not continuous, for any cause whatsoever, even with the permission of the Superiors (can. 556, § 1). If the novice has remained outside the enclosure of the house beyond fifteen but not beyond thirty days, even non-continuous, by permission of the Superior or compelled by force, under the obedience of the Superior, for the validity of the novitiate it is necessary and sufficient to supply the days passed in this way; if not beyond fifteen days, the supplement can be prescribed by the Superiors, but is not necessary for validity (can. 556, § 2). Superiors should not grant permission of remaining outside the enclosure of the novitiate except for a just and grave cause (can. 556, § 3). If a novice is transferred by the Superiors into another house of novitiate of the same religion, the novitiate is not interrupted (can. 556, § 4). But if by the transfer it is brought about that the novice remains beyond thirty days, whether continuous or not continuous, outside the house of novitiate, the novitiate is interrupted.

4. **The master of novices and his associate;** let canons 559-565 be compared.

5. **Confessors of novices;** cf. the tract on Penance.

[1] Cf. Sacred Congregation of Religious, 3 November 1921 (*Acta Apostolicae Sedis* 1921, p. 539), where there is discussion of works to be performed in the second year of novitiate.

[2] Cf. Pontifical Commission, 12 November 1922, under 2nd (*Acta Apostolicae Sedis* 1922, p. 661).

1226 **III. Obligations of novices.**

1. They are held to observe the rules established for them; likewise to obey the Master and the Superior (can. 561, § 2).

2. In monasteries of nuns they are held by the law of enclosure. For if this has force for postulants (can. 540, § 3), a fortiori it has force for novices.

3. In the course of the novitiate, if a novice has renounced his benefices or goods in any way, or has obligated the same, the renunciation or obligation is not only illicit, but null by the law itself (can. 568). Except compensation for the expenses of postulancy and novitiate (can. 570, § 1). The law does not regard postulants, as it seems, concerning whom there is no discussion.

4. At the end of the novitiate, before first profession, a novice must: 1st, cede the administration of his goods to whomever he wishes; 2nd, freely dispose concerning the use and usufruct of his goods, unless nevertheless the constitutions provide otherwise (can. 569, § 1). Now "Constitutions approved before the promulgation of the Code are to be observed whether they take away from novices the right of disposing concerning the use and usufruct of their goods, or whether they limit

or predetermine this right."[1] If the said cession and disposition has been omitted because of lack of goods and these later supervene, or if it has been made and afterwards other goods by any title come to him, it should be made or repeated according to the norms established in § 1, notwithstanding simple profession already emitted (can. 569, § 2). Now:

a) The prescribed cession and disposition also regard novices of Orders.

b) The cession, and likewise, unless the constitutions provide otherwise, the disposition regarding use and usufruct, must regard the whole time during which the novice will be bound by simple vows (can. 569, § 1); hence it persists until death if he never emits solemn vows. With regard to those who will emit solemn vows, the disposition made ceases after the renunciation of goods prescribed by can. 581, § 1, and the solemn profession following it.

c) It is not required that the disposition have force before the law;[2] nevertheless it is expedient that it be made in writing, with the date and signature of the novice and of the major Superior added.

5. A novice in a religious Congregation before profession of temporary vows should freely make a testament concerning present goods or goods perhaps to come (can. 569, § 3). Now the canon regards only religious Congregations, not Orders. The reason is that members of an Order renounce goods before solemn profession (can. 581, § 1). It is disputed whether it regards members of an Order who never emit solemn vows.

[1] Pontifical Commission, 13 July 1930, ad I (*Acta Apostolicae Sedis* 1930, p. 365).

[2] Pontifical Commission, 16 October 1919 (*Acta Apostolicae Sedis* 1919, p. 478); cf. Norms of the Sacred Congregation of Bishops and Regulars, n. 118 (28 June 1901).

1227 **IV. End of the novitiate.** When the novitiate has been completed, if the novice is judged suitable, he should be admitted to profession; otherwise he should be dismissed. If doubt remains whether he is suitable, the time of probation can be extended by the major Superiors, but not beyond six months (can. 571, § 2).

§ III. On Religious Profession

1228 **I. Requisites for the validity of profession.** 1. For the validity of any religious profession it is required that: 1st, the one who is going to emit it have the legitimate age according to the norm of can. 573;[1] 2nd, a legitimate Superior admit him to profession according to the constitutions; 3rd, a valid novitiate according to the norm of can. 555[2] have preceded; 4th, the profession be emitted without force or grave fear or fraud; 5th, it be expressed; 6th, it be received by a legitimate Superior according to the constitutions, either personally or through another[3] (can. 572, § 1).

2. But for the validity of perpetual profession, whether solemn or simple, it is required besides that simple temporary profession have preceded according to the norm of can. 574 (can. 572, § 2). Now in canon 574 it is declared:

[1] Can. 573 establishes: Anyone who is going to emit religious profession must have completed the sixteenth year of age, if there is question of temporary profession; the twenty-first, if of perpetual profession, whether solemn or simple.

[2] Cf. n. 1225.

[3] Therefore religious societies in which vows are not accepted by a Superior, such as the Congregation of the Daughters of St. Vincent de Paul, do not pertain to religions properly so called (Fanfani, n. 185). - When in the Constitutions of a Religious Congregation of pontifical right no mention is made of the Abbess or Superior in the formula of profession, but

only of the Bishop or his delegate, then the Bishop or his delegate is to be held the legitimate superior according to the Constitutions for receiving profession, as having a legitimate mandate (Pontifical Commission, 1 March 1921, *Acta Apostolicae Sedis*, p. 178).

1229 **II. Necessity of placing temporary profession before perpetual profession.** In any Order, both of men and of women, and in any Congregation which has perpetual vows, after the completed novitiate, in the house of the novitiate itself, the novice must place before perpetual vows, whether solemn or simple, with the prescription of can. 634 preserved, a profession of simple vows to be valid for three years, or for a longer time if the age required for perpetual profession is farther distant, unless the constitutions require annual professions (can. 574, § 1). Nevertheless note:

1. When the time for which temporary profession was emitted has elapsed, the legitimate Superior can extend the time to be passed before perpetual profession, but not beyond three years (can. 574, § 2).
2. In the case in which the Superior extends the time to be passed before perpetual profession, the religious, when the time for which the vows were pronounced has elapsed, should renew profession at once (can. 574, § 2; 577, § 1). Nevertheless Superiors have the faculty, for a just cause, of permitting the renewal of temporary vows to be anticipated for some time, though not beyond a month (can. 577, § 2).
3. The Pontifical Commission[1] declared that three years of temporary vows are not to be placed before profession in those institutes of simple vows in which vows are emitted under this or a similar appended condition: "As long as I live in the congregation," so that the alumnus, whether he departs voluntarily or is dismissed by the superiors, by that fact becomes free from the vows.
4. With regard to young men to be enrolled in military service, compare the Decree of the Sacred Congregation of Religious *Inter reliquas*;[2] likewise the response of the same Sacred Congregation dated 15 July 1919.[3]

[1] 1 March 1921 (*Acta Apostolicae Sedis* 1921, p. 177).

[2] 1 January 1911 (*Acta Apostolicae Sedis* 1911, p. 37).

[3] *Acta Apostolicae Sedis* 1919, p. 321.

1230 **III. Prescriptions when the time of temporary profession has elapsed.** When the time of temporary profession has elapsed, the religious, according to the norm of can. 637,[1] should either emit perpetual profession, solemn or simple according to the constitutions, or return to the world. But even during the time of temporary profession, if he is not considered worthy to pronounce perpetual vows, he can be dismissed by the legitimate Superior according to the norm of can. 647 (can. 575, § 1). The vote of the Council or Chapter for first temporary profession is deliberative; for subsequent perpetual profession, solemn or simple, it is only consultative (can. 575, § 2).[2]

Here, however, note with regard to solemn perpetual profession to be emitted: One who is going to emit a solemn vow, within sixty days before solemn profession, with particular indults granted by the Holy See preserved, must renounce all goods which he actually has, to whomever he wishes, under the condition that profession will follow (can. 581, § 1). Once profession has followed, all things should immediately be done which are necessary so that the renunciation may obtain effect also in civil law (can. 581, § 2).

[1] Can. 637 declares: One professed by temporary vows, when the time of the vows has elapsed, can freely leave the religion; likewise the religion, for just and reasonable causes, can exclude the same person from renewing temporary vows or from emitting perpetual profession, but not by reason of infirmity, unless it is certainly proved that it was fraudulently concealed or disguised before profession.

[2] With regard to suffrages, it was asked whether they have force "even if constitutions previously approved by the Holy See provide otherwise." The Pontifical Commission, on 16 October 1919, responded: "Affirmatively and according to the mind. The mind is: Orders and religious Congregations can prescribe suitable and the same suffrages for all ... temporarily professed and professed of solemn vows or professed of perpetual simple vows, in their constitutions to be amended and presented for approval to the Sacred Congregation of Religious, according to the norm of the same Sacred Congregation's Decree of 26 June 1918."

1231 **IV. Effects of profession.** It is enough to note the effects:

1. **With regard to graces.** Those professed by temporary vows enjoy the same indulgences, privileges, and spiritual graces which those professed by solemn vows or those professed by perpetual simple vows enjoy; and if they are overtaken by death, they have a right to the same suffrages (can. 578, 1st).
2. **With regard to obligations.** Those professed by temporary vows are held by the same obligation as those professed by solemn vows or those professed by perpetual simple vows of observing the rules and constitutions; but where the obligation of choir is in force, they are not bound by the law of reciting the divine office privately, unless they are constituted in sacred orders or the constitutions expressly prescribe something else (can. 578, 2nd).
3. **With regard to acts.** Simple profession, whether temporary or perpetual, renders acts contrary to the vows illicit, but not invalid, unless something else has been expressly provided; but solemn profession, if they are capable of being invalidated, renders them also invalid (can. 579).
4. **With regard to the right of retaining and acquiring goods and of disposing of goods,** n. 1245 should be compared.
5. Finally, after a year from any religious profession emitted, parochial benefices become vacant; after three years, other benefices (can. 584). One professed by perpetual vows, whether solemn or simple, loses by the law itself the proper diocese which he had in the world (can. 585).

1232 **V. Convalidation of an invalid profession.** Religious profession invalid because of an external impediment does not become valid by subsequent acts, but it is necessary that it be sanated by the Apostolic See, or emitted anew legitimately, once the nullity is known and the impediment has been removed (can. 586, § 1). But if it was invalid because of a merely internal defect of consent, once this has been supplied, it becomes valid, provided consent on the part of the religion has not been revoked (can. 586, § 2).

Scholion. On Profession in Danger of Death

1233 **I. Substance of the privilege.** A novice or probationer who, in the judgment of a physician, is gravely ill, so that he is considered to be constituted in the article of death, can before the end of the novitiate be admitted to profession or consecration or the promise customary in the institute; and indeed either by the major superior, or by him who actually governs the monastery, or the house of novitiate or probation, or by a delegate of the aforesaid superiors.

II. Things to be observed in the use of the privilege. The formula of profession or consecration or promise should be the same as that which is in use in the Institute outside the case of illness; and the vows, if they are pronounced, should be pronounced without determination of time or perpetuity.

III. Effects. 1. One who has emitted a profession, consecration, or promise of this kind will be participant in absolutely all the indulgences, suffrages, and graces which truly professed religious dying in the same Institute obtain; and to the same person a plenary indulgence and remission of his sins in the form of a Jubilee is mercifully granted in the Lord.

2. This profession or consecration or promise, besides the graces declared in the preceding article, produces no other effect at all. Therefore:

a) If a novice or probationer after a profession, consecration, or promise of this kind dies intestate, the Institute will be able to claim no goods or rights belonging to him for itself.

b) If he recovers before the time of novitiate or probation expires, let him be in entirely the same condition as if he had emitted no profession; and therefore: a) freely, if he wishes, he will be able to return to the world; b) the Superiors are able to dismiss him; c) he must complete the whole time of novitiate or probation defined in each Institute, even if it is beyond a year; d) when this time has been completed, if he perseveres, a new profession or consecration or promise will have to be emitted.

So, considering the decree of the Sacred Congregation of Religious dated 10 September 1912, and the declaration of the same Congregation dated 30 December 1922, which declared that the first decree, after the promulgation of the Code, was still in force.[1]

[1] *Acta Apostolicae Sedis* 1923, p. 157.

Section II. On the Duties of Religious

The Code first declares: All religious are also held by the common obligations of clerics, concerning which in canons 124-142, unless something else is clear from the context of the discussion or from the nature of the thing (can. 592). We spoke about these obligations in n. 1157 sq. But here we must speak about the special obligations or duties of religious; and indeed first about the substantial duties, so to speak, and those connatural to the religious state, then about certain other duties.

Chapter I. On the Substantial Duties of Religious

1234 The substantial duties of religious are: the pursuit of acquiring perfection, the observance of vows, likewise of rules and constitutions. These are sufficiently indicated by can. 593: All and each religious, Superiors equally as subjects, must not only faithfully and entirely observe the vows which they have pronounced, but also compose their life according to the rules and constitutions of their own religion and thus strive toward the perfection of their state.

Article I. On the Pursuit of Acquiring Perfection

1235 **I. Nature of the obligation.** The pursuit of acquiring perfection, or tendency toward perfection, consists in this, that someone: 1st, observes the means which oblige under grave sin; 2nd, does not contemn any means annexed to his state, even if not imposed under grave sin; 3rd, habitually observes the means which do not oblige under grave sin, but nevertheless are annexed to the state by force

either of vows, or of rules and constitutions, or of ecclesiastical precept (St. Alphonsus IV, 9-11; cf. St. Thomas 2-2, q. 186, article 9).

1236 **II. The existence of the obligation** is deduced both from can. 488, 1st (n. 1212) and 593 (n. 1215), and from the fact that a religious "by force of profession is held to advance in some way in the way of perfection. Because by force of profession he is held to will to preserve his state, which is of perfection or of those tending to perfection, although according to itself it is not of precept but of counsel; but this is intrinsically to will to tend toward perfection" (St. Alphonsus IV, 9; cf. St. Thomas 2-2, q. 186, articles 1 and 2).

Corollary I. A religious sins gravely against the obligation of tending toward perfection: 1st, who does not observe a means which obliges under grave sin; 2nd, who from contempt neglects a means annexed to his state, even if it is not imposed under grave sin (St. Thomas 2-2, q. 186, articles 2 and 9; St. Alphonsus IV, 10).

Corollary II. He sins lightly against the obligation of tending toward perfection who habitually neglects means which are annexed to the state, but do not oblige under grave sin (St. Alphonsus IV, 11).

Corollary III. He does not sin against the obligation of tending toward perfection: 1st, who is not yet actually perfect (St. Thomas 2-2, q. 186, article 1, ad 3; St. Alphonsus IV, 9); 2nd, who now and then does not observe a means which is annexed to the state but does not oblige under grave sin; 3rd, who neglects means not annexed to his state (St. Alphonsus IV, 9).

Article II. On the Observance of Vows

§ I. On the Vow of Poverty

1237 **I. Notion.** The vow of poverty is a promise made to God concerning a certain constant repudiation of temporal goods for the sake of following poor Christ. It is said to concern a certain repudiation, inasmuch as it restricts in some way either the ownership itself of goods or acts concerning it.

The remote material object generally consists of external temporal or material goods, capable of being valued by price. I said generally, because the material object can at least by use or by law be extended or restricted, according as there is or is not present a danger of harming the spirit or vow of poverty. The proximate material object consists of certain acts concerning those goods which involve a certain repudiation, such as acts of not having them as one's own, dependent use of them, dependent administration of one's own goods, and so forth.

The remote formal object is the perfect following of poor Christ for obtaining perfection; the proximate formal object is the very honesty which shines forth in following Christ exercised for that end.

Corollary I. For the essence of the vow of poverty there is required at least the abdication of independent beneficial ownership.

Corollary II. The vow and the virtue of poverty differ in this, that the vow excludes independent acts concerning temporal goods, whereas the virtue excludes affection of heart toward them.

1238 **II. Fuller exposition of the notion.** Two things especially need development, namely the remote and the proximate material object.

1. **The remote material object.** To it there do not belong: 1st, internal things, such as liberty; 2nd, spiritual things, both supernatural, such as Mass and indulgence, and natural and intermediate things, such as integrity of honor, the right of good reputation, nobility, the right of election, presentation, and collation of benefices; 3rd, material things not capable of being valued by price, that is, things either of no value or of inestimable value, because they are consequently or intrinsically joined to a spiritual thing, for example a benefice; 4th, things which by use or by law are equated with the foregoing (St. Alphonsus IV, 14).

Corollary I. The application of a Mass as such is not against the vow of poverty, for instance if someone celebrates Mass for an intention other than the one prescribed; it can, however, be against obedience. Nevertheless the stipend is for the monastery (cf. can. 580, § 2 and 594, § 2). Nor is it against the vow of poverty to ask for intentions, or to dispose freely concerning them; intentions can also be given to another without injury to poverty. Superiors, however, can interpose their prohibition; for in the decree of 3 May 1914 it was asked whether religious superiors can command their subjects, even in virtue of holy obedience, that they celebrate according to the intention prescribed by the constitutions or determined by those superiors themselves, with the exceptions sanctioned by the constitutions or by legitimate custom preserved. The response was: Affirmatively.

Corollary II. Knowledge is an internal good; it is the fruit of the intellect and, as it were, part of it. One can dispose of his knowledge by a gratuitous title, but not by an onerous title. This would be against poverty. Then it becomes, as it were, an external thing capable of being valued by price.

Corollary III. Relics are exempt from the vow of poverty. By reason of their sacred character they are placed outside commerce, although otherwise they may have great value, for example manuscripts of the Saints. Relics which are not from bones are sacred first and principally from the use of the Church; hence if, apart from the use of the Church, they do not receive a certain veneration, they can as such be the object of the vow of poverty; for example, a manuscript of St. Thomas is rather preserved in museums.

Corollary IV. Reliquaries, as things antecedently annexed to spiritual things, are in themselves capable of valuation by price and are not prohibited from being sold, and thus they are the object of poverty. By use, however, they are usually excepted, provided they are of moderate price. Hence a contrary use can also exist in some Order. Finally, the use is reasonable, for the accessory follows the principal.

Corollary V. Devotional objects, such as images, medals, rosaries, and crosses, are not matter of the vow only by use; and the use perhaps only argues a tacit license of the Superior, not that they are no longer the object of the vow.

Corollary VI. Manuscripts. A religious has full ownership of any manuscripts whatsoever that have no sale value, because they are not things capable of being valued by price, and therefore are not matter of the vow. Likewise he can have full ownership, or at least unlimited use, of manuscripts of some value, and indeed from custom or the tacit consent of Superiors. Nevertheless custom or tacit consent does not support a religious if there is question: 1st, of manuscripts drawn up by command of the Superior for the good of the Order; 2nd, of manuscripts drawn up after profession, to be given away or alienated, at least if this is done for the purpose that they be published;[1] 3rd, of manuscripts for which the Superior, custom, or rule determines otherwise, as perhaps with regard to very precious manuscripts.

Note. The use of these rights over manuscripts, whether salable or not, always remains matter of obedience, and indeed, as it seems, of a certain high ownership.

Corollary VII. Lithographic notes, or notes made in a similar artificial way, even those written by machine, and indeed also those privately printed in type, seem to be equated with manuscripts, and this both from use, and from the fact that they often lack price, and from the fact that, if you except those printed by type or by machine, they are really manuscripts, although multiplied artificially.

Corollary VIII. Works made by art, for example paintings and sculptures composed by a religious, are the object of the vow of poverty, inasmuch as ownership of them cannot be retained by the religious himself; but they belong either to the monastery or to the one who supplied the materials.

St. Alphonsus says concerning a choir religious: "If panels, canvas, colors, etc., are handed over to him by the monastery, then the paintings belong to the monastery; otherwise, if those things are furnished by others" (IV, 14). Concerning lay brothers he says that those works belong to the monastery, because such lay brothers are received only for this, that they exercise external arts; an exception is made if the lay brother makes them on a feast day or by working for one or another hour in the day; in that case they belong to the one who supplied the materials (loc. cit.).

[1] Cf. Sacred Congregation of Religious, 2 June 1911; 13 July 1913; *Ned. Kath. Stemmen*, 1913, p. 290.

1239 **2. The proximate material object** consists: 1st, in dependent use of things; 2nd, in dependent administration of one's own goods; 3rd, in the exclusion of the use of superfluous things, with regard being had to the character of the religion.

1240 **a) Dependent use of things,** namely on the license of Superiors. Now:

a) License is a faculty granted to a subject for doing something. It is especially divided into express, tacit, and presumed. Tacit license is that which is granted only by an internal act, but truly; hence it should not be confused with mere toleration for avoiding a greater evil[1] (St. Alphonsus IV, 17). Presumed license exists if the Prelate is supposed to be going to grant the license if he were asked.

b) License is granted either by the rule, or by legitimate custom, or by a designated Superior.

c) In order that license be valid, it must be: 1st, voluntary, and therefore not extorted from the Prelate by force; 2nd, obtained without obreption or subreption. In order that the license also be licit, it must be granted for a just cause of necessity or utility. But it is disputed whether a license given for illicit uses, or uses superfluous when the character of the religion and the circumstances are considered, is valid. Now it seems it must be denied, because "the Superior is not the owner, nor does he have any faculty over the goods of the monastery except insofar as the canons and the religion grant it to him. But neither the sacred canons nor the religion can be said to grant him the faculty of giving license for illicit or superfluous uses: not the sacred canons, since the contrary is drawn from them; not the religion, which is never considered to grant that for the spiritual destruction of its children" (St. Alphonsus IV, 30; cf. also n. 31).

d) Tacit license suffices whenever express license is not expressly required. Let these be examples: 1st, "If the prelate knows that a subject receives, retains, or spends something, and does not prohibit it although he easily could, he seems tacitly to consent and approve.... 2nd, if in some religion there is in force a custom of receiving or spending certain things without license, that is excused by the tacit license of the prelate, who by tolerating it reasonably declares the custom; if the prelate gives to a

subject, or permits to be given to him, images, rosaries, etc., knowing that he does not need all of them for his own use, he is considered tacitly to grant the faculty of giving them to others" (St. Alphonsus IV, 17). Yet generally you should observe that "not always are the things which are done under the eyes of the prelate to be considered tacitly approved by him; for very often Superiors are reluctantly compelled to tolerate many things which they see done against their will" (St. Alphonsus IV, 18, at the end).

e) Presumed license suffices for saving the vow. The reason is that, according to the notion handed down, in the case of that license the Superior is not considered unwilling as to the substance, as it is said, and therefore the thing is not disposed of wholly without dependence on the will of the Superior. It also suffices for saving the discipline of the rules, if express license cannot be obtained in time; otherwise if it can be acquired in time, because then the superior and the rule require the petition for license, so that, if this is neglected, the authority would be unwilling as to the manner, as it is customarily said (St. Alphonsus IV, 18).

Moreover, note: 1st, "If, however, the things are of great importance, with regard to them presumed license does not support him; otherwise occasion would be given for receiving and retaining things even of greater importance without express license: which would yield grave detriment to religious poverty" (St. Alphonsus, loc. cit.). Therefore "they, that is, Superiors, are in such cases to be presumed unwilling even as to the substance"; 2nd, "it must be observed that licenses are not easily to be presumed unless there is certainty, or at least certain probability, about their concession... and one must take the greatest care lest things be presumed which ought not to be presumed" (St. Alphonsus, loc. cit.).

[1] License which is virtually or implicitly contained in some express act, for example license to undertake a journey contains license for those things which are necessary for the journey, is counted by some as tacit, by others as express.

1241 **b) Dependent administration of one's own goods,** namely on the license of Superiors. Now administration in the broad sense is any juridical act concerning temporal things. In the strict sense it is a complex of actions by which temporal things are preserved and so handled that they become fruitful. It is twofold, according as it is done in one's own name or in another's name.

1242 **c) Exclusion of the use of superfluous things.** The use of superfluous things, namely with regard being had to the character of the religion, seems to be excluded by common law itself, and not only by the particular law of many religions. This is first suggested by can. 594, § 3: The furnishings of religious should befit the poverty which they have professed. Then the vow of poverty excludes those things which are repugnant to the state of poverty which religious have chosen; but the use of superfluous things is repugnant to the said state.[1] (St. Alphonsus IV, 29, 30).

Corollary I. A religious sins against the vow of poverty: 1st, "if, at home or outside, even from those things which pertain to food and clothing, he receives, retains, consumes, exchanges, gives to another, or lends anything without the express, tacit, or presumed consent of the superior or rule" (St. Alphonsus, loc. cit.); likewise if without license he eats or drinks at home or among externs,[2] because a religious has abdicated every independent use; 2nd, if he expends for another use anything from the things conceded to his use, or culpably loses or destroys it by broad fault. The reason is that in those things he has only use of fact, and that precariously, so long as it will seem good to the superior, and it is an act of ownership to be able to destroy a thing at one's own judgment (St. Alphonsus IV, 19); 3rd, "if you hide anything, so that you withdraw it from the free disposition of the superior. Nor can

procurators, stewards, administrators, or lower prelates spend anything contrary to what the rule of the order, the will of the superiors, or custom demands. The reason is that they are not owners of the common goods, but only administrators" (St. Alphonsus IV, 28); 4th, a religious sins "if, while traveling, he turns aside to other places outside the direct route in order to see curious things; unless perhaps the expenses are moderate, and in an unforeseen case the license of the Superior can certainly be presumed. The same must be said if without faculty from the superior he buys anything, even for the Community";[3] 5th, a professed religious of simple vows sins if he acquires ownership or disposes of his own goods entirely by his own authority and will, and not according to the Rule and the will of the Superior, because the vow of religious poverty altogether requires abdication of the proprietorial use and disposition of all goods.[4]

Corollary II. A religious does not sin: 1st, if without express license he makes "remuneratory donations from goods conceded to him for use, because such donations are, as it were, payments of a debt. Indeed he can give more than he received, up to an excess of a fourth part; because gratitude demands that more always be returned than was received" (St. Alphonsus IV, 21); 2nd, if he accepts or gives something under the condition of license to be obtained, provided the thing can be recovered if license is denied, because then the act is suspended.[5]

Corollary III. One who has proceeded from presumed license is afterwards bound to disclose the thing to the Superior, if he still retains the thing, and the Superior is unwilling at least either as to the substance or as to the manner (St. Alphonsus IV, loc. cit.).

Corollary IV. One who acts against a license, even one unduly denied, sins against the vow, "unless there is danger of grave harm in the delay; for then the consent of a major superior is presumed to be present; and if he also then denies license, it can sometimes be prudently judged that the law or vow does not oblige in so great a crisis" (St. Alphonsus IV, 33; cf. St. Thomas I-II, q. 96, a. 6).

[1] Cf. Council of Trent, session 25, chapter 2, on regulars.

[2] This, however, is not admitted by Lugo (*De iustitia*, disp. 2, n. 5) and by others; nor should it be extended to those things which do not involve use of a thing as this is commonly understood. Hence I agree with Lugo teaching that it is not against the vow of poverty, for example, if a secular person lights a fire for warming a religious, if he burns some precious perfume to refresh his smell, or if he shows him some spectacle whose viewing is otherwise worthy of a price.

[3] Aertnys-Damen, *Theologia Moralis* I, n. 1193.

[4] Aertnys-Damen, *Theologia Moralis* I, n. 1193.

[5] Aertnys-Damen, loc. cit.

1243 **3. Doubts and responses.** a) A religious can ask for, accept, and refuse gifts as follows. It is not licit to ask for the community except within the limits of the rule and ecclesiastical laws. This, however, does not seem of itself to pertain to the vow (cf. can. 621 sq.). It is not licit to ask for himself, except within the limits of the rule. 2nd, it is licit to accept things spontaneously offered for the community; for oneself, as was said above. 3rd, it is not licit to refuse what is owed to the community; and this is both against the vow and against justice. To refuse what is offered to the community beyond what is owed is not against the vow, but can be against charity. It is licit for a religious to refuse things offered for himself alone; indeed there is an obligation to do so, unless the rule permits an increase of the substance of his own goods, or the religious declares that they are acquired for the community.

b) A religious seems to sin against the vow by accepting money without license to be spent at his discretion on pious works. The reason is that the arbitrary choice of the pious work involves something of independent disposition. Nor should you say that the choice is made in another's name; since the choice, as one which after the faculty of choosing has been given can no longer be contradicted, is made in one's own name (St. Alphonsus, *Homo Apostolicus*, tract 13, n. 7; letter of 3 Oct. 1757).

The same seems to be said if a religious without license accepts money to be distributed at his discretion among indeterminate poor persons, because the arbitrary choice of the poor person also involves something of independent disposition. St. Alphonsus indeed, loc. cit., speaks only of money to be distributed at discretion among pious works; but the same formal reason alleged by him subsists in each case.

If there is question of determinate poor persons, to distribute money or goods without the license of Superiors is not against the vow, since the distributor acts as a bare minister. Superiors, however, if a just cause is present, can prohibit that. But that someone gives counsel, or directs someone's attention to a certain poor family, cannot be disapproved.

But if gifts are offered "for your poor," as it is said, it depends on the circumstances whether by this word penitents wish to designate determinate poor persons, that is, exclusively the poor for whom that Father has care, or rather more indeterminate poor persons, that is, the poor whom the monastery is accustomed to assist. In the latter case, the subject cannot without license spend gifts on poor persons, as indeterminate; and the same seems to be said of the former case, because a certain arbitrary disposition is left.

c) A religious can accept another's thing on deposit without license as follows. 1st, if there is question of a deposit properly so called, or under a contract that obliges the religious himself or indirectly the monastery (cf. can. 536), it is against the vow. 2nd, if there is question of a deposit in the broad sense, or of mere custody of one's own or another's money, in general it can be said that the vow of poverty is not offended by it, unless it is expressly prohibited by the Rule from a motive of poverty.

1244 **III. Division.** The vow of poverty is divided into solemn and simple.

1. **The solemn vow.** The solemn vow, or rather solemn profession, of itself renders a religious incapable of ownership, so that any act of property is invalid (can. 579). But goods which in any way come to one solemnly professed: 1st, in an order capable of possessing, accrue to the Order or province or house according to the constitutions; 2nd, in an Order incapable of possessing, are acquired in ownership for the Holy See (can. 582).

I said: "Solemn profession of itself renders a religious incapable of ownership"; for accidentally solemnly professed religious of either sex in Belgium and in Holland received the faculty that, with due dependence on legitimate superiors, they can acquire, retain, administer, and dispose for pious and honorable uses of goods which have come to them. So from the Sacred Penitentiary[1] and the Sacred Congregation for Extraordinary Ecclesiastical Affairs.[2] These decrees are explained in two ways: either so that they become owners only civilly, or so that they become owners also naturally and before God. The latter seems to us more probable from the terms of the indult. The reason for the faculty granted was that civil laws there do not admit possession by religious. Some wish to extend this also to religious of simple vows, which seems improbable from the end and origin of this institute.

2. **The simple vow,** or rather simple profession, of itself does not deprive one of direct ownership, nor render acts of ownership invalid, but only prohibits independent use according to the manner determined in the rules. I said of itself, for the spiritual and temporal coadjutors of the Jesuits are wholly incapable of acquiring any ownership. Moreover, concerning simple profession the canons establish:

a) Anyone professed by simple vows, whether perpetual or temporary, unless something else has been provided in the constitutions, preserves the ownership of his goods and the capacity of acquiring other goods, with those things preserved which are prescribed in can. 569 (can. 580, § 1).

b) It is not licit for those professed by simple vows in religious Congregations:[3] 1st, to abdicate by an act among the living the ownership of their goods by gratuitous title; 2nd, to change a testament made according to the norm of can. 569, § 3, without the license of the Holy See, or, if the matter is urgent and there is not time to have recourse to it, without the license of the major Superior or, if even he cannot be approached, of the local Superior (can. 583).

c) Anyone professed by simple vows, whether perpetual or temporary, can change the cession or disposition of which in can. 569, § 2 (n. 1226), not indeed by his own judgment unless the constitutions allow this, but by license of the supreme Moderator, or, if there is question of nuns, by license of the local Ordinary and, if the monastery is subject to regulars, of the regular Superior, provided that the change, at least concerning a notable part of the goods, is not made in favor of the religion. But by departure from the religion, a cession and disposition of this kind ceases to have force (can. 580, § 3).

d) Anyone professed by simple vows, whether perpetual or temporary, whatever he acquires by his own industry or with regard to the religion, he acquires for the religion (can. 580, § 2).

[1] 1 December 1820.

[2] 31 July 1871.

[3] It is said "in religious Congregations" because one who is going to profess in a religious Order is not bound to make a testament, and before solemn profession renounces all goods (can. 569, § 3; 581).

1245 **IV. Obligation of the vow.** The obligation of the vow of poverty is grave from its kind, so that one sins gravely who, either by claiming something for himself as his own, or by using some thing as his own without the Superior's license, or in any other way, so behaves that, with the nature of the action and the quantity of the thing considered, he places an act of property in grave matter. But the gravity of the matter depends both on the nature of the act and on the quantity of the thing; hence, for example, a greater sum is required if someone uses the goods of the community without license than if he alienates them; much greater if he gives them as a loan than if he gives them as a gift, and so forth. Thus, for example, "regularly a religious does not sin gravely by secretly taking, for example, a book for temporary use, even a long one, but not in perpetuity" (St. Alphonsus IV, 24).

Moreover it cannot be determined accurately when grave matter is present. In addition, slight matters, insofar as they are opposed to the vow and therefore to the religion, quite probably do not coalesce, just as slight matters do not coalesce which, for example, are repugnant to temperance. Besides, observe:

1. To a sin against the vow there can be added a sin against justice, for instance if a religious destroys or without license alienates the goods of the community.

2. What in a case is grave matter, likewise when slight matters coalesce, and what quantity is required, if they do coalesce, so that the matter becomes grave, see in the treatise on justice, nn. 1028-1030.

Scholion. On Common Life

1246 **I. Notion.** Common life, taken in the formal sense, seems to consist in this, that individual religious receive equally, from common goods alone held in common, with the license of the rule or of Superiors, all and only those things which they need here and now.

1247 **II. Division.** Common life is distinguished as twofold, perfect and imperfect, according as it excludes or permits some peculium, as it is called. With regard to peculium note:

1. A peculium is a good capable of being valued by price which, separated from the things of the monastery, religious are permitted to possess, administer, and keep for their own uses, beyond what their present necessity morally requires.
2. A peculium is twofold, namely of perfect or imperfect right. It is of perfect right if the permission, once given from the beginning for spending goods on one's own uses, can no longer be taken away by the superior. It is of imperfect right if the faculty of disposing can always be circumscribed or taken away by the Superior.

1248 **III. Obligation of common life.** The obligation of common life does not subsist by divine law, since a sufficient abdication of temporal goods can be had without it, as is clear from the example of the ancient hermits and from the nature of the thing. By present ecclesiastical law there exists an obligation of common life, and indeed of perfect common life (can. 594; cf. can. 2389).

Question 1. Does a defect of common life, at least of perfect common life, or the use of an imperfect peculium, persist from custom and by way of privilege for some religions (cf. can. 5)?

The matter seems doubtful;[1] whatever the case, however, with all agreeing, the mind of the Church is that perfectly common life be introduced where it does not exist. But Superiors who would introduce the use of a peculium, even only an imperfect one, would certainly sin gravely, both because ecclesiastical law excludes it, and because the use of a peculium gives occasion to abuses and is usually very harmful to religious discipline (St. Alphonsus IV, 15; *Homo Apostolicus*, tract 13, n. 6).

Question 2. Is the obligation of common life included in the vow of poverty itself?

Response. Affirmatively, at least with regard to the exclusion of a perfect peculium, as is clear from the very common doctrine which teaches that acts against common life are against the vow.

Question 3. Is moderate use, or a poor and uniform life, prescribed by the vow of poverty?

Response. With common law considered, it is disputed (cf. can. 594); therefore it is better to have recourse to the particular discipline of individual institutes.

[1] Cf. Vermeersch, *Epitome*, I, n. 696; Chelodi, *De personis*, p. 430.

§ II. On the Vow of Chastity

1249 **I. Notion.** The vow of chastity is a promise made to God of excluding the appetite and use of venereal things.

The remote material object is the appetite and use of venereal things; the proximate object is acts of excluding the aforesaid.

The formal object is the honesty which shines forth both in the said exclusion and in the vowing of it.

1250 **II. Effects.** 1. A simple vow prohibits contracting marriage (can. 1058, § 1); a solemn vow, and likewise a simple vow to which this force has been added by a special prescription of the Apostolic See, dissolves a marriage contracted and not consummated between baptized persons or between a baptized party and a non-baptized party (can. 1119).

2. Concerning the manner in which both a simple and a solemn vow extinguish betrothals, see in the treatise on Matrimony.

1251 **III. Obligation.** One who violates the vow of chastity sins: 1st, against religion, as is clear; moreover he commits the sin of personal sacrilege (n. 614); 2nd, against the virtue of chastity, at least if he perpetrates an act illicit in itself. It is disputed if he exercises an act licit in itself, as if a husband who has become a religious were again to use his wife.

1252 **IV. Penalties against violators of the vow;** cf. our little work *De virtute castitatis*, 3rd ed., n. 60.

§ III. On the Vow of Obedience

1253 **I. Notion.** It is a promise made to God of fulfilling the commands of legitimate superiors. Whether the vow also extends itself to the rule is disputed. We said:

1. **Commands;** namely commands strictly so called. Now a superior can command or oblige either under fault or to penalty alone. Under fault, I say, either grave, provided the matter is grave, or light, if the matter is light, or, even if grave, it is commanded only under light fault. But the Superior is considered to oblige under fault if he uses the words "I command," "I order," and similar words; under grave fault, if he employs the formula: "in virtue of obedience," "under grave fault," "under penalty of excommunication," etc. Otherwise he is considered only to oblige to penalty (St. Alphonsus IV, 38; I, 141). This, however, does not prevent the subject from sinning gravely if he proceeds from contempt of authority.

2. **Of superiors;** namely of those who by force of the vow of obedience can command. Such are the Supreme Pontiff (can. 499, § 1), the Sacred Congregation of Religious, as it seems, other Congregations if a special mandate is added, major and local Superiors; but not the Superiors of religions in which only a promise of obedience is emitted, as among the Oratorians.

3. **Legitimate;** wherefore observe that whatever is contained in the rule, or is required for its perfect observance and for attaining the end of the institute, is commanded legitimately (St. Alphonsus IV, 38, 39). But those things cannot be commanded which are outside the rule, that is, either: 1st, against the rule, unless the Superior justly dispenses; or 2nd, above the rule, such as certain macerations, unless they are inflicted as a penalty, or the care of sick outsiders imposed on a religious who is not a hospitaller; or 3rd, within the rule, such as vain or ridiculous things, unless the Superior "commands for a cause which is according to the rule, for example, that obedience be exercised. Nor does it matter that the rules command obedience in all things; for this is understood not of the obligation of the vow, but of the perfection of obedience" (St. Alphonsus IV, 40).

Here, however, note these words of St. Thomas: "No one is obliged to the impossible; and therefore if some prelate heaps up or enjoins so many precepts that the subject cannot fulfill them, he is excused

from sin; and therefore prelates ought to abstain from a multitude of precepts" (II-II, q. 105, a. 1, ad 3). And St. Alphonsus: "A multitude of decrees would be the ruin of a Congregation" (*Correspondence generale*, n. 75).

4. Whether and to what extent the vow extends itself to the rule is disputed. Now it certainly extends itself to rules which express the obligation of the vow sufficiently certainly, as if something is commanded in virtue of obedience. Otherwise, according to some, the matter must be resolved from the acceptance and use of the institute itself. According to others, if the rule obliges under sin, its transgression is against the vow. According to others, the vow simply extends itself to the rules just as to the commands of Superiors; but understand this in such a way that the vow obliges either to the act or to penalty alone, according as the rule itself obliges[1] (cf. St. Thomas II-II, q. 186, a. 9; St. Alphonsus IV, 41, 42).

Corollary I. A command to which danger of life is annexed does not oblige unless it accords with the end of the institute or is demanded by the common good (St. Alphonsus IV, 40). Hence a Superior cannot oblige a subject to go to infidels with manifest danger of death or servitude, unless the subject has expressly obliged himself to this. Nevertheless a religious can be compelled to go to very remote provinces beyond the sea, if there are Convents of the Order there; for this pertains to the good of the Religion.

Likewise the Superior can oblige a subject to assist the sick infected by contagious disease, if the sick are religious of the same Monastery or Order; or if they are outsiders and there is lacking someone who would fortify them with the Sacraments of the Church; or finally if the care of the sick is the end of the Institute.[2]

Corollary II. In doubt whether a thing is outside the rule, likewise whether a thing is licit, one must obey, unless the thing commanded is too difficult, or grave spiritual harm threatens the subject or a third party from it. The reason is both because presumption stands for the superior, and because order, that is, peace and tranquillity, requires that in doubt the right of the superior prevail, and because the rules of various institutes favor this doctrine (St. Alphonsus IV, 47).

Corollary III. A religious is obliged to new statutes of Chapters, provided they are not wholly outside the rule, but are only means apt for attaining the end of the religion and the observance of the rule. But those who have embraced the rule legitimately mitigated cannot be forced to further things (St. Alphonsus IV, n. 44).

Corollary IV. License obtained from an inferior superior is valid, even if it has been denied by a major superior, "because the major Superior by denying license by no means takes away the power of the inferior" (St. Alphonsus IV, 50). And this seems to be valid in itself even if the rule commands that the refusal of the higher Superior be made known to the inferior; if in this case it is not made known, only the manner is illicit. "But I think one must say otherwise if the major Superior positively prohibits the subject from executing the thing requested, because then the inferior cannot dispense in the command of the superior" (St. Alphonsus, loc. cit.).

Corollary V. A religious can appeal from the commands and penalties of a Superior. Nevertheless, except in the case of dismissal, ordinarily this does not have suspensive effect, unless the abuse of power is excessive. Yet extrajudicial recourse is always available to them.

[1] Cf. Raus, *Obedientia religiosa*, p. 54 sq., where he sets out the diverse opinions.

[2] Aertnys-Damen, *Theologia Moralis* I, n. 1212, question 3.

1254 **II. The distinction between the vow and the virtue of obedience** consists in this, that the virtue extends itself also to undue things and to internal and cheerful subjection (St. Thomas II-II, q. 104, a. 4, ad 3).

1255 **III. Obligation.** One who transgresses a true command of a religious Superior sins, as is clear; but of what species the sin is, see n. 148.

There are those who think that a sin of injustice is also committed by one who transgresses a command, at least if it is imposed from dominative power. But that seems to be denied, because dominative power does not confer a strict right to the act commanded, as is clear in parents; for no one would say that disobedient children sin against justice.

Objection. The Superior or institute by force of a contract has a right to the execution of the command.

Response. It is clear from no source that a contract of this kind is entered into. St. Alphonsus, who is sometimes alleged for the contrary opinion, in the place cited by the adversaries (IV, 46), does not speak of a sin of injustice.

Article III. On the Observance of Rules and Constitutions

Preliminary Note I. The rules and particular constitutions of individual religions which are not contrary to the canons of this Code retain their force; but those which are opposed to them are abrogated (can. 489).

Preliminary Note II. We speak of rules properly so called, or preceptive rules, but not of those which are merely directive and do not even oblige to penalty.

1256 **I. Obligation.** All and each religious, Superiors as well as subjects, must not only faithfully and entirely observe the vows which they have pronounced, but also compose their life according to the rules and constitutions of their own religion and thus strive toward the perfection of their state (can. 593).

Whether rules of themselves oblige to the act or to penalty alone depends on the different institutes. Thus in the Order of Friars Minor the rule obliges to the act, under grave or light fault according to the matter subject to it; in the Society of Jesus and the Congregation of the Most Holy Redeemer and in more recent Congregations,[1] it obliges only to penalty.

Nevertheless even the transgression of a rule which obliges only to penalty is commonly not without fault, either because it disturbs order or otherwise is scandalous, or because it does not proceed from an honorable motive but from laziness, from mere pleasure, etc.; indeed the transgression would also be a grave sin if it were done from formal contempt or had a grave influence toward relaxation of discipline (cf. St. Thomas II-II, q. 186, a. 9, ad 1 and 3; St. Alphonsus IV, 10, 41, 42).

[1] Cf. Norms of the Sacred Congregation of Bishops and Regulars, n. 320 (28 June 1901).

1257 **II. Interpretation.** With regard to interpretation of rules and constitutions, the same norms are valid as for laws taken generally (n. 141). If the matter, all things considered, is strictly doubtful, one must stand for liberty. Moreover, observe:

1. An inconvenience excusing from obligation should not be thought to be present too quickly, considering these things: a) in the state of perfection it is fitting that liberty be restricted; b) in the state of perfection laws have been voluntarily undertaken; therefore sacrifice should be sought rather than avoided.

2. Nor should legitimate desuetude be judged present too quickly. Yet he would err who thought that contrary customs enjoy no favor of law, as though legal or tacit consent were always lacking.

1258 **III. Consequences.** 1. Local Superiors should take care that at least once a year, on fixed days, their proper constitutions are publicly read (can. 509, § 2, 1st).

2. A Superior is bound to protect the observance of vows and rules, and therefore to correct the defects of subjects, even slight ones; indeed he is bound to this under grave fault "in the case in which the defects are many and such, for example concerning silence, fasts, etc., that they can relax discipline" (St. Alphonsus IV, 13).

"Although each religious may fail in a slight matter by transgressing a slight rule, nevertheless the superior who negligently fails to prevent relaxation of observance when he can do so fails in a grave matter. And therefore he is bound not only to correct defects of subjects which tend to the harm of the whole community, but also to inquire so that he may correct them, as St. Thomas teaches: 'yet without excessive solicitude,' as de Alexandris notes" (St. Alphonsus, loc. cit.).

3. Electors of Superiors should consider these things:

a) Those who elect notably less worthy persons sin gravely, namely because relaxation of discipline must be feared; and this is rightly extended to the election of general consultors and of the procurator general, considering their grave influence both on observance and on other grave matters (St. Alphonsus IV, 100, 101; *Homo Apostolicus*, tract 13, n. 35).

"Observance will with the greatest difficulty flourish if less worthy persons are elected; because less worthy persons easily become tepid and unworthy, or at least less diligently apply themselves to observance, and then from imperfect observance relaxation of the rules easily and quickly follows, with irreparable harm; for experience establishes that where in some religion an abuse has even once crept in, afterwards it is most difficult to avert it. And indeed less diligent prelates, and those who elect such prelates, are certainly the cause of this most grave harm. Would that detriment of this kind, derived from this source in many monasteries, were not often lamented" (St. Alphonsus IV, 101).

b) With regard to major Superiors in religions of men, can. 506, § 1, establishes: Before proceeding to the election of major Superiors in religions of men, all and each from the Chapter must promise by oath that they will elect those whom they have judged according to God to be fit to be elected.

[1] Cf. Raus, *De Sacrae obedientiae Virtute et Voto*.

Chapter II. On Certain Other Duties

1259 **I. Exercises of devotion.** 1. Superiors should take care that all religious: 1st, each year spend time in spiritual exercises; 2nd, if not legitimately impeded, daily be present at the Sacred Sacrifice, devote themselves to mental prayer, and diligently apply themselves to other offices of piety which are prescribed by the rules and constitutions; 3rd, approach the Sacrament of Penance at least once a week (can. 595, § 1).

2. Superiors should promote among their subjects frequent, even daily, reception of the Most Holy Body of Christ; moreover frequent, indeed even daily, access to the Most Holy Eucharist should be freely open to religious rightly disposed (can. 595, § 2). But if after his last sacramental confession a religious has been a grave scandal to the community or has perpetrated a grave and external fault, until he has again approached the sacrament of penance the Superior can prohibit him from approaching holy communion (can. 595, § 3). But if there are religions of either solemn or simple vows in whose rules or constitutions, or even calendars, communions are found fixed or commanded on certain days, these norms have merely directive force (can. 595, § 4).

1260 **II. Religious habit.** All religious should wear the habit proper to their religion both inside and outside the house, unless a grave cause excuses, in the judgment of the major Superior or, in urgent necessity, even of the local Superior (can. 596).

1261 **III. Papal enclosure.** Enclosure is distinguished as twofold: papal or major enclosure, and minor enclosure. Papal enclosure is that which must be observed in houses of regulars, both of men and of women; minor enclosure is that which must be observed in houses of religious congregations. Concerning papal enclosure, accept the following:

1. **General matters.** a) In canonically constituted houses of regulars, whether of men or of women, even not formed, papal enclosure must be observed (can. 597, § 1). Nevertheless, by force of an apostolic indult, houses of nuns which in fact do not emit solemn vows are exempt from papal enclosure.[1]

b) By the law of papal enclosure there is affected the whole house which the regular community inhabits, with the gardens and grounds reserved to the access of religious; excepted, besides the public church with the adjoining sacristy, is also the lodging for visitors, if there is one, and the parlor, which, as far as can be done, should be established near the door of the house (can. 597, § 2).

c) The parts subject to the law of enclosure should be openly indicated; but it will belong to the major Superior or General Chapter according to the constitutions, or, if there is question of a monastery of nuns, to the Bishop, to prescribe accurately the limits of enclosure or to change them for legitimate causes (can. 597, § 3).

d) Enclosure is violated even if someone enters illicitly within the bounds of enclosure by only one step, provided he enters with his whole body (St. Alphonsus IV, 229).

2. **Papal enclosure of men.** a) Within the enclosure of male regulars women of whatever age, class, or condition are not to be admitted under any pretext (can. 598, § 1).

b) The wives, with their retinue, of those who actually hold the supreme rule of peoples are exempted from this law (can. 598, § 2).[2]

c) If a house of male regulars has attached to it a boarding school for internal students or another work proper to the religion, at least a separate part of the building, if it can be done, should be reserved for the habitation of religious, subject to the law of enclosure (can. 599, § 1).

d) Even into places outside the enclosure which are reserved for external or internal students or for works proper to the religion, persons of the other sex are not to be admitted except for an equitable cause and with the license of the Superior (can. 599, § 2).

e) Women violating the enclosure of male regulars, and Superiors and others, whoever they may be, introducing or admitting them of whatever age, are punished by an excommunication *ipso facto* simply reserved to the Apostolic See; and besides, religious introducing or admitting them are deprived of office, if they have one, and of active or passive voice (can. 2342, 2nd).

3. **Papal enclosure of women.** a) Within the enclosure of nuns no one, of whatever class, condition, sex, or age, is to be admitted without license of the Holy See, except the persons who follow:

alpha) It is licit for the local Ordinary or regular Superior, when visiting a monastery of nuns, or for other Visitors delegated by them, to enter the enclosure only for the cause of inspection, care being taken that at least one cleric or religious man of mature age accompany them (can. 600, 1st).

The discussion concerns a local visitation. A personal visitation ought to be made at the grilles; nor is entrance into the enclosure admitted on the occasion of examining the will, election, clothing, or profession.[3]

beta) The confessor, or one who acts in his place, can, with due precautions, enter the enclosure to administer the Sacraments to the sick or to assist the dying (can. 600, 2nd).

gamma) Those who actually hold the supreme rule of peoples and their wives with their retinue can enter the enclosure; likewise Cardinals of the Holy Roman Church (can. 600, 3rd).[4]

delta) It belongs to the Abbess, with due precautions used, to permit entrance to physicians, surgeons, and others whose work is necessary, after at least habitual approval has first been obtained from the local Ordinary;[5] but if necessity is urgent and there is no time to ask approval, this is presumed by law (can. 600, 4th).

b) It is licit for no nun after profession to leave the monastery, even for a short time, under whatever pretext, without a special indult of the Holy See, except in the case of imminent danger of death or another most grave evil (can. 601, § 1).[6] This danger, if there is time, must be recognized by the local Ordinary (can. 601, § 2). These things also regard novices and postulants (n. 1226; can. 540, § 3).[7]

c) Those violating the enclosure of nuns, of whatever class or condition or sex they may be, by entering their monasteries without legitimate license, and likewise those introducing or admitting them, are punished *ipso facto* by an excommunication simply reserved to the Apostolic See; but if they are clerics, besides this they are suspended for a time to be determined by the Ordinary according to the gravity of the fault (can. 2342, 1st). Likewise nuns unlawfully leaving enclosure contrary to the prescription of can. 601 incur *ipso facto* an excommunication simply reserved to the Apostolic See (can. 2342, 3rd); concerning can. 601, see what was said under b.

[1] Pontifical Commission, 1 March 1921, under III (*Acta Apostolicae Sedis* 1921, p. 178).

[2] Therefore not only queens, but also wives of a president of a republic and wives of a prince actually reigning, provided that either they themselves or their husband actually hold the rule of peoples (Fanfani, n. 234).

[3] Instruction on the enclosure of nuns of solemn vows, 6 February 1924, under III, 2nd (*Acta Apostolicae Sedis* 1924, p. 96).

[4] Cf. note 1.

[5] Habitual approval is usefully sought once a year.

[6] Cf. the cited Instruction, under III, 1st.

[7] Cf. Sacred Congregation of Religious, 7 November 1916.

1262 **IV. Minor enclosure.** 1. Also in houses of religious Congregations, whether of pontifical or diocesan right, enclosure is to be observed, into which no one of the other sex is to be admitted except those of whom in can. 598, § 2 and can. 600,[1] and others whom the Superiors have judged can be admitted for just and reasonable causes (can. 604, § 1).

2. The prescription of can. 599 is also to be applied to houses of religious Congregations, whether of men or of women (can. 604, § 2).

3. In peculiar circumstances, and when grave causes intervene, the Bishop can fortify this enclosure with censures, unless there is question of an exempt clerical religion; he should always take care that it is rightly observed and that whatever vice creeps into it is corrected (can. 604, § 3).

[1] Cf. n. 1262.

1263 **V. Communication with outsiders.** 1. All those to whom the custody of enclosure belongs should watch diligently lest, when outsiders visit, discipline be disturbed by useless conversation and the religious spirit suffer detriment (can. 605).

2. Religious Superiors should take care that those things which are prescribed in their own constitutions, either concerning the going out of subjects from the cloisters or concerning outsiders to be received or approached, are accurately observed (can. 606, § 1).

3. Without prejudice to the prescriptions in can. 621-624, it is not permitted to Superiors to allow subjects to live outside a house of their own religion, except for a grave and just cause and for as brief a time as can be done according to the constitutions; but for an absence which exceeds six months, unless the cause of studies intervenes, permission of the Apostolic See is always required (can. 606, § 2).

4. Abbesses and local Ordinaries should watch seriously lest religious women, outside the case of necessity, go outside the house alone (can. 607).

1264 **VI. Obligation of choir and Mass.** 1. In religions, whether of men or of women, which have the obligation of choir,[1] in individual houses where there are at least four religious bound to choir and actually not legitimately impeded, and even fewer if the constitutions so provide, the divine office must be performed in common daily according to the norm of the constitutions (can. 610, § 1).

2. Likewise Mass corresponding to the office of the day must be celebrated daily according to the rubrics in religions of men and also, as far as can be done, in religions of women (can. 610, § 2).[2]

3. In the same religions, whether of men or of women, the solemnly professed who have been absent from choir, except lay brothers, must recite the canonical hours privately (can. 610, § 3).

[1] A canonical obligation is understood, which is not had unless solemn vows are in fact emitted.

[2] A conventual Mass must also be celebrated in houses of religious women having simple vows, who by constitutions approved by the Holy See have the obligation of choir (Pontifical Commission, 20 May 1923).

1265 **VII. Communication of letters.** All religious, whether men or women, can freely send letters, subject to inspection by no one, to the Holy See and its Legate in the nation, to the Cardinal Protector, to their own major Superiors, to the Superior of the house who is perhaps absent, to the local Ordinary to whom they are subject, and, if there is question of nuns who are under the jurisdiction of regulars, also to the major Superiors of the Order; and from all these the aforesaid religious, men or women, can likewise receive letters to be inspected by no one (can. 611).

1266 **VIII. Observance of ecclesiastical decrees.** 1. Every Superior must promote among his subjects knowledge and execution of decrees of the Holy See which regard religious (can. 509, § 1).

2. Local Superiors should take care that, at least once a year, on fixed days, the decrees which the Holy See prescribes to be read publicly are publicly read (can. 509, § 2, 1st).

1267 **IX. Help to be furnished to Ordinaries and the secular clergy.** 1. Superiors should take care that religious subjects designated by them, especially in the diocese in which they live, when their ministry is required by local Ordinaries or parish priests for providing for the people's necessity, willingly furnish it both within and outside their own churches or public oratories, with religious discipline preserved (can. 608, § 1).

2. In turn, local Ordinaries and parish priests should willingly use the work of religious, especially of those living in the diocese, in the sacred ministry and especially in administering the sacrament of penance (can. 608, § 2).

3. Besides the prescription of can. 1345,[1] if the local Ordinary for a public cause indicates the ringing of bells, certain prayers, or sacred solemnities, all religious, even exempt ones, must obey, with the constitutions and privileges of each religion preserved (can. 612).

[1] The cited canon states: It is desirable that in Masses which, with the faithful present, are celebrated on feast days of precept in all churches or public oratories, a brief explanation of the Gospel or of some part of Christian doctrine be made; but if the local Ordinary has prescribed it, having given opportune instructions, not only priests of the secular clergy are held by this law, but also religious, even exempt ones, in their own churches.

Scholion. On the Privileges of Religious

1268 **I.** Religious, even lay religious and novices, enjoy the privileges of clerics (can. 614); but concerning these there was discussion in n. 1153.

II. Moreover regulars, novices not excluded,[1] whether men or women, with their houses and churches, except those nuns who are not subject to regular Superiors, are exempt from the jurisdiction of the local Ordinary, except in cases expressed by law (can. 615). Nevertheless a house that is not formed remains under the special vigilance of the local Ordinary, who, if abuses have crept in and have been a scandal to the faithful, can provide in the meantime by himself (can. 617, § 2).

III. Religions of simple vows do not enjoy the privilege of exemption unless it has been specially granted to them (can. 618, § 1), as it has been granted to the Redemptorists and Passionists.

[1] Postulants are excluded.

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Book III. On the Aids of the Christian Life, or on the Sacraments

We shall speak first of the sacraments in general, then of the sacraments in species.

Treatise I. On the Sacraments in General

(St. Thomas, part 3, qq. 60-65; St. Alphonsus, *Theologia Moralis*, book VI, nn. 1-94; *Homo Apostolicus*, tract 14, nn. 1-6.)[1]

We shall deal first with the sacraments considered in themselves, then with the administration, and finally with the reception of the sacraments. Those things, however, which are treated by dogmatic theologians we shall touch upon very briefly, especially for this end, that there may be had a view of the whole doctrine, and that the connection between dogmatic and moral doctrine may appear.

[1] Cf. Billuart, *Summa S. Thom.*, part 3, treatise III; De Smet, *De sacramentis in genere*; Rath, *De Sacramentis in genere*; Pourrat, *La theologie sacramentaire*; Schanz, *Die Lehre von den Sakramenten der kath. Kirche*; Billot, *De Ecclesiae sacramentis*.

Dissertation I. On the Sacraments Considered in Themselves

Having handed down a summary notion of a sacrament, we shall speak first of the existence, essence, and division of the sacraments, then of their efficacy, and then of the effects of the sacraments.

Part I. On the Summary Notion, Existence, Essence, and Division of the Sacraments

1 **I. Summary notion.** By force of the word, a sacrament signifies every sacred thing. Here, however, it is taken more strictly and is defined: a sensible sign of a sacred thing sanctifying man, that is, of grace. Sacraments of the Old Law and sacraments of the New Law are distinguished. The former only signify; the latter signify and produce grace. Hence a sacrament of the Old Law is defined: a sensible sign, but not an efficacious sign, of grace; but a sacrament of the New Law is called: a sensible and efficacious sign of grace.

2 **II. Existence of the sacraments.** In order that the existence of the sacraments may be rightly set forth, the various states of men must be distinguished, namely: 1. the state of innocence in paradise; 2. the state of the law of nature, so named not to the exclusion of grace, but to the exclusion of the written Mosaic law. This state prevailed for the Israelites until the written law, and for others until Christ; 3. the state of the Mosaic Law, which for the Israelites lasted until Christ; 4. the state of the new or Christian Law. Now:

1. In the state of innocence, by the consent of all, no sacrament existed.
2. In the state of the law of nature, more probably at least one sacrament existed. Namely, considering the will of God to save all, there certainly existed a remedy by which little children would be freed from original sin. That this was a sensible sign of sanctifying grace, or a sacrament, is more probable, as the dogmatic theologians explain (cf. St. Thomas, part 3, q. 61, a. 3; q. 60, a. 5, ad 3; q. 61, a. 1).
3. In the state of the Mosaic Law, several sacraments existed, as is deduced from the Council of Trent[1] and from the decree of Eugene IV for the Armenians. Moreover, it is commonly admitted that circumcision was a sacrament. Other sacraments of this Law are enumerated: the consecration of priests, the eating of the paschal lamb and of the loaves of proposition, and purifications (cf. St. Thomas, I-II, q. 102, a. 5; part 3, q. 61, a. 3, ad 2).
4. In the state of the New Law there are seven sacraments, and these were instituted by Christ; this is of faith from the Council of Trent: "If anyone shall say that the sacraments of the New Law were not all instituted by Jesus Christ our Lord; or that there are more or fewer than seven, namely Baptism, Confirmation, Eucharist, Penance, Extreme Unction, Order, and Matrimony; or even that any one of these seven is not truly and properly a sacrament, let him be anathema."[2] That the said sacraments were instituted immediately by Christ, not by the Apostles under the inspiration of the Holy Spirit, is certain doctrine, although it is disputed whether it was defined by the Council of Trent as a truth to be believed with Catholic faith.

It is disputed how Christ instituted the sacraments. Some teach that Christ determined the matter and form only in general, commanding only an apt gesture and suitable words, and leaving the more exact determination to the Church; this is the opinion of immediate institution in general. Others judge that Christ prescribed this gesture in species and these words in species, yet in such a way that there is room for some latitude, insofar as the Apostles or the rulers of the Church can, not indeed abrogate the matter and form established by Christ, but determine them more exactly or more strictly, or even increase them by new elements, so that the very sign-value is, within certain limits, subject to the will of the Church; this is the opinion of immediate institution in a perfectible specific form. Others admit

immediate institution in a fixed specific form, so that the Church can do nothing directly with respect to validity by changing or adding anything concerning the matter or form.

[1] Session 7, canon 2.

[2] Session 7, canon 1.

3 **III. Essence of the sacraments.** 1. The sacraments of the New Law consist of things and words; this doctrine is declared in the decree for the Armenians. It is clear: 1. from Sacred Scripture, which expressly affirms this about several sacraments, such as Baptism,[1] Confirmation,[2] and Extreme Unction;[3] 2. from the doctrine and use of the Church. For the rest, words and things can be understood morally, so that it suffices for words and things to be had equivalently.

2. Things and words in the sacraments stand to one another as matter and form; this doctrine is proposed in the same decree for the Armenians. It is clear from the fact that the thing of a sacrament, which of itself can signify several things, for example washing in Baptism, and therefore of itself is indeterminate in the being of a sign, is determined by words to a special signification; so that the thing is like matter, the determinable part, while the words are like form, the determining part.

3. The matter of a sacrament is customarily distinguished as twofold, remote and proximate. The remote matter is the thing which is used in the sacred rite, as water in Baptism; or the thing about which the sacramental action is concerned, as sins in Penance. The former is called the remote matter from which, the latter the remote matter about which. The proximate matter is the application of the remote matter, as washing in Baptism; or the action which is concerned with the remote matter, as the acts of the penitent in Penance.

[1] Matt. 28:19.

[2] Acts 8:15, 17.

[3] Jas. 5:14.

4 **IV. Division of the sacraments.** The sacraments of the New Law are distinguished into:

1. Sacraments of the dead and of the living, according as they were primarily instituted for giving grace, namely to the spiritually dead; or for increasing it, namely in the spiritually living. The grace which is conferred on a man deprived of every degree of grace, or spiritually dead, is called first grace; the grace which is conferred on a man constituted in the state of grace, or spiritually living, is called second grace. The sacraments of the dead are Baptism and Penance. The sacraments of the living are Confirmation, Eucharist, Extreme Unction, Order, and Matrimony.

2. Repeatable and non-repeatable, according as they can be conferred on the same person more than once or only once.

3. Necessary and non-necessary, according as they ought or ought not to be received by individuals. Of those which ought to be received, some are necessary by necessity of means and precept, others by necessity of precept alone. Baptism for all (can. 737), and Penance for all who have fallen into mortal sin after Baptism, are necessary by necessity of means and precept (can. 901 and 906). The Eucharist is certainly necessary by necessity of precept (can. 859, §§ 1 and 4; can. 864, § 1); concerning necessity of means, it is disputed. Confirmation and Extreme Unction are not necessary by necessity of means; whether they are necessary by necessity of a grave precept is disputed.

Finally, Matrimony and Order are necessary only to the community; each of these matters will be developed in its own place.

4. Formed and unformed, according as, as soon as they are received, they confer grace, or, on account of an obstacle, at least do not produce it immediately. Of the unformed sacraments, some, when the obstacle has been removed, revive, that is, confer grace; others do not revive (St. Alphonsus, VI, 6).

5. Finally, a sacrament is called valid or invalid according as nothing or something is lacking for constituting it.

Part II. On the Efficacy, or Productive Power, of the Sacraments

5 The question is whether the sacraments truly produce grace, etc.; concerning the effects themselves there will be discussion in the following part. Now:

I. The sacraments of the New Law confer grace *ex opere operato*, or are truly efficient causes of grace. This proposition is established against the Protestants and Modernists, and is of faith from these words of the Council of Trent: "If anyone shall say that grace is not conferred through the sacraments of the New Law themselves *ex opere operato* ... let him be anathema."[1]

II. The sacraments concur in producing grace only as instrumental causes; the principal cause, which uses the sacraments as instruments, is God alone; for no creature can, as principal cause, produce an effect which exceeds the order of every creature.[2]

III. The mode by which the sacraments concur in producing grace is explained in different ways. Some teach that the sacraments, which morally are actions of Christ, move God by an infinite and infallible power to confer grace (the doctrine of moral causality). Others judge that the sacraments do not immediately produce grace, but effect in the subject a title which, so far as lies in itself, demands grace (the doctrine of intentional causality). Others teach that the sacraments physically and immediately produce grace (the doctrine of physical causality). This is the opinion of St. Thomas (I-II, q. 112, a. 1, ad 2; III, q. 62, a. 1, 3, 4, 6).

[1] Session 7, canon 8.

[2] Council of Trent, Session 6, chapter 7.

Part III. On the Effects of the Sacraments

The effects of the sacraments are grace and character. The former is common to all the sacraments; the latter is proper to three, namely Baptism, Confirmation, and Order.

Section I. On Grace

6 **I. Grace conferred.** The grace which the sacraments confer is sanctifying grace and sacramental grace.

1. **Sanctifying grace.** a) All the sacraments confer sanctifying grace on those rightly disposed. This follows from what has been said concerning the efficacy of the sacraments. Moreover, to sanctifying grace there is attached either the infusion of the supernatural virtues and of the gifts of the Holy Spirit, namely if first grace is conferred; or the increase of the aforesaid, namely if second grace is conferred.

b) Baptism and Penance of themselves confer first grace; accidentally, namely if someone in the state of grace receives them in the due manner, they confer second grace, that is, an increase of grace.

c) Extreme Unction of itself and primarily confers second grace; of itself, but secondarily, it confers first grace. The other sacraments of themselves confer second grace, and accidentally, at least much more probably, first grace. The case obtains if someone in the state of mortal sin receives a sacrament in good faith and with attrition, which extends itself to all the sins committed. The reason for this opinion is that, according to Trent, the sacraments confer grace on those who place no obstacle. Now one who is in good faith and attrite places no obstacle to grace, as is clear from the sacraments of the dead (St. Thomas, III, q. 72, a. 7; q. 79, a. 3; Supplement, q. 30, a. 1; St. Alphonsus, VI, 6, 269 and 731).

2. **Sacramental grace,** that is, a certain divine help for attaining the end proper to such a sacrament (St. Thomas, III, q. 62, a. 2). What end is proper to each sacrament will be stated where there is discussion of the individual sacraments. Further:

a) That sacramental grace is conferred through the sacraments is deduced first from the Council of Florence, which declares: "Each sacrament is ordered to a proper and distinct end." But a sacrament cannot attain its proper end unless it produces an effect or grace proper to itself, in other words, sacramental grace. Then, if all the sacraments conferred the same grace, they would differ only in the external rite; nor would there have been a reason for instituting diverse sacraments; nor would it be clear why one is more necessary than another.

b) There is not one opinion of theologians about that in which sacramental grace precisely consists. According to the defenders of intentional causality, sacramental grace consists in actual graces proper to some sacrament, which are demanded by the same title as sanctifying grace. According to others, sacramental grace is sanctifying grace itself, insofar as it is given through such a sacrament; but sanctifying grace, given through such a sacrament, is ordered to the ends of such a sacrament, and consequently gives a right to receive, namely in due time, the actual graces by which the end of such a sacrament may be obtained. Thus, for example, sanctifying grace conferred in Baptism is regenerative and preservative of spiritual life; in Confirmation, strengthening and perfective, etc. According to the Thomists, sacramental grace is sanctifying grace with an intrinsic modification, by force of which sanctifying grace is ordered to the effects proper to the sacrament, together with a right to receive

actual graces in order to those effects. Hence, according to them, for example, sanctifying grace conferred in Baptism, by force of the aforesaid modification, is regenerative and preservative of spiritual life, etc.

7 **II. The measure according to which the sacraments confer grace.** 1. Sacraments distinct in species more probably confer unequal grace on those equally disposed. For sacraments differ in dignity; and to a more worthy cause there corresponds a more worthy effect.

2. Sacraments distinct only in number confer equal grace on those equally disposed, and unequal grace on those unequally disposed. The Council of Trent[1] expressly teaches this concerning Baptism. Hence it must also be presumed concerning the others.

[1] Session 6, chapter 7.

Section II. On Character

8 **I. Existence of sacramental character.** Three sacraments, namely Baptism, Confirmation, and Order, imprint upon the soul a character, that is, a certain spiritual and indelible sign, whence they cannot be repeated. This is of faith from the Council of Trent: "If anyone shall say that in the three sacraments, namely Baptism, Confirmation, and Order, a character is not imprinted on the soul, that is, a certain spiritual and indelible sign, whence they cannot be repeated, let him be anathema."[1] Canon 732, § 1, also teaches this.

[1] Session 7, canon 9.

9 **II. Nature of sacramental character.** The nature of sacramental character is explained in different ways by different authors. Yet all agree in this: that character is a spiritual quality, distinct from sanctifying grace, and is a power by which man becomes capable either of receiving sacred things, as in Baptism, or of handing on sacred things, as in Confirmation and Order (St. Thomas, III, q. 63, aa. 1 and 2). But they dispute, according as they defend either physical or moral causality, whether it is a physical power or only a moral one; wherefore consult the dogmatic theologians.

Scholion. On the Informity and Reviviscence of the Sacraments

10 **I. Informity.** 1. The informity of a sacrament consists in this: that the sacrament is validly received, but, on account of an obstacle, does not produce fruit, that is, grace. It is said to be on account of an obstacle, whether material or formal, according as it is placed inculpably or culpably.

2. Six sacraments certainly can be unformed; concerning Penance alone it is disputed whether it can be received informly, that is, validly but without fruit.

11 **II. Reviviscence;** concerning which several things must be explained.

1. **Notion.** Reviviscence consists in this: that a sacrament validly but fruitlessly received afterwards produces grace, when the obstacle has been removed and the sacramental sign has ceased. I said "when the sacramental sign has ceased." Hence, supposing that the Holy Eucharist, received with an obstacle, produces Eucharistic grace when the obstacle has been removed before the consumption of the species,[1] there would not be reviviscence of the sacrament, because the fruit would be produced while the sacramental sign remains.

2. **The sacraments which revive are these:**

a) Baptism certainly can revive; this is clear from the fact that otherwise those who received Baptism without fruit would be unable to obtain the remission of original sin and of the other sins committed before Baptism. For original sin and the other sins committed before Baptism are not remitted except through Baptism received in reality or in desire. But those who have once received Baptism can no longer receive it: neither in reality, because Baptism cannot be repeated; nor in desire, because if a new Baptism is impossible, the desire for a new Baptism is also excluded.

b) Confirmation, Order, Matrimony, and Extreme Unction much more probably can revive. Otherwise those who had received the said sacraments fruitlessly, even inculpably, would remain deprived of sacramental grace, which is so necessary to man in the various states of life; since Confirmation and Order cannot be repeated at all, Matrimony cannot be repeated while the same bond remains, and finally Extreme Unction, while the same danger persists, is at least not licitly repeated.

c) Whether Penance can revive is doubtful: both because it is doubtful whether it can be unformed, that is, valid and fruitless; and because it can be repeated.

d) The Holy Eucharist, at least if it has been received sacrilegiously, is almost commonly said not to revive: both because it can be repeated so often, and because there would follow the absurdity that one who had communicated very often sacrilegiously, if he afterwards truly repented, would immediately be heaped with grace.

3. **The time of reviving.** Baptism, Confirmation, and Order can always revive, since they can never be repeated, and by force of the character in some way continue in being. Matrimony can revive so long as the same matrimonial bond persists. Once it has been broken, sacramental grace either is no longer necessary, or can be acquired through a new marriage. Extreme Unction can at least revive so long as the same danger continues. Finally, Penance, if it must be numbered among the sacraments that revive, must be said to be able always to revive.

4. **The requisites for reviviscence.** If someone has sacrilegiously received a sacrament, or has sinned gravely after receiving it, there is required of itself contrition or attrition with sacramental absolution; accidentally, given good faith, attrition with a sacrament of the living received in good faith suffices, as is taught much more probably. The reason is that such a man is in the state of mortal sin. But in order that mortal sin may be remitted, and thus that place may be given for the reviviscence of the sacrament, there is required of itself contrition or attrition with sacramental absolution; accidentally, attrition with a sacrament of the living suffices (St. Alphonsus, VI, 6, 87, 444). Outside these cases:

a) Attrition certainly suffices in order that Baptism and Penance may revive. For the disposition required in the very reception itself suffices.

b) Of itself contrition is required, but accidentally attrition most probably suffices, in order that Extreme Unction may revive, because this sacrament, received in good faith with attrition, most probably produces fruit.

c) Of itself contrition is required, but accidentally attrition more probably suffices, in order that Confirmation, Order, and Matrimony may revive, because those sacraments, received in good faith with attrition, more probably produce fruit (n. 6).

5. **The mode by which reviviscence has place** is explained in different ways, according as the causality of the sacraments is explained in different ways. Supporters of moral causality teach that

the value of the sacrament received perseveres morally in divine acceptance, and, when the obstacle has been removed, moves God to the infusion of grace. Defenders of intentional causality say that there remains a title demanding grace, and that, when the obstacle has been removed, it produces grace. Defenders of physical causality attribute the reviviscence of Baptism, Confirmation, and Order to character; as for the reviviscence of the other sacraments, some of them deny it, others derive it from a certain habitual determination in the will, and others have recourse to moral causality for these cases.

6. **The degree of reviviscence** seems to correspond to the actual disposition of the subject.[2]

[1] Whether this has a place, see in the treatise on the Eucharist.

[2] Cf. Council of Trent, Session 6, chapter 7.

Dissertation II. On the Ministration of the Sacraments

Part I. On the Person Ministering

12 The minister of a sacrament is he to whom the administration of the sacraments belongs by legitimate authority. A twofold minister is distinguished, namely principal and secondary, according as the administration of the sacraments belongs to someone by his own authority, or by authority communicated by the primary minister. The principal minister is Christ as man. The secondary minister is only the priest of the first or second order. Except Baptism and Matrimony. Concerning these there will be fuller discussion in the treatise on the individual sacraments.

Part II. On the Mode of Ministering

Concerning the mode of ministering the sacraments, canon 731, § 1, notes these things in general: Since all the sacraments of the New Law, instituted by Christ our Lord, are the chief means of sanctification and salvation, the greatest diligence and reverence must be employed in administering and receiving them opportunely and rightly.

With these things premised, we shall speak first of the requisites for valid ministration, then of the requisites for licit ministration.

Section I. On the Requisites for Valid Ministration

13 **I. For the valid ministration of the sacraments, faith and sanctity are not required in the minister.** With respect to faith, this is of faith as regards Baptism;[1] certain as regards the other sacraments. With respect to sanctity, it is of faith.[2]

The reason is that "the ministers of the Church operate instrumentally in the sacraments ... but, as was said above, an instrument does not act according to its own form or power, but according to the power of him by whom it is moved" (St. Thomas, III, q. 64, a. 5). Hence the efficacy of the sacraments does not depend on the disposition of the minister (St. Alphonsus, VI, 13).

II. For the valid ministration of the sacraments there are required intention, and certain other things, concerning which we shall treat individually.

[1] Council of Trent, Session 7, On Baptism, canon 4.

[2] Council of Trent, Session 7, On the Sacraments, canon 12.

Chapter I. On Intention

14 **I. Notion.** Intention is here understood as the deliberate will of confecting a sacrament.

15 **II. Division.** Intention is distinguished:

1. **By reason of itself** into actual, virtual, habitual, and interpretative. Actual intention is had when the minister, at the time at which he confects the sacrament, actually wills to confect it. It is reflex, or rather *in actu signato*, if there is had an express and formal volition of confecting the sacrament; it is *in actu exercito* if someone actually wills indeed, but nevertheless less expressly and formally, to confect the sacrament, as if someone, recognizing a rite as a sacrament, administers it under this recognition. Virtual intention is had when someone has actually and explicitly willed to confect a sacrament, and that will, though not actually, nevertheless perseveres virtually, so that he operates by force of the will once had, as if someone, from the intention of celebrating Mass, puts on the vestments and performs the other things, even if perhaps at the time of the ministry he is wholly distracted. Habitual intention exists if someone has actually and explicitly willed to confect a sacrament and that will has not indeed been retracted, but nevertheless does not persevere virtually. Interpretative intention is had when someone neither actually and explicitly wills nor actually and explicitly has willed to confect a sacrament, but is presumed to be going to will it if thought about it should occur.[1] (St. Alphonsus, VI, 15.)
2. **By reason of the object** into merely external and internal. Merely external intention is had when someone wills and outwardly seriously performs only the external rite, but lacks the mind of

confecting a sacrament, or even intends the contrary. It is called merely external because, although in itself it is internal, nevertheless its whole object is external, namely only the placing of the external rite. Internal intention is had when someone wills the external rite insofar as it is sacred, or at least insofar as it is held as such by the Church.

By reason of the object, intention is further distinguished into determinate and indeterminate, according as the thing intended is certain and defined; or is uncertain, as if someone intends to consecrate only ten hosts out of a multitude of hosts.

3. **By reason of mode** into explicit and implicit, according as someone expressly wills such a sacrament known and thought of, or by a more general will wills such a sacrament, whether not known, or known but not thought of.

By reason of mode it is also distinguished into absolute and conditioned, according as someone intends to confect a sacrament independently of, or dependently upon, some circumstance or event; as if someone absolves another under the condition: if you are attrite; or: if you make restitution.

[1] Some call interpretative the intention which others call implicit habitual intention.

16 **III. The intention required.** It is of faith that intention is required, and indeed intention "at least of doing what the Church does."[1] In order that these things may be unfolded and completed, observe the following:

1. **In itself, actual intention is not required, but virtual intention suffices; habitual intention does not suffice, much less interpretative intention; fear, however, does not hinder intention.** I said:

a) Actual intention is not required, but virtual intention suffices. For it must be judged that the intention suffices which truly flows into the act or sacramental rite, and therefore can be called its cause. Such is not only actual intention, but also virtual intention. There is added the fact that actual intention is not always within man's power, and its necessity would give occasion for anxieties about the validity of the sacraments (St. Thomas, III, q. 64, a. 8, ad 3;[2] St. Alphonsus, VI, 17, 18).

Corollary. A priest validly acts who, in the customary way, betakes himself to the baptistery, confessional, or altar and there baptizes, absolves, or consecrates; for there is had at least virtual intention; indeed practically everywhere actual intention is present, even if remiss. Likewise, a priest validly consecrates who has placed on the corporal the hosts to be consecrated, even if at the time of consecration he does not think of them. Indeed, in general it must be said that one imprudently doubts the value of the act who has placed the required rite, unless he has expressly excluded the due intention (St. Alphonsus, VI, 18).

b) Habitual intention does not suffice; since it cannot be admitted that an intention suffices which in no way flows into the action of the minister; such is habitual intention (St. Alphonsus, VI, 16). Much less, as is clear, does interpretative intention suffice (St. Alphonsus, VI, 16).

c) Fear does not hinder, because, as we posit, it does not take away the voluntary (St. Alphonsus, VI, 19). Except, however, Matrimony, as will be said in its place.

2. **As regards the object, there is required the intention or will of confecting a sacrament.** This is established against those who judge that external intention suffices; in other words, that it suffices for someone outwardly and seriously to place the external rite, even if inwardly he does not

will to confect the sacrament. This doctrine, first defended by Roland Bandinelli, and afterwards revived by Ambrosius Catharinus (1553), is today almost commonly abandoned and rightly seems to be rejected. For: 1. as we have said, it is of faith that intention is required in the minister, "at least of doing what the Church does." But these words seem to have to be understood according to the sense which they had in the schools, in other words, of the intention of doing what the Church intends to effect through the rite. 2. Proposition 28 was condemned by Alexander VIII: "Baptism conferred by a minister who observes every external rite and the form of baptizing is valid, even though inwardly in his heart he resolves within himself: I do not intend what the Church does."[3] Here it seems entirely that there is discussion of one who outwardly and seriously places the external rite. Therefore this does not suffice. 3. The Roman Missal has these words: "If someone has before him eleven hosts and intends to consecrate only ten, not determining which ten he intends, ... he does not consecrate, because intention is required,"[4] namely, as the Missal, according to the obvious sense, supposes, the intention of consecrating, and that a determinate one (St. Alphonsus, VI, 23).

It suffices, however, that the minister implicitly will to confect the sacrament, for example, that he will the rite as sacred, that he will to do what Christ instituted, what the Church does, what is asked by a Christian, etc.

Corollary I. A sacrament is not valid: 1. if someone places the external rite without any intention; this, for example, will have place if someone does not place a human act, as if he baptizes someone in sleep or drunkenness; 2. if someone performs the external rite for the sake of jest, mockery, or mere exercise.

Corollary II. A sacrament can be valid, even if someone does not regard the rite placed by himself as sacramental, provided he truly wills, for example, what Christ instituted, what he who admits the sacrament asks, etc. Hence heresy or infidelity of itself is not a reason for doubting the required intention;[5] otherwise if there is added hatred of the Christian name, which, for example, we can easily suspect in a Jew.

3. **As regards the term, intention must be borne toward a determinate person or matter;** yet it suffices that the intention be directed to the person or to the whole matter present, without being directed to the parts individually. But he consecrates invalidly who would will to consecrate ten hosts out of eleven and would not determine those ten.

4. **As regards the mode, especially as regards a sacrament to be confected under a condition, several things must be noted:**

a) A sacrament conferred under a condition concerning the present or the past generally is valid or not valid at once, according as the condition is verified or not verified. I said "generally," because it is disputed whether a sacrament conferred under a condition naturally unknowable is valid; as if someone were to absolve another if he were predestined. Further, it seems this must be denied, because "since God has committed the administration of the sacraments to the knowledge and will of men, a condition cannot be placed which cannot fall under human knowledge" (St. Alphonsus, VI, 26).

b) A sacrament conferred under a condition concerning the future, for example: I absolve you, if you will make restitution, that is, as soon as you shall have made restitution, generally is not valid, neither before nor after the condition has been fulfilled. Not before the condition is fulfilled, because there is not had the intention of confecting the sacrament before the fulfilled condition; not after the condition

is fulfilled, because then the matter and form no longer exist (St. Alphonsus, loc. cit.). I said generally, because Matrimony is excepted, which follows the nature of a contract. But a contract entered into under a condition is perfected when the condition has been fulfilled.

[1] Council of Trent, Session 7, On the Sacraments, canon 11.

[2] St. Thomas in the cited place indeed says: "Although he who is thinking of something else does not have actual intention, nevertheless he has ... habitual intention, which suffices for the perfection of the sacrament." But St. Alphonsus responds: "By habitual intention here the holy Doctor without doubt understands virtual intention; for immediately after he adds thus: Suppose that when a priest approaches to baptize, he intends to do with respect to the one to be baptized what the Church does; hence if afterwards in the very exercise of the act his thought is carried off to other things, the sacrament is perfected from the force, note well, of the first intention" (VI, 18).

[3] Denzinger-Bannwart, n. 1318.

[4] *De Defectibus*, title 7, n. 1.

[5] Holy Office, 18 December 1872 (*Collectanea*, n. 1392).

Scholion. On the Simulated Administration of a Sacrament

Authors do not agree in explaining the nature and morality of simulated or fictitious administration of a sacrament. It seems to us that the following must be said:

17 **I. Notion.** 1. Simulated administration of a sacrament, taken in the full sense, consists in this: that someone uses the matter and form of a sacrament, and this in such a way that he signifies the will of confecting a sacrament, which nevertheless he does not actually have (St. Alphonsus, VI, 60 and 61, where he denies simulation because matter and form are lacking).

2. Simulated administration, accepted in a less full sense, is had when someone uses the matter or form of a sacrament, and this again in such a way that he signifies the will of confecting a sacrament, which in reality he does not have (St. Alphonsus, loc. cit.).

Each simulated administration is called formal or material, according as deception of one's neighbor is intended as an end, or is chosen as a means.

3. Simulated administration of a sacrament, taken improperly, consists in this: that someone applies something which bears the appearance of the matter and form of a sacrament, or of either one, and this for the end that he may be judged to confect a sacrament.

From every simulated administration there differs the dissimulation of a denied sacrament, which has place when someone applies something which bears the appearance of the matter and form, or of either one, for the end that he may hide the denial of the sacrament; for example, if someone gives a blessing instead of absolution to one who is indisposed, lest the denial of absolution be disclosed to others (St. Alphonsus, VI, 59).

18 **II. Morality.** 1. Simulation of a sacrament, accepted in the full sense, is gravely evil, because it contains a sacrilegious lie, that is, a lie which, as having been committed through a sacramental rite, redounds upon the sacrament itself and inflicts grave injury upon it. Add that the said lie will often be gravely harmful. There is added proposition 29 condemned by Innocent XI: "Urgent grave fear is a cause for simulating the administration of the sacraments";[1] concerning which note: 1. by that proposition at least the simulation of a sacrament accepted in the full sense is condemned; 2. the

authors of the said proposition understood it of material simulation (St. Alphonsus, VI, 59); hence formal simulation is to be rejected *a fortiori*.

2. Simulation of a sacrament accepted in the less full sense likewise seems gravely illicit, because the argument just brought forward also has force if the lie is committed through the partial rite of a sacrament.[2]

3. Simulation of a sacrament taken improperly of itself is quite probably not gravely illicit; for since the rite of the sacrament is applied neither wholly nor partially, the injury inflicted on the sacrament seems to be lacking, so that only a lie remains. I said of itself, because grave sin can be committed from another source, for example against charity or even against justice with respect to the subject to whom the sacrament, owed by charity or by justice, is thus denied.

4. The dissimulation of a denied sacrament, when there is a just cause, is of itself licit. For in the case neither is injury inflicted on the sacrament, nor is a lie committed, but only the truth is hidden (St. Alphonsus, VI, 59). I said of itself, because again grave sin can be had from another source, for example with respect to the subject, who can have a grave right that the truth not be hidden from him.

And these things which we have said concerning simulated administration of a sacrament, with the necessary adjustments, should also be applied to simulated reception.

Corollary I. It is neither simulation of a sacrament nor sin:

1. To place the matter and form for the sake of practice, because it is not signified that the sacrament is being confected, and therefore a lie is lacking; nor does the placing of the rite for the sake of practice inflict any injury upon the sacrament.

2. For the sake of avoiding infamy, to pronounce the customary words before one pretending to receive Communion, while not handing over the host but replacing it in the ciborium (St. Alphonsus, VI, 61). Nevertheless the case is little practical.

3. To enter the confessional and there speak to the confessor about some business. "For since matter and form are lacking there, I do not know how to understand where there is simulation of a sacrament" (St. Alphonsus, VI, 60). Nor is there a lie, unless someone "approached with the intention that bystanders believe that he is confessing" (St. Alphonsus, loc. cit.); otherwise if he did it in order to hide from others the fact that he was not confessing.

4. In contracting Matrimony, to which someone is compelled, to simulate consent; since consent of this kind is invalid, so that the matter and form of the sacrament are lacking. Nor is there sin because consent is simulated, since, on account of the opposing impediment, the words of consent can be uttered with a restriction that is not purely mental, so that a lie also is lacking (St. Alphonsus, VI, 62).

Corollary II. It is simulation of a sacrament, or at least grave sin:

1. To pronounce without intention the words of absolution over one who is indisposed, or the words of consecration over bread, or in the celebration of Mass to omit the words of consecration; indeed, also from chapter *De homine*, 7, *de celebratione missarum*, the priest who in Mass did not consecrate would sin more gravely than one who consecrated and communicated sacrilegiously (St. Alphonsus, VI, 59, 61).

2. To hand over a non-consecrated host as consecrated; here indeed there is not simulation of a sacrament, but cooperation in idolatry, at least material idolatry (St. Thomas, III, q. 80, a. 6, ad 2; St. Alphonsus, VI, 61).

[1] Denzinger-Bannwart, n. 1179.

[2] Cf. Holy Office, 6 September 1625 (Denzinger-Bannwart, n. 1489).

Chapter II. On the Other Requisites

In order that a sacrament be validly confected, besides intention these things are required:

19 **I. The minister must place the external rite in a human manner, or by a human act.** For it cannot be admitted that Christ instituted a sacrament in such a way that it can be confected by an act which is not human; as if someone wholly drunk or sleeping were to baptize. For the rest, in the case, at least practically, the required intention will also be lacking (St. Alphonsus, VI, 16).

20 **II. The same minister must apply the matter and pronounce the form.** If there is discussion of Baptism, this seems certain, both because otherwise the words of the form are not verified, and because the Sacred Congregation of the Discipline of the Sacraments[1] declared Baptism conferred in another way invalid, adding these words: Catholic doctrine holds most certainly that the matter must be placed by one and the same minister and at the same time the form of Baptism must be uttered; otherwise the form *I baptize you, I wash you* would labor under falsity (St. Thomas, III, q. 67, a. 6, ad 3). The same seems almost certain with regard to Confirmation, Extreme Unction, and Order, considering namely both the analogy with Baptism and the doctrine of theologians and the practice of the Church. There is added that otherwise the moral union in the sacrament does not seem to be sufficiently preserved. Except the sacrament of Penance, whose nature requires the contrary. With regard to the sacrament of the Eucharist, the question cannot be posed. For the rest, note:

1. Different ministers can validly minister a sacrament which consists of parts, if you grant that this occurs; concerning which consult the treatise on Extreme Unction, provided that the individual parts are placed whole by one and the same minister, that is, with their own matter and form. This is clear from what will be said in the treatise on Extreme Unction. Nevertheless, since that is gravely contrary to the rite, it is forbidden under grave obligation outside a case of necessity.
2. Even if a sacrament does not consist of parts, nevertheless several ministers can validly confect one and the same sacrament, provided that each places everything which is required for the sacrament. This is urged first, with regard to other sacraments, from the analogy with the sacrament of the Eucharist, which can certainly be confected by several at the same time. The reason is that the individual ministers do not confect the sacrament except in the person of Christ, and therefore in and with Christ they are one. Then, since the individuals, as we suppose, possess the power of confecting the sacrament and exhibit all the requisites, it does not appear that anything is lacking to the conferral of the individuals (cf. St. Thomas, III, q. 67, a. 6; q. 82, a. 2, ad 2; St. Alphonsus, VI, 120, 232; can. 803). But this also is gravely illicit, except the consecration in the ordination of priests and the consecration of Bishops.

Even if several confect a sacrament, nevertheless it will be one sacrament, because Christ, who is the one principal minister, effects one thing through several (St. Thomas, III, q. 67, a. 6).

3. Finally, one and the same person can confer a sacrament on several at the same time, for example baptize or absolve several. Yet this too is illicit outside a case of necessity (St. Alphonsus, VI, 29).

[1] 17 November 1916 (*A.A.S.* 1916, p. 479); cf. Roman Ritual, title 2, chapter 1, n. 10.

21 **III. The minister must confer the sacrament on a subject distinct from himself.** This is drawn both from the common doctrine of theologians and the constant practice of the Church, and from the form of several sacraments. There is added that Innocent III declared null the Baptism which a certain Jew had ministered to himself in danger of death, adding this reason: "Since there ought to be a distinction between the one baptizing and the one baptized, as is clearly gathered from the words of the Lord, saying to the Apostles: Go, baptize all nations in the name, etc." (St. Thomas, q. 66, a. 5, ad 4; q. 82, a. 4, ad 2).[1] Except the Most Holy Eucharist and Matrimony.

[1] Cf. Decretals, IV, III, 42.

22 **IV. The minister must duly unite matter and form, because they must constitute one sign.** A moral union suffices, or rather that union by which the words of the form, according to common estimation, affect the matter and so constitute one thing with it (St. Alphonsus, VI, 9). Now:

1. In Baptism, Confirmation, Order, and Extreme Unction it certainly suffices that matter and form coexist in some part of themselves, or that one be begun before the other is completed. Likewise, it seems to suffice that the form be pronounced immediately before or immediately after the application of the matter. The reason is that even on this supposition the words "I baptize you," etc., "I sign you," etc., still seem to signify the actual application of the matter. There is added that the Holy Office several times resolved that the sacrament of the priesthood was not to be repeated in the case in which the Bishop had had his extended hand over the ordinands immediately before the prayer *Oremus*;[1] likewise in the case in which the ordinand had touched the instruments after the form had been uttered.[2] These resolutions seem also to be applicable to Baptism, Confirmation, and Extreme Unction. Nevertheless, the reason for doubting with regard to these three sacraments, especially with regard to Baptism, is taken from the fact that the Holy Office on 2 May 1858 declared that Baptism is always to be repeated under condition whenever "after the washing has been wholly completed, the form is pronounced, or conversely, when the pronouncing of the form has been completed, one proceeds to the washing."[3] For the rest, a very brief delay would render the sacrament doubtful, but the delay of one *Our Father* would render it null (St. Alphonsus, loc. cit.). For liceity it is required that matter and form perfectly coexist.[4]
2. In Penance, because it was instituted after the manner of a judgment, a greater interval can intervene.
3. In Matrimony there is always had union of matter and form when the consent of one is placed, the consent of the other not having been retracted; for it has and follows the nature of a contract (St. Alphonsus, VI, 9).
4. In the Eucharist there is discussion rather of the presence of the matter than of its union with the form; here, however, it is required that the matter be physically present, because otherwise the words "this" and "here" are not verified (St. Alphonsus, VI, 9).

[1] 12 September 1877; 30 November 1898; 14 December 1898.

[2] 17 March 1897.

[3] Note, however, that at the time the response was given, the value of Baptism conferred in this way was doubted more than today. Considering this together with the declarations afterwards issued concerning Order, it is permissible to doubt whether the Sacred Congregation, if again consulted, would give the same response.

[4] Roman Ritual, title 2, chapter 1, n. 8; title 5, chapter 1, n. 18.

23 **V. The minister must use neither matter nor form substantially vitiated.** Now:

1. A substantial change of matter is had when a thing is used which, according to common estimation, differs from the thing which the Church uses, as if in Baptism you should use wine instead of water. If, however, the matter is the same thing in reality, either wholly or as to the greater quantity, but is called by a different name and is used for a different use, it is rather doubtfully valid than certainly invalid, as if someone were to baptize with moisture flowing from a vine (St. Alphonsus, VI, 11).

2. A substantial change of form is had when the words, according to common estimation, have a meaning different from that which must be expressed according to the mind of Christ (St. Alphonsus, VI, 11, 221). If the change is made into words which can be taken in a twofold sense, namely a sacramental one and a foreign one, the change is substantial or accidental according as the minister intends the foreign or the sacramental sense; since even in the common intercourse of men an ambiguous sense must be determined by the speaker himself. Besides, it can happen that a change which, considering only the grammatical sense, is substantial, is in fact accidental or substantial according as it proceeds from inadvertence or ignorance, or from a heretical mind. Thus if someone in consecration, from inadvertence, were to say, "Here" in place of "This is My Body," the consecration would be valid; otherwise if he intended the word "here" in the sense of Luther, or adverbially (St. Alphonsus, VI, 110). For the rest, a change of form can occur:

a) By substitution of words, as if in Baptism it were said: I wash you, etc. But it is accidental or substantial according as the substituted words are synonymous or not synonymous.

b) By transposition, as if someone says: I baptize you, etc. This will generally be accidental.

c) By omission, as if in consecration the word *for* is omitted. It must be seen whether or not an essential word is omitted, namely one by which the due sense is taken away.

d) By corruption, as can happen because of stammering, haste, or inexperience, as if someone says: This is my *boby*. In the case the change is generally accidental.

e) By addition, as if in Baptism it is said: I baptize you in the name of the Father, who created you, etc. Further, a change of this kind is more easily substantial if what is false is added than if what is true is added; likewise if the change is made with a heretical mind than otherwise.

f) By interruption. Further:

a) Interruption of the words of the form is substantial or accidental according as it is or is not so great that the words before those hearing no longer effect the complete sense intended by Christ.

b) Interruption of the syllables of the same word, if it occurs by the interposition of several words or of one word, as if it were said: I bap- (be silent) -tize you, etc., renders the value doubtful. Otherwise if it occurs by a cough or a similar way and is very brief (St. Alphonsus, VI, 11, 221).

3. A substantial change, as one which renders the sacrament invalid, is a grave sin; an accidental change is gravely or lightly forbidden according as it greatly or lightly opposes the use and precept

of the Church.

24 **VI. The minister must utter the sacramental form by voice,** that is, by the organs ordered to speaking. Therefore vocal pronunciation is required. Besides, at least practically, the pronunciation ought to be audible of itself, because it is doubtful whether pronunciation which of itself is not audible can be called vocal (St. Alphonsus, VI, 414).

Section II. On the Requisites for Licit Ministration

In order that the minister of a sacrament proceed licitly, first indeed he must minister validly; concerning this there has already been discussion. Then it is required that he minister legitimately, holily, according to the rite, to the worthy, and absolutely or under condition according to the circumstances.

25 **I. Legitimately;** namely, it is required that the minister have received from the Church a mission or some jurisdiction, in other words authorization, and that he not have contracted a penalty which deprives him of the use of order. Concerning the jurisdiction required there will be fuller discussion in the treatise on the individual sacraments.

26 **II. Holily,** that is, in the state of grace. Now:

1. The obligation of ministering the sacraments in the state of grace is clear from the reverence due to an action so holy. Nevertheless, a necessity excuses which is so urgent that not even an act of contrition can be elicited, for example if absolution must be granted immediately to one dying. For since the sacraments are for men, the harm of one's neighbor to be averted prevails over the reverence due of itself to the sacrament, and thus, when the higher law of charity urges, the irreverence is taken away.

Here, however, it is asked by some whether the minister also is excused who cannot elicit an act of contrition in time without danger of infamy or scandal. Further, theoretically this must be affirmed, because, granted the good will of the minister and his moral inability to repent in time, even the right of preserving reputation and, *a fortiori*, the obligation of avoiding scandal prevail over the reverence due of itself to the sacrament. But since practically sufficient time for eliciting an act of contrition is available, it can be said that the said excusing cause in fact scarcely exists (St. Alphonsus, VI, 33).

2. As regards the gravity of the obligation, receive the following:

a) The obligation of the state of grace is certainly grave if these three things occur, namely if: 1. the minister is consecrated; 2. he confects the sacrament; and 3. he does this by office, or as consecrated, or solemnly.[1] This is clear from the Roman Ritual, which declares: "Those ministering these things impurely and unworthily incur the guilt of eternal death";[2] and these words must at least be applied to those of whom we are speaking. So also the Roman Catechism.[3] The reason is that grave irreverence is had in this, that someone exercises an act so holy in a state so foul, whether as consecrated and furnished with sacramental grace, or as acting as minister and instrument of Christ and in His name, or with the said titles considered together (cf. St. Thomas, III, q. 64, a. 5, ad 3 and a. 6; St. Alphonsus, VI, 31, 32, 884).

b) It is disputed whether the following sin gravely: 1. a non-consecrated minister who confects a sacrament in mortal sin, namely a layman baptizing and those contracting Matrimony;[4] 2. a consecrated minister who confects a sacrament, but not by office or not as consecrated, namely a

deacon or priest baptizing in a case of necessity. Some affirm, because there is grave irreverence in this, that someone, whether he is consecrated or is not consecrated, whether he acts as consecrated or does not act as such, performs such sublime things in the name of and as an instrument of Christ. Others deny it, and judge that for grave irreverence it is required that someone act by office, and therefore confect the sacrament as public minister of Christ and of the Church. Thus St. Thomas teaches (loc. cit.), nor does St. Alphonsus seem to reject this for practice (VI, 32; *Homo Apostolicus*, tract 14, n. 6); all things considered, it can be held as practically safe. Likewise, a priest does not sin gravely who, while in mortal sin, only hears confession, yet in such a way that he resolves to elicit an act of contrition before absolution is to be given (St. Alphonsus, VI, 36).

c) It is further disputed whether a priest or deacon sins gravely who, while in mortal sin, does not confect, but only administers a sacrament. This question regards only the distribution of the Holy Eucharist. Further, St. Alphonsus, against many, affirms it, "because," he says, "a priest ministering the Eucharist in mortal sin inflicts grave injury on this sacrament, because, as a minister consecrated for dispensing it, he ministers it unworthily (cf. can. 845). And just as in the other sacraments the minister proximately concurs in the sanctification of those receiving through confection, so here he proximately concurs through dispensation, since the minister of the Eucharist cannot exhibit himself as minister otherwise than through dispensation" (VI, 35). There is added that Nicholas II compares a dispenser in the state of sin to a burning torch, which, while it illuminates others, consumes itself.[5] Finally, the Roman Catechism favors this opinion.[6]

d) He does not sin gravely who, while in mortal sin, exercises other sacred functions, for example: 1. one who performs the functions of the Diaconate, Subdiaconate, or minor Orders; 2. one who performs consecrations, for example of Sacred Oil, and blessings; 3. one who touches or carries the Holy Eucharist or gives Benediction with the Most Holy Sacrament; 4. a priest who assists at Matrimony; 5. finally, one who preaches while in mortal sin does not sin gravely (St. Alphonsus, VI, 37-40).

Corollary. A minister who in mortal sin confects several sacraments in one continuous act commits as many sins as the sacraments he confects. The contrary must be said of him who by one moral action distributes the Holy Eucharist to several. Finally, he who celebrates while in mortal sin more probably commits four sins, namely he unworthily confects the sacrament, unworthily receives the sacrament, unworthily administers the sacrament to himself, and administers the sacrament to an unworthy person, again to himself (St. Alphonsus, VI, 35; vol. I, p. 201).

3. As regards the mode of recovering lost grace, one about to confect or administer a sacrament while constituted in mortal sin can recover grace either by an act of perfect contrition or by confession. If, however, there is question of confecting the Holy Eucharist, Confession is required of itself; this is clear from canon 807, to be explained later. Besides, the confection of this sacrament has its reception annexed to it. Further, he who has sinned mortally cannot receive the Holy Eucharist unless he has first received the sacrament of Penance (n. 179). With regard to the confection of the other sacraments, it is indeed fitting to confess,[7] but there is no obligation.

[1] The word *solemnly*, which in the case is commonly used, does not regard external rites, but signifies the same as *by office*.

[2] Title I, single chapter, n. 4.

[3] Part 2, chapter 1, q. 17.

[4] Nevertheless, they sin gravely insofar as they receive Matrimony in mortal sin.

[5] Chapter 5, cause 15, question 8.

[6] Part 2, chapter 1, question 17.

[7] Roman Ritual, title I, n. 4.

27 **III. According to the rite,** that is, according to the rites prescribed by the Church. Rites, however, are customarily distinguished as essential and accidental, according as they belong to the essence of the sacraments or do not belong to it. Concerning the essential rite, that is, concerning the use of matter and form, there has already been discussion, so that it remains to speak only of the accidental rite. Concerning this, let these things be observed:

1. That there is an obligation of observing the rites is of faith from these words of the Council of Trent: "If anyone shall say that the received and approved rites of the Catholic Church, customarily used in the solemn administration of the sacraments, can either be contemned, or omitted by the ministers at their pleasure without sin, or changed into other new rites by any pastor of churches whatsoever, let him be anathema."[1] The obligation is likewise drawn from the Constitution *Apostolicae Sedi* of Paul V,[2] placed at the head of the Roman Ritual; likewise from canon 733, § 1, which establishes: "In confecting, administering, and receiving the sacraments, the rites and ceremonies which are prescribed in the ritual books approved by the Church are to be accurately observed." Yet this does not prevent certain rites from being called directive rather than preceptive; this is drawn both from the words of the Ritual and from the thing itself, as will be noted in its place.
2. The obligation of observing the rites is grave by its genus, so that he sins gravely who neglects the law in grave matter; this is drawn both from the importance of the matter being treated and from the penalties to be inflicted on incorrigible transgressors (cf. can. 2378).
3. Each person is bound to follow his own rite (can. 733, § 2). Now the rite to be observed in the Latin Church is contained in the Missal and Roman Ritual, the Roman Pontifical, the Ceremonial of Bishops, and the *Memoriale Rituum*.[3]

Note 1. The sacred oils which serve for administering certain sacraments must have been blessed by the Bishop on the most recent Thursday in the Lord's Supper; and old oils are not to be used unless necessity urges. When the blessed oil is nearly lacking, other unblessed olive oil is to be added, even repeatedly, but in a smaller quantity (can. 734). The pastor must request the sacred oils from his Ordinary and diligently preserve them in the church in safe and decent custody under key; nor is he to retain them at home, unless because of necessity or another reasonable cause, with the permission of the Ordinary (can. 735).

Note 2. The reverence due to the sacraments also requires that they be confected with the decency which the nature of the sacrament demands; to this also belongs due attention. Nevertheless, voluntary distraction is only venial, unless there is added danger of a substantial or at least notable defect. Yet voluntary distraction of a priest during consecration and communion is held by many as grave irreverence, namely because of the eminent dignity of the Sacrifice (cf. St. Alphonsus, VI, 14, 224, 410, dub. 5).

[1] Session 7, On the Sacraments in general, canon 13.

[2] 17 June 1614.

[3] The *Memoriale Rituum* is a small book of rites given for the City by Benedict XIII (1723) and promulgated for the whole world by Pius VII (1827).

28 **IV. To the worthy.** The sacraments can be ministered only to the worthy, at least of themselves. But it suffices that worthiness be established as will be explained below. I said:

1. **They can be ministered only to the worthy.** He who ministers them to an unworthy person commits: 1. the sin of sacrilege, on account of the irreverent treatment of a sacred thing, that is, of a sacrament; 2. the sin of scandal, on account of cooperation in the sin of one's neighbor (St. Alphonsus, VI, 43).
2. **At least of themselves;** because, as if accidentally, the sacraments can be ministered to an unworthy person if there is present a cause by which both the irreverence which is contained of itself in ministration to the unworthy is removed, and cooperation in the sin of one's neighbor is made honorable. Causes of this kind are: violation of the sacramental seal, infamy, scandal, and other inconveniences to be avoided. From these things follow:

a) A sacrament must be ministered to an unworthy person if his unworthiness is known only by sacramental knowledge. For the rest, the following rules hold:

b) The sacraments are to be denied to a public sinner whether he asks secretly or publicly. The reason is that neither scandal nor infamy to be avoided makes the ministration honorable[1] (can. 855, § 1; St. Thomas, III, q. 80, a. 6; St. Alphonsus, VI, 44). A public sinner, however, is one whose crime is notorious either by fact, by law, or by reputation; he is occult as long as there is hope that the crime can be hidden.

c) The sacraments are to be denied to an occult sinner if he asks for them secretly, that is, before the priest alone, or before a few others who do not understand what is being done and will not spread the matter; they are not to be denied if he asks for them publicly. It is said:

a) They are to be denied if he asks for them secretly (can. 855, § 2; Roman Ritual):[2] the reason is that from denial there does not follow the inconvenience mentioned above (St. Thomas, loc. cit.; St. Alphonsus, VI, 44). Except if the priest knew the state of the sinner from confession alone; for he cannot use knowledge from confession with the burden of the penitent (St. Alphonsus, VI, 51, 658).

b) They are not to be denied if he asks for them publicly (can. 855, § 2; Roman Ritual).[3] The reason is that from the fact that a minister could publicly deny the sacraments from private knowledge, the greatest inconveniences would follow: namely, not only the loss of the reputation[4] of the one asking, but especially disputes, disturbances, scandals, and the danger that many would abstain from the sacraments, namely from fear lest they be kept away by an imprudent or malicious minister (St. Thomas, loc. cit.; St. Alphonsus, VI, 49). Except, however, the sacrament of Order, from which even one occultly unworthy must be kept away (Council of Trent;[5] can. 970). "The reason is certain, because he who thrusts himself into public offices for which he is not suitable must be repelled, even with infamy, on account of the public good to be preferred to the private good" (St. Alphonsus, VI, 52; cf. St. Thomas, Supplement, q. 36, a. 4). Besides, "it must be noted that in that case the Bishop is not bound to manifest the cause why he repels him from ordination; according to the declarations of the Sacred Congregation of the Council issued on 21 March 1643 and on 21 April 1668, which the Supreme Pontiff Benedict XIV brings forward at length"[6] (St. Alphonsus, loc. cit.).

If the crime is public in another place, but occult in the place where the sacrament is asked, the sacrament should not be denied unless knowledge of the crime will easily reach there (St. Alphonsus, VI, 46; cf. can. 855, § 2).

d) It is forbidden to minister the sacraments of the Church to heretics, even those erring in good faith and asking for them, unless first, having rejected their errors, they have been reconciled to the Church (can. 731, § 2). It is forbidden both because the sacraments generally cannot be ministered to heretics and schismatics without scandal,[7] and because ministration of the sacraments to non-Catholics fosters indifferentism.

Insofar as these things are also to be applied to the dying, see in the treatise on Penance and on Extreme Unction.

3. **It suffices that worthiness be established as follows:**

a) With regard to Baptism of adults, Penance, Order, and Matrimony, the worthiness of the recipient must be established more or less positively, and therefore inquiry must be made into it, as will be explained more fully in the treatise on the said sacraments. Meanwhile consult, with regard to Baptism, canon 752, § 1; with regard to Penance, canons 886 and 888; with regard to Order, canon 973, § 3; with regard to Matrimony, canons 1020, 1021, § 1, and 1033.

b) With regard to the other sacraments, worthiness must be presumed, while unworthiness must be proven in some measure, so that in doubt the sacraments ought rather to be granted. The reason is that all the faithful have a right to these other sacraments, and ministers are not judges but dispensers; whence in these cases they do not have the right of inquiring, but only the duty of dispensing to all who ask, provided that they are not positively unworthy (St. Alphonsus, VI, 43). If, however, unworthiness has been established, amendment must be proven, and sometimes, besides, the satisfaction performed must be established. Concerning this the Roman Ritual has these words: "All the faithful are to be admitted to sacred Communion, except those who are prohibited for a just reason. But the publicly unworthy are to be kept away, such as the excommunicated, the interdicted, and the manifestly infamous: as prostitutes, concubinarians, usurers,[8] magicians,[9] sorcerers, blasphemers,[10] and other public sinners of that kind, unless their penitence and amendment are established, and they have first satisfied for public scandal."[11] Canon 855, § 1, inculcates the same for the same reason. With these things considered, the following can be drawn:

[1] Roman Ritual, title IV, chapter 2, n. 3.

[2] Title IV, chapter 1, n. 9.

[3] Title IV, chapter 1, n. 9.

[4] This reason is not adequate, because the reverence to be shown of itself to the sacrament prevails over the private good of the reputation of the sinner, who, as is supposed, is not of good will; but it does not prevail over the common good.

[5] Session 14, on reform, chapter 1; Session 23, chapters 5 and 7.

[6] *De Synodo*, book 12, chapter 8, n. 2.

[7] Holy Office, 20 July 1898 (*Collectanea*, n. 2012).

[8] That is, those judicially convicted as such.

[9] That is, those who publicly practice true and certain magic.

[10] That is, those who from a spirit of impiety are accustomed by mouth or writing to utter injurious things against God, against the Saints, or against the Church.

[11] Title IV, chapter 1, n. 8.

29 **Corollary I.** If unworthiness arises from sin alone, generally it suffices that the sinner has confessed publicly; indeed, the very approach to the Holy Eucharist seems generally to suffice that he be judged amended. If, however, a public sinner of this kind, notwithstanding confessions and communions, does not cease falling back into the same habit, and the relapse is notorious, then the ministration of the sacraments should be deferred for some time, so that amendment may be sufficiently proven, unless now particular signs of amendment appear, as can occur especially on the occasion of a Mission.

Corollary II. If someone has publicly lived in a proximate occasion; likewise, if some resignation of office, or retraction, or satisfaction must be imposed, for example if someone has performed a wicked office, or has publicly enrolled in a wicked society, or has spread pernicious errors, or has publicly and unjustly stripped another of reputation, generally the occasion must be abandoned or the other obligation fulfilled before the sinner is publicly[1] admitted to the sacraments.

Corollary III. If someone has been publicly excommunicated, or has notoriously adhered to a heretical sect, before he communicates he must be reconciled with the Church in the external forum and absolved from the censure.

Corollary IV. If the crime is doubtful, the sacrament should not be denied, unless nevertheless someone is so suspected that by charity he is bound to remove the suspicion. If the crime is certain, but penitence doubtful, the sacrament should be denied, because penitence is not established; which the Roman Ritual cited above and canon 855 require (cf. St. Alphonsus, VI, 48).

Corollary V. If a doubt remains whether the sacraments must be denied to someone, the Ordinary should be consulted; or, if there is not time, after the sacrament has been granted, recourse should be had to him for the future.

For the rest, if the sacraments are to be denied, one should proceed most prudently. As far as can be done, the sinner should be warned in time, so that the request itself may be forestalled. If the matter does not succeed, the denial should be made without disturbance. The ordinary circumstances are especially regarded by the things said above; concerning the things to be observed in urgent danger of death there will be discussion in its own place.

Finally, here it is customary to ask whether the minister can administer a sacrament to an unworthy person in order to avoid harm threatening himself, for example death. Some affirm, provided that the one asking can here and now validly receive the sacrament and does not ask for it in contempt of God or of religion. They affirm this because there is had only material cooperation, which is licit for a cause of this kind. But with St. Alphonsus (VI, 49) it seems it must be denied; since the conferral of a sacrament on an unworthy person, and this in the supposed circumstances, carries with it so great an injury to the sacrament that it does not seem it can be admitted for averting private harm from the minister, but only for preventing inconveniences that would follow for the community from the denial (St. Alphonsus, VI, 49). As we already noted above, the adequate reason why it is permitted to confer a sacrament on an occult sinner is not the avoidance of infamy for a contumacious sinner, but the inconveniences which would arise for the community from the denial (St. Alphonsus, loc. cit.).

[1] Of themselves, the sacraments can be ministered at least secretly to all who are truly penitent, but according to the Sacred Penitentiary (1856) it is not fitting "to admit to secret participation in the sacraments those who have not made retraction, on account of the scandal of the weak, who can believe that the penitent has persevered in obstinate pertinacity."

30 **V. Absolutely or conditionally, according to the circumstances.** The sacraments are to be conferred absolutely if there is no serious doubt about validity; otherwise under condition. Yet he who, being certain of validity, places a condition, seems of himself to sin only lightly, because grave irreverence is not evident.

Scholion I. On the Ministration of a Doubtfully Valid Sacrament

31 **I. The morality of doubtfully valid ministration.** 1. Of itself it is illicit to minister a sacrament with doubt about its validity; in other words, moral certainty about the validity of the sacrament is required of itself. The reason is that of itself it is injurious to Christ, the Author of the sacraments, to place the external rite instituted by Him, wholly or at least partially, and indeed in order to constitute a sacrament, with grave danger of not truly constituting the sacrament. There is added proposition 1 condemned by Innocent XI: "It is not illicit in conferring the sacraments to follow a probable opinion about the validity of the sacrament, the safer one being left aside, unless law, agreement, or danger of incurring grave harm forbids it. Hence one must not use only a probable opinion in the conferral of Baptism, priestly Order, or episcopal Order."[1] Therefore of itself it is illicit: 1. to use doubtful matter or form; 2. to minister a sacrament in doubt whether another requisite for validity is present, for example the presence of the penitent due in the sacrament of Penance. Consequently, of itself it is also not licit to minister a sacrament under a condition which, according to what was said in n. 32, renders the validity of the sacrament doubtful (St. Alphonsus, VI, 28, 46).

Note. The moral certainty about validity which is required must be taken more strictly or more broadly according to the diversity of the sacraments; more broadly, for example, for the sacrament of Penance, as will be explained in its place.

2. Accidentally, a sacrament can sometimes, or even must, be conferred with doubt about its validity, namely if on the one hand it cannot certainly be conferred validly, and on the other hand there is a grave reason for conferring it. For since the sacraments are for men, the salvation of men to be procured prevails over the obligation of taking care lest the sacrament be exposed to the danger of nullity. A sufficient reason is present the more easily in proportion as the sacrament is more necessary (St. Alphonsus, VI, 28, 29).

Corollary I. A doubtfully valid sacrament can be conferred if the validity is at least probable and, from the sacrament not being conferred, grave spiritual harm threatens someone. Hence, for example, one doubtfully disposed can be absolved if there is fear lest otherwise he be alienated from the sacraments. But scarcely ever is it licit to consecrate doubtful matter (St. Alphonsus, VI, 28, 29, 432).

Corollary II. In danger of death, even with slight probability about validity, the necessary sacraments must be conferred, namely Baptism and Penance; likewise Extreme Unction, at least if Penance certainly cannot be conferred validly (St. Alphonsus, VI, 103).

[1] Denzinger-Bannwart, n. 1151.

32 **II. The mode of doubtfully valid ministration.** If a sacrament is ministered with doubt about validity, it must be confected under condition; namely, the reverence due to the sacrament requires

that the minister, in a doubt of this kind, protest that he does not will to confect the sacrament if the necessary condition is lacking.[1] Besides, observe:

1. Let the condition be placed on which validity depends, not that on which only the fruit depends. The reason is that a sacrament conferred under a condition on which only the fruit depends, for example, if you are disposed to receive grace, cannot revive; for if the condition is verified, the sacrament is immediately received validly and fruitfully; if it is not verified, it is not even validly received, and therefore cannot revive (n. 11). On the contrary, a sacrament conferred under a condition on which validity depends, for example, if you are capable of receiving the sacrament, is validly conferred if the condition is verified; and if perhaps it is now received without fruit, afterwards, when the due disposition is added, it can revive.

2. It is not required that the condition be expressed by mouth, but it suffices that it be expressed mentally, except in the cases in which, according to the Roman Ritual,[2] it must be expressed by mouth, namely: 1. in doubt whether the one to be baptized has already been baptized, or whether that which has been born is a human being; 2. in doubt whether the one to be anointed is still living (St. Alphonsus, VI, 29). The reason is that a condition placed mentally suffices for the sacrament truly to be conferred conditionally, in other words, for the intention to be restricted to the case of valid confection. This is confirmed by these words of the Roman Missal: "If he doubts very probably that he has omitted something essentially in the consecration, let him repeat the form at least under a tacit condition."[3] Indeed, it is enough to place the condition, whether by mouth or only mentally, implicitly; for example by ministering the sacrament according to the institution of Christ or the intention of the Church.

[1] If doubt about validity is removed by the Church supplying the defect, if it exists, the sacrament must be conferred absolutely. If someone places the condition: if you are disposed, it can seem doubtful whether there is intended a disposition required for the fruit alone or, at least confusedly or predominately, for validity. Hence it is safer not to express the condition in this way.

[2] Title 2, chapter 1, nn. 9, 22; title 5, chapter 1, n. 14.

[3] *De defectibus*, title 5, n. 2.

Scholion II. On the Repetition of a Sacrament Doubtfully or Doubtfully Validly Conferred

33 We speak of the repetition of a sacrament which is done under this condition, or an equivalent one: If the former sacrament was not conferred, or was not validly conferred; and which therefore effects nothing if the former sacrament was validly conferred. Now:

I. It is illicit to repeat a sacrament under condition if the doubt about the ministration or its valid ministration lacks reasonable foundation. In the case, repetition is gravely illicit, because it is grave irreverence to repeat the sacramental rite without reason. Nevertheless, the scrupulous are excused from sin, at least grave sin; yet they must be seriously admonished to abstain from repeating the form. Likewise, it is venial uselessly to repeat the same word, by which manner of acting Christ is introduced as speaking ridiculously. Stammerers, however, are excused, provided that, as far as can be done, they try to pronounce the words rightly the first time.

II. It is licit to repeat the sacraments under condition if both a prudent doubt about ministration, or about valid ministration, exists, and the usefulness of one's neighbor recommends reception of the sacrament.

III. A sacrament must be repeated under condition if there is prudent doubt about the ministration or its validity, and reception of the sacrament is necessary by necessity of means or of precept; even more if the common good requires that the sacrament be certainly conferred validly. Moreover, the more necessary the sacrament is, the more easily a sufficient doubt is present.

Corollary I. The sacraments of Baptism, Confirmation, and Order are to be repeated under condition if a prudent doubt exists whether they were really conferred or whether they were validly conferred (can. 732, § 1). If it is prudently doubted whether absolution was imparted or rightly pronounced, and the penitent is still sufficiently present, absolution must be repeated if there is question of a penitent constituted in mortal sin; otherwise it can at least be repeated.

Corollary II. Baptism, Order, absolution of one dying, and Extreme Unction conferred on one deprived of the senses must be repeated, even if the reason for doubting the validity of the former sacrament is slight.

Corollary III. It can happen that doubt about the ministration or the valid ministration of a sacrament, even a necessary one, is so slight that it can indeed be repeated, but need not be repeated. Thus, for example, to quiet anxiety Order could be repeated if the words of the form had been uttered immediately after the matter was placed.

Corollary IV. Finally, it can happen that a sacrament can and must be repeated several times under condition, for example that an infant must first be baptized while still existing in the womb; then, when some member has emerged, be rebaptized under condition; finally, once brought into the light, be rebaptized again under condition (n. 93; cf. can. 746, § 3).

Section III. On the Obligation of Ministering

34 **I. Bishops and pastors are bound in this way:**

1. They must, by justice, minister the sacraments to their subjects; and indeed not only in true necessity, but as often as they reasonably ask for this. They are bound by justice because, in accepting their office, they entered into a tacit contract. There is added the reason of salary or honorable support accruing to them by reason of their office (St. Alphonsus, VI, 58; cf. vol. I, n. 572; canons 464, § 1; 467, § 1; 785; 892, § 1; 939).
2. The aforesaid obligation is grave by its genus, namely so that they would sin gravely: 1. if they did not aid a subject constituted in grave or extreme necessity; 2. if by custom they showed themselves difficult or slow, for example if they heard confessions only on a few days in the month, or assigned notably inconvenient times for the distribution of the Holy Eucharist.
3. If the necessity is grave or extreme, grave inconvenience does not excuse, indeed not even danger on the way (cf. vol. I, n. 572). Nevertheless, concerning the obligation of ministering the sacraments with danger to life, let these things be noted:

a) The obligation regards only the sacraments necessary for salvation according to the circumstances, namely Baptism, Penance, and, if the sick person were deprived of the senses before he could have been absolved, Extreme Unction.

b) In order that the said obligation exist, it is required: 1. that there be no other who will certainly minister the sacraments; 2. that there be hope of fruit; 3. that from the sacrament ministered with

danger to life there not threaten a greater harm, for example a common harm or the harm of many for whom the minister is necessary.

Corollary I. Pastors can provide many things through others, unless nevertheless they are requested by name. Bishops, however, can, at least today, fulfill ordinary offices entirely through others.

Corollary II. Benedict XIV concludes from rescripts of the Sacred Congregation of the Council that a pastor cannot withdraw in time of plague, even if he leaves behind a suitable vicar; nevertheless he can reserve to himself the care of the healthy if the vicar is ready to provide for the sick, lest the healthy, from fear of infection, flee both of them.[1] The same Sacred Congregation declared that this prohibition has much more force for Bishops.[2] Moreover, the things said about time of plague are certainly to be applied generally to a time of common danger, such as war or any contagious disease. Finally, pastors and bishops in a time of common danger cannot resign unless someone else can be substituted into their office.

[1] *De Synodo dioecesana*, book 13, chapter 19, n. 2.

[2] 18 December 1576.

35 **II. Assistants who by reason of office supply the place of the pastor** are held by almost the same obligation as pastors (cf. can. 476, § 6).

36 **III. Other priests are obliged by charity alone** (cf. can. 892, § 2; 939). They are bound under grave obligation if their neighbor is in extreme or grave necessity. If there is question of grave necessity, grave inconvenience excuses. If there is discussion of extreme necessity, or of grave common necessity, not even danger of life excuses. But concerning the obligation of ministering the sacraments with danger to life, let the things noted above concerning it be noted (St. Alphonsus, VI, 624; II, 27; *Homo Apostolicus*, tract 4, n. 14; tract 16, n. 125).

Corollary. If the people, because of a scarcity of ministers, are in grave necessity, a simple priest cannot abstain from hearing confessions and administering the Holy Eucharist; and if he is not suitable for hearing confessions, he is bound, if he can, to render himself suitable (St. Alphonsus, VI, 625).

37 **IV. Superiors of religious, toward their subjects, are held by an equally grave obligation as pastors** (cf. can. 514, § 1); nevertheless practically they are not held by justice, because there is no established tacit contract, nor is a salary assigned. There is added an obligation of religion, because superiors seem to be obliged from this motive.

Dissertation III. On the Reception of the Sacraments

We must speak first of the person receiving, then of the mode of receiving a sacrament.

Part I. On the Person Receiving

38 **I. Only man as a wayfarer is capable of receiving the sacraments.** Therefore angels and the dead are excluded. Nevertheless not every wayfaring man is capable of receiving all the sacraments; namely:

1. Every man not yet baptized is capable of Baptism (can. 745, § 1).
2. Every baptized person is capable of Confirmation and the Eucharist (canons 786, 853).
3. Every baptized male is capable of Order (can. 968).
4. Every baptized person who has fallen after Baptism is capable of Penance (can. 902).
5. Every baptized person able to enter into a contract is capable of Matrimony (cf. can. 1035).
6. Every baptized person who, after having attained the use of reason, is in danger of death because of illness or old age is capable of Extreme Unction (can. 940, § 1).

Part II. On the Mode of Receiving a Sacrament

In order that the sacraments produce the twofold effect concerning which there was discussion (n. 5), namely character and grace, they must be received validly and licitly. I said "in order that they produce the twofold effect," since valid reception suffices for producing character alone. In order, moreover, that grace be received, valid and licit reception is required.

Section I. On the Requisites for Valid Reception

39 For validly receiving a sacrament neither faith nor uprightness is required, as is clear from the sense and practice of the Church, which has always held as valid a sacrament received according to the rite of the Church in heresy. Penance is excepted, for which the good acts of the penitent are required, as will be explained in its own place.

Baptism, however, is required for the other sacraments. This is established, namely, from tradition, that the other sacraments were instituted only for those who through Baptism have been made members of the Church (St. Alphonsus, VI, 79).

Finally, for the valid reception of all the sacraments there is required, at least in adults, intention, that is, the will of receiving the sacrament; concerning which intention we must speak more fully (St. Alphonsus, VI, 80, 139).

40 **I. Necessity of intention.** 1. In little children and in the perpetually insane, that is, in those who have never enjoyed the use of reason, no intention is required, but the will of the Church supplies. This is of faith with regard to Baptism,[1] certain with regard to Confirmation and the Holy Eucharist, namely from the most ancient practice of the Church; likewise with regard to Order from the Constitution *Eo quamvis tempore* of Benedict XIV[2] (St. Thomas, III, q. 68, a. 9; a. 12, ad 1; St. Alphonsus, VI, 80, 139). Further, little children and the perpetually insane are capable of the sacraments which we have indicated, but incapable of the others (St. Alphonsus, loc. cit.).

2. In adults intention is required, as follows:

a) He who both internally resists the reception of the sacrament and is forced to the external rite, by the consent of all, does not receive the sacrament.

b) He who internally resists the reception of the sacrament, but voluntarily admits the external rite, does not receive the sacraments which do not imprint character. Thus authors commonly teach, relying on this reason: that it is not fitting that the gifts of God be conferred on one who positively does not will to receive them. There is some dispute about those sacraments which confer character, that is, Baptism, Confirmation, and Order. Those few who judge that the latter sacraments are received in the case rely especially on the fact that Innocent III[3] declares that it is not absurd to teach that he who fictitiously approaches Baptism, that is, externally consenting but dissenting in heart, receives the impressed character of Christianity. Nevertheless, the more common opinion teaches that even the sacraments which imprint character are not received by one who internally dissents, although he externally consents. The reason alleged is that it seems especially unfitting that sacraments which carry special burdens with them should be received by a subject who does not will to receive them. For the rest, the words of Innocent III, considering their tenor, are of a kind to move anyone little.

c) He who neither consents nor dissents, but holds himself merely passively, much more probably does not receive the sacraments any more than one who positively resists reception; because it is not fitting that the gifts of God be conferred on one who does not positively will to receive them (St. Thomas, III, q. 68, a. 7; St. Alphonsus, VI, 81).

St. Thomas says thus in the cited place: "I answer that through Baptism someone dies to the old life of sin and begins a certain newness of life ... And therefore, just as in order that a man die to the old life there is required, according to Augustine, in one having the use of free will, the will by which he repents of the old life; so there is required the will by which he intends newness of life, whose beginning is the very reception of the sacrament; and therefore on the part of the one baptized there is required the will or intention of receiving the sacrament." And again: "If in an adult the intention of receiving the sacrament were lacking, he would have to be rebaptized; if however this were not established, it would have to be said: If you are not baptized, I baptize you."

With this doctrine of St. Thomas there cannot be reconciled the opinion of those who teach that the will which is required in the recipient is rather that of one not placing an obstacle than of one positively consenting.[4]

Corollary I. He validly receives a sacrament who, from fear, consents to reception; for fear does not take away freedom. Except Matrimony, which is invalid if consent has been extorted by grave fear, as will be explained in its own place.

Corollary II. The question treated concerning the intention of one receiving a sacrament does not regard the Holy Eucharist; concerning this, namely, it is not asked whether it is valid without the intention of the recipient, but whether without the said intention it is received sacramentally, or only materially, so that it does not produce fruit.[5]

[1] Council of Trent, Session 7, canon 13 on Baptism.

[2] 4 May 1745, article 1.

[3] Chapter 3, *De Baptismo* (III, 42).

[4] Cf. also, with regard to Baptism, canons 745, § 2, and 752; Roman Ritual, title 2, chapter 3, n. 1; with regard to Penance, Roman Ritual, title 3, chapter 1, n. 24; with regard to Extreme Unction, canon 943; Roman Ritual, title 5, chapter 1, n. 6.

[5] Cf. the treatise on the Holy Eucharist.

41 **II. Nature of the required intention.** 1. In itself actual intention is not required, nor virtual intention, but even habitual intention suffices; interpretative intention does not suffice. I said:

a) Habitual intention suffices, in other words, it suffices that someone positively had it and has not retracted it.[1] The reason is that intention is required in the recipient only so that he may not be said to be sanctified against his will. But this cannot be said of one who enjoys habitual intention. Others except Penance and Matrimony. But as regards Penance, habitual intention suffices insofar as there is question of receiving absolution. It is another question, however, whether the acts of the penitent must be placed from an at least virtual intention, that is, by force of the intention of receiving the sacrament, in other words, whether they must be referred by the penitent, actually or virtually, to absolution.[2] With regard to Matrimony, which the recipients themselves minister, actual or virtual intention is necessary to this extent: that it is required that consent begin to exist from an actual or virtual intention of contracting Matrimony (St. Alphonsus, VI, 81, 82, 139).

b) Interpretative intention does not suffice, because intention of this kind, at least as it is understood by us (n. 15), in reality has not existed.[3]

Objection. The Roman Ritual[4] and canon 943 establish that Extreme Unction is to be conferred absolutely on the sick who, when they were in possession of their mind, at least implicitly asked for it or probably would have asked for it. Therefore with regard to Extreme Unction interpretative intention suffices, or rather a mind inclined toward the said sacrament, which interpretative intention indicates.

Response. I deny the consequence. And indeed the Roman Ritual and canon 943 do not speak of sick persons, faithful, who would probably have willed Extreme Unction, but who would probably have asked for it. But a faithful person who, while master of himself, would probably ask for Extreme Unction also, with sufficient certainty, willed the said sacrament more or less explicitly, just as the request which probably would have place indicates with sufficient certainty a mind inclined toward the sacrament.

2. With regard to the object, the intention of receiving such a sacrament is required, or of receiving what the Church intends through such a rite. But an intention more or less explicit of receiving such a sacrament suffices. A merely implicit intention, as for example the will of using the means of salvation, does not suffice if there is an explicit contrary intention; if no such contrary intention is had, the matter seems doubtful. With these things noted in general, receive the following in particular:

a) With regard to Baptism, the will of embracing the Christian religion suffices for receiving it, at least in danger of death. It is disputed whether the same can be said of the will of using the means of salvation, likewise of attrition or contrition. Many hold this as probable, because there is an implicit intention. But we judge that one must speak thus:

a) It seems it must be denied if there is question of those who reject Baptism at least more or less explicitly; of this kind are Jews, Mohammedans, and many Protestants today. But it seems it must be denied because, besides the fact that it is not proven that implicit intention suffices, explicit rejection seems to prevail over implicit admission.[5] There is added that the Holy Office on 30 March 1898 declared: "Concerning dying Mohammedans deprived of the senses, one must respond as in the decree of the Holy Office of 18 September 1850 to the Bishop of Perth, that is: If previously they had given signs of wishing to be baptized, or in their present state either by nod or in another way have shown the same disposition, they can be baptized under condition, insofar nevertheless as the Missionary, having inspected all the circumstances of things, has so prudently judged"; which at least proves that it is illicit to confer Baptism on those who reject it, and suggests that such conferral is invalid, because, if validity were posited, at least in extremis it does not seem it should be excluded. There are added canons 752, § 3, and 754, § 3, compared with the Holy Office of 30 March 1898, which seem to require a more or less explicit will. There is added finally that a practice conforming to the contrary doctrine never seems to have existed in the Church (St. Alphonsus, VI, 82; cf. VI, 483). Practically, the contrary opinion can be called licit, but not obligatory.

b) If there is discussion of those who do not explicitly reject Baptism, the probability of the opinion which teaches that the general will of admitting the means of salvation suffices, likewise attrition and contrition, the probability of that opinion, I say, seems rather slight: both because, as we said, canons 752, § 3, and 754, § 3, compared with the Holy Office of 30 March 1898, seem to require that the one to be baptized have signified an intention more or less explicit of receiving Baptism; and because the

practice of baptizing those who enjoy only an implicit intention seems truly new in the Church. Practically, however, the contrary opinion seems licit, and, according to circumstances, obligatory.

b) With regard to Extreme Unction, likewise for receiving Viaticum sacramentally, the will of dying Christianly suffices; the same will in danger of death suffices for Confirmation; likewise for receiving sacramental absolution, at least considered by itself alone.

The will of dying Christianly, likewise the will of using the means of salvation, or contrition or attrition, according to the things explained above, do not seem to suffice in those who reject the mentioned sacraments more or less explicitly. With regard to non-Catholics who do not explicitly reject the said sacraments, it is not so proven that the will of dying Christianly, etc., does not suffice for valid reception.

c) With regard to Matrimony and Order, explicit intention is required; since, at least practically, there will not be had an implicit intention which includes the will of entering Matrimony or of receiving Order. There is added that the said sacraments carry special burdens with them, so that for that reason also a general will does not sufficiently contain the will of receiving them (St. Alphonsus, VI, 82).

Question. Whether the conceived intention of receiving a sacrament effects that it is validly received, even if it is ministered to one not master of himself, for example sleeping, drunk, or fallen into insanity.

Response. A few deny it;[6] but it seems it must entirely be affirmed, both because Innocent III teaches thus with regard to Baptism,[7] likewise Benedict XIV;[8] and because intention is not judged restricted unless a restriction is expressly placed, or is drawn from a contrary will once had (St. Thomas, In IV, dist. 6, q. 1, a. 2, sol. 3, ad 2; St. Alphonsus, VI, 81).

[1] Innocent III, chapter *Maiores*, § *Item quaeritur*, *de baptismo*; Instruction of Benedict XIV, *Postremo mense*, n. 46.

[2] Cf. the treatise on Penance.

[3] St. Alphonsus (VI, 82) and others teach that interpretative intention suffices; but they understand that intention which others call implicit habitual intention. The holy Doctor indeed calls it interpretative intention which was never had; but he intends the one which was never had explicitly, as follows from the context, namely both from the fact that he also calls interpretative intention general, that is, such by which someone implicitly wills the sacrament, and from the fact that he opposes interpretative intention to explicit intention.

[4] Title V, chapter 1, n. 6.

[5] It seems to others that in the will of using the means of salvation there is not included the implicit will of receiving the sacrament, but rather a merely conditioned will; in other words, he would will to receive it if he recognized it as a means of salvation; but this condition not being fulfilled, he in no way wills it (cf. Ter Haar, *De occasionariis et recidivis*, n. 503).

[6] Roncaglia, *De Sacramentis in genere*, chapter 5, question 2, response 2; Billuart, *De Sacramentis in communi*, dissertation VI, article I; Lehmkuhl (II, 65 note) doubts.

[7] Book 3 of the Decretals, title 42, chapter 3, *Maiores*.

[8] Instruction *Postremo mense*, n. 46.

Section II. On the Requisites for Licit Reception

42 In little children and the perpetually insane no disposition is required. In adults these things are required:

43 **I. They must have the disposition by which they become proximately capable of the effect to which the sacrament is of itself ordered.** Hence:

1. For the sacraments of the dead, that is, for Baptism and Penance, besides acts, at least implicit, of faith and hope, at least attrition is required.[1] That attrition suffices is clear from the fact that those sacraments are of themselves ordered to remitting mortal sins, and therefore cannot demand a disposition which already of itself remits mortal sins (St. Alphonsus, VI, 440). He who receives the sacrament of Penance without attrition sins gravely, because the sacrament is rendered invalid. Likewise, he sins gravely who, guilty of personal mortal sin, receives Baptism without attrition; for he inflicts grave injury on the sacrament who receives it in such a way that it is frustrated of its grave end, that is, the remission of mortal sins. If one guilty only of personal venial sin receives Baptism without attrition, he indeed effects that Baptism does not remit the venial sin; but only venial sin is committed.

2. For the sacraments of the living, the state of grace is required.

a) The existence of the obligation is clear from the fact that those sacraments are ordered to increasing grace; hence grace must already be present. Nevertheless, as was said concerning the minister, a necessity excuses which is so urgent that not even an act of contrition can be elicited; for example, "if a consecrated host were about to be profaned by heretics and someone, because of that sudden incursion, could not be contrite so quickly"; or if "a layman were reclining at the communion rail who remembered a mortal sin and could not elicit contrition because of the narrowness of time" (St. Alphonsus, VI, 86).

b) Gravity of the obligation. He who receives a sacrament of the living in mortal sin sins gravely, because he is guilty of grave injury who receives a sacrament of this kind without the disposition which its nature demands, or without the disposition required for the end or fruit to which it is of itself ordered, which is the increase of grace. There is added that a sacrament of the living received in mortal sin, even with attrition, according to some produces no fruit at all except character (n. 6; St. Alphonsus, VI, 86).

c) The certainty required concerning the state of grace. In order that someone licitly receive a sacrament of the living, at least broad moral certainty concerning the state of grace is required; but this also suffices. It is required because otherwise the one receiving exposes the sacrament to grave danger that it be received without the disposition which its nature demands, or without the disposition required for the fruit to which it is of itself ordered, to pass over the danger that it be received without any fruit at all; and this contains grave irreverence (St. Alphonsus, *Homo Apostolicus*, tract 15, n. 34). There is added that most authors, especially the more distinguished, adhere to this opinion. It suffices because these things must be taken in a human manner.

Objection. In order that someone who has sinned gravely be morally, although broadly, certain of the state of grace, he must either confess or elicit contrition with exquisite diligence. But the reverence due to the sacrament cannot oblige to so great a burden.

Response. I deny the assertion. Namely, in order that someone acquire broad moral certainty concerning the state of grace, it suffices that he either confess or elicit an act of contrition with moral diligence. God Almighty will not deny His help to one applying serious effort. For the rest, granted, though not conceded, the assertion of the adversaries, the burden set forth does not seem so great

that, in order to avoid it, it would be licit to expose the sacrament to grave danger that it be received without the disposition required for the fruit to which it is of itself ordered, to say nothing of the danger that it be received without any fruit at all.

d) The mode of recovering lost grace. He who, constituted in mortal sin, wishes to receive a sacrament, can recover grace through an act of perfect contrition or through confession. If, however, there is question of receiving the Holy Eucharist, confession is required of itself; this obligation will be explained more fully in the treatise on the Eucharist. With regard to receiving the other sacraments, it is indeed fitting to confess, but there is no obligation.

Note. Besides the state of grace, the reverence due to the sacraments requires that the sacraments be received according to the rite perhaps prescribed in reception, and with that decency which the nature of the sacrament demands. To this especially belongs due attention, neglect of which nevertheless is only venial.

[1] Council of Trent, On Justification, Session 6, chapter 6; On Penance, Session 14, chapter 4.

44 **II. They must ask for the sacrament from a minister:** 1. enjoying legitimate faculty; 2. not censured, that is, not excommunicated, interdicted, or suspended, not irregular, or not canonically simply impeded; and 3. worthy, that is, living in the state of grace. Observe, however, that every minister is presumed suitable unless the contrary is established. But in order that the contrary be established, rumors do not suffice; indeed, one who has been a sinner is generally presumed amended, unless the contrary is evident, for example from a manifest voluntary proximate occasion not left behind. For the rest, receive these things:

1. It is a grave sin to ask for a sacrament from a minister here and now lacking legitimate faculty.
2. Of itself it is a grave sin to ask for a sacrament from a minister who is censured, irregular, canonically simply impeded, or unworthy because of grave sin, because it is proximate cooperation in the grave sin of the minister. Accidentally it is licit when a cause proportionate to the case and circumstances is present. This is clear from the things said concerning cooperation (n. 556) and from the canons soon to be cited. Hence:

a) From excommunicates to be avoided, and also from other censured persons after a condemnatory or declaratory sentence has intervened, the faithful can ask, in danger of death alone, both sacramental absolution according to the norm of canons 882 and 2252,[1] and also, if other ministers are lacking, the other sacraments and sacramentals (can. 2261, § 3; 2275, 2; 2284).

b) From tolerated excommunicates, and also from other censured persons before a condemnatory or declaratory sentence has intervened, the faithful can ask for the sacraments and sacramentals for any just cause, especially if other ministers are lacking; and then the censured person who is requested can minister the same and is held by no obligation to inquire of the requester about the cause (can. 2261, § 2; 2275, 2; 2284).

c) Concerning irregular persons and those canonically simply impeded, almost the same seems to have to be said as concerning excommunicates to be avoided (cf. can. 968, § 2).

d) Sacraments can be asked from a minister unworthy because of sin: 1. if the precept of confession or communion urges; 2. "if from delaying reception there threatens danger of a fall; 3. if you must fulfill the precept of hearing Mass; 4. if one is in mortal sin and does not wish to wait even an hour, because

it is not a small usefulness to be freed from sin as soon as possible; 5. if you would have to lack, at least for a long time, communion or the fruit of confession, even if you do not have mortal sin; 6. if otherwise you cannot gain a jubilee; 7. if you need a skilled director and do not have another; 8. if you wish to apply Mass for a deceased friend" (St. Alphonsus, VI, 89). Indeed, for any just cause a sacrament can be asked from one whose office it is to administer such a sacrament, for example from one's own pastor (St. Alphonsus, loc. cit.).

[1] The cited canons will be explained in their own place.

45 **Note.** It is pleasing to explain briefly how far the sacraments can be ministered to little children, the insane, and the partially insane, and received by the aforesaid.

I. Little children and the perpetually insane, as was already said (n. 38), are capable of receiving Baptism, Confirmation, the Holy Eucharist, and Order. Yet not all are conferred on them.

II. To the insane who previously possessed the use of reason, those things must be applied which we said generally concerning adults. Hence, for example, for valid reception it is required that before insanity they had the intention and did not retract it. For the rest, consult what is to be said concerning the individual sacraments.

III. The partially insane are not of themselves to be kept away from the sacraments. Namely:

1. Baptism must be conferred on them even outside danger of death; nor is so much instruction prerequired in them as in others.
2. Confirmation can be conferred, even if they have been instructed less than others.
3. Absolution should be granted, in doubt about sufficient use of reason or disposition under condition: 1. in danger of death; 2. at Easter; 3. as often as they have confessed a doubtfully grave sin; indeed, 4. several times, even if they have declared only light sins (St. Alphonsus, VI, 432; IV, 3).
4. The Holy Eucharist should be conferred: 1. in danger of death; 2. at Easter; 3. several times, if they show devotion (St. Alphonsus, VI, 303).
5. Extreme Unction should be furnished to those lying dangerously ill; under condition if there is doubt about the use of reason had both now and previously.
6. Order is not to be administered to them.
7. They can indeed enter Matrimony if they understand the substance of the contract; nevertheless they are generally to be turned away from it.

Appendix. On Sacramentals

46 **I. Notion.** Sacramentals are things or actions which the Church, in some imitation of the sacraments, is accustomed to use for obtaining from her own impetration effects, especially spiritual effects (can. 1144). This notion handed down by the Code will become clearer from what is to be said. Sacramentals are, for example, consecrations and blessings to be performed in the name of the Church, exorcisms, prayers prescribed by the Church and to be recited in her name, such as the breviary, and blessed things, such as water, Agnus Dei, ashes, palms, etc.

47 **II. Institution.** With regard to the institution of sacramentals, it seems more probable that one must speak thus: most derive their origin from ecclesiastical institution; but certain ones of them, such as exorcisms and blessings, were instituted by Christ at least in a general way and entrusted to the Church, yet in such a way that afterwards they were more determinately circumscribed by the Church both as to mode and as to effect.[1] To add new things to the sacramentals, or to change anything in them, belongs to the Apostolic See alone, as is clear from canon 1145. The reason is that sacramentals draw their force from the impetration of the Church alone. Therefore it belongs to the Head of the Church alone to constitute or change them.

[1] Cf. Schmid, *Die Sacramentalien der Katholischen Kirche*, p. 149.

48 **III. Effects.** 1. The effects of sacramentals are either the special deputation of some person or thing to divine worship, as, for example, the blessing of an abbot or the administration of minor orders, supposing that these do not enjoy the character of a sacrament, and the consecration of a church or chalice; or the attainment of some good, whether spiritual, such as actual grace, the removal of venial guilt and temporal punishment, or bodily, such as health of body or immunity from calamity by which the person himself or his goods can be affected. Special deputation to divine worship is the effect of those sacramentals which consist in consecrations and constitutive blessings; the attainment of a good, whether spiritual or bodily, is obtained by the sacramentals of exorcism, prayer, and blessed objects.

2. As regards the mode by which diverse sacramentals produce their diverse effects, it can generally be established that they produce them by way of impetration, as if *ex opere operato*, that is, from the work of the working or praying Church, and this independently of the disposition either of the minister or of the subject, and indeed with that infallibility by which God promised to hear the prayer of His most beloved spouse, namely the Church. Some effects, however, are received immediately, others mediately through the sacramentals; wherefore concerning the individual effects in species one can speak thus:

a) The special deputation of some person or thing to divine worship is obtained by way of impetration *ex opere operato*, infallibly and immediately.

b) Actual graces are obtained in the same way, and through acts placed by means of these graces, the remission of sins and other goods which the just man can acquire for himself supernaturally.

c) The expulsion and restraint of demons is obtained both by way of impetration and by way of adjuration or command.

d) Finally, temporal goods, such as health, fertility of the earth, and the removal of threatening evil, are obtained both by way of impetration and by way of adjuration directed against demons.

49 **IV. Ministration or use.** 1. In general, the legitimate minister of sacramentals is a cleric to whom power has been granted for this and who has not been prohibited by competent ecclesiastical authority from exercising the same power (can. 1146). In species, with regard to legitimate ministers, the following are established:

a) No one who lacks the episcopal character can validly perform consecrations unless this is permitted to him either by law or by apostolic indult (can. 1147, § 1).[1]

b) Any priest can impart blessings, except those which are reserved to the Roman Pontiff or to Bishops or others.[2] A reserved blessing which is given by a priest without the necessary permission is illicit but

valid, unless in the reservation the Apostolic See has expressed otherwise (can. 1147, §§ 2 and 3). Deacons and lectors can validly and licitly give only those blessings which are expressly permitted to them by law (can. 1147, § 4).

c) With regard to exorcisms, see vol. I, n. 700.

2. In confecting or administering sacramentals, the rites approved by the Church are to be accurately observed (can. 1148, § 1). Consecrations,[3] and blessings whether constitutive or invocative,[4] are invalid if the formula prescribed by the Church has not been used (can. 1148, § 2).

3. Blessings, which are chiefly to be imparted to Catholics, can also be given to catechumens, indeed, unless a prohibition of the Church stands in the way, even to non-Catholics, for obtaining the light of faith or, together with it, health of body (can. 1149).

4. Things consecrated or blessed with a constitutive blessing are to be treated reverently and not applied to profane or improper use, even if they are in the ownership of private persons (can. 1150).

Note. Let the ministers of the Church explain to the faithful the nature and efficacy of sacramentals. Moreover, let the ministers of the Church show themselves ready in ministering sacramentals, and prudently accustom the faithful who neglect sacramentals to the use of them. Yet let them beware lest they apply ecclesiastical blessings, under whatever pretext, to ends other than those for which they were instituted by the Church, and lest by an imprudent use of them they expose this most holy institution to contempt, or stain it with the reputation of superstition or of dishonest gain.

[1] That law permits this to Cardinals (can. 239, § 1, n. 20); Vicars and Prefects Apostolic (can. 294, § 2); Pro-vicars and Pro-prefects (can. 310, § 2); Abbots and Prelates nullius (can. 383, § 2), according to the norm of the cited canons.

[2] Cf. with regard to blessings reserved to the pastor, can. 462, 6 and 7; with regard to sacred furnishings to be blessed, can. 1304; with regard to exorcisms to be pronounced, vol. I, n. 700.

[3] Consecrations are made by anointing with chrism or sacred oil.

[4] A constitutive blessing is one which orders a person or thing to divine worship, and so constitutes it sacred; an invocative blessing regards things, for example a ship, destined for profane use.

Treatise II. On Baptism

(St. Thomas, part 3, qq. 66-69; St. Alphonsus, *Theologia Moralis*, book VI, nn. 95-160; *Homo Apostolicus*, tract 14, nn. 7-38.)

We shall speak first of Baptism considered in itself, then of its ministration, and finally of the reception of Baptism.

Dissertation I. On Baptism Considered in Itself

50 Baptism is a sacrament by which man is spiritually regenerated through the washing of the body with water, done by another, under the express invocation of the individual Persons of the Most Holy Trinity. With this summary notion premised, we shall treat first of the existence, then of the essence, then of the effects, and finally of the necessity of Baptism.

Part I. On the Existence of the Sacrament of Baptism

51 Baptism is a true sacrament of the New Law. This is of faith from the Council of Trent,[1] and it is clear from Sacred Scripture, which openly teaches that Baptism is a sensible sign instituted by Christ and efficacious of grace.

I said a sensible sign, that is, consisting of matter, which is washing with water, and of form, which is situated in the invocation of the Most Holy Trinity. It suffices to have alleged John 3:5: Unless one is born again of water and the Holy Spirit, he cannot enter into the kingdom of God; and Matthew 28:19: Going therefore, teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit.

I said a sign efficacious of grace; since regeneration, concerning which Matthew speaks in the cited place, cannot be understood except as spiritual regeneration, which is effected through grace. For the rest, let the dogmatic theologians be consulted.

Note 1. It is disputed concerning the time at which Christ instituted Baptism. The more common and more probable opinion teaches that it was instituted by Christ before the Passion. Otherwise the Apostles would have received the Holy Eucharist and Order before Baptism had been received. There is added that the disciples of Christ baptized before the Passion of the Master.[2] Now the Baptism conferred by the disciples seems to have been different from the Baptism of John the Baptist. This is deduced from John 3:25 ff. It remains, therefore, that we say that the Baptism conferred by the disciples of Christ was our sacrament. For a third Baptism is invented without sufficient reason (St. Thomas, III, q. 66, a. 2; St. Alphonsus, VI, 96).

It is more disputed at what precise moment Christ instituted Baptism. According to some, in the discourse with Nicodemus;[3] according to others, when He sent the disciples to baptize.[4] According to St. Thomas (III, q. 66, a. 2 and q. 73, a. 5, ad 4), St. Alphonsus (VI, 96), and others, when He Himself was baptized by John.[5]

Note 2. The Baptism of John was not of the same efficacy as the Baptism of Christ. This is of faith from the Council of Trent.[6] Further, according to St. Thomas, "the Baptism of John was not of itself a sacrament, but as it were a certain sacramental disposing for the Baptism of Christ, and therefore in some way it belongs to the law of Christ, but not to the law of Moses" (III, q. 38, a. 1, ad 1).

[1] Session 7, On Baptism, canon 1.

[2] John 4:1, 2.

[3] John 3.

[4] John 4:1, 2.

[5] Matthew 3:11-17.

[6] Session 7, On Baptism, canon 1.

Part II. On the Essence of the Sacrament of Baptism

Section I. On Remote Matter

52 **I. The remote matter of Baptism required for validity is true and natural water.** This is of faith from the Council of Trent,[1] and is declared by canon 737, § 1. By true and natural water is understood that which according to common estimation comes under the name of natural water; for attention must be paid to this more than to the assertions of chemists. Water remains valid matter even if a diverse element has been mixed in, provided the quantity mixed in is small and does not change the water substantially. Thus, for example, valid matter is water into which a thousandth part of corrosive bichloride of mercury has been mixed;[2] with which water many physicians in a case of necessity baptize infants, especially in the womb of the mother, namely lest the mother's uterus be affected by disease.[3]

Water composed by chemical art from the elements which constitute water, that is, from oxygen and hydrogen, is doubtful matter. In the case there is true water; likewise water natural according to intrinsic causes, but artificial according to the extrinsic cause. Further, it is doubted whether water of this kind is valid matter.

Corollary I. Matter certainly valid is: 1. water drawn from wells, spring water, sea water, rain water; 2. water melted from ice, snow, or hail; likewise water condensed from vapor; likewise water purified from foreign elements by distillation; 3. sulphurous, ferruginous, or mineral water, provided that according to common estimation it is still called water.

Corollary II. Matter certainly invalid is: 1. blood, milk, wine; 2. fluids of the body, such as sweat, urine, saliva; 3. ice, snow, and hail, so long as they have not yet melted; 4. the sap of plants is almost certainly invalid matter. Amniotic fluid, that is, the fluid by which the fetus enclosed in the afterbirth is surrounded, seems to be invalid matter. For it is constituted by secretions from the body of the mother and of the infant, and therefore seems to have to be equated with other secretions, such as sweat, etc. Since, however, the matter is not so certain, in a case of necessity, if Baptism cannot be conferred in a more certain way, it can be ministered with amniotic fluid.[4]

Corollary III. Doubtful matter, besides water composed by chemical art, concerning which above, is: 1. moisture flowing from a vine or other trees; 2. liquid from dissolved salt; 3. water drawn by chemical art from plants, flowers, roots, such as rose water; 4. finally, broth, beer, coffee, tea, ink, mud, lye, and artificial waters are more or less doubtfully valid, according as they are thicker or thinner, or contain a greater or lesser quantity of foreign elements (St. Alphonsus, VI, 103, 104).

[1] Session 7, On Baptism, canon 2.

[2] In French: *chloride de mercure*.

[3] Holy Office, 21 August 1901, in *Nederlandsche Katholieke Stemmen*, 1901, p. 289.

[4] Cf. Aertnys-Damen, *Theologia moralis*, vol. II, n. 47.

53 **II. The remote matter required for liceity is water certainly valid, pure, and, if there is question of solemn Baptism, that is, Baptism which is administered with all the rites and ceremonies (can. 732, § 2), baptismal water, that is, water blessed for baptizing (can. 757, § 1).** It is said:

1. Certainly valid; nevertheless, in extreme necessity only matter certainly invalid is excluded. If the matter is doubtful, Baptism should be conferred under condition: if the matter is valid; and afterwards it should be repeated under condition (St. Alphonsus, VI, 103).
2. Pure, that is, neither mixed[1] nor filthy. To use very impure water without necessity is a grave sin (St. Alphonsus, VI, 102).
3. Baptismal for solemn Baptism (can. 757, § 1); and this obligation is grave (St. Alphonsus, VI, 102). The consecration, however, must be done twice in the year, namely on Holy Saturday and on the Vigil of Pentecost, the old water having been poured into the sacrarium;[2] the precept of consecrating the water at the aforesaid times is grave. If lack is feared, common water can be mixed with it, even repeatedly, but in a smaller quantity (can. 757, § 2); if, however, it has become corrupted, or has flowed out, or has failed in any way whatsoever, the pastor is to pour fresh water into the font, well cleaned and neat, and bless it by the proper rite prescribed in his liturgical books (can. 757, § 3). Moreover, if the baptismal water is too cold, it can licitly be warmed or mixed with warmed common water.

With regard to the water to be used in private Baptism, it is better, if it can be done, to use baptismal water, but there is no obligation (cf. can. 757, § 3). Hence a priest called to confer private Baptism will laudably carry with him a sufficient quantity of baptismal water. "If baptismal water is not had and danger threatens, let the priest use simple water,"[3] whether holy water or common water, as it is permissible to interpret this word.[4]

[1] The Holy Office, on 21 August 1901, responded that the mixture of corrosive bichloride of mercury, concerning which in the text under I, is licit only where a true danger of disease is present.

[2] Roman Ritual, title 2, chapter 2, n. 5; Sacred Congregation of Rites, nn. 2878, 3331.

[3] Roman Ritual, title 2, chapter 2, n. 29.

[4] The Holy Office, 20 June 1883, prefers holy water.

Section II. On Proximate Matter

54 **I. The proximate matter required for validity is the washing of the one to be baptized, done by the baptizer himself.** This is clear from Sacred Scripture, which declares that man through Baptism is born again of water,[1] and is washed.[2] Canon 737, § 1, declares the same.

It is said:

1. **Washing;** and this indeed can be done in three ways, namely by immersion, pouring, and sprinkling. As regards validity, however, it makes no difference in what way it is done (can. 758). Nevertheless, true washing wholly requires:

a) That the water physically or immediately touch the one to be baptized. Hence: 1. Baptism is doubtful if the water has touched only the hair, scab, or birth matter still adhering in notable quantity. To birth matter there also seems to be numbered the *vernix caseosa*, which is accustomed to adhere to the fetus before cleansing. Hence surgeons and midwives, having removed scab and filth if need be, should either part the hair with the left hand while baptizing, or rather effect that the water flow over the temples of the head. Likewise, the sacred minister can, while pouring the water, divide the hair, or rather proceed in such a way that the water flows somewhat over the forehead (St. Alphonsus, VI, 107, q. 3).

2. With regard to Baptism conferred on the afterbirth, some teach absolutely that it is invalid, in whatever afterbirth the conferral may be done; namely, they judge that no afterbirth is a part of the fetus. Others hold Baptism conferred on the external afterbirth, or decidua, as certainly invalid, but Baptism on the inner afterbirths as doubtfully invalid. The reason is that they judge the decidua certainly, but the other afterbirths only probably, not to be parts of the fetus. According to others, Baptism conferred on whatever afterbirth is doubtfully valid. Many allege as the reason that the afterbirths are united with, or constitute as it were one continuum with, the umbilical cord, which probably belongs to the fetus; and thus Baptism conferred on the afterbirths would not be certainly invalid. There is added, they say, with regard to the inner afterbirths, that it is not yet wholly established that they do not belong to the fetus.[3] In what way, all things considered, the fetus must be baptized will be explained in n. 93.
3. Baptism on the umbilical cord is more probably valid than on the afterbirths, because the cord is united immediately with the infant, while the afterbirths are united with the infant by means of the cord.[4]

b) That the water touch the one to be baptized with successive motion, unless several parts of water touch several parts of the body at the same instant, as happens, for example, in Baptism by sprinkling. For the rest, successive motion can occur in two ways, namely both by moving the body to the water, as in immersion, and by moving the water to the body, as in pouring and in sprinkling.

Moreover, a small quantity of water suffices, provided nevertheless that it flows over a sufficient part of the body; hence only one or another little drop, even if it flows, will leave Baptism practically doubtful (St. Alphonsus, VI, 107, q. 6). It also suffices that the baptizer, by the motion of a finger or of a moistened cloth, wash a part of the body (St. Alphonsus, loc. cit.). Note, however, that according to the Holy Office, Baptism conferred "by way of anointing on the forehead, with the thumb moistened in baptismal water," had to be repeated.[5]

2. **Of the one to be baptized;** namely, in such a way that the man can morally be said to have been washed. Further, Baptism is certainly valid if the washing is done on the whole body or on the head, whether on the forehead, cheek, or crown; most probably if on another more principal part, as on the shoulder-blades, shoulders, or chest; it is more doubtful if on a less principal part, as on the hand, finger, or foot. The reason why Baptism conferred otherwise than on the whole body or on the head remains doubtful is "because ... in none of the exterior parts does the integrity of life consist as in the head" (St. Thomas, III, q. 68, a. 11, ad 4; St. Alphonsus, VI, 107, qq. 3 and 4). Hence canon 746, §§ 2 and 3: If the infant has put forth the head and danger of death threatens, let him be baptized on the head; nor afterwards, if he comes forth alive, is he to be baptized again under condition. If he has put forth another member, let him be baptized on it under condition if danger threatens; but then, if he is born alive, he is again to be baptized under condition.
3. **Done by the baptizer himself.** Therefore it does not suffice that the washing be done by the one to be baptized, or by a third party, or by a natural cause alone. Therefore:

a) Baptism would certainly be invalid: 1. if someone, seeing another washing himself or falling into a river, were to pronounce the form; 2. if someone were to utter the form while a third party poured the water (n. 20).

b) It would be doubtfully invalid if the baptizer himself were to place the one to be baptized under water poured by a third party, provided that the third party is not employed as applying the matter.

c) Baptism would be almost certainly valid if the baptizer himself moved the one to be baptized to water falling from a roof or from the sky, or springing from a fountain (St. Alphonsus, VI, 106).

Corollary I. If Baptism is conferred by immersion, it does not suffice that someone be held motionless in motionless water, because the baptizer cannot be said to wash the one to be baptized. Besides, according to some authors it is also required that the one to be baptized be drawn out of the water, according to that saying of Paul: Do you not know that all we who have been baptized in Christ Jesus have been baptized in His death? For we have been buried together with Him through Baptism into death, so that, as Christ rose from the dead by the glory of the Father, so we also may walk in newness of life; for if we have been planted together in the likeness of His death, we shall also be in that of His resurrection.[6]

Corollary II. They also ask about the throwing of the one to be baptized, for example an infant, into a river. Now Baptism of this kind is doubtfully valid, for example because there is not had, as we suppose, emergence. Moreover, a manner of acting of this kind seems absolutely illicit, because the said throwing of itself tends only to killing. "Nevertheless it is licit to baptize a child soon to die with even icy water, if other water cannot be had, even if it were feared that death would be hastened by this ... because then death would not occur of itself, but accidentally; since such an action of itself does not tend to killing, but to washing" (St. Alphonsus, VI, 100). The same, with the same circumstances supposed, holds concerning poisoned or boiling water from which the infant would be killed.

[1] John 3:5.

[2] Eph. 5:26; Tit. 3:5; Acts 22:16; Heb. 10:22.

[3] The fetus is enveloped in three membranes or afterbirths, which are: 1. the exterior afterbirth, which is called the decidua; 2. the inner afterbirths, namely the chorion and amnion. Cf. Cavellmann-Bergmann, *Pastoral-Medizin*, p. 242; *Nouvelle Revue Theologique* 1912, p. 581.

[4] *Nederlandsche Katholieke Stemmen*, 1927, p. 146.

[5] 14 December 1898 (*Collectanea*, n. 2028); cf. Holy Office, 8 November 1770; 9 July 1779 (*Collectanea*, nn. 486, 530).

[6] Rom. 6:3-5.

55 **II. The proximate matter required for liceity in solemn Baptism is gathered from canon 758 and the Roman Ritual.** The cited canon declares: "Although Baptism can be conferred validly either by pouring, by immersion, or by sprinkling, nevertheless the first or second mode, or one mixed from both, which is more in use, is to be retained, according to the approved ritual books of the diverse Churches." Therefore the third mode, by sprinkling, is no longer to be used. The Roman Ritual defines the mode of baptizing more by these words: "The priest takes baptismal water in a small vessel or pitcher and pours it three times over the head of the infant in the form of a cross ... But where there is a custom of baptizing by immersion, the priest takes the infant and, taking care that he not be harmed, cautiously immerses him and baptizes by a triple immersion."[1] The triple pouring or immersion in solemn Baptism obliges under grave obligation (St. Thomas, III, q. 66, a. 8; St. Alphonsus, VI, 107, q. 5); in private Baptism it is recommended insofar as it can be done.

[1] Title II, chapter 2, nn. 19, 20. In almost all Churches which use the Latin rite, Baptism is conferred by pouring.

Section III. On the Form

56 The legitimate form of Baptism is:

For the Latin Church: **I baptize you in the name of the Father and of the Son and of the Holy Spirit.** This is clear from the Fourth Lateran, Florentine, and Tridentine Councils,[1] and likewise from the Roman Ritual.[2] That *Amen* is not to be added at the end is clear both from the cited documents and from the response of the Sacred Congregation of Rites on 9 June 1853.

For the Greek Church: **The servant of Christ, N., is baptized** (here the name of the one to be baptized is placed) **in the name of the Father and of the Son and of the Holy Spirit.** This is established from the Council of Florence and from the decree of Eugene IV for the Armenians.

[1] Session 7, canon 4, On Baptism.

[2] Title II, chapter 2, n. 8.

57 **I. For validity, so that it be certain, it is required that there be expressed in the form:** 1. the person baptizing (*I*); 2. the person to be baptized (*you*); 3. the act of baptizing (*baptize*); 4. the unity of the divine nature (*in the name*); 5. the express distinction of the three Persons, and indeed by proper names: Father, Son, and Holy Spirit. That the act of baptizing and the distinct invocation of the three Persons must be expressed, all concede. Concerning the rest there is dispute. Therefore let there be expressed:

1. **The person baptizing.** Whether the expression of this in the form of the sacrament is required for validity can be disputed. For the rest, it certainly suffices that it be expressed implicitly, as is done in the form of the Greeks, where they say that *is baptized* has the same force as *is baptized by me* (cf. St. Thomas, III, q. 66, a. 5; St. Alphonsus, VI, 108).

Corollary. The word *I* is not essential in the Latin and Greek languages, because the first person, as it is said, is expressed through the word *baptize*; the same cannot be said of several more recent languages.[1]

2. **The person to be baptized** indeed seems to have to be expressed, "because, just as the washing, so also the form must be concerned with a certain person" (St. Alphonsus, VI, 108). Yet it seems to suffice that it be expressed implicitly; this can be done even if the word *you* is omitted. Hence the Holy Office on 8 September 1633 declared valid the form of the Armenians: *Now my hand baptizes in the name of the Father and of the Son and of the Holy Spirit*.[2] But the declaration of the Sacred Congregation de Propaganda Fide, dated 11 September 1841, that Baptism is rendered invalid through omission of the word *you*, was omitted in the new edition.

3. **The act of baptizing, and indeed the present act or act now being placed, must be expressed,** as is clear: 1. from the Council of Florence;[3] 2. from proposition 27 condemned by Alexander VII: "Baptism conferred under this form was at some time valid: In the name of the Father, and of the Son, and of the Holy Spirit, these words being omitted: I baptize you";[4] 3. from the Decretal of Alexander III;[5] 4. from this reason of St. Thomas: "Because the washing of a man in water can be for many things, it is necessary that it be determined in the words of the form for what it is done; and this indeed is not done by the fact that it is said: In the name of the Father, and of the Son, and of the Holy Spirit, because we ought to do all things in such a name, as is had in Colossians 3. And therefore, if the act of Baptism is not expressed either according to our mode or according to the mode of the Greeks, the sacrament is not perfected" (III, q. 66, a. 5, ad 2; St. Alphonsus, VI, 108).

But the present act of baptizing, or the act now being placed, must be expressed; otherwise, considering the form, nothing would be effected now.

Corollary I. The word *baptize*, or another equivalent, such as *wash* or *lave*, is essential; but not *anoint*, because it does not involve the signification of washing. But in order that a certainly valid word be used, it is better in the vernacular language to use a word derived from the Latin *baptizare*, such as *baptiser*, *to baptize*, unless there is had a word which by usage has been consecrated for signifying sacramental washing, such as *doopen*, *taufen*.

Corollary II. There is doubt concerning the form: *I christianize you*, or concerning the English formula: *I christen thee*, because it expresses rather the effect of the sacramental action than the action itself. Yet if that or a similar formula somewhere by common acceptance signifies the action of baptizing, it is certainly valid. Hence it is valid among the Yugoslavs, as is clear from the Slavic Ritual, which was approved by the Holy See in 1894 and contains for the Greek rite the form: *krescaetsja* (= is christianized), for the Latin rite: *Ia te krstim* (= I christianize you).

[1] The Sacred Congregation of the Council on 11 February 1797 declared valid Baptism conferred thus, provided that a bad or heretical mind is set aside: *Enfante, te baptize en nom de Pere, de Fils et de Saint-Esprit*.

[2] *Collectanea*, n. 74.

[3] Denzinger-Bannwart, n. 696.

[4] Denzinger-Bannwart, n. 1317.

[5] Chapter 1, X 3, 42.

58 **4. The unity of the divine nature likewise seems to have to be expressed,** considering the words of Christ: Baptizing them in the name of the Father and of the Son and of the Holy Spirit.

Corollary I. *In the name* is essential, at least insofar as it signifies unity; hence it would be invalid: 1. with the words *in the name* omitted, to say *in the Father*, etc.; 2. in place of *in the name*, to use the words *in the names* (St. Alphonsus, VI, 111).

Corollary II. The following forms are valid: 1. *I baptize you in the name of the Father, in the name of the Son, in the name of the Holy Spirit*;[1] 2. *I baptize you in the name of the Father, I baptize you in the name of the Son, I baptize you in the name of the Holy Spirit*;[2] 3. *I baptize you in the name of the Father and in the name of the Son and in the name of the Holy Spirit*;[3] 4. *I baptize you with the name of the Father*, etc.[4] Further, the four assigned forms, according to the mind of the Sacred Congregations, are valid if, a depraved or heretical mind being set aside, they are used. 5. *I baptize you into the name of the Father*, etc.; for this form plainly agrees with the form handed down in Sacred Scripture.[5]

Corollary III. Since it is somewhat doubtful whether the words *in the name* signify *the name having been invoked* or *by the authority*, the following forms are doubtful: 1. *I baptize you by the authority of the Father*, etc.; 2. *I baptize you name of the Father*, *in* being omitted (St. Alphonsus, VI, 112, dub. 2). In the case of Faesulae,[6] Baptism conferred in Italian in this way, *Io ti battezzo 'nnome del Padre*, etc., is indeed judged valid; but the consultor argued from the usage in the Italian language, or in the Etruscan idiom, of omitting the letter *i* before *m* and *n*. Hence the declaration cannot be referred to another language.

[1] Cf. Holy Office, 11 January 1882, and Sacred Congregation of the Council, 4 May 1641.

[2] Holy Office, 11 January 1882.

[3] Sacred Congregation of the Council, 4 May 1641.

[4] Sacred Congregation of the Council, 16 August 1828; 24 May 1823; Holy Office, 23 May 1720. See *Thesaurus resolutionum*, vol. 83, fol. 134 and following.

[5] Cf. the Greek text, Matthew 28:19; Acts 19:5; 1 Cor. 1:13.

[6] 12 September 1801.

59 **5. The express distinction of the three Persons.** It is required that the three Persons be expressed explicitly, and, in order that every doubt about validity be excluded, by proper names, and those common or such as are accustomed to be used, and so joined that the distinction is sufficiently signified. This is clear from the words of Christ: Baptizing them in the name of the Father and of the Son and of the Holy Spirit; likewise from Tradition[1] (St. Thomas, III, q. 66, a. 5 and ad 7; St. Alphonsus, VI, 108, 109). Therefore the three Persons:

a) Must be expressed. It is indeed disputed whether, by special dispensation in the time of the Apostles, Baptism conferred under the form *in the name of Jesus* was valid. But after the times of the Apostles all concede that Baptism conferred in this way is not valid. This is drawn from the words of Christ: Baptizing them in the name of the Father and of the Son and of the Holy Spirit. Likewise from Tradition.[2] Hence the forms are invalid: *in the name of God*; *in the name of Christ* (St. Alphonsus, VI, 108).

b) Explicitly, as is proven by the arguments brought forward under a). Hence likewise the forms are invalid: "in the name of the Most Holy Trinity"; "in the name of the three Persons" (St. Alphonsus, VI, 111).[3]

c) By proper names. This is urged by the words of Christ and the ancient practice of the Church. The form is very doubtful: "in the name of the Omnipotent and the Wise and the Good."

d) And by common names. "As," says St. Thomas, "water is taken for Baptism because its use is more common for washing, so for signifying the three Persons in the form of Baptism those names are assumed by which the Persons have been more commonly accustomed to be named in that language; nor is the sacrament perfected in other names" (III, q. 66, a. 5, ad 7). Therefore in the Latin language it should be said: "in the name of the Father and of the Son and of the Holy Spirit." But the following forms are doubtful: "in the name of the Begetter and of the Begotten and of the One Proceeding from Both"; "in the name of the First and Second and Third Person of the Most Holy Trinity"; "in the name of the Father and of Jesus Christ and of the Holy Spirit" (St. Alphonsus, VI, 109). The form "in the name of the Father and of the Son and of the Holy Spirit and of Mary" is invalid if *of Mary* is said in the same sense as *of the Father*, etc.; but it is valid if the minister wills to invoke her as a helper in obtaining grace (St. Alphonsus, VI, 108).

e) And joined in such a way that the distinction is sufficiently signified. Now: 1. The form is certainly valid if the conjunction *and* is omitted only between *Father* and *Son*, and therefore it is said: "in the name of the Father, the Son, and the Holy Spirit." The reason is that the very word *Son* designates a distinct Person. Then, the usage is sufficiently customary of denoting distinct members in this way. There is added the response of the Sacred Congregation of the Council.[4] 2. The forms are somewhat doubtful: 1. if the conjunction is omitted twice: "in the name of the Father, the Son, the Holy Spirit"; 2. if it is expressed only between *Father* and *Son*: "in the name of the Father and of the Son, the Holy Spirit." The reason for both is that then *Holy Spirit* can seem to be an apposition of *Son*; for the name Holy Spirit belongs both to the Father and to the Son (St. Alphonsus, VI, 112). Responses are indeed reported which declared valid Baptism conferred in this way: *Mi te abattezzo in nome del Padre e del Figliuolo, dello Spirito Sancto*; but the matter is not sufficiently certain and clear to remove every doubt.[5]

[1] Rath, *De Baptismo*, n. 287.

[2] Cf. Rath, *De Baptismo*, n. 287.

[3] Nicholas I in the year 876 to the Bulgarians holds as valid Baptism conferred in the name of the Most Holy Trinity or only in the name of Christ, and argues from Acts; cf. Acts 2:38; 19:5 (Denzinger-Bannwart, n. 335).

[4] 12 September 1801.

[5] Cf. Lehmkuhl, *Theologia Moralis*, II, n. 90, note 1.

60 **II. For liceity it is required that Latins use the formula of the Roman Ritual, and Greeks the formula shown in their Rituals.** Besides, observe that by any change a grave sin is easily committed; for some doubt about the validity of so necessary a sacrament will easily arise.

Corollary. From what has been said both in the present number and in the treatise on the Sacraments in general (n. 23), it is gathered that faulty pronunciation of the form is generally not substantial if it is made from haste, inadvertence, or because of stammering; more easily if it is made with a heretical mind.

Part III. On the Effects of Baptism

61 The effects of Baptism are:

I. Sanctifying grace, of itself first grace, accidentally second grace (n. 6), with the infusion of all the virtues and gifts of the Holy Spirit attached.

II. Sacramental grace; this consists in the fact that the sanctifying grace which Baptism confers is both ordered to this, that man be spiritually regenerated and live Christianly, and carries with it a right to actual graces in order to living Christianly. This spiritual regeneration involves the remission of all guilt, both original and personal; the remission of all punishment, both eternal and temporal, with the things to be posited being posited, that is, sorrow for sins.

III. Character. 1. The existence of character is clear from the things said in n. 8.

2. Effects of character. Baptismal character effects that man:

a) Is deputed to the worship of God according to the rite instituted by Christ and exercised in the Church, especially with regard to the sacraments, for the reception of which, therefore, he is rendered capable by character (St. Thomas, Supplement, q. 35, a. 3; III, q. 63, a. 6; St. Alphonsus, VI, 79; cf. can. 737, § 1).

b) Becomes a member of the Church, and is obliged to lead a Catholic life, and is subjected to the authority and laws of the Church, that is, of the spiritual society instituted by Christ (cf. can. 87).

Corollary. In order that the baptized be bound to live Catholicly and obey the Church, it is not required that, after attaining the use of reason, they be asked whether they wish to hold the baptismal promises as ratified and in fact hold them as ratified.[1] Nor should you say: It is repugnant that someone be subjected to authority and laws without the consent of his will. That this is not repugnant is clear even from the fact that without the consent of their will infants are subjected to the authority and precepts of parents, and citizens to the authority and laws of their country.

[1] Council of Trent, Session 7, On Baptism, canon 14.

Part IV. On the Necessity of Baptism

Baptism is necessary by necessity of means and of precept.[1]

[1] On the notion of each necessity, see vol. I, n. 484.

Section I. On Necessity of Means

62 After the sufficient promulgation of the Gospel, the sacrament of Baptism is necessary for salvation by necessity of means, yet not absolutely but hypothetically. It is said:

I. After the sufficient promulgation of the Gospel. Thus the Council of Trent.[1] Now sufficient promulgation for some, but not for all, was effected through the sermon of St. Peter on the day of Pentecost. For the rest, authors more commonly teach that the promulgation of the Gospel for different nations took place at different times, and that for the whole world it has already long since occurred, although its diffusion has not yet been extended everywhere.

II. The sacrament of Baptism is necessary for salvation by necessity of means; this proposition is of faith from the Council of Trent: "If anyone says that Baptism is free, that is, not necessary for salvation, let him be anathema."[2] Cf. canon 737, § 1.

III. Yet not absolutely, but hypothetically; by these words it is signified that there are means which can supply the place of Baptism, namely Baptism of desire and perhaps Baptism of blood, concerning which we shall speak in the scholia.

[1] Session 6, chapter 4.

[2] Session 7, On Baptism, canon 5.

Scholion I. On Baptism of Desire

63 **I. Notion.** Baptism of desire is so called because it is the effect of the Holy Spirit, who is also called *Flamen* (from breathing or inspiring). Now Baptism of desire is an act of perfect charity or perfect contrition.

64 **II. Suppletive Character.** Baptism of desire is a suppletive means of Baptism, that is, it does not justify except dependently on a desire, whether explicit or implicit, for Baptism. Now an implicit desire for Baptism is always included in an act of charity or perfect contrition elicited by one not baptized; for in such an act there is contained a general purpose of fulfilling all things which have been established by God, among which is the reception of Baptism by one not baptized.

65 **III. Suppletive Force.** An act of charity or perfect contrition supplies the place of Baptism with respect to justification, or the infusion of grace, and consequently with respect to all things which cannot be separated from it, namely the remission of original and actual sins, at least mortal sins, the remission of eternal punishment, the infused virtues, and the gifts of the Holy Spirit; but not with respect to sacramental grace, character, and the remission of all punishment.

66 **IV. The requisites for Baptism of desire to justify** are only those which constitute Baptism of desire.

67 **V. The manner in which Baptism of desire produces its effects.** Baptism of desire produces its effects only *ex opere operantis*; otherwise than the sacrament, which operates *ex opere operato*,[1] and Baptism of blood, which operates at least partly, as it were, *ex opere operato*.[2]

Corollary. For one who has been justified through Baptism of desire, there remains the obligation of receiving the sacrament of Baptism, if this can be done; nor can he receive other sacraments before that.

[1] Others say: *ex opere operato* actively.

[2] Others say: *ex opere operato* passively.

Scholion II. On Baptism of Blood

68 **I. Notion.** Baptism of blood is martyrdom endured by one not baptized.

69 **II. Suppletive Character.** 1. Martyrdom in little children not baptized is not a suppletive means of Baptism, that is, it does not justify them dependently on a desire for Baptism. With respect to the fruitful martyrdom of adults, even if you posit that a desire for Baptism is contained in such martyrdom, nevertheless it seems doubtful whether justification takes place dependently on the aforesaid desire; in a word: it is doubtful whether or not Baptism of blood was instituted by God as a suppletive means of the sacrament; perhaps the desire for Baptism is required only as removing an obstacle, with respect to the infusion of grace.

70 **III. Suppletive Force.** Martyrdom in the non-baptized, both adults and infants, supplies the place of Baptism with respect to the remission of all guilt and punishment (vol. I, n. 418).

71 **IV. The requisites for Baptism of blood to justify.** 1. In little children no disposition is required.

2. In adults there are required the same things which are required for martyrdom strictly so called (vol. I, n. 418). Besides, if the adult has committed grave personal sin, according to some there are required acts of charity or perfect contrition; according to others attrition suffices; according to others, per se an act of charity or perfect contrition is required, while per accidens attrition suffices (cf. St. Alphonsus, VI, 98).

72 **V. The manner in which Baptism of blood produces its effects.** According to some, justification in itself is effected *ex opere operantis*, while from a quasi *ex opere operato* there is given a higher degree of justification; similarly, some remission of punishment is given *ex opere operantis*, while total remission of punishment is granted by a quasi *ex opere operato*. According to others, both justification and the remission of all punishment are effected by a quasi *ex opere operato*. According to others, the effects are produced in the manner of the former opinion if the martyr elicits an act of charity or perfect contrition; in the manner of the latter opinion if he is only attrite; wherefore the dogmatic theologians should be consulted.

Corollary. An adult who knows that martyrdom is imminent is certainly bound, if he can, to receive Baptism; likewise, if he is a sinner and baptized, to confess, or, if he cannot confess, to elicit perfect contrition, and this already because according to what has been said mere attrition with martyrdom probably does not suffice for justification; and so the hope of martyrdom does not free them from these things.

Section II. On Necessity of Precept

73 The necessity of precept already follows from the necessity of means. Moreover:

I. Adults not yet baptized, or doubtfully baptized, are bound to receive Baptism as soon as they can receive it worthily and, considering the circumstances and the dignity of the sacrament, suitably.

"For adults," says St. Thomas, "the sacrament of Baptism is not to be conferred immediately when they are converted, but it must be deferred until some certain time, first indeed because of the caution of the Church, lest she be deceived in conferring the sacrament on those who approach falsely, according to that passage of 1 John 4: Believe not every spirit, but prove the spirits whether they are of God; and this proving is taken concerning those approaching Baptism when for some space of time their faith and morals are examined. Secondly, this is necessary for the benefit of those who are baptized, because they need some space of time for this, that they may be fully instructed concerning the faith and exercised in those things which pertain to the Christian life. Thirdly, this is necessary for a certain reverence of the sacrament, while in the principal solemnities, namely of Easter and Pentecost, men are admitted to Baptism, and thus they receive the sacrament more devoutly" (III, q. 68, a. 3).

II. An adult who without reason defers Baptism for a long time sins gravely, because he is bound to be enrolled in the Church and to live as a Christian.

For the rest, compare what is to be said concerning the time of conferring Baptism (n. 87).

Dissertation II. On the Ministration of Baptism

We must speak first about the person ministering, then about the manner of ministering.

Part I. On the Person Ministering

74 **I. Every priest is the ordinary minister of solemn Baptism** in this sense, that by the force of his ordination he is deputed principally, not secondarily as a deacon is, for baptizing, and can always be delegated by the proper pastor of the person to be baptized to baptize, and that solemnly (cf. canon 738, § 1).

75 **II. A deacon is the extraordinary minister of Baptism** in this sense, that by the force of his ordination he is deputed secondarily for baptizing, and can be delegated by the Ordinary or by the proper pastor of the person to be baptized, for a just cause, to baptize, and that solemnly. Hence he is not to use his power without the delegation or permission of the local Ordinary or of the pastor, to be granted for a just cause, which, where necessity urges, is legitimately presumed (cf. canon 741; St. Alphonsus, VI, 116, doubt 1). It was said:

1. A deacon is deputed secondarily, because he is ordained rather to assist a minister of a higher order, and secondarily to supply his place.
2. For a just cause to be granted: for example, if the pastor is absent or ill or subject to excommunication or occupied in hearing confessions; perhaps also if the parents desire it, for example because of consanguinity, etc.
3. Where necessity urges, granted permission is not required, but presumed permission suffices. Now necessity urges if the person to be baptized is in the article or danger of death; likewise if it is foreseen that the priest will be absent for a long time, and no other can be approached.[1]

[1] Cf. Sacred Congregation de Propaganda Fide, 21 January 1788; 16 January 1804; 11 September 1841 (*Collectanea*, nn. 593, 674, 939).

76 **III. With respect to the right of baptizing solemnly, hold the following:**

1. The Ordinary of the place and the pastor enjoy the right of baptizing solemnly their own subjects, or rather the inhabitants of their territory; this does not belong to another priest except by permission of the same pastor or of the local Ordinary, which in a case of necessity is legitimately presumed (canon 730, § 1). He who performs this without due permission sins gravely (St. Alphonsus, VI, 115); likewise parents violate the right of the pastor when, without necessity or permission, they bring their child to another priest to be baptized.
2. Even a traveler is to be baptized solemnly by his own pastor in his own parish, if this can be done easily and without delay; otherwise any pastor can solemnly baptize a traveler in his own territory (canon 730, § 2).
3. Where parishes or quasi-parishes have not yet been established, account must be taken of special statutes and received customs, so that it may be established to which priest, besides the Ordinary, the right of baptizing belongs in the whole territory or in part of it (canon 740).

Note. The Baptism of adults, where it can conveniently be done, is to be referred to the local Ordinary, so that, if he wishes, it may be conferred more solemnly by him or by his delegate (canon 744).

77 **IV. With respect to the territory in which solemn Baptism may be conferred,** canon 739 establishes: In another's territory no one may, without due permission, confer solemn Baptism, not even on inhabitants of his own place.

Corollary I. If a woman gives birth outside her own parish, she ought to see that the child is baptized in her own parish, if this can be done easily and without delay; otherwise she can choose either her own parish or that in which she gave birth to the child, or even another (canon 738, § 2; St. Alphonsus, VI, 115).

Corollary II. Those without fixed domicile can choose whichever church they prefer (cf. canon 94, § 2).

78 **V. Every human being is the minister of Baptism** in this sense, that he can baptize validly; in a case of necessity also licitly, though not solemnly (canon 742, § 1). If, when a case occurs, several are present, the prescribed order, to be assigned under 2 below, is to be observed. I said:

1. **In a case of necessity;** wherefore note:

a) Extreme necessity is not required, but a well-founded danger suffices, lest an infant soon to die should die. The Holy Office, to the question "whether a midwife, when she foresees that Baptism will have to be deferred for a long time, can immediately wash a newborn, although he is found in good health, even without the knowledge of one or both spouses, the pastor nevertheless having been warned of this," responded on 11 January 1899: "It must be urged that Baptism be administered as soon as possible; but then it will be permissible for the midwife to confer it when danger is positively feared that the child will die during the time of the delay."

b) To danger of death is equivalent a necessity which can arise especially in mission places from the lack of any priest whatever or from difficulty in approaching him; namely, the Sacred Congregation de Propaganda Fide several times approved the practice prevailing in several places by which catechists or other approved laypersons baptize the infants of Christians quickly, for example not beyond eight days from birth, even when they are in good health.[1]

2. **The order to be observed among several ministers of necessity** is set forth in these words by canon 742, §§ 2 and 3: If nevertheless a priest is present, he is to be preferred to a deacon, a deacon to a subdeacon, a cleric to a layperson, and a man to a woman, unless for the sake of modesty it is fitting that a woman rather than a man baptize, or unless the woman knows better the form and manner of baptizing. A father or mother is not permitted to baptize his or her own child, except in danger of death, when no other is present who can baptize. Thus also the Roman Ritual.[2] Now the prescribed order must be understood so that: 1. any of the faithful, even a woman, existing in union with the Church, must be preferred to any unbeliever, heretic, schismatic, or excommunicate to be avoided, even if he is a priest; 2. a woman is to be preferred to the father, but not to the mother.

3. **An inversion of the order** is per se illicit because of the precept of the Code and the Roman Ritual; but it is a grave sin only then: 1. when a non-priest is preferred to a priest existing in union with the Church; 2. when a non-Catholic or a person to be avoided is preferred to a Catholic. There is indeed doubt when a layperson is preferred to a deacon, since from the text of the law he is a minister by office (canon 741); but because he is only a secondary minister, it does not seem sufficiently established that there is grave sin. Besides, a just cause always seems to excuse from every sin; hence canon 742, § 2: "unless for the sake of modesty it is fitting that a woman rather than a man baptize, or unless the woman knows better the form and manner of baptizing" (St. Alphonsus, VI, 117).

Corollary. Let the pastor see to it that the faithful, especially midwives, physicians, and surgeons, thoroughly learn the correct manner of baptizing for a case of necessity (canon 743).[3] If Baptism was administered neither by the proper pastor nor in his presence, the minister should as soon as possible inform the proper pastor of the baptized person by reason of domicile concerning the Baptism conferred (canon 778). In private Baptism, so far as it can be done, two witnesses, or at least one, are to be used, by whom the conferral of Baptism can be proved (canon 742, § 1).

[1] 21 January 1788 (*Collectanea*, n. 533); 16 January 1804 (*Collectanea*, n. 674); 11 September 1841 (*Collectanea*, n. 939).

[2] Roman Ritual, title 2, chapter 1, n. 16.

[3] Roman Ritual, title 2, chapter 1, n. 13.

Part II. On the Manner of Administering Baptism

It has been explained above what things are generally required for administering the sacraments validly and licitly. It is sufficient to develop more fully one of the requisites for licit ministration, and to apply it to Baptism, namely the obligation of ministering the sacrament duly, that is, according to the prescriptions of the Church. For the sake of completeness we shall explain both the things which must be observed in the conferral of Baptism and the things which must be observed after it. The prescriptions of the Church regard first the rites and ceremonies, then the sponsors to be used, then the time and place, and finally the notation and proof of Baptism conferred.

Section I. On the Rites and Ceremonies of Baptism

79 **I. The rites and ceremonies to be used.** 1. Per se Baptism is to be conferred solemnly (canon 755, § 1), that is, with all the rites and ceremonies which are prescribed in the ritual books being observed (canon 737, § 2). Now:

a) The prescribed rites and ceremonies differ according as Baptism is to be conferred on adults or on little children. Nevertheless the local Ordinary can, for a grave and reasonable cause, allow the ceremonies prescribed for the Baptism of infants to be used in the Baptism of adults (canon 755, § 2); wherefore note that the Baptism of adults is indeed more beautiful, but longer, so that it can more easily produce weariness both for the neophytes and for those standing by.

b) The offspring must be baptized in the rite of the parents. If one parent belongs to the Latin rite and the other to an Eastern rite, the offspring is to be baptized in the rite of the father, unless another provision is made by special law. If only one is Catholic, the offspring must be baptized in the rite of this one (canon 756). From these things it follows that, so far as it can be done, care must be taken that the offspring be baptized by a minister belonging to the rite in which the offspring must be baptized;[1] since each person is bound to follow his own rite in confecting and ministering the sacraments (canon 733, § 2; n. 27).

c) The interrogations are to be made in the Latin language; but from the response of the Holy Office[2] it is permitted that the minister, after he has said the interrogation and responses in the Latin language for himself, repeat the interrogation in the vernacular language, so that he may receive the response of the sponsors.[3]

2. In danger of death, Baptism may be conferred privately; and, if it is conferred by a minister who is neither a priest nor a deacon, only those things are to be done which are necessary for the validity of Baptism; if by a priest or deacon, the ceremonies which follow Baptism are also to be observed, if there is time (canon 759, § 1).

It is disputed whether, if the danger of death is fairly remote, the ceremonies preceding Baptism also must be performed. Now this is denied quite probably, because the canon speaks only of the subsequent ceremonies, and perhaps does so in order that every danger that someone might die before Baptism may be radically forestalled.

3. Outside danger of death, the local Ordinary cannot permit private Baptism, unless the case concerns heretics who in adult age are baptized conditionally (canon 759, §§ 1 and 2). In such a case even the ceremonies which follow Baptism can be omitted.

[1] Here note canon 98, § 1: "Among the various Catholic rites one belongs to that rite with whose ceremonies he was baptized, unless perhaps Baptism was conferred by a minister of another rite by fraud, or because of grave necessity, when a priest of the proper rite could not be present, or by apostolic dispensation, when the faculty was given that someone be baptized in a certain rite, yet without remaining ascribed to it." Moreover, one who, at the prayers of the parents, contrary to the prescription of canon 756, was baptized by a minister of another rite, belongs to the rite in which he ought to have been baptized according to the prescription of canon 756. Thus the Pontifical Commission, 16 October 1919 (*A.A.S.* 1919, p. 476).

[2] 25 August 1880 (*Collectanea*, n. 1538).

[3] In some places it has been conceded that the interrogations be made in the vernacular language alone.

80 **II. The obligation of the rites and ceremonies** is grave from its genus. Hence it would be mortal to omit a ceremony of greater moment, on account of a special end or signification. Such are the use of consecrated water, the anointing both that which must be performed before and that which must be performed after Baptism, the use of oil and chrism consecrated in the present year, insufflation, the imposition of saliva and salt, the profession of faith, and the threefold ablution. Besides, several ceremonies of lesser moment omitted together can coalesce into grave matter (St. Alphonsus, VI, 107, question 5a, 141, 142).

81 **III. Ceremonies to be supplied.** 1. Ceremonies which in the conferral of Baptism were omitted for any reason whatever are to be supplied as soon as possible in church, unless the case concerns heretics who in adult age have been baptized conditionally and privately by permission of the Ordinary (canon 759, § 3). Now the ceremonies from the Baptism of infants are used if Baptism was conferred in infancy, even if the supplying is done in adult age;[1] otherwise those from the Baptism of adults are used.

2. When Baptism is repeated conditionally, the ceremonies, if indeed they were omitted in the former Baptism, are to be supplied, except in the case in which an adult heretic is baptized conditionally and privately by permission of the Ordinary; but if they were used in the former Baptism, they can be repeated in the second or omitted (canon 760). The same things seem to have to be said of the case in which a heretic, as one certainly baptized invalidly in heresy, is baptized absolutely.

3. If a heretic validly baptized is converted to the faith, the ceremonies likewise are to be supplied, unless for a reasonable cause it seems otherwise to the local Ordinary.[2]

Note. From baptismal vows no new obligation arises.

[1] Cf. Sacred Congregation of Rites, 27 August 1836, n. 2743, III.

[2] Roman Ritual, title II, chapter 3, n. 12.

Section II. On Sponsors

82 **I. Notion.** Sponsors, or receivers, are those who lift the baptized person from the sacred font or receive him from the minister of Baptism. St. Thomas sets forth the reason for this institution in these words: "Spiritual regeneration, which is effected through Baptism, is in a certain way likened to carnal generation; hence it is said in 1 Peter 2: 'As newborn infants, desire the rational milk without guile.' Now in carnal generation the recently born little child needs a nurse and teacher; hence also in the spiritual generation of Baptism someone is required who performs the office of nurse and teacher, by informing and instructing him, as one newly received into the faith, concerning those things which pertain to the faith and Christian life" (III, q. 67, a. 7).

83 **II. The obligation of taking a sponsor.** 1. From the most ancient custom of the Church, no one is to be baptized solemnly unless, so far as it can be done, he has his sponsor (canon 762, § 1; Council of Trent, session 24, chapter 2, on reform of marriage). Also in private Baptism a sponsor is to be used if one can easily be had; if he was not present, he is to be used when the baptismal ceremonies are supplied (canon 762, § 2). When Baptism is repeated conditionally, the same sponsor is to be used, so far as it can be done, who perhaps was present at the former Baptism; outside this case, in conditional Baptism a sponsor is not necessary (canon 763, § 1).

It is said, so far as it can be done; hence Baptism is rather to be conferred without a sponsor than to be deferred for a long time because of the lack of a sponsor.

2. Only one sponsor, even of a different sex from the one to be baptized, or at most one male and one female, are to be used (canon 764). It makes no difference of what sex the sponsor is; but if several are used, they must be one male and one female; more than two cannot be admitted.

3. The obligation of taking a godfather or godmother is grave if solemn Baptism is in question; if private Baptism or the supplying of ceremonies is the matter under discussion, the obligation seems only light, just as also the obligation of using the same sponsor if Baptism is repeated conditionally. He who takes two male sponsors or two female sponsors sins lightly if both are of the same sex as the one to be baptized; gravely, if they are of different sex, because kinships are multiplied contrary to the mind of the Church (St. Alphonsus, VI, 155, 159).

84 **III. The requisites for someone to be taken as sponsor.** 1. In order that someone be validly constituted sponsor, it is required: 1. that he be baptized, have attained the use of reason, and have the intention of carrying out that office; 2. that he belong to no heretical or schismatical sect, nor be excommunicated or infamous with infamy of law by condemnatory or declaratory sentence, or excluded from legitimate acts, nor be a cleric deposed or degraded; 3. that he be neither father nor mother nor spouse of the person to be baptized; 4. that he be designated by the person to be baptized himself, or by his parents or tutors, or, these failing, by the minister; 5. that in the act of Baptism he physically hold or touch the one to be baptized, either by himself or by a procurator, or immediately lift or receive him from the sacred font or from the hands of the one baptizing (canon 765).

Note. If more are designated than the law permits, some judge that all those designated become sponsors whether they touch simultaneously or successively, unless it is known who were designated first, in which case only these are constituted sponsors. Others with St. Alphonsus (VI, 154, doubt 2) distinguish and teach: if they touch successively, the first man and the first woman who touch become sponsors, not others; if all touch simultaneously, according to some no one, according to St. Alphonsus all are constituted sponsors.

2. In order that someone be licitly admitted as a sponsor, it is required: 1. that he have reached the fourteenth year of his age, unless for a just cause something else seems good to the minister; 2. that he not be excommunicated or excluded from legitimate acts or infamous with infamy of law because of a notorious delict, even though no sentence has intervened, nor be interdicted or otherwise publicly criminal or infamous with infamy of fact;[1] 3. that he know the rudiments of the faith; 4. that in no religious institute he be a novice or professed, unless necessity urges and the permission of at least the local superior is expressly had;[2] 5. that he not be constituted in sacred orders, unless the express permission of his own Ordinary is added (canon 766). It was said licitly, which does not prevent all those excluded from being able to be validly taken, with the things

saved which were set forth under 1. Besides, whenever someone must be rejected, he can nevertheless, if otherwise grave inconvenience would follow, be permitted to assist at the Baptism as a witness, omitting the things which belong to sponsors[3] (St. Alphonsus, VI, 156). For the rest, one who is ignorant that touching must be done is very easily kept from touching; commonly it suffices not to warn him. Finally, the minister of Baptism, if he wishes to act as sponsor, which is licit for him,[4] should choose a procurator who fulfills the parts of the sponsor, namely so that the observance of the ceremonies may be better provided for.

3. In doubt whether someone can validly or licitly be admitted to the office of sponsor or not, the pastor, if time permits, should consult the Ordinary (canon 767).

[1] By common law there are not excluded, for example, those who do not assist at Mass on Sunday or have neglected, even several times, the precept of annual confession or of Easter Communion. For the rest, the same persons are not included in different regions under the name of publicly criminal persons or persons infamous with infamy of fact.

[2] Nor can a religious who has been made bishop undertake the office of sponsor (cf. canon 627, 2).

[3] Holy Office, 9 December 1745; 5 July 1878 (*Collectanea de Propaganda Fide*, nn. 345, 447, 1495).

[4] Sacred Congregation of Rites, 14 January 1873.

85 **IV. The choice of sponsors** per se belongs to the person to be baptized, if he is his own master; otherwise to the parents or tutors; but if these are lacking, to the pastor (canon 765, 4).[1] Therefore it is prohibited to the pastor, and indeed under grave obligation, to reject suitable persons chosen by the person to be baptized or by his parents or tutors, and to substitute others; indeed this kind of illegitimate substitution seems to be invalid, since someone, in order validly to be a sponsor, must be designated by the minister only when the person to be baptized and his parents or tutors are lacking (cf. canon 765, 4).

Note. The Provincial Council of Utrecht wisely admonishes:[2] "If the pastor understands before Baptism that an unworthy person has been chosen by the parents for the office of sponsor, let him teach them the law of the Church in time, and prudently induce them to choose another. If an unworthy person presents himself unexpectedly, let the priest signify to him in an honorable manner that the law of the Church does not permit him to be admitted, but let him by no means rebuke him before others; indeed, let him easily permit him to assist as a witness; and lest, Baptism having been delayed to another time, the infant be exposed to danger of dying without it, let him baptize even without any sponsor."

[1] Council of Trent, session 24, chapter 2, on reform of marriage; Roman Ritual, 2, chapter 1, n. 24.

[2] Page 76.

86 **V. The effects of sponsorship.** 1. From Baptism only the one baptizing and the sponsor contract spiritual kinship with the baptized person (canon 768). This kinship, concerning which more fully in the treatise on Matrimony, is not contracted: 1. if a sponsor is used in supplying the ceremonies (canon 762, § 2); 2. when Baptism is repeated conditionally, neither by the sponsor who was present at the former Baptism nor by him who was present at the later one, unless the same sponsor was used in both Baptisms (canon 763, § 3).

2. The kinship which has been contracted constitutes an impediment diriment of marriage between the baptized person and the one baptizing and the sponsor (canon 1079), and causes a sin of lust committed by the aforesaid persons with the baptized person to be spiritual incest (St. Alphonsus,

VI, 146, 147). Now "the receivers are to be admonished concerning the spiritual kinship which they contracted with the baptized person";[1] likewise concerning the impediment that has arisen.

3. It belongs to sponsors, from the office undertaken, to have the spiritual child perpetually commended to themselves, and, in those things which concern instruction in the Christian life, diligently to see to it that he show himself throughout his whole life such as, in the solemn ceremony, they promised he would be (canon 769). The obligation of sponsors is grave, but it binds only when parents or tutors are lacking. Practically, sponsors, where the baptized are "nourished among Catholic Christians, can sufficiently be excused from this care, presuming that they are diligently instructed by their parents; yet if in any way they should perceive the contrary, they would be bound, according to their manner, to spend care on the salvation of their spiritual children" (St. Thomas, q. 67, a. 8).

[1] Roman Ritual, title II, chapter 2, n. 31.

Section III. On the Time and Place of Conferring Baptism

87 **I. Time.** 1. Private Baptism, when necessity urges, is to be administered at any time and place (canon 771).

2. Even solemn Baptism can be administered on any day; nevertheless it is fitting that the Baptism of adults, according to the most ancient rite, be conferred, if it can conveniently be done, on the vigils of Easter and Pentecost, especially in metropolitan or cathedral churches (canon 772).

88 **II. Place.** 1. Private Baptism, when necessity urges, is to be administered at any time and place (canon 771). The same holds for private Baptism which is conferred outside urgent necessity, that is, for Baptism which, by permission of the Ordinary, is administered privately and conditionally to an adult heretic (cf. canon 759, § 2); and for every conditional Baptism which is conferred without ceremonies (cf. canon 760); if the ceremonies are supplied, this is to be done in a church or public oratory (cf. canon 759, § 3).

2. With respect to solemn Baptism, the following hold:

a) The proper place for administering solemn Baptism is the baptistery in a church or public oratory (canon 773). Hence every parochial church, any contrary statute or privilege or custom being revoked and reprobated, is to have a baptismal font, saving the legitimate cumulative right already acquired by other churches (canon 774, § 1).[1] Besides, for the convenience of the faithful the local Ordinary can permit or order that a baptismal font be placed also in another church or public oratory within the boundaries of the parish (canon 774, § 2).

b) If the person to be baptized, because of the distance of places or other circumstances, cannot approach or be transferred to the parish church, or to another church which enjoys the right of a font, without grave inconvenience or danger, solemn Baptism can and must be conferred by the pastor in the nearest church or public oratory within the boundaries of the parish, even though these lack a baptismal font (canon 775).

c) But in private houses solemn Baptism must not be administered, except in these circumstances: 1. if those to be baptized are the children or grandchildren of those who actually hold supreme rule over peoples or have the right of succession to the throne, whenever they have duly requested this; 2. if the local Ordinary, according to his prudent judgment and conscience, has judged that it should be

conceded in some extraordinary case for a just and reasonable cause (canon 776, § 1).[2] In the cases mentioned, Baptism is to be conferred in the chapel of the house or at least in another decent place, and with baptismal water blessed in the usual way (canon 776, § 2).

In places of the missions, where Catholics live far from a church and infants cannot be brought to the church without great dangers and inconveniences, in those places, I say, the permission to baptize solemnly at home seems to persist.[3]

Note. Let pastors see to it that a Christian name be imposed on the one who is baptized; but if they cannot obtain this, let them add to the name imposed by the parents the name of some Saint, and write both names in the book of the baptized (canon 761). This addition can be made in a low voice.[4] Note, however, that there are many names of saints which occur rarely, or have been taken from other languages and altered.

[1] The Pontifical Commission, 12 November 1922, reply to IV, declared that canon 774, § 1 is to be understood so that a church which has the right of a font cumulatively with other parochial churches of the whole city obtains it also before parochial churches newly erected in the city with a baptismal font. But the cumulative right of a font cannot in future be obtained by custom, which must be called corruption. A church which before the promulgation of the Code had an exclusive right of font before other parochial churches, after the promulgation of the Code and the erection of a font in the same churches according to the prescription of the cited canon, obtains only a cumulative right, saving the prescription of canon 778 (*A.A.S.* 1922, p. 662). Canon 778 prescribes that the pastor of the baptized person be informed.

[2] The Sacred Congregation for the Discipline of the Sacraments, 22 July 1925 (*A.A.S.* 1925, p. 452), to the question "whether the practice is conformable to law according to which infants who are not in danger of death, but cannot be transferred to the church without danger, are solemnly baptized at home by the pastor or by another priest with the pastor's permission," responded that it is conformable to law that, if the infant is not in danger of death but cannot without danger be transferred to the church according to canon 775, the Ordinary, by force of canon 776, § 1, n. 2, can permit, according to his prudent judgment and conscience, for a just and reasonable cause, in some extraordinary case, that Baptism be solemnly administered at home; but judging the gravity of the extraordinary case is left to the prudence and conscience of the Ordinary himself in individual cases.

[3] Sacred Congregation of Rites, 4 February 1871 (n. 3234, reply to III).

[4] Holy Office, June 1883.

Section IV. On the Notation and Proof of Baptism Conferred

89 **I. Notation.** 1. Pastors must carefully and without any delay enter in the baptismal book the names of the baptized, with mention made of the minister, the parents and sponsors, and the place and day of the Baptism conferred (canon 777, § 1).

But where illegitimate children are concerned, the mother's name is to be inserted if her maternity is publicly established, or if she herself spontaneously asks this in writing or before two witnesses; likewise the name of the father, provided he himself spontaneously asks this of the pastor either in writing or before two witnesses, or is known from a public authentic document; in other cases the newborn is to be inscribed as the child of an unknown father or of unknown parents (canon 777, § 2). Moreover the Pontifical Commission responded[1] that the names of parents are to be inserted in such a way that every occasion of infamy is avoided; but in particular cases recourse must be had to the Sacred Congregation of the Council.

2. If Baptism was administered neither by the proper pastor nor in his presence, the minister should as soon as possible inform the pastor of the baptized person by reason of domicile concerning the

Baptism conferred (canon 778). "If the baptized person lacks a domicile, the pastor of the quasi-domicile, or, if he was without fixed domicile, the pastor of the place of Baptism, seems to be the one to be informed."[2]

3. The use of the baptismal book is prescribed under grave obligation, regard being had, namely, to the grave end of the law, that is, the proof of Baptism received, which, if the baptismal register is lacking, would sometimes be impossible.

[1] 14 July 1922, reply to VIII (*A.A.S.* 1922, p. 528).

[2] Vermeersch-Creusen, *Epitome*, n. 55.

90 **II. Proof.** To prove Baptism conferred, if prejudice is done to no one, one witness beyond all exception suffices, or the oath of the baptized person himself, if he received Baptism in adult age (canon 779).

Dissertation III. On the Reception of Baptism

Part I. On the Person Receiving

The subject capable of Baptism is every and only wayfaring human being not yet baptized (canon 745, § 1; On the Sacraments in general, n. 38). Having noted these things about the subject generally, we shall speak specifically about the different subjects.

Section I. On Infants

91 **Preliminary Note.** When Baptism is in question, under the name of little children or infants, according to the norm of canon 88, § 3, come those who have not yet attained the use of reason, and to these are reckoned the insane from infancy, in whatever age they may be constituted[1] (canon 745, § 2, 1).

I. Infants before the use of reason can be baptized validly. This is of faith from the Council of Trent.[2]

II. Infants must already be baptized before the use of reason. Now:

1. It is clear that this is prescribed under grave obligation and by divine law itself if danger of death is imminent.
2. Outside danger of death, there is the obligation of baptizing them as soon as possible, as is clear from canon 770 in these words: Infants are to be baptized as soon as possible; and pastors and preachers are frequently to remind the faithful of this grave obligation of theirs.

It is disputed how much delay, if the infant is healthy, is to be considered grave. Some say fifteen or more days, others one or another day, others with St. Alphonsus (VI, 118) require a delay which exceeds ten or eleven days; this estimation of the holy Doctor is to some extent confirmed by the Instruction of the Sacred Consistorial Congregation concerning the visitations of bishops.[3]

[1] Those of seven years are presumed to have the use of reason; those not yet seven are presumed not to have the use of reason (canon 88, § 3).

[2] Session 5, canon 4.

[3] N. 148 (*A.A.S.*, vol. II, p. 39).

Section II. On Abortive Fetuses

An abortive fetus is a fetus prematurely projected from the womb (vol. I, n. 733).

92 **I. Every abortive fetus brought forth at any time must be baptized,** unless it is wholly certain that he is dead (cf. canon 747). The reason is that in the case it is at least somewhat probable that a wayfaring human being is present (vol. I, n. 732).

The same must be said of everything which is cast out from the womb of a pregnant woman and concerning which it is doubted whether it is a fetus or a mole, as it is called. For the rest, even if it seems to be a mole, this should be carefully dissected, so that it may be inspected whether perhaps a fetus lies hidden in it; likewise, if a pregnant woman suffers a flow of blood, it is expedient that the flow be moved and palpated, because sometimes something is found in it concerning which it is rightly doubted whether it is a fetus (St. Alphonsus, VI, 124).

II. Abortive fetuses, brought forth at any time, if they certainly live, are to be baptized absolutely; if doubtfully, conditionally[1] (canon 747). If the fetus brought forth is still enclosed in membranes or in a vesicle, proceed in this way: Place the vesicle on a table or in a basin or dish, and place a bowl of water nearby. Then first either pour some water over the vesicle or immerse the vesicle itself in the water of the bowl,[2] meanwhile saying: **If you can be baptized, I baptize you in the name of the Father and of the Son and of the Holy Spirit.** Then, holding the vesicle somewhat obliquely in the bowl of water, open it with the thumb and index finger of each hand, so that the liquid flows out from it. Then again say, moving the fetus somewhat here and there in the water: **If you can be baptized, I baptize you in the name of the Father and of the Son and of the Holy Spirit.** Afterward you must again draw the fetus out of the water (n. 54).

Note 1. They say that even very small abortive fetuses sometimes preserve life for a longer time, indeed for several days. Nevertheless there is danger that they may soon die; hence inquiry into whether the fetus is alive should not be prolonged too much.

Note 2. The things explained above must be especially inculcated to midwives and mothers. And although pastors are bound more than others to this instruction, nevertheless confessors too, from a confession heard, can and not rarely must prudently take occasion to ask whether they have been sufficiently instructed.

[1] Before the sixth month there can scarcely be certainty about the life of the fetus, whether it exists in the womb or is brought forth before the sixth month; in the latter case it is either dead or appears dead. Today, however, by means of the stethoscope the pulsations of the heart can ordinarily be perceived from the fifth month.

[2] Therefore the vesicle is not immediately ruptured, but is first immersed in water and cut there, namely because rupture outside water, on account of the contact of air, according to some, though others deny this, can be so dangerous that the fetus dies before Baptism has been conferred.

Section III. On Fetuses Not Yet Brought Forth

93 No one enclosed in the womb of the mother is to be baptized until there is probable hope that, duly brought forth, he can be baptized (canon 746, § 1). Therefore a fetus not yet duly brought forth cannot be baptized unless, Baptism being delayed, he will probably die without Baptism.

When the case occurs, proceed in this way:

I. If the infant has put forth the head and danger of death is imminent, let him be baptized on the head; nor afterward, if he comes forth alive, is he to be baptized again conditionally (canon 746, § 2).

II. If he has put forth another member and danger is imminent, let him be baptized on that member, however small it may be, for example on a finger or toe (cf. canon 746, § 3). But if you receive the occasion of baptizing again on a more principal member, for example on the hand or foot, then on that member you must baptize again, and indeed as often as you can on a member more worthy than before, for example on the breast or back or shoulders, until you have baptized on the head; for only then, when you have duly baptized on the cleansed head, is one of the Baptisms certainly valid. But if after you have baptized on a finger or toe you can immediately baptize on the head, then omit the other members which I have named between these two extremes and baptize immediately on the head.

Note. In cases in which you cannot immediately baptize on the head, each time in washing the member you must use these words: **If you can be baptized, I baptize you**, etc.[1]

III. If the infant is entirely hidden in the womb, he is to be baptized conditionally. If afterward he is brought forth, he must again be baptized conditionally (canon 746, § 5).[2] A fetus enclosed in the womb is to be baptized conditionally, both because in practice it will be doubtful whether the infant was truly washed or was washed on the head, and because it is somewhat doubted whether a human being not yet born according to common estimation can be reborn.[3] But, "just as original sin is contracted by generation alone, so likewise, in order that a man be regenerated by grace, it suffices that he has already been generated. And therefore Baptism is called regeneration by the Council, which does not require birth from the womb, since this is not called generation, but only that nativity which takes place in the womb and by which man becomes a son of Adam" (St. Alphonsus, VI, 107). For the rest, note:

1. The obligation of baptizing an infant in the womb of the mother before the completed fifth month of pregnancy will rarely be present. The reason is that on the one hand there is often great doubt about the life of the infant and about the required washing having been performed; on the other hand intrauterine Baptism, because of the destruction of the afterbirth membranes, will both increase the danger to the mother and bring on the danger of accelerating the death of the offspring.[4] After the completed fifth month of pregnancy the obligation can more easily be present.
2. Concerning the manner of baptizing a fetus in the womb of the mother, I note: the infant, the afterbirth membranes having been perforated,[5] can be reached and baptized by means either of a small syringe filled with water, or of a sponge filled with water, or of a moistened finger.[6] Water mixed with corrosive mercuric chloride is usually used, and this licitly where otherwise there is true danger of disease for the mother (n. 53).

Note. It is clear that intrauterine Baptism must commonly be conferred by a physician or by a midwife, both because of decency and because of the difficulty and dangers attached to the matter. But if on the one hand it is foreseen that the infant will probably die in the womb, and on the other hand intrauterine Baptism cannot be conferred, it sometimes remains that the infant be extracted from the womb and, once extracted, baptized, absolutely indeed if he certainly lives, if doubtfully, conditionally (canon 746, § 4).[7] Now the infant is extracted by means of some incision of the mother, especially by Caesarean section, as it is called. Concerning these we shall speak in a scholion.

[1] Theoretically, more perfectly thus: In cases in which you cannot immediately baptize on the head, the first time in washing the member you must use these words: **If you can be baptized, I baptize you in the name of the Father and of the Son and of the Holy Spirit**; at other times: **If you are not baptized and can be baptized, I...** etc. (cf. Roman Ritual, title II, chapter 1, n. 16; canon 746, §§ 2 and 3).

[2] Sacred Congregation of the Council, 12 July 1794 and 16 March 1877.

[3] For the opinion which holds that an infant in the womb of the mother cannot validly be baptized, St. Thomas cannot be cited; for he supposes that Baptism cannot be conferred except by washing the body of the mother, so that he does not deny that the infant is validly baptized if the water touches him immediately (cf. St. Thomas, III, q. 68, a. 11).

[4] Cf. Capelmann-Bergmann, *Medicina pastoralis*, II, p. 109; *Pastoral-Medizin*, p. 243; Antonelli, *Medicina pastoralis*, II, n. 16.

[5] Baptism first on the afterbirth membranes is omitted, because contact of air is not feared, contrary to the case in which a fetus already brought forth is to be baptized. The perforation of the afterbirth membranes, so that the fetus may be baptized rather certainly than very doubtfully over the membranes, is quite probably licit, because it yields equally immediately to a good effect, namely the possibility of baptizing the fetus, and to an evil, that is, the death of the infant to follow from the outpouring of the amniotic fluid.

[6] Cf. Capelmann-Bergmann, *Pastoral-Medizin*, p. 242.

[7] Roman Ritual, II, chapter 1, n. 20.

Scholion. On Caesarean Section and Other Incisions

Besides Caesarean section, symphysiotomy, pubiotomy, and combined operations are distinguished.[1]

[1] Cf. Antonelli, *Medicina pastoralis*, I, n. 308 and following; Capelmann-Bergmann, *Pastoral-Medizin*, p. 57 and following.

94 **I. Notions.** 1. Caesarean section is an operation by which, the maternal womb having been cut, the fetus is extracted from the womb. It is called Caesarean section from Julius, who was brought into the light by cutting and thence was called Caesar. Now Caesarean section can be done either on a living mother or on the body of a mother recently dead.

2. Symphysiotomy is an operation by which the cartilage, the symphysis, which joins the two pubic bones, is cut, whereby it happens that the width of the pelvis is increased and the fetus can more easily come forth into the light.

3. Pubiotomy is an operation by which one or both pubic bones are cut, and in that way the exit of the fetus is rendered easier.

4. Combined operations are constituted by symphysiotomy together with artificial premature delivery.[1]

[1] Cf. Antonelli, loc. cit.

95 **II. Morality.** 1. Caesarean section or another incision of the living mother, according to the circumstances:

a) Is licit if there is a well-founded hope of saving both the mother and the offspring, and by the section the hope of baptizing the offspring is increased.[1] It is said:

1. If there is a well-founded hope of saving both the mother and the offspring; for otherwise the section would involve homicide. "Evils are not to be done," says St. Thomas, "that goods may come, as is said in Romans 3:8; and therefore a man ought not to kill the mother in order to baptize the child" (III, q. 68, a. 11, ad 3; St. Alphonsus, VI, 106). Now hope of saving the offspring is not present except after 28 weeks from conception; before that he is not viable. For the rest, observe that hope of performing the operation with a happy outcome is present today much more easily than formerly because of the progress of surgical art.[2]

2. And by the section the hope of baptizing the offspring is increased. For it is licit for the mother to expose herself to danger of death so that the spiritual salvation of the offspring may be better provided for.

b) It is obligatory, that is, it must be sustained by the mother, if: 1. there is a well-founded hope of saving the mother and the offspring; and 2. by the section the hope of baptizing the offspring is notably increased. The reason is that the mother is bound to prefer the eternal life of the offspring to her own temporal life. Now since the infant can commonly be baptized either in the womb of the living mother, or after, the mother being dead, he has been cut out, therefore section of the living mother will very rarely be obligatory. If the case obtains, prudence will commonly require that the section be urged upon the mother rather than imposed.

2. Section on the body of a dead mother:[3]

a) Is laudably done whenever there is even the least hope of extracting a living fetus. Now some hope is already had about the fortieth day from conception, indeed even before, since they narrate that it has happened that fetuses have been extracted alive at the assigned time.[4]

b) Is obligatory, and indeed under grave obligation, whenever there is probable hope of extracting a living fetus. Now probable hope seems to be present after about the completed fourth month from conception.[5] But the obligation once begun "perseveres until the morally certain death of the offspring... How long life can be preserved for infants in the womb of a deceased mother cannot be determined: this depends much on the character of the illness from which the pregnant mother died; but there is no doubt that a fetus can survive the mother for an hour, indeed for several."[6]

[1] It suffices practically to note this; for there are also other cases in which the section is licit, for example if not only is there a well-founded hope of saving the mother and the offspring, but by the section the hope of saving the mother is increased, while the hope of baptizing the offspring is not diminished, etc.; but these cases cause no difficulty.

[2] *Nederlandsche Katholieke Stemmen*, 1907, p. 15.

[3] Note that the death of the mother is not certainly established unless the first signs of putrefaction are present.

[4] Cangiamilla, *Embryologia sacra*, book II, chapter 5.

[5] Cf. Capelmann-Bergmann, op. cit., p. 62.

[6] De Smet, *De Sacramentis*, n. 313. Cf. Ferreres, *Mort reelle et mort apparente*.

96 **III. By whom is it to be performed?** 1. Section of a living mother, as is clear, belongs only to an expert; one who is not an expert would become guilty of homicide.

2. Section of a mother not certainly dead, but perhaps only apparently dead:

a) If revival, as it is called, is held as possible, the section should be done by an expert if one is present, because otherwise the operation would expose the life of the mother to graver danger without sufficient reason. If an expert is lacking, generally whoever is sufficiently skilled is bound, or at least one who has hope of extracting the fetus; because then there is sufficient reason for admitting the graver danger. Now revival is held as possible if the mother succumbs after a crisis of the nerves, whether induced by vehement pain or by another cause.

b) If revival is held as impossible, namely if the mother is seen to succumb after longer pains, the section again belongs primarily to an expert, who can admit the danger of accelerating death if it is present. If an expert is lacking, generally another is bound, as was said above.

3. If the mother is certainly dead, the things just said under b) hold.

I said above, generally he is bound, etc., because authors do not agree to what extent even a priest must, or licitly can, perform the section, or command that it be performed, that is, by ordering see to it that it is done. Now he certainly cannot proceed to the said operation if the common good stands in the way, namely if, considering the circumstances, it must be feared that by this kind of manner of acting the priest would become less capable of promoting the salvation of people, or that other inconveniences would arise from it for the faithful.[1] If danger to the common good certainly is not imminent, some judge that the priest is bound, because natural law, to which the decrees are not thought to be contrary, imposes the obligation. Others teach that he is prohibited from performing the section. They rely on decrees of the Holy Office.[2] The first decree indeed regards in itself circumstances in which the common good stood in the way; but the second, they say, which refers the petitioner to

the first, seems to signify that a general prohibition is intended. Finally, others hold each opinion as truly doubtful, and consequently think that a priest can perform the section or command that it be performed, but is not bound. The matter seems truly doubtful to me also; but for that reason I think that natural law, as possessing priority, should prevail, or that the section is to be performed, except, of course, in the case in which danger to the common good stands in the way.

Corollary. All to whom the matter becomes known are per se bound prudently to see to it that the section is done, but especially relatives and the pastor. Therefore a surgeon should be called as quickly as possible, and meanwhile the uterus of the deceased mother should be kept warm.[3] Nor should the section be omitted, even if a fairly notable time has elapsed from the death of the mother; for they narrate that it has happened that fetuses have survived the mother for 24, indeed for 48 hours and beyond.[4] Hence a physician asserting that the fetus has certainly died should not easily be believed. Indeed Dr. Brillaud even contends: "Since medical science knows no sign by which it may be judged with certainty that the fetus is dead, the Caesarean operation after death must always be undertaken."[5]

[1] Civil laws commonly stand in the way.

[2] 15 February 1780 (*Collectanea*, n. 541) and 13 December 1899.

[3] Older authors add that the mouth of the mother is to be opened; but according to physicians the infant does not breathe in the womb of the mother.

[4] Eschbach, *Disputationes physico-theologicae*, p. 356.

[5] In Eschbach, op. cit., p. 363.

97 **IV. The manner of performing the section.** 1. The section is made from the navel to the genitals or pubic bone; but lest the intestines be injured, this precaution is to be used: once a small opening has been made, the operator immediately puts into it the index finger placed beneath the back of the scalpel or knife, and in the aforesaid manner cuts first the skin, then the other coverings which cover the intestines. When this has been done, the uterus, if the pregnancy is more advanced, will appear of itself; otherwise it will be found back behind the bladder. If this is filled with urine and impedes the finding of the uterus, let it be compressed by the hand and emptied.

2. The uterus, once found, is immediately cut, proceeding from the upper and anterior part to the lower; then the afterbirth membranes also are cut or ruptured, by which the fetus is enveloped.

3. The infant or fetus is extracted, and if certain or doubtful signs of life appear, he is to be baptized at once. If nevertheless danger of death is thought or feared to be present, the fetus is to be baptized before he is extracted.

4. After Baptism has been conferred, if the infant survives with hope of preservation, the umbilical cord is cut at a distance of two or three inches from the abdomen and is strongly tied with thread at a distance of one inch from the abdomen; when these things have been done, he is handed over to be nourished.[1]

Question. What should be done by a confessor who, from the confession of a sick girl, discovers that she is pregnant?

Response 1. If the girl is already pregnant from about the fourth month, she is bound under grave obligation to see to it that after her death she be cut; nor is she excused on account of the loss of reputation. Therefore let the girl reveal her condition to a prudent person either by word of mouth, or

let her hand over to him a writing to be read after death, in which she declares her pregnancy and her will that after death the infant be extracted and baptized.

Response 2. If the girl is ignorant of the grave obligation, and it is feared that, once taught, she will not obey it, let the confessor proceed only by persuading.

[1] Aertnys-Damen, *Theologia Moralis*, II, n. 57.

Section IV. On Monsters

98 **I. Monsters and prodigies** are always to be baptized at least conditionally (canon 748). Namely, if the monster has a head and breast, or at least a head, even if beast-like, it is certainly a human being; since it cannot be anything else, because there cannot be generation between a human being and a brute: hence it is to be baptized absolutely. Otherwise Baptism is to be conferred conditionally; this also holds concerning one about whom it is doubted whether or not he ought to be reckoned among monsters and prodigies (St. Alphonsus, VI, 125).

II. If the monster has two heads and two sufficiently distinct breasts, there is a double human being; hence a double Baptism is to be conferred. If nevertheless danger of death is imminent, both are to be baptized at once under the form: **I baptize you**, etc.

III. But in doubt whether there is one human being or several, one is to be baptized absolutely, the others conditionally (canon 748). In practice, proceed in this way:

1. If the doubt arises from the fact that the monster does not have two sufficiently distinct heads and two sufficiently distinct breasts, then first one must be baptized absolutely, and afterward the other conditionally in this way: **If you are not baptized, I...**, etc.
2. If the doubt arises from the fact that the monster has two heads and one breast, proceed in the same way as was said under 1.
3. If the doubt arises from the fact that the monster has two breasts and, apparently, only one head, then let the head be baptized absolutely, then each breast conditionally: **If you are not baptized, I...**, etc.[1]

[1] Namely, if, as commonly happens, it is doubtful which breast belongs to the baptized head.

Section V. On Infants of Non-Catholics

99 An infant of non-Catholics, that is, of unbelievers, heretics, schismatics, and Catholics who have fallen into apostasy or heresy or schism, is licitly baptized:

I. When he is in such danger of life that it is prudently foreseen that he will die before he reaches the use of reason (canon 750, § 1), or when "it is very prudently doubted that, from the infirmity by which they are actually affected, they will not live, but will die before the age of discretion."[1]

Therefore a probability founded on this, that in some place, for example, half of infants die before the use of reason, does not suffice; nor a probability arising from this, that in some region a contagious disease is raging and there is grave danger that the disease may be transferred to infants.[2] If it is doubted whether an infant who is in danger of death has reached the use of reason, "let the missionaries try to instruct them in the better way in which it can be done; otherwise let them be baptized conditionally."[3]

II. When the infant appears perpetually insane;[4] in this case there can be no discussion of education properly so called (St. Alphonsus, VI, 130).

III. Outside the case of danger of death or insanity, the infant is licitly baptized, provided that his Catholic education is safeguarded: 1. if the parents or tutors, or at least one of them, consents; 2. if the parents, that is, father, mother, grandfather, grandmother, or tutors, are lacking, or have lost their right over him, or can in no way exercise it (canon 750, § 2). It is said:

1. **Provided that his Catholic education is safeguarded.** Now, considering the responses of the competent Authority,[5] it suffices that, all things considered, the Catholic education be in some way safeguarded, or that, all things having been seen, a noteworthy hope of Catholic education shines forth. Here, however, note that this kind of hope is more easily present in the case in which either parent is Catholic and the Catholic party consents, than in the case in which each parent is non-Catholic.

2. **If the parents... consent;** and so even the consent of the mother alone or of a female tutor suffices. And this holds even if it is foreseen that the other parent will afterward see to it that the infant is baptized by a heretical minister.[6] Now the said consent is required per se if it is a question of an infant of unbelievers. This is clear from the Instruction of Benedict XIV *Postremo mense*;[7] the same is taught by the Sacred Congregation de Propaganda Fide.[8] But the reason seems to be that the Church, by conferring Baptism on the offspring of parents over whom she has no right, places that offspring in such a condition that it can and per se must be separated from the parents. But this seems to involve a violation of right (St. Thomas, II-II, q. 10, a. 12; St. Alphonsus, VI, 132). If the discussion concerns an infant of baptized non-Catholics, consent is not required per se, because the Church has a right over them as her subjects. It is, however, commonly required per accidens, because if it is lacking, hope of Catholic education will commonly be absent. Hence canon 751 declares that, with respect to infants of two heretics or schismatics, or of two Catholics who have fallen into apostasy or heresy or schism, generally the norms established by canon 750 are to be observed.

3. **If the parents... have lost their right over him, or can in no way exercise it.** The case would occur if the infant had been entrusted to a Catholic, or had been abandoned and received in a Catholic hospital or by a Catholic.[9] But if the parents have entrusted the infant to a Catholic to be educated, per se he ought not afterward be returned to them, even if they ask for him back and the infant has not yet been baptized; since the prior offering and acceptance ought not afterward be rescinded to the prejudice of the eternal salvation of the one offered (St. Alphonsus, VII, 130).

4. Finally, it is permitted to baptize infants offered by unbelievers if the missionary has a well-founded motive for believing that their parents too will in the future seek Baptism.[10]

[1] Holy Office, 18 July 1894 (*Collectanea*, n. 1877); Sacred Congregation de Propaganda Fide, 15 February 1781.

[2] Instruction of the Sacred Congregation de Propaganda Fide, 17 April 1777, reply to VIII (*Collectanea*, n. 522).

[3] Instruction of the Sacred Congregation de Propaganda Fide, 17 April 1777, reply to VIII (*Collectanea*, n. 522).

[4] Holy Office, 18 July 1892.

[5] Instruction of the Sacred Congregation de Propaganda Fide, 17 April 1777 (*Collectanea*, n. 522).

[6] Cf. Holy Office, 12 October 1600; 29 November 1672, reply to I (*Collectanea*, n. 205); Instruction of the Holy Office, 1827; Holy Office, 6 July 1898, reply to IV (*Collectanea*, n. 2007).

[7] 28 February 1747.

[8] Holy Office, 29 November 1672, reply to I (*Collectanea*, n. 205).

[9] The cited Instruction of Benedict XIV.

[10] Holy Office, 11 December 1850, reply to IV (*Collectanea*, n. 1054).

100 **Corollary I.** An infant of non-Catholic parents, whether legitimately or illegitimately baptized, per se must be withdrawn from the care of the parents so that he may be educated Catholicly. But in practice the Church will not be able to use her right (St. Alphonsus, VI, 127, 128).

Corollary II. The fact that parents baptized Catholic live so non-Catholicly that there is little hope of Christian education is not a reason for refusing Baptism.[1] The same must be said of infants of Catholics who have given their name to socialism.

Corollary III. If a Catholic mother desires that the infant be baptized Catholicly, but the non-Catholic father wishes him to be baptized after some time by a heretical minister, proceed in this way: If the offspring will soon be baptized by a heretical minister, it is better to wait and afterward baptize the offspring conditionally. If one must wait longer, it is better to baptize the infant Catholicly at once. In the case, per se indeed, the heretical spouse is to be warned about the Baptism conferred; but if grave inconvenience stands in the way of warning, a second Baptism can be permitted. Besides, prudence will sometimes suggest that the Baptism be conferred by someone other than the pastor himself; let a Catholic and trustworthy person be chosen.

[1] Sacred Congregation de Propaganda Fide, 31 January 1796 (*Collectanea*, n. 625).

Section VI. On Adults

When Baptism is in question, those are considered adults who enjoy the use of reason (canon 745, § 2). Moreover:

101 **I. Adults are bound, as soon as it can morally be done,** to acquire sufficient instruction for themselves and to receive Baptism. If they are sufficiently instructed and rightly disposed and ask for it, per se they must be baptized, even if they are minors and their parents contradict it (canon 745, § 2). The reason is that with respect to eternal salvation they are in their own right (St. Thomas, II-II, q. 10, a. 12; St. Alphonsus, VI, 128). I said per se, since circumstances or even the common good sometimes require that Baptism be delayed.

The Holy Office,[1] to the question "whether a girl of ten years living in a monastery can safely be admitted to the profession of the Catholic faith, her heretical father being unwilling," responded: "Let the Vicar Apostolic first take care with all his strength to obtain the consent of the girl's father. If consent is not obtained, let him seriously weigh the inconveniences which are foreseen to arise from the admission of such a girl into the Church, both with respect to grave damage to the Catholic school and mission; and insofar as no inconveniences, or only contemptible ones, are foreseen, let him admit her without delay; but insofar as grave inconveniences are foreseen as future, let him defer her admission to the formal and public profession of the Catholic faith, unless danger of death is imminent; and meanwhile let him take care to exhort her to persevere in her good purpose, and to pray God that He deign to remove all obstacles; and at the same time let him see to it that she continue in the monastery, so that in this way she may complete and perfect her Catholic education." Therefore great prudence is necessary, and in cases of this sort a new reason is found for observing canon 744, by

force of which the Baptism of adults, where it can conveniently be done, is to be referred to the local Ordinary.

Corollary. Children baptized against the will or without the knowledge of their parents per se can, if they are exposed to dangers of faith, withdraw themselves from their parents and be helped in this by others; but prudence commonly prohibits these things from being put into practice, all the more because civil law commonly stands in the way.

[1] 16 July 1881.

102 **II. With respect to the Baptism of dying adults,** these things specifically must be noted:

1. A dying adult who can no longer ask for Baptism, but who either previously or in the present state with some probability manifested an at least more or less explicit intention of receiving Baptism, is to be baptized conditionally; if afterward he recovers and a doubt remains concerning the value of the Baptism conferred, Baptism is again to be conferred conditionally (cf. canons 752, § 3 and 754, § 3).
2. A dying adult who can no longer ask for Baptism, but who with some probability is judged contrite or attrite, or to have the will of employing the means of salvation, in our opinion can, but need not, be baptized conditionally if he more or less explicitly rejects Baptism, as if the case concerns a Jew (n. 41). If that does not obtain, per se he seems to be baptized conditionally (n. 41). I said per se, because prudence can prohibit this doctrine from being brought into practice.

Section VII. On the Insane and the Furious

103 **I.** The insane and the furious who are such from birth, or at least before attaining the use of reason, are to be baptized, even against the will of their parents insofar as prudence permits it (cf. canon 754, § 1; n. 99). Those who became insane or furious after the use of reason are to be treated as adults, and therefore cannot be baptized unless, before they became insane, they had the desire of receiving Baptism; but if it is certain or probable, even slightly, that this took place, they are to be baptized when danger of death is imminent (canon 754, § 3), or even during the course of life if it is rightly feared that, when danger of death is imminent, Baptism will be omitted.

II. Those who have lucid intervals, while they are in possession of their mind, are to be baptized if they wish (canon 754, § 2). They are also to be baptized, as was said concerning other insane persons, when danger of death is imminent, if before they became insane they showed a desire of receiving Baptism (canon 754, § 3).

III. One who labors under lethargy or frenzy is to be baptized only when awake and willing; but if danger of death threatens, let the things said concerning the insane and concerning those who have lucid intervals be observed (canon 754, § 4).

Scholion. On the Doubtfully Baptized

104 **I. Those doubtfully baptized or doubtfully validly baptized** must be rebaptized under condition whenever, after diligent examination has been instituted, a prudent doubt remains about the conferral and its validity (cf. canon 732, § 2). It is said:

1. **After diligent examination has been instituted.** The reason is that the examination instituted perhaps will procure sufficient certainty about the value of Baptism, so that, the examination being

neglected, it would be rash and injurious to the sacrament to repeat Baptism immediately (St. Alphonsus, VI, 136 and following). Some authors indeed judged that those baptized by a layperson can be rebaptized even when no inquiry has been carried out; indeed there were synods which in such a case simply prescribed repetition. But that this opinion must be rejected is clear from the fact that it can happen that the value of Baptism conferred by a layperson is morally certain. Hence the said synods were afterward corrected, and Benedict XIV teaches that they are to be disapproved.[1]

2. **Whenever a prudent doubt remains about the conferral and its validity.** With respect to proof of Baptism, canon 779 establishes: "To prove Baptism conferred, if prejudice is done to no one, one witness beyond all exception suffices, or the oath of the baptized person himself, if he received Baptism in adult age." But authors dispute what things for the most part are required so that one may be permitted to trust, with moral certainty, the testimony of a layperson concerning Baptism duly conferred. Some judge that it suffices that a physician or midwife, taught the method of baptizing, testifies in the particular case that he or she baptized duly, provided nothing occurs which weakens the testimony.[2] Others besides require that the physician or midwife of unimpaired reputation has often been found to baptize duly. Others require that the testimony of the layperson be confirmed by at least one witness. But the circumstances must be inspected, which certainly can be such that certainty about the value of Baptism is had, although the layperson has not often been found to have baptized duly, or his testimony is not confirmed by another witness. Nor do I think that this is simply denied by any author.[3] Nevertheless midwives should be admonished that they baptize in the presence of one or another witness, who attends to the manner of baptizing, warns the midwife if she errs, and afterward can testify concerning Baptism duly conferred. The same must be applied in many regions to catechists, since very great is the levity of many peoples in asserting even grave matters.

Corollary I. Those who, a long time after Baptism received, begin to doubt whether they were duly baptized by a pastor or by a midwife should put away scruples. It must be judged that he was duly examined at the proper time, if it was necessary. Besides, according to many, one born of Catholic parents and educated among Catholics, although no testimony concerning Baptism exists, is not to be rebaptized. Nevertheless the presumption deduced from these things is today rather often destroyed by a contrary presumption in regions where negligence of parents is not rare, for example by easily deferring Baptism. Therefore if, after inquiry, a prudent doubt remains, Baptism is to be repeated under condition. Moreover, the sole reason that no positive testimony exists is not sufficient for repeating Baptism before ordination.[4] Nor in the case of a mixed marriage, before the marriage, must the non-Catholic party be baptized under condition because of doubt about Baptism, if that party wishes to remain in heresy.[5]

Corollary II. Exposed and found infants, unless, the matter having been diligently investigated, their Baptism is established, are to be baptized under condition (canon 749). In practice they commonly must be baptized under condition, and this even if a slip is attached by which the conferral of Baptism is signified, unless the person who wrote the slip is both certainly known and held for certainly worthy of trust, or it is proved from another source that Baptism was duly conferred (St. Alphonsus, VI, 135).[6] Considering the documents cited in the note, per se inquiry must first be made, unless there is danger in delay; in practice, however, in some regions it is not customary to do this. The things which have been said about exposed infants are also to be applied to infants abandoned by vagrant parents, and

this even if they have already been born, for example, three or five or more years, unless there is indubitable certainty about Baptism received.

Corollary III. Those baptized by a layperson, for example by a physician or by a midwife, must not rarely be baptized under condition, because, when inquiry has been made, a doubt often remains. Except if a duly instructed, Catholic, sincere person of proven solidity affirms that he or she baptized duly. If the case concerns a non-Catholic person, some doubt will more easily remain; indeed if a hater of religion, for example a Jew, baptized, there can be reason for doubting due intention.

If an infant was baptized by a layperson, let the priest inquire: 1. what form he used; 2. whether the water was natural; onto what part it was poured; whether it touched the skin, or only the hair or the uncleanness of birth; whether it was poured in sufficient quantity, so that it flowed; whether he washed the infant and pronounced the form with sufficient simultaneity.

Corollary IV. Converted heretics commonly must be baptized under condition, because, when examination has been instituted, doubt about the value commonly remains. The Holy Office declared that examination must be instituted.[7] Inquiry should be made whether the sect to which the newly converted person belonged holds Baptism in great esteem and is accustomed to take great care about the form and matter; whether the little minister is religious, and in what manner he was accustomed to baptize. When the matter has been examined, outside the case of imminent danger of death, the judgment of the Bishop must always be sought; he will judge in particular cases whether some probable doubt concerning validity underlies.

[1] *De Synodo dioecesana*, book 7, chapter 6, n. 7.

[2] Benedict XIV, *De Synodo dioecesana*, book 7, chapter 7, n. 11.

[3] The Sacred Congregation de Propaganda Fide on 8 September 1869 for the East Indies established: "In order that the missionary not be bound to baptize under condition those baptized by a trustworthy catechist, it is required that there be two witnesses who can testify that Baptism was legitimately conferred; excepting, however, certain cases in which, with the individual circumstances weighed, and with attention paid to the skill and probity of the catechist, to whom nevertheless trust is not to be granted too easily, it can happen that no probable doubt at all about the validity of Baptism arises, even if two witnesses were not present."

[4] Sacred Congregation de Propaganda Fide, 30 September 1848 (*Collectanea*, n. 1034).

[5] Holy Office, 13 April 1878.

[6] Holy Office, 5 January 1724 (*Collectanea*, n. 299).

[7] 20 November 1878 (*Collectanea*, n. 1504); 21 February 1883 (*Collectanea*, n. 1590).

105 **II. The order to be observed in reconciling a heretic** from the responses of the Holy Office is this:[1]

1. If Baptism is conferred absolutely, no abjuration nor absolution is required, because the sacrament of regeneration washes away all things.
2. When Baptism has been judged valid, only the abjuration or profession of faith is received, which is followed by absolution from censures.
3. If Baptism is to be repeated under condition, it is permitted to proceed in a twofold order, namely:

a) Either thus: 1. Abjuration or profession of faith; 2. conditional Baptism; 3. sacramental confession with conditional absolution.

b) Or thus: 1. Abjuration or profession of faith; 2. sacramental confession without absolution; 3. conditional Baptism; 4. a summary repetition of the confession and conditional absolution.

With respect to abjuration, the Profession of Faith which is found at the beginning of the Code suffices; and it "is held juridically performed when it is made before the local Ordinary himself or his delegate and at least two witnesses" (canon 2314, § 2).

[1] 20 July 1859 (*Collectanea*, n. 1178); 2 December 1874 (*Collectanea*, n. 1426).

Part II. On the Manner of Receiving Baptism

With respect to the reception of Baptism, both valid and licit, we refer to those things which we noted in the treatise On the Sacraments in general (n. 39 and following). Nevertheless, it is pleasing to enlarge what was said about licit reception with these things concerning the Baptism of an adult. Therefore in an adult to be baptized there are required:

106 **I. Faith.** This is clear from these words of Christ in Mark 16:16: "He who believes and has been baptized will be saved." Now explicit faith is required in those things which certainly or probably must be believed by necessity of means: in those certainly to be believed, because otherwise the sacrament would certainly be received fruitlessly; in those probably to be believed, because it would probably be received fruitlessly (vol. I, n. 488).

107 **II. Instruction,** according to these things in canon 752:

1. An adult is not to be baptized unless knowing and willing and well instructed (§ 1).
2. But in danger of death, if he cannot be instructed more diligently in the principal mysteries of faith, it is sufficient, for Baptism to be conferred, that he in some way show that he assents to them and seriously promise that he will observe the commandments of the Christian religion (§ 2).
3. Indeed, if because of impending death or other circumstances instruction cannot be premised, nevertheless Baptism is to be conferred, even if explicit faith is lacking in those things which are only probably to be believed by necessity of means.
4. Finally, if it is doubted whether a dying person has reached the state of discretion, let him be instructed in the better way in which it can be done.[1]

[1] Holy Office, 18 July 1892, reply to IV (*Nouvelle Revue Theologique*, 1897, p. 95).

108 **III. Attrition, and indeed supernatural attrition,** concerning mortal sins, if any have been committed by the one to be baptized (canon 752, § 1). Habitual attrition suffices, that is, attrition elicited and not retracted. Attrition cannot be had concerning original sin; nevertheless a certain displeasure about it is required. Contrition and attrition are "sorrow regarding and in some way breaking down the hardness of the will; and therefore they can exist only concerning those sins which come upon us from the hardness of our will; and because original sin has not been introduced by our will, but contracted from the origin of a vitiated nature, therefore concerning it there cannot be contrition, properly speaking, but only displeasure or sorrow" (St. Thomas, Supplement, q. 2, a. 2). The required displeasure is always had in him who supplies the other requisites.

Hope and initial love are also required; but these too are always found in him who enjoys the dispositions explained.

109 **IV.** It is fitting that both the priest who is about to baptize adults and the adults themselves, if they are healthy, be fasting. Unless grave and urgent causes stand in the way, a baptized adult should immediately assist at the sacrifice of the Mass and receive Holy Communion (canon 753).[1]

Corollary. Confession of sins is not to be imposed on an adult to be baptized absolutely. Nevertheless it is usefully instituted, so that the one to be baptized may be admonished about vices and better disposed for Baptism (St. Thomas, III, q. 68, a. 6). Nor are satisfactory works to be imposed, because Baptism is ordered to removing every debt both of guilt and of punishment.

[1] Roman Ritual, title 2, chapter 3, n. 7.

Treatise III. On Confirmation

(St. Thomas, III, q. 72; St. Alphonsus, *Theologia Moralis*, book VI, nn. 161-188; *Homo Apostolicus*, tract 14, nn. 39-53).[1]

We must speak first about Confirmation considered in itself, then about its ministration, finally about the reception of Confirmation.

[1] Cf. Dolger, *Das Sakrament der Firmung historisch-dogmatisch dargestellt*; Umberg, *Die Schriftlehre vom Sakrament der Firmung*.

Dissertation I. On Confirmation Considered in Itself

110 Confirmation is a sacrament by which the Holy Spirit is conferred for strength in faith through anointing and imposition of the hand under a certain form of words. Confirmation is the complement of Baptism, insofar as, namely, it increases and strengthens the spiritual life received through Baptism (n. 115), and joins to the army of the Lord the human being who has been enrolled by Baptism in the family of Christ (n. 115). It is called Confirmation from the word confirming, that is, making firm. With these things premised, we shall treat first of the existence, then of the essence, then of the effects, finally of the necessity of Confirmation.

Part I. On the Existence of the Sacrament of Confirmation

111 Confirmation is a true sacrament of the New Law. This is of faith from these words of the Council of Trent: "If anyone says that the Confirmation of the baptized is an idle ceremony and not rather a true and proper sacrament... let him be anathema."[1]

It is doubtful at what time Christ instituted Confirmation. According to some, at the Last Supper; according to others, after the resurrection and before the ascension, namely while He was speaking with the Apostles about the kingdom of God and completing the mysteries of salvation;[2] according to others, on the day of Pentecost.

[1] Session 7, On Confirmation, canon 1.

[2] Acts 1:3.

Part II. On the Essence of Confirmation

Section I. On the Matter

112 **I. Remote matter.** 1. For validity, so that this be undoubted, there are required: 1. chrism, that is, a composition from olive oil and balsam; 2. consecrated; 3. by a bishop; 4. and this by a special consecration of chrism. Now from the aforesaid:

a) Olive oil is certainly required, as is clear from the universal and constant tradition of the Church[1] (St. Thomas, III, q. 72, a. 2; St. Alphonsus, VI, 162).

b) The admixture of balsam is most probably required, regard being had both to the decree of Eugene IV for the Armenians, which hands down that the matter is chrism confected from oil and balsam, and from the practice of the Church. The reason for doubting is taken from the fact that Paul IV and Pius V conceded to the Indians the privilege of using in place of balsam a liquid which is called balsam by them, but is not; likewise from the fact that the use of balsam does not appear before the sixth century, although even before that oil came under the name of chrism.

c) Some consecration or blessing likewise seems to be required, attention again being paid to the decree of Eugene IV and to the practice of the Church (St. Alphonsus, VI, 163).

d) Consecration by a bishop is certainly prescribed, but it is not so certain that it is required for validity (cf. canon 781, § 1). The power of consecrating chrism seems in antiquity sometimes to have been conferred on a simple priest.[2] It is also certain that the faculty of confirming with chrism consecrated by a bishop can be granted to a simple priest (canon 781, § 1).

e) A special consecration or blessing, that is, the consecration proper to chrism, likewise seems to be required; this is already suggested by the very necessity of chrism.

Corollary. Since olive oil is certainly required for validity, note that nut oil or other kinds of oil can never be used.

2. For liceity it is required that certainly valid matter be used, and that the chrism have been consecrated on the most recent Lord's Supper day (canon 734, § 1). Hence it is not permitted to confirm with old chrism, unless necessity urges. It is said, certainly valid matter; this does not prevent Confirmation from being conferred under condition, at least in danger of death, with oil of catechumens if chrism consecrated by a special blessing cannot be had; for the great usefulness of the sacrament suffices so that it can be exposed to the danger of nullity (St. Alphonsus, VI, 162).

[1] Cf. Innocent III, Decretals, book I, title 15, at the beginning of chapter 1, *Cum venisset*.

[2] Dolger, op. cit., pp. 108-112.

113 **II. Proximate matter.** 1. For validity, so that this be undoubted, there are required: 1. anointing; 2. on the forehead; 3. made immediately by the hand of the minister, not through an instrument; 4. in the form of a cross (cf. canon 780). But what degree of certainty belongs to each of the things enumerated, see among the dogmatic theologians.

The imposition of the hand is certainly required for the essence of Confirmation, as is already clear from Sacred Scripture itself.[1] But, according to the opinion which today is commonly held as certain, the required imposition of the hand is neither that imposition or extension of the hand which is had at the beginning of the rite and is made over all those to be confirmed under the prayer: *Almighty,*

everlasting God, etc. (cf. canons 780 and 781, § 2);[2] nor is it that imposition of the hand by which the minister, during the anointing itself, places the rest of the hand on the head of the one to be confirmed;[3] but it is the anointing itself, so that this is at once both anointing and imposition of the hand.

2. For liceity it is required that certainly valid proximate matter be used, and that the anointing be made with the thumb of the right hand; for this is the usage of the Church, which nevertheless quite probably obliges only under light obligation, because in the consecration of a bishop the thumb and index finger of each hand, indeed even both whole hands, are anointed (St. Alphonsus, VI, 165).

[1] Acts 8:17; 19:6; Hebrews 6:2.

[2] Decree for the Armenians; Sacred Congregation de Propaganda Fide, 6 August 1840 (*Collectanea*, n. 908).

[3] Innocent III, Decretals, book I, title 15, chapter 1.

Section II. On the Form

114 The legitimate form is:

I. For the Latin Church: "I sign you with the sign of the cross and confirm you with the chrism of salvation, in the name of the Father and of the Son and of the Holy Spirit." Probably these suffice for the essence: **I sign and confirm you**; or, **I confirm you with the chrism of salvation**; since these alone are found equivalently in the form of the Greeks. Nevertheless it is also probable that all things in the form are essential; this depends on the question what the direct power of the Church is concerning the value of the sacraments (cf. St. Thomas, III, q. 72, a. 4; St. Alphonsus, VI, 167, 168).

II. For the Greek Church: "The seal of the gift of the Holy Spirit." Yet it is disputed whether the invocation of the Most Holy Trinity also, which in the Greek Euchologia is premised to chrismation, pertains to the essence. Several of those who judge that in the Latin form all things, even the expression of the Most Holy Trinity, are essential affirm this; and they are bound to affirm it unless they admit that Christ did not determine the form of Confirmation in a fixed specific form.

Part III. On the Effects of Confirmation

115 The effects of Confirmation are:

I. Sanctifying grace; per se second grace or an increase of grace, per accidens more probably first grace (n. 6); there is joined an increase of the virtues and gifts of the Holy Spirit.

II. Sacramental grace: this consists in the fact that the sanctifying grace which Confirmation increases is both ordered to this, that the faithful constantly hold and constantly profess the faith, and carries with it the right to actual graces to be received in order to those effects (St. Thomas, III, q. 62, a. 1; St. Alphonsus, VI, 169).

III. Character. 1. The existence of character is clear from what was said in n. 8.

2. The effects of character. It causes the baptized person to be constituted a soldier of Christ and to be deputed to profess the faith fearlessly (St. Thomas, III, q. 72, a. 5).

Part IV. On the Necessity of Confirmation

116 **I. Necessity of means** is rightly denied (canon 787); for Confirmation is necessary neither for acquiring sanctifying grace, because it is ordered to increasing it, nor for obtaining actual graces by which the spiritual life can be preserved, since a right to graces simply necessary is already given through Baptism.

117 **II. Necessity of precept.** There is an obligation of receiving Confirmation; and that obligation seems to be grave. It is said:

1. **There is an obligation.** This is clear: 1. From canon 787: "It is permitted to no one, when the occasion is offered, to neglect it"; add canon 1021, § 2: "Catholics who have not yet received the sacrament of Confirmation are to receive it before they are admitted to marriage, if they can do so without grave inconvenience." 2. From these words by which Pope Urban draws out the obligation from the end and character of Confirmation: "All the faithful, through the imposition of the hands of bishops, ought to receive the Holy Spirit after Baptism, so that they may be found fully Christians."[1] 3. From those things by which we shall prove the grave obligation.
2. **The obligation seems to be grave.** I understand a grave obligation per se, not only sometimes per accidens. Namely, all concede that one who neglects to receive Confirmation can per accidens sin gravely: 1. by reason of scandal; 2. by reason of contempt; 3. by reason of a particular danger and spiritual weakness (St. Alphonsus, VI, 182). But it is disputed whether a grave obligation per se must be asserted. With St. Alphonsus (loc. cit.), against several more recent authors, it seems that it must be affirmed. For first, St. Paul[2] reckons Confirmation among the fundamental institutions of Christianity; this hints that it obliges under grave obligation, all the more because all the other things enumerated there[3] oblige under grave obligation.[4] Then Benedict XIV, in the bull *Etsi pastoralis*,[5] declares with respect to the Italo-Greeks who had been confirmed by a non-competent priest and therefore invalidly: "that they are held guilty of grave sin if, when they can approach Confirmation, they refuse and neglect it."[6]

Now Benedict XIV by these words intends and signifies a grave obligation existing per se, not only that which held the Italo-Greeks per accidens by reason of special circumstances. For: a) This is the more obvious sense, since the preceding words regard all, so that even the words cited seem to regard all and not only the Italo-Greeks; for the rest, for a whole century all theologians understood the words of the Supreme Pontiff in the aforesaid sense. b) The Instruction of the Sacred Congregation de Propaganda Fide,[7] approved by Clement XIV, which teaches that the obligation is present per se, refers to the bull of Benedict XIV. c) Benedict XIV himself sufficiently signifies that this is the meaning of his bull, as can be seen in the unpublished works of Pope Benedict XIV.[8] Observe also that Benedict XIV, as a private doctor, held as certain and almost common the opinion which teaches that there is per se a grave obligation of receiving Confirmation.[9] Besides, the Instruction of the Sacred Congregation de Propaganda Fide,[10] which Clement XIV "approved and commanded to be inviolably observed by all whom it concerns," declares: This sacrament "cannot be rejected and neglected without guilt of grave sin when a suitable occasion of receiving it is present."[11] Moreover a sacrament which is held as the complement of Baptism, or which pertains to the integrity of Christian being, seems to be imposed under grave obligation. But Confirmation is of this kind; hence Pope Urban, to use his words again: "All the faithful, through the imposition of the hands of bishops, ought to receive the Holy Spirit after

Baptism, so that they may be found fully Christians." Then Confirmation confers the Holy Spirit, who is called "the Promise of the Father"; it confers grace which both in the Old and in the New Testament is assigned as the proper gift of the Messianic kingdom. Now it is difficult to admit that these things are not to be pursued under a precept, and that a grave one.[12]

Corollary I. It seems it must be said that the obligation of Confirmation is not only of ecclesiastical law, but also of divine law, since several of the arguments brought forward indicate divine law.

Corollary II. Per se the sacrament must be repeated under condition if a prudent doubt exists whether it was truly or validly conferred (canon 732, § 2).

Corollary III. Those more advanced in age who are very ashamed to receive the sacrament with children can, if they cannot be confirmed privately, scandal being excluded, be left in good faith.

[1] In canon *Omnes*, 1, distinction 5, *De consecratione*.

[2] Hebrews 6:2.

[3] Hebrews 6:1-2.

[4] Cf. Umberg, op. cit., p. 200.

[5] 26 May 1742.

[6] The complete text here is: "Although those confirmed by a simple priest are not to be compelled to receive this kind of sacrament of Confirmation from a bishop if scandals could arise from such compulsion, since the sacrament of Confirmation does not have such necessity that without it someone cannot be saved, nevertheless they are to be admonished by the Ordinaries of places that they are held guilty of grave sin if, when they can approach Confirmation, they refuse and neglect it."

[7] 4 May 1774 (*Collectanea*, n. 503).

[8] These were edited by Dr. F. Heiner; there, on p. 215, Benedict XIV declares that in his Constitution *Etsi pastoralis* he established several things, among them: "That, although one of the Italo-Greeks has received Chrismation from some simple priest, he must not be forced to receive Chrismation from the bishop when some grave scandal could perhaps be feared from this step; nevertheless, since this sacrament is not absolutely indispensable for eternal salvation, the Ordinary of the place to whom the Italo-Greek is subject ought wisely to admonish him that, in order not to be guilty of grave sin, when the occasion of being confirmed comes, he should not neglect it, since in this case contempt of the sacrament would have place, as we also demonstrated in our sixth Instruction."

[9] "It is certain," he writes, "that men already in adult age must, either in fact or at least in desire, be confirmed by necessity of precept, which is also numbered among the precepts of God. It is called a precept of the Church when one endowed with the use of reason, if a bishop, the minister of this sacrament, is present, is impeded by no legitimate cause from receiving it. Thus almost all theologians teach, and those who are especially commended by praise of wisdom; they testify that those are stained with grave fault who, because of contempt or yawning sluggishness, omit to have the soul fortified with the grace of this sacrament" (*Institutiones Ecclesiasticae*, VI, n. 10).

[10] 4 May 1774 (*Collectanea*, n. 503).

[11] The complete text here is: "For the rest, let missionaries not omit also to exhort the peoples entrusted to them to receive Confirmation at the due time, and also that parents see to it that their children are confirmed; for although this sacrament is not of necessity of means for salvation, nevertheless it cannot be rejected and neglected without guilt of grave sin when a suitable occasion of receiving it is present. Now this doctrine, if it is true for all Christ's faithful everywhere, has much more place in those who live in lands of heretics or pagans, in which persecutions sometimes arise against Catholics."

[12] "If Confirmation," says Pohle, "were a merely useful and not a necessary sacrament, why would it have been instituted and ordained by Christ as the supplement and completion of Baptism for all Christians?" (*Lehrbuch der Dogmatik*, vol. III,

p. 158). Cf. Umberg, op. cit., p. 198.

Dissertation II. On the Ministration of Confirmation

118 **I. The person ministering.** 1. A bishop can validly confer Confirmation. This is of faith from the Council of Trent.[1] Therefore a bishop can always validly minister the sacrament.

2. A presbyter in fact cannot validly confer Confirmation without delegation. Thus all. But it is disputed whether or not even a presbyter per se or of himself enjoys the faculty of validly ministering Confirmation. Some affirm this; nevertheless they add that, by force of ecclesiastical or even divine disposition, the valid exercise of the said power does not belong to the presbyter. Others deny that a presbyter can per se or of himself confer Confirmation validly, but say that he enjoys only an incomplete power of confirming, to be completed by delegation. Among these, however, some teach that this kind of delegation, regard being had only to divine law, belongs even to a bishop; others judge that it is reserved, not only in fact but also by force of divine law, to the Supreme Pontiff alone.[2] From what has been said, draw out the things which follow.

3. The ordinary minister of Confirmation is the bishop alone (canon 782, § 1). The extraordinary minister is a presbyter to whom this faculty has been granted either by common law or by a special indult of the Apostolic See (canon 782, § 2). Now:

a) Besides Cardinals of the Holy Roman Church according to the norm of canon 239, § 1, n. 23,[3] an abbot or prelate nullius, a vicar and prefect apostolic enjoy this faculty by the law itself; these, however, cannot use it validly except within the boundaries of their territory and only during their office (canon 782, § 3). To the said persons are also reckoned the pro-vicar and pro-prefect to whom the care of the vicariate or prefecture has come according to the norm of canon 309 (canon 310, compared with canon 294, § 2). The aforesaid persons can validly confirm all within the boundaries of their territory.

b) A presbyter of the Latin rite to whom this faculty belongs by force of an indult validly confers Confirmation only on the faithful of his own rite, unless another thing has been expressly provided in the indult (canon 782, § 4). If, however, the indult is local, in the territory designated for him he validly confirms all the faithful of his own rite, even outsiders. If the indult is personal, he validly confirms only those persons who are comprehended by the indult.

c) Priests of the Eastern rite, by force of immemorial custom, validly and licitly administer Confirmation together with Baptism to infants of their own rite, except in those churches to which by a special statute the Latin discipline has been extended,[4] as has taken place in Bulgaria, Italy, and the adjacent islands. But "it is unlawful for priests who enjoy the faculty or privilege of conferring Confirmation together with Baptism on infants of their own rite to minister the same to infants of the Latin rite" (canon 782, § 5); since these words do not exclude validity, the conferral does not seem invalid.

[1] Session 7, On Confirmation, canon 3.

[2] Cf. Gilsamann, *Zur Lehre der Scholastik vom Spender der Firmung*; De Smet, *Tractatus dogmatico-moralis de sacramentis in genere, de Baptismo et Confirmatione*, n. 400 and following.

[3] Cardinals confirm validly everywhere, with the burden, however, of recording the name of the confirmed person (canon 239, § 1, n. 23).

[4] Aertnys-Damen, II, n. 87.

119 **II. Liceity of ministering.** 1. A bishop legitimately ministers this sacrament in his own diocese even to outsiders, unless an express prohibition of their proper Ordinary stands in the way (canon 783, § 1). In another diocese he needs the permission of the local Ordinary, at least reasonably presumed, unless the case concerns his own subjects to whom he confers Confirmation privately and without staff and mitre (canon 783, § 2).

2. A presbyter who is furnished with a local apostolic privilege licitly confirms even outsiders in the territory designated for him, unless their Ordinaries have expressly forbidden it (canon 784).

120 **III. Obligation of ministering.** 1. A bishop is bound by obligation to confer this sacrament on subjects rightly and reasonably asking for it, especially at the time of the visitation of the diocese. A presbyter endowed with apostolic privilege is held by the same obligation toward those in whose favor the faculty has been granted (canon 785, §§ 1 and 2). Nevertheless they are not bound to confer Confirmation on a dying person who asks for it; for they cannot furnish that office to one and deny it to another, but to satisfy all would be an excessive burden (St. Alphonsus, VI, 175).

2. An Ordinary impeded by a legitimate cause or lacking the power of confirming must, so far as it can be done, provide at least within every five-year period that this sacrament be administered to his subjects (canon 785, § 3).

3. If he has gravely neglected to minister the sacrament of Confirmation to his subjects by himself or through another, the Metropolitan is bound to inform the Holy See (canon 785, § 4). Grave neglect seems to be present if the occasion of receiving Confirmation is deferred beyond five years.

121 **IV. Things to be observed in ministering** regard time, place, sacred vestments, ceremonies, and sponsors.

1. **Time.** This sacrament can be conferred at any time; but it is especially fitting that it be administered in the week of Pentecost (canon 790). It is only of counsel that the one confirming and those to be confirmed be fasting (St. Alphonsus, VI, 174, question 1).

2. **Place.** The proper place for administering Confirmation is a church; nevertheless the minister, for a cause which he has judged just and reasonable, can confer it in any decent place (canon 791). A bishop has the right of administering it within the boundaries of his diocese also in exempt places (canon 792).

3. **Sacred vestments** are set forth in the Pontifical; to omit most of them would be grave (St. Alphonsus, VI, 184, note 1).

4. **Ceremonies** to be observed by a bishop are found in the Roman Pontifical; those to be observed by a presbyter are contained in the Instruction of the Sacred Congregation de Propaganda Fide.[1] Their obligation is grave from its genus (St. Alphonsus, VI, 184).

5. **Sponsors:** a) A sponsor, if he can be had, is to be used (canon 793), and this under grave obligation (St. Alphonsus, VI, 185). Moreover:

1. There is to be only one sponsor for each person to be confirmed (canon 794, § 2); hence the person to be confirmed cannot have two sponsors.

2. The same person can be sponsor for only one or two, unless for a just cause something else seems good to the minister (canon 794, § 1). Therefore the minister can for a just cause permit that the

same person be sponsor even for several, indeed that one man be sponsor for all males, and one woman for all females.[2]

b) In order that someone be validly constituted sponsor, it is required: 1. that he himself also be confirmed, have attained the use of reason, and have the intention of carrying out that office; 2. that he be ascribed to no heretical or schismatical sect, nor be excommunicated or infamous with infamy of law by a condemnatory or declaratory sentence, or excluded from legitimate acts, nor be a cleric deposed or degraded; 3. that he not be the father, mother, or spouse of the person to be confirmed; 4. that he be designated by the person to be confirmed or by his parents or tutors, or, if these are lacking or refuse, by the minister or by the pastor; 5. that in the very act of Confirmation he physically touch the person to be confirmed, either by himself or through a procurator (canon 795).

c) In order that someone be licitly admitted to the office of sponsor, it is required: 1. that he be someone other than the sponsor of Baptism, unless a reasonable cause, in the judgment of the minister, suggests otherwise, or Confirmation is legitimately conferred immediately after Baptism; 2. that he be of the same sex as the person to be confirmed, unless in particular cases something else seems good to the minister for a reasonable cause; 3. that the prescriptions of canon 766 also be observed (canon 796).[3]

d) From valid Confirmation there arises between the confirmed person and the sponsor a spiritual kinship, from which the sponsor is bound by obligation to have the confirmed person perpetually commended to himself and to care for his Christian education (canon 797). Nevertheless the said kinship does not carry with it an impediment of marriage.

[1] 4 May 1774 (*Collectanea*, n. 503).

[2] Cf. Sacred Congregation of the Council, 24 June 1823; 12 July 1823; Holy Office, 16 June 1884 (*Collectanea*, n. 1619).

[3] Canon 766 sets forth the requisites for someone to be licitly admitted as sponsor in Baptism (n. 84).

122 **V. Notation and proof of Confirmation ministered.** 1. The pastor is to inscribe in a special book the names of the minister, of those confirmed, of the parents and sponsors, and the day and place of Confirmation (canon 798). Besides, it should be noted in the book of the baptized if the baptized person has received Confirmation (canon 798). If the proper pastor of the confirmed person was not present, concerning the Confirmation conferred the minister, either by himself or through another, should as soon as possible inform the same pastor (canon 799).

2. To prove Confirmation conferred, provided prejudice is done to no one, one witness beyond all exception suffices, or the oath of the confirmed person himself, unless he was confirmed in infant age (canon 800), that is, before the completed seventh year (canon 88, § 3).

Dissertation III. On the Reception of Confirmation

123 **I. The person receiving.** Every and only baptized person not yet confirmed can validly be confirmed (canon 786; n. 38). Per se even those perpetually insane are to be anointed, namely so that at least according to being they may be constituted perfect and complete Christians; and this must be urged even more if the discussion concerns the partially insane (St. Alphonsus, VI, 180).

124 **II. The age of reception.** In the first twelve centuries there was the usage of conferring Confirmation together with Baptism. This practice still flourishes in the Greek Church; but in the Latin Church it has been changed, except in some regions in which even little children are presented to be confirmed, as in Spain and in Latin America. For the rest, with respect to the Latin Church this rule holds: the administration of Confirmation is suitably deferred to about the seventh year of age; nevertheless it can be conferred even before then if the infant is constituted in danger of death, or if it seems expedient to the minister for just and grave causes (canon 788), for example if otherwise the infants would lack the occasion of receiving the sacrament for a very long time (St. Alphonsus, VI, 178). In other cases it cannot be conferred before about the seventh year of age.[1] It is not expedient to defer Confirmation longer than about the seventh year of age, since "thus the young adolescents confirmed become more pliant for grasping precepts, and more suited for receiving the Eucharist afterward, and from having received it they receive more abundant advantages."[2] Cf. St. Thomas, III, q. 65, aa. 1 and 2.

[1] Pontifical Commission, 16 June 1931, reply to II (*A.A.S.* 1931, p. 353); compare, however, with respect to the custom which flourishes in Spain and elsewhere, the response of the Sacred Congregation of the Sacraments, 13 June 1932 (*A.A.S.* 1932, p. 271).

[2] Thus Leo XIII in the brief *Abrogata*, 22 June 1897.

125 **III. Things to be observed in reception.** In the one receiving there are required: 1. the state of grace (canon 786), which, if it has been lost, is to be recovered through confession or through perfect contrition; 2. sufficient instruction, if the one to be confirmed possesses the use of reason (cited canon), namely instruction in the rudiments of faith and in the principal things which regard the sacrament of Confirmation.[1] It is only of counsel that the one to be confirmed, if it can conveniently be done, be fasting.[2] Finally, those to be confirmed, if there are several, are to be present for the first imposition or extension of hands, nor are they to depart until the rite has been completed (canon 789). It is said, if there are several, for if there is only one person to be confirmed and he is absent, the ceremony cannot even be begun.

Note. The precept of the Roman Pontifical of wearing a linen band until the chrism has dried is no longer observed, but immediately after the anointing the chrism is wiped from the forehead of the confirmed person (St. Alphonsus, VI, 180).

[1] The Sacred Congregation de Propaganda Fide, 4 May 1774, says thus: "Those to be anointed with sacred chrism must first be diligently instructed, according to the teachings of the Roman Catechism, concerning the nature, dignity, effects, and dispositions prerequired for receiving this sacrament worthily. Likewise they must be instructed concerning the rudiments of faith, the precepts of the Decalogue and of the Church, the acts of the theological virtues, and they must hold in memory the Lord's Prayer and the Apostles' Creed" (*Collectanea*, n. 503).

[2] Cf. Roman Pontifical.

Treatise IV. On the Most Holy Eucharist

(St. Thomas, III, qq. 73-83; St. Alphonsus, *Theologia Moralis*, book VI, nn. 189-424; *Homo Apostolicus*, tract 15).[1]

The Most Holy Eucharist is not only a sacrament, but also a sacrifice. Now the foundation of the whole doctrine on this matter is the real presence of Christ in the Eucharist. Hence we shall speak first about the real presence of the Lord in the Eucharist, then about the Most Holy Eucharist as it is a sacrament, finally about the Most Holy Eucharist as it is a sacrifice. These three things are set forth in these words of canon 801: In the Most Holy Eucharist, under the species of bread and wine, Christ the Lord is contained, offered, and received.

[1] Cf. Billuart, *Tractatus de almo Eucharistiae sacramento* (VI, vol. VI); Rath, *De Eucharistia*.

Dissertation I. On the Real Presence of Christ in the Eucharist

126 (St. Thomas, III, qq. 75-77; *Contra Gentiles*, book 4, chapters 62-67.)

I. The truth of the real presence of Christ. In the Most Holy Eucharist Christ is truly, really, and substantially present. This is of faith from the Council of Trent solemnly declaring: "If anyone denies that in the sacrament of the Most Holy Eucharist there are contained truly, really, and substantially the body and blood, together with the soul and divinity, of our Lord Jesus Christ, and therefore the whole Christ, but says that He is in it only as in a sign, or figure, or power, let him be anathema."[1] "The Council," says St. Alphonsus, "says truly, so that it may exclude a figurative presence; for figure is opposed to truth; really, to repel an imaginary presence, apprehended by faith, which the Sacramentarians admitted; substantially, so that it may remove the opinion of Calvin, who asserted that the Eucharist does not contain the body, but only the power of Jesus Christ, who communicates Himself to us" (*Opera dogmatica*, vol. I, p. 555, ed. Walter).

[1] Session 13, canon 1.

127 **II. The manner in which Christ is made present.** Christ is made present in the Most Holy Eucharist through transubstantiation; concerning this I note:

1. The proposition stated is of faith from the Council of Trent: "If anyone says that in the most holy sacrament of the Eucharist there remains the substance of bread and wine together with the body and blood of Our Lord Jesus Christ, and denies that wonderful and singular conversion of the whole substance of bread into the body and of the whole substance of wine into the blood, the species of bread and wine alone remaining, which conversion indeed the Catholic Church most fittingly calls transubstantiation, let him be anathema."[1]
2. Transubstantiation, according to the cited words of Trent, is: "The conversion of the whole substance of bread into the body and of the whole substance of wine into the blood of Christ, the species of bread and wine alone remaining." It is said:

a) **Conversion;** therefore consubstantiation is excluded, which admits a simple conjunction, and impanation, which admits the hypostatic union of the body and blood of Christ with bread and wine.

b) **Conversion... of the substance of bread and wine.** Therefore it is distinguished from accidental transformation, in which the same substance remains and only receives, for example, a new figure, as if a stone is transformed into a statue.

c) **Conversion of the whole substance.** Hence it is distinguished from substantial transformation, in which there is not a conversion of the whole substance, namely while the matter of the prior substance remains, as if daily foods pass into the substance of our body.

Transubstantiation regards a double term, namely the term from which and the term into which; or the term which passes away, namely bread and wine, and the term which succeeds, namely the body and blood of Christ. Now:

It is disputed first how the term from which, or the substance of bread and wine, passes away. Some judge that it is annihilated. Others, such as St. Thomas (III, q. 75, a. 3) and St. Alphonsus (*Opera dogmatica*, vol. I, p. 562, ed. Walter), teach that it ceases through a true and simple conversion, because

in annihilation, which is reduction to nothing, the concept of conversion into another thing is not verified.

It is disputed besides how the term into which, or the body and blood of Christ, succeeds. Some, such as the Scotists, think that this is done by way of adduction, insofar, namely, as God in the consecration effects with respect to the body of Christ, without local motion, what local motion effects in the natural order; that is, God gives to the body of Christ non-distance from this space and from these accidents of bread and wine. Others, among whom are several Thomists, teach that this is done through production, or reproduction, of the body and blood of Christ, and this not simply, but by way of conversion from the substance of bread and wine; this opinion better corresponds to the concept of the conversion of bread and wine into the body and blood of Christ. Others[2] say that transubstantiation is a simple action by which God immediately changes whatever entity is in the substance of bread into that which is entity in the substance of the body of Christ; yet in such a way that the body of Christ is in no way changed, but the whole change takes place in the bread, whose substance passes away while the dimensions remain. According to this explanation, Christ suffers nothing in the consecration, receives nothing, but becomes present where He was not before, not locally but sacramentally, from this alone, that by force of the conversion He is now really contained under the dimensions of bread, under which the substance of bread was previously contained.[3]

d) **The species of bread and wine alone remaining.** Concerning the species, note:

1. The species of bread and wine have objective reality; this is "the perpetual and constant doctrine of the Catholic Church,"[4] and therefore at least theologically certain.
2. The species inhere in no substance as a subject, but are sustained divinely.

I said, in no substance: neither in the substance of bread and wine, since it has passed away; nor in the body of Christ, which in the sacrament is entirely glorious and exists supernaturally.

I said, are sustained divinely: understand this so that God immediately sustains only the quantity, but accidents distinct from quantity inhere in the quantity as in a subject (St. Thomas, III, q. 77, a. 2).

Corollary. From the Eucharistic species a new substance is generated. This is explained in different ways by different authors. According to some, to set forth the principal opinion, in the last instant of corruption matter is produced by God, from which a new form is educed (St. Thomas, III, q. 77, a. 5). But it is disputed whether the said production is done by way of creation or by way of conversion of quantity into matter. And thus it is also explained how the species can nourish (St. Thomas, III, q. 77, a. 6).

[1] Session 13, canon 2.

[2] Thus Billot.

[3] Tanquerey, n. 406.

[4] Roman Catechism, part 2, On the Eucharist, n. 44.

128 **III. The manner in which Christ is present** is circumscribed in these terms:

1. The whole Christ is present under each Eucharistic species. This is of faith from the Council of Trent.[1]

By force of the words, under the species of bread only the body becomes present, and under the species of wine only the blood. By force of natural connection and concomitance, under the species of bread the blood and soul exist, and under the species of wine the body and soul exist.

2. The whole Christ is contained under each part of the species both before and after division. That the whole Christ is contained under each part after division is of faith from the Council of Trent.[2] With respect to presence under each part before division, it is theologically certain.

[1] Session 13, canon 3.

[2] Session 13, canon 3.

129 **IV. The time during which Christ is present.** Christ is present in the manner which we have stated from the moment of consecration until the essential alteration of the species; and this is had when the species are so altered that, if the substance of bread and wine had persisted, this substance according to common estimation would have ceased to persist. Moreover:

1. Authors do not agree when the species are corrupted. Von Olfers judges that the species of bread is changed already in the mouth itself; yet Capellmann-Bergmann[1] rejects this entirely. Nevertheless even for the sake of security the species should not be kept long in the mouth, namely so that Christ is certainly eaten and the grace of the sacrament is certainly conferred (St. Alphonsus, VI, 226; n. 171). With respect to corruption in the stomach, some assign half an hour, others a much longer time, especially for the infirm; and it is certain that the matter depends on the condition of the stomach. With attention to all these things, I say:

a) Because of doubt about the presence of the species, it is illicit to provoke vomiting or to wash the stomach within two to three hours after the reception of the Eucharist, especially since these things are ordinarily not done except because of illness.

b) Whatever may be true about the duration of the presence, it is permitted to anyone to eat after he has spent a reasonable time in thanksgiving, because the sacraments must be ministered and received in a human manner (cf. St. Thomas, III, q. 80, a. 8, ad 6; St. Alphonsus, VI, 283).

2. If unconsecrated wine is mixed in a small quantity with consecrated wine, Christ remains present. If another liquid is mixed with consecrated wine, the matter depends both on the quantity and on the quality of the other liquid. If unconsecrated wine is mixed in a greater quantity with consecrated wine, it is disputed whether the presence of Christ endures. Some affirm this, because, as modern chemists teach, the molecules of the consecrated species retain their individuation. Others with St. Thomas (III, q. 77, a. 8) deny it, because the consecrated species, at least according to common estimation, do not remain the same numerically, but receive a new individuation from the greater quantity.

Note. When flesh or blood appears in the Most Holy Eucharist, it is not the flesh or blood of Christ. Apparitions of this kind are explained either from this, that species are formed by God in the eyes of those seeing, and thus it happens as if flesh or blood were truly seen; or from this, that a miraculous figure is formed which represents the flesh or blood of Christ. Hence to such figures, which are called relics of the Most Holy Blood, only relative worship is rendered (St. Thomas, III, q. 76, a. 8).

[1] Cf. Von Olfers, *Pastoral-Medizin*, p. 44 and following; Capellmann-Bergmann, op. cit., p. 270 and following; ibid., p. 271.

Scholion I. On the Custody of the Holy Eucharist

130 **I. Liceity of reserving the Holy Eucharist.** That the Holy Eucharist can licitly be preserved in the sacrarium after the sacrifice has been completed is of faith from Trent: "If anyone says that it is not permitted for the Sacred Eucharist to be reserved in the sacrarium, but that immediately after the consecration it must necessarily be distributed to those present, or that it is not permitted for it to be carried honorifically to the sick, let him be anathema."[1]

[1] Session 13, canon 7.

131 **II. Places for reserving the Holy Eucharist.** In order that the Holy Eucharist must or can be reserved in the places soon to be assigned, two things are required: 1. that there be someone who has care of it; 2. that regularly a priest celebrate Mass at least once a week in the sacred place (canon 1265, § 1). These things being posited:

1. It must be kept in a cathedral church, in the principal church of an abbey or prelature nullius, of a vicariate and prefecture apostolic, in any parochial or quasi-parochial church, and in a church attached to a house of exempt religious, whether men or women (canon 1265, § 1, 1).

2. It can be kept, with the permission of the local Ordinary, in a collegiate church and in the principal oratory, whether public or semi-public, both of a pious or religious house and of an ecclesiastical college which is governed by secular clerics or by religious (canon 1265, § 1, 2). The same seems to be applied a fortiori to succursal churches, over which a priest presides who is bound to exercise the care of souls for a determined part of the parish. The Pontifical Commission declared[1] that the Ordinary can permit this if immemorial custom is added.

3. In order that it can be kept in other churches or oratories, an apostolic indult is necessary; the local Ordinary can grant this permission only to a church or public oratory for a just cause and by way of act (canon 1265, § 2).

Note 1. It is permitted to no one to retain the Most Holy Eucharist with himself or to carry it with him on a journey (canon 1265, § 3). Exceptions: 1. if, insofar and for as long as otherwise the security of the Holy Eucharist would not be sufficiently provided for; 2. if, which is to be prevented so far as can be done, the Holy Eucharist cannot be kept decently in the church.

Note 2. Churches in which the Most Holy Eucharist is reserved, especially parochial churches, should be open to the faithful daily for at least some hours (canon 1266).

4. Any contrary privilege having been revoked, in the religious or pious house itself the Most Holy Eucharist cannot be kept except either in the church or in the principal oratory; nor among nuns within the choir or enclosure of the monastery (canon 1267). The cited canon sets forth to what extent the Holy Eucharist can be reserved in two places, that is, both in the church and in the principal oratory. Now, considering the response of the Pontifical Commission,[2] it must be established thus:

a) If a religious or pious house has a public church attached and uses it for carrying out ordinary and daily exercises of piety, the Most Holy Sacrament can be reserved only in that church.

b) If a religious or pious house does not use the attached church for ordinary and daily exercises of piety, by privilege or permission of the local Ordinary (cf. canon 1265, § 2), the Holy Eucharist can be kept in the principal oratory of the same religious or pious house, and indeed without prejudice to the

right of the church, if it has any, for example because it is attached to a house of exempt religious; in this case it can be reserved both in the church and in the oratory. But it can be kept in only one oratory, unless in the same material building there are distinct and separate families, so that they are formally distinct religious or pious houses; this obtains, for example, in the case in which in a college there is a community of sisters who devote themselves to the service of the college; likewise in the case in which in a religious house there are, besides the students living in common, religious partly devoted to education and partly to other works. It is doubtful whether the novitiate constitutes a religious house formally distinct from the other community of the house.

[1] 20 May 1923 (*A.A.S.* 1924, p. 155).

[2] 2 June 1918 (*A.A.S.* 1918, p. 346).

132 **III. The manner of reserving the Holy Eucharist.** 1. The Most Holy Eucharist cannot be kept continuously or habitually except on one altar only of the same church (canon 1268, § 1). It is said, habitually; hence nothing prevents the Holy Eucharist from sometimes being kept also on another altar for some time, for example so that Communion may be distributed more conveniently. It is to be kept in the most excellent and noble place of the church, and therefore regularly on the high altar, unless another place seems more convenient and becoming for the veneration and worship of so great a sacrament, with the prescription of liturgical laws being observed as regards the last days of Holy Week (canon 1268, § 2). But in cathedral, collegiate, or conventual churches in which choral functions must be performed at the high altar, lest an impediment be brought to ecclesiastical offices, it is fitting that the Most Holy Eucharist regularly not be kept on the high altar, but in another chapel or altar (canon 1268, § 3). Let rectors of churches take care that the altar on which the Most Holy Sacrament is reserved be adorned before all the others, so that by its very arrangement it may move the piety and devotion of the faithful more (canon 1268, § 4).

2. The Most Holy Eucharist must be kept in an immovable tabernacle placed in the middle part of the altar (canon 1269, § 1). Nevertheless, if some grave cause approved by the local Ordinary persuades it, it is not forbidden that the Most Holy Eucharist be reserved at night outside the altar, yet on a corporal, in a safer and decent place, with the prescription of canon 1271 being observed (canon 1269, § 3); the cited canon prescribes that a lamp be lit before the tabernacle (cf. p. 94). For the rest, note:

a) The tabernacle should be skillfully constructed, solidly closed on every side, decently adorned according to the norm of liturgical laws, empty of every other thing, and so carefully guarded that danger of any sacrilegious profanation is kept away (canon 1269, § 2). It is said: adorned according to the norm of liturgical laws. Now the said laws prescribe that the tabernacle be covered within with white silk, unless it is gilded;[1] that it be blessed and outwardly covered with a conopaeum or veil of a color either white or adapted to the office; for black, violet is used.[2] But if the form of the tabernacle does not allow the use of a conopaeum, at least a broad cloth hanging from above, a baldachin, is to be used, which covers the altar. Nor is it permitted to place images or relics of Saints before or above the tabernacle, even of the Holy Cross. Nevertheless a cross with an image of the Crucified can be placed above the tabernacle. It is said: empty of every other thing; hence not even the sacred oils can be kept in the tabernacle.[3]

b) The key of the tabernacle in which the Most Holy Sacrament is reserved must be guarded most diligently, the conscience of the priest who has care of the church or oratory being gravely burdened

(canon 1269, § 4). It no longer seems, as formerly, to be prescribed that the priest himself guard the key.

3. The Holy Eucharist must be kept in a pyx of solid and decent material, clean and well closed with its own lid, covered with a white silk veil and, as far as the matter allows, adorned. The consecrated particles should be of such a number as can suffice for the Communion of the sick and of other faithful (canon 1270). Now the pyx or ciborium, likewise the monstrance and lunette, can be of gilded copper, although it is more fitting that the pyx and lunette be silver. It is not prescribed that the pyx and lunette, if they are silver, be gilded. But the pyx and monstrance, or at least the lunette, are to be blessed, not consecrated, and this more probably under sin, though only venial (St. Alphonsus, VI, *Quaestiones reformatae*, 74).
4. Before the tabernacle in which the Most Holy Sacrament is reserved, at least one lamp should shine continually day and night, to be nourished with olive oil or beeswax; but where olive oil cannot be had, it is permitted to the prudence of the local Ordinary that it be changed for other oils, as far as possible vegetable oils (canon 1271). The obligation of the lamp is grave from its genus, so that neglect through an entire day or through several nights would constitute mortal sin (St. Alphonsus, VI, n. 248).
5. Consecrated Hosts, whether for the Communion of the faithful or for exposition of the Most Holy Sacrament, should both be fresh and be frequently renewed, the old ones being duly consumed, so that there be no danger of corruption, with the instructions which the local Ordinary has given concerning this matter being carefully observed (canon 1272). The Ceremonial of Bishops wills that hosts be renewed every week;[4] nevertheless it seems to suffice that this be done within two weeks. Moreover, new consecrated Hosts should not be mixed with old, but the old should first be distributed or consumed.[5]

[1] Sacred Congregation of Rites, 20 June 1899, reply to IV, n. 4035.

[2] Sacred Congregation of Rites, 20 June 1899, reply to IV, n. 4035.

[3] Roman Ritual, title IV, chapter 1, n. 6; Sacred Congregation of Rites, 12 March, reply to IV, n. 2740.

[4] Book II, chapter 6, n. 51.

[5] Roman Ritual, title IV, chapter 1, n. 7.

Scholion II. On the Worship of the Holy Eucharist

133 **I. Necessity of worship of the Holy Eucharist.** Christ in the Eucharist must be adored with the worship of latria, even external. This is of faith from the Council of Trent: "If anyone says that in the holy sacrament of the Eucharist Christ, the only-begotten Son of God, is not to be adored with the worship of latria, even external, and therefore is not to be venerated with a special festive celebration, nor solemnly carried around in processions according to the praiseworthy and universal rite and custom of holy Church, or is not to be publicly proposed to the people that He may be adored, and that His adorers are idolaters, let him be anathema."[1] Now the sacramental species, since they pertain to the sacramental Christ, are to be adored together with the body and blood of Christ. But they constitute not the motive but the term of this adoration, and therefore the adoration, insofar as it regards the species themselves, must be called relative.

[1] Session 13, canon 6.

134 **II. Zeal for the worship of the Holy Eucharist.** Those who labor in the religious instruction of the faithful should omit nothing to excite piety toward the Most Holy Eucharist in their souls, and especially exhort them that, not only on Sundays and feasts of precept, but also on weekdays within the week, they frequently, so far as can be done, assist at the sacrifice of the Mass and visit the Most Holy Sacrament (canon 1273). Specifically, the following are noted in the Code:

1. **Exposition of the Holy Eucharist.** A twofold exposition is distinguished: private, which is made with the pyx, and public, which is made with the monstrance. Now private exposition can be made for any just cause without the permission of the Ordinary in churches or oratories to which it has been given to reserve the Most Holy Eucharist. But public exposition on the feast day of Corpus Christi and within the octave can be made in all churches during the solemnities of the Masses and at Vespers; but at other times only for a just and grave cause, especially a public one, and with the permission of the local Ordinary, even if the church belongs to an exempt religious institute (canon 1274, § 1), with the prescription of canon 1171 remaining firm, as the Sacred Congregation of the Council says,[1] that is, with parochial rights, privileges, and legitimate customs being saved, and with the right of the Ordinary of predefining, for a just cause, the hours of sacred rites in churches which do not belong to an exempt religious institute being saved.

Note 1. According to the rubrics, the pyx to be exposed cannot be taken out from the tabernacle, but can only be brought forward to its entrance.[2] But where a contrary custom is legitimately sustained, this kind of exposition of the pyx on a throne is, with respect to liceity, to be equated with public exposition. Finally, the custom of exposing the Holy Eucharist without the permission of the Bishop, where this is required by law, cannot be preserved.[3]

Note 2. The minister of exposition and reposition of the Most Holy Sacrament is a priest or deacon; but the minister of Eucharistic Benediction is the priest alone, nor can a deacon impart it except in the case in which, according to the norm of canon 845, § 2, he has carried Viaticum to the sick (canon 1274, § 2).

2. **The supplication of the Forty Hours** should be held every year in all parish churches and other churches in which the Most Holy Sacrament is habitually reserved, on days established with the consent of the local Ordinary, with the greatest solemnity possible; and if somewhere, because of particular circumstances of things, it cannot be done without grave inconvenience and with the reverence due to so great a sacrament, let the local Ordinary see to it that at least for some continuous hours, on fixed days, the Most Holy Sacrament be exposed in a more solemn rite (canon 1275).

[1] 14 July 1922 (*A.A.S.* 1922, p. 529).

[2] Sacred Congregation of Rites, 23 May 1835, n. 2725, reply to IV; 16 March 1876, n. 3394, reply to I; 28 April 1902, n. 4096, reply to VII; 16 February 1906, n. 4180, reply to II.

[3] Sacred Congregation of Rites, 14 March 1861, n. 3104, reply to XIV.

Dissertation II. On the Most Holy Eucharist as It Is a Sacrament

(St. Thomas, III, qq. 73-74; qq. 78-80; St. Alphonsus, *Theologia Moralis*, book VI, nn. 189-303; *Homo Apostolicus*, tract 15, nn. 1-58.)

We shall treat first of the Most Holy Sacrament considered in itself, then of its ministration, finally of the reception of the Most Holy Sacrament.

Part I. On the Most Holy Sacrament Considered in Itself

135 The Most Holy Eucharist is usually defined: **The sacrament of the Body and Blood of the Lord for the spiritual refreshment of the soul.**

This definition having been handed down, we shall speak first, briefly, about the existence, then about the essence, then about the effects, finally about the necessity of the Eucharist.

Section I. On the Existence of the Sacrament of the Eucharist

136 **I. The Most Holy Eucharist is a true sacrament;** this proposition is of faith from the Council of Trent: "If anyone says... that the Eucharist... is not truly and properly a sacrament, let him be anathema."[1]

Note. The sacrament of the Eucharist was instituted at the Last Supper. "For thus," says the Council of Trent, "all our forefathers, as many as were in the true Church of Christ who have discussed the Most Holy Sacrament, most openly professed that our Redeemer instituted this so admirable sacrament at the Last Supper."[2]

[1] Session 7, canon 1, On the Sacraments in general.

[2] Council of Trent, Session 13, chapter 1.

137 **II. The sacrament of the Eucharist is one sacrament in species, and indeed in the lowest species,** even though it exists under the double species, namely of bread and wine. For otherwise the dogma concerning the sevenfold number of the sacraments would not stand. Now the reason is that "although each species is materially different, nevertheless morally each constitutes one sacrament, since each signifies one banquet consisting of food and drink" (St. Alphonsus, VI, 191).

"A thing is called one," says St. Thomas, "not only because it is indivisible, or because it is continuous, but also because it is perfect, as one house and one man are said to be one. Now that is one by perfection to whose integrity all things concur which are required for its end; as man is integrated from all the members necessary for the operation of the soul, and a house is integrated from all the parts which are necessary for dwelling. And thus this sacrament is called one: for it is ordered to spiritual refreshment, which is conformed to bodily refreshment. But for bodily refreshment two things are required, namely food, which is dry nourishment, and drink, which is liquid nourishment; and therefore for the integrity of this sacrament two things also concur, namely spiritual food and spiritual drink, according to that passage of John 6: My flesh is truly food, and my blood is truly drink" (III, q. 73, a. 2).

138 **III. The sacrament of the Eucharist is numerically multiple.** Thus the much more common and much more probable opinion. The reason is that the species, which constitute the sacrament in the direct order (n. 139), are numerically multiple.

But authors differ in assigning the principle of numerical distinction; in this matter three principal opinions are defended. Some seek the number from the physical unity or plurality of the species, because, they say, number follows the unity or plurality of quantity.[1] Others derive the number from the unity or plurality of refreshment, or of the proposition of the sacrament for the sake of adoration.[2] The third opinion, recognizing part of the truth in each preceding opinion, teaches that a distinction must be made between numerical unity taken physically and taken morally. For numerical unity is

derived from unity of quantity. But this quantity is either physical, or of continuous parts, or moral, or of contiguous parts joined because of some end or in some order. Therefore there is likewise a twofold numerical unity, physical and moral. Hence the physical unity of this sacrament is taken from the physical continuity of the species; moral unity from moral continuation, insofar as they are proposed or received by way of one thing. St. Alphonsus follows this opinion as the more probable. "Several consecrated species," he says, "although discontinuous, even if physically they are several sacraments, nevertheless morally they are one sacrament from the moral conjunction which they have while they are proposed or received by way of one thing" (VI, 191). "Whence," the same holy Doctor says:

1. If one species or one host is distributed to several persons or to the same person at morally distinct times, they are different sacraments numerically.
2. Conversely, if both species or several parts of the same species, or even of species consecrated at different times, are ministered to someone at the same time, there is one sacrament.
3. Thus likewise, if different consecrated species are proposed at the same time and on the same altar, there will be one sacrament; but if they are divided and proposed on different altars, they are different sacraments (VI, 191, question 2).

[1] Thus, for example, the Salmanticenses, disputation 2, doubt 4, n. 58 and following.

[2] Thus, for example, John of St. Thomas, disputation 26, article 3.

Section II. On the Essence of the Sacrament of the Eucharist

139 The Most Holy Eucharist, like the other sacraments, consists of proximate matter and form. But for the sake of completeness, a discussion must also be made about remote matter. Now the remote matter, that is, that from which the sacrament is confected, is bread and wine; the proximate matter is the species together with the body and blood of Christ; but the form is the words of consecration, insofar as they virtually persevere. Namely, the aforesaid words, insofar as they were sensibly uttered, effected or confected the sacrament; but insofar as they virtually persevere, they constitute the sacrament as confected and remaining. Hence the words of consecration, insofar as they are sensibly uttered, are called the form of the sacrament *in fieri*; insofar as they virtually endure, they are the form of the sacrament *in facto esse*. Thus commonly the Thomists and others, while others teach that the form is not the words of consecration, since these have passed away, but the sacramental signification, that is, the refreshment of the soul through the increase of grace.

With respect to the proximate matter it is disputed in what way each element concurs in constituting the proximate matter, that is, whether the proximate matter is the body and blood connoting the species, or the species connoting the body and blood, or whether each element equally must be called the proximate matter. According to St. Thomas (III, q. 77, a. 7), the proximate matter is the species alone in the direct order, connoting the body and blood in the oblique order. The principal reason for this doctrine is taken from the fact that the sacraments are in the direct order sensible signs. But in the Most Holy Sacrament the sensible sign is had only in the species, connoting the body and blood of the Lord. Thus also teaches the Catechism of Trent.[1]

With these things noted about the essence of the sacrament in general, we shall speak specifically about the remote matter and form.

[1] Part 2, chapter 4, question 8.

Chapter I. On the Remote Matter

140 The matter from which the sacrament of the Eucharist is confected, or the matter around which, as others say, is bread and wine. This doctrine, after the Third Council of Carthage, the Fourth Lateran Council, and Florence, is expressed by the Council of Trent in these words: "It was always firmly believed in the Church, and now this Synod again declares it, that through the consecration of bread and wine a conversion takes place."[1] We shall speak about each matter separately.

[1] Session 13, chapter 4; cf. canon 2.

Article I. On the Matter of Bread

141 **I. The matter required for validity** is bread, composed of wheaten flour and water, and uncorrupted with respect to substance. It does not matter for validity whether it is unleavened or leavened. I said:

1. **Bread.** Therefore invalid matter is: a) a raw or uncooked mass of flour; b) a mass which was not baked by fire but boiled after the manner of porridge or cake; c) a fried mass. The reason is that all these things do not come under the name of bread. Nevertheless it does not matter whether the bread has been baked by electric fire or by another fire.
2. **Composed of wheaten flour and water.** That wheaten bread is required is clear: 1. from the Council of Florence[1] and from various liturgies;[2] 2. from the fact that Christ used wheaten bread, and this bread alone is and was usual in Palestine.[3] Therefore invalid matter is:

a) Food confected from matter which is not grain, for example from flour of beans, potatoes, etc.

b) Bread confected from grain which is not wheat, for example from millet, barley, oats, maize, rice, or rye; the grain which in Dutch is called *emer* is doubtful matter.

By the name spelt there is sometimes designated a kind of wheat, sometimes grain which in no way or doubtfully belongs to the genus of wheat. Therefore in practice attention should be paid to the quality and to the judgment of experts. For the rest, it does not matter whether the wheat is summer or winter wheat.

3. **Composed of wheaten flour and water.** This is clear from the fact that bread thus composed was used by Christ, and was usual in Palestine.[4] Therefore invalid matter would be flour kneaded only with oil, honey, wine, butter, or milk; flour kneaded with artificial or at least non-usual water, such as rose water, is doubtful matter[5] (St. Alphonsus, VI, 199).

Admixture made with wheat certainly does not obstruct validity if the quantity of wheat notably prevails; it certainly obstructs if the quantity of wheat is notably smaller; otherwise, that is, if the suitable and unsuitable quantity is equal or differs little, the species has at least probably been changed, and therefore the matter is at least doubtfully valid (cf. St. Thomas, III, q. 74, a. 3, ad 3; St. Alphonsus, VI, 201).[6] Thus, with regard to the quantity of the admixed matter; with regard to its quality, a smaller quantity can sometimes suffice to change the wheat to which it is admixed.

4. **Uncorrupted with respect to substance.** Bread notably corrupted is in practice doubtful matter; but moldy bread, or bread only tending toward corruption, is valid matter.
5. **For validity it does not matter whether the bread is unleavened or leavened.** This is clear from the Council of Florence[7] (cf. canon 816).

[1] Denzinger-Bannwart, n. 692.

[2] Cf. Roman Missal, On Defects, title 3, n. 4.

[3] Vigouroux, *Dictionnaire de la Bible*, word *pain*, p. 1951.

[4] Vigouroux, loc. cit.

[5] Roman Missal, On Defects, title 3, n. 2.

[6] Cf. Sacred Congregation for the Discipline of the Sacraments, 16 March 1929 (*A.A.S.* 1929, p. 632).

[7] Denzinger-Bannwart, n. 692.

142 **II. The matter required for liceity** is bread:

1. Merely wheaten (canon 815, § 1), indeed altogether pure, to which, namely, matter diverse from wheat or water has not been admixed; indeed it is better that the flour have been purified by a sieve.

2. Entirely uncorrupted; hence not at all moldy. But for how much time after their baking hosts remain entirely uncorrupted depends on the circumstances of weather, place, manner of preserving them, etc.

3. Recently confected, so that there is no danger of corruption. Thus canon 815, § 1. And the Roman Ritual:[1] "But the hosts or particles to be consecrated should be fresh." Now the Sacred Congregation of Rites, in the case of Ghent,[2] reprobated the custom of consecrating hosts confected three months previously in wintertime or six months previously in summer; and the Sacred Congregation for the Discipline of the Sacraments[3] rejected the practice of procuring for oneself so many hosts as would suffice for two or three months. Now, although in the judgment of chemists the danger of corruption is commonly exaggerated, nevertheless, considering the mind of the Church, it should be urged that hosts to be consecrated not have been baked more than two weeks or a month previously.[4]

4. Of circular and thin shape in the Latin Church; square in the Greek Church. Thus from ancient practice. Besides, the host should be:

5. Whole, clean, and, according to use, larger for the priest. If the fracture or spot is enormous, or if the host begins to grow moldy, its use is prohibited under grave obligation. Hence it is not permitted to use this kind of host except for a grave cause, for example if the defect is detected after the oblation has been made, provided, however, that scandal does not arise from its use, and that the host is not so broken that the grave rites cannot be carried out[5] (St. Alphonsus, VI, 204). The use of a host simply broken or spotted, or smaller, is prohibited only under light obligation. Therefore a just cause excuses, for example if otherwise a sick person would lack Viaticum or the people would lack Mass; indeed, quite probably the devotion of the priest alone suffices (St. Alphonsus, VI, 205).

6. Unleavened in the Latin Church, leavened in the Greek;[6] for canon 816 establishes: In the celebration of Mass, a priest, according to his own rite, must use unleavened or leavened bread wherever he offers the sacred sacrifice.

Considering the cited canon, the opinion no longer seems to hold which conceded that a priest, as a traveler living in a region of another rite, might consecrate the bread of that rite if bread of his own rite was not available. For the rest, the obligation of using bread of one's own rite is considered so great

that not even for ministering Viaticum to a sick person is it permitted to consecrate bread of another rite. The reason is that the common good, because of which the law was passed, that is, the necessity of preserving for each Church its own rite, in the mind of the Church prevails over the divine precept of receiving Viaticum; this necessity of the common good, of course, was once more evident than today. Nevertheless the use of bread of another rite is licit for completing the sacrifice; as if after the wine has been consecrated the bread used should be detected as corrupted, and only bread of another rite should be available (St. Alphonsus, VI, 203).

The distribution and reception of the Holy Eucharist confected in another rite will be discussed later.

[1] Title IV, chapter 1, n. 7.

[2] 16 December 1826 (*Collectanea*, n. 2650).

[3] 7 December 1918.

[4] Concerning consecrated Hosts, see n. 132.

[5] Roman Missal, On Defects, title X, n. 9.

[6] Certain Orientals, however, such as Armenians and Maronites, use unleavened bread; cf. Sacred Congregation de Propaganda Fide, 20 May 1838.

Article II. On the Matter of Wine

143 **I. The matter required for validity** is wine from the vine, whether white or red, whether mixed from each, whether strong or weak. There is required:

1. **Wine,** as is clear from what was said in n. 140 and from the things to be said under 2.
2. **Wine from the vine,** as is deduced: 1. from the fact that Christ used that matter;[1] 2. from the Decree of Eugene IV; 3. from universal Tradition; 4. from the fact that only the assigned liquid, according to common estimation, is called true wine.
3. **Whether white, etc.** The reason is that all the wines assigned are true wine.

Corollary I. Valid matter is:

a) Must, that is, recently fermented wine not yet cleared from sediment; indeed, as they deduce from chapter *Cum omne*, *De consecratione*, distinction 2, and from the Roman Missal,[2] even wine recently expressed from grapes and not yet fermented. Vermeersch,[3] however, requires that it have begun to ferment.

b) Wine from dried grapes, provided it is duly prepared, so that "from color, odor, and taste it is recognized to be true wine";[4] in which case it is also licit to use it.

c) Wine to which a small amount of another liquid has been admixed. If a notable quantity is admixed, the matter easily becomes doubtful.

Corollary II. Invalid matter is:

a) Liquid expressed from fruits other than grapes, for example from apples, cherries, currants, or from grains, even if perhaps it is called wine; likewise spirit of wine. The same seems to have to be said of wine made by chemical art, even if it consists of the same elements as ordinary wine. The reason is that it is not wine from the vine.

b) Juice not yet expressed from grapes. Likewise verjuice or *omphacium*, that is, juice from unripe grapes.[5] Likewise *lora*, that is, liquid from grapes previously pressed and, a great quantity of water having been poured over them, pressed again. But if water is poured in a smaller quantity, the matter will be valid or doubtful.[6]

c) *Sapa* or *defrutum*, because although it contains the substance of wine, nevertheless it has obtained the nature and use of food.

d) Vinegar, because it differs substantially from wine. If wine becomes sour from initial corruption, the matter will easily be doubtful; otherwise if it is from the fact that the grapes were not perfectly ripe.

e) It is disputed whether frozen wine is valid matter. Now it seems to have to be affirmed, both because by its nature it is drinkable, and because the Blood of Christ remains under the species of frozen wine;[7] this proves that wine is not corrupted by freezing.

Nor should you object: just as the water of Baptism must be liquid, so also the wine of the Most Holy Eucharist. Response: I deny the parity; for the water of Baptism must be liquid by reason of washing, that is, of the proximate matter of Baptism; but drinking, by reason of which wine would have to be liquid, is not the proximate matter of the Most Holy Eucharist.

[1] Matthew 26:29.

[2] On Defects, title IV, n. 2.

[3] *Theologia Moralis*, III, 371.

[4] Holy Office, 22 July 1706 (*Collectanea*, n. 270); 7 May 1879 (*Collectanea*, n. 1518).

[5] "Today, however, often from unripe grapes wine is made which has the appearance of true wine, sugar being added, which is lacking to the grapes. But when the quantity of sugar thus added would exceed that which is found in must, the matter would be at least illicit" (Geniot-Salsmans, *Theologia Moralis*, II, n. 121).

[6] Today, after grapes have been pressed once, a solution of sugar is commonly poured over them several times, and a quantity of wine five times greater than that which would have been obtained from the berries once pressed is obtained.

[7] Roman Missal, On Defects, title X, n. 11.

144 **II. The matter required for liceity** is wine:

1. Fermented and cleared from sediment. It would be a grave sin without grave necessity to consecrate wine not yet cleansed from sediment. Nevertheless it is permitted to use wine cleansed from sediment through evaporation and condensation, provided fermentation is not excluded.[1] Likewise it is a grave sin without grave cause to use wine notably infected with sediment. Nevertheless it is permitted to consecrate wine that is merely turbid.
2. Pure, that is, not mixed with foreign matter, for example with aromatics. Nevertheless the Holy Office[2] permitted that spirit of wine be admixed to weak wine, "provided the spirit has been extracted from the produce of the vine and the alcoholic quantity, together with that which the wine in question naturally contains, does not exceed the proportion of 12%, and the admixture is made when it is very fresh." Indeed the same Congregation permitted[3] that the spirit of wine be increased up to 17-18 percent, if this is required for preserving very strong and extraordinarily sweet wines. The use of port wine seems illicit, because it contains too much spirit of wine, namely 18-21 percent.

3. Not becoming sour. "If the wine has begun to become sour or corrupted, or has been somewhat sharp... the sacrament is confected, but the one confecting sins gravely."[4] These words, with several authors, are to be taken thus:

a) If the wine becomes sour from initial corruption, in which case the matter becomes doubtful, that is, it becomes doubtful whether it is wine or vinegar, proceed according to what was said in n. 147.

b) If the wine becomes sour from natural sharpness, arising from the fact that the grapes were not perfectly ripe, the matter is valid but illicit; in this case these things hold:

1. If it becomes notably sour, it is permitted to use it when grave necessity urges, provided it is certainly wine (St. Alphonsus, VI, 207).
2. If it becomes only slightly sour, per se indeed, as the Roman Missal expressly declares, it is mortal to use it; but these things are not to be urged so far that it would not be permitted to use it if other wine is lacking (St. Alphonsus, loc. cit.). Finally, one who celebrates in another's church, or as a religious subject does not have care of the wine, should proceed without scruple even if the wine is a little sour, the danger being thrown back upon the rector of the church or upon the superior.
4. A very small amount of natural water should be admixed to the wine (canon 814). The admixture, however, must be made by way of ceremony, that is, at the altar and in the chalice; hence an admixture before the sacred rite, even by the priest himself, for example made in the cruet, does not suffice. If the admixture has been omitted and this is noticed before the consecration, it must be made immediately; if it is noticed after the consecration, it must be omitted.[5] For the rest, observe:

a) The admixture of water is not required for validity, as the Roman Missal has it.[6] Nevertheless it is prescribed, as is clear from the Council of Trent,[7] from canon 814, and from the rituals. Yet more probably it is not of divine law but only of ecclesiastical law; this is deduced from the fact that neither in Sacred Scripture nor in Tradition is a divine origin indicated, and ecclesiastical documents, notably the Council of Trent,[8] rather insinuate that it is an ecclesiastical precept (St. Alphonsus, VI, 208).

b) The precept obliges under grave obligation, as the Roman Missal says.[9] The reason is that its ends are grave, namely so that there may be signified: 1. the water and blood which flowed together from the side of Christ; 2. the union between Christ, who is represented by the wine, and the faithful, who are represented by the water;[10] 3. the union of the twofold nature in Christ (St. Thomas, III, q. 74, a. 6; St. Alphonsus, VI, 208). Indeed the obligation is considered so grave that scarcely ever is it permitted to consecrate without water admixed. Natural water is required, so that one would sin gravely who used, even in necessity, water which was not natural (St. Alphonsus, VI, 208, 2).

c) Only a very little or little water must be admixed.[11] One or another small drop suffices, although a somewhat greater quantity is urged. Yet it must especially be guarded against that the admixture be made up to a third part of the quantity, since that would render the matter doubtful (St. Alphonsus, VI, 210).

d) The admixed water, according to the opinion of all, is converted into the Blood. But it is disputed whether it is converted into the Blood without first having been converted into wine, or whether it is converted first, at least according to common estimation, into wine, then into the Blood. Those who admit the first argue from the fact that the molecules of the admixed water remain numerically the same, or retain their individuation. Those who hold the second reason from the fact that the molecules

of water do not remain numerically the same, but receive a new individuation from the greater quantity.

[1] Holy Office, 5 August 1896 (*Collectanea*, n. 1950); 22 May 1901 (*Collectanea*, n. 2113).

[2] 30 July 1890 (*Collectanea*, n. 1735).

[3] 5 August 1896 (*Collectanea*, n. 1950); 22 May 1901 (*Collectanea*, n. 2113).

[4] Roman Missal, On Defects, title IV, n. 2.

[5] Cf. St. Thomas, III, q. 74, a. 5, ad 2; Benedict XIV, *Institutiones*, 77, n. 2.

[6] Roman Missal, On Defects, title IV, n. 7.

[7] Session 22, chapter 7.

[8] Loc. cit.

[9] On Defects, title IV, n. 2.

[10] Council of Trent, session 22, chapter 7.

[11] Council of Florence; Roman Missal, *Ritus servandus*, title VII, n. 4.

Scholion. On a Defect of Valid or Certainly Valid Matter Detected in Mass

145 **I. If a priest in Mass notices that the host is corrupted or is not wheaten,** let him proceed thus:

1. If he notices this before the consecration, then, that host having been removed, let him place another and, the oblation having been made, at least conceived mentally, continue from the place where he left off.

2. If he notices this after the consecration, even after the consumption of that host:

a) If before the consumption of the Blood, after another host has been placed and the oblation made, at least conceived mentally, let him consecrate it, beginning from the words: **Who the day before He suffered**; then let him consume it, even if he has already consumed the former host. If he has not consumed the former host, let him consume it after the consumption of the Blood, hand it to another to be consumed, or preserve it reverently somewhere.

b) If after the consumption of the Blood, new bread and wine with water must again be placed; and the oblation first having been made as above, he consecrates each, beginning from those words: **Who the day before**; and immediately consumes each, and continues the Mass.[1]

[1] Cf. Aertnys-Damen, who set these things forth in order (vol. II, n. 114); Roman Missal, On Defects, title III, nn. 4-6.

146 **II. If a priest in Mass notices that there is not wine in the chalice, but another matter or corrupted wine,** let him proceed thus:

1. If he notices this before the consumption of the Body, then, the invalid matter having been placed in another vessel, let him again place wine with water in the chalice and, the oblation having been made, at least conceived mentally, consecrate beginning from the words: **In like manner**, etc., and continue where he left off.

2. If he notices this after the consumption of the Body or of that invalid matter,[1] it must be done thus:

a) If Mass is celebrated privately, that is, in a non-public place, let him place another host to be consecrated again, and wine with water in the chalice, let him offer each, and consecrate each, beginning from the words: **Who the day before**, and consume, although he is not fasting.

b) If Mass is celebrated in a public place, where several are present, to avoid scandal it suffices to place only wine with water and, the oblation having been made as above, to consecrate, immediately consume, and continue the rest.[2]

[1] If the priest detects the defect in the consumption of the chalice, he can swallow the draft which he has in his mouth (St. Alphonsus, VI, 288). If nevertheless he has done this, he cannot, for example on the feast of the Nativity of the Lord, celebrate other Masses.

[2] Roman Missal, On Defects, title IV, nn. 4 and 5. According to others, even in the case in which he celebrates privately, it is permitted to consecrate only wine, because there remains one sacrifice and the order of consecration is not inverted.

147 **III. If the priest after the consecration notices that the matter is doubtfully valid,** let him proceed in the same manner as was explained above. It is disputed, however, whether the other consecration must be done absolutely or under this condition: **if the prior matter was not consecrated.** Most favor conditional consecration, because otherwise, if perhaps the prior matter was consecrated, another consecration would not correspond to the new consecration (St. Alphonsus, VI, 206).

Matter doubtfully consecrated is to be consumed after the consumption of the Blood; if this cannot be done, it is to be treated as is explained in the Roman Missal.[1]

IV. If the whole Blood is spilled, so that nothing remains, let the priest again place wine and water, offer, and consecrate from that place: **In like manner**, etc.[2]

[1] On Defects, title X, nn. 6 and 7.

[2] On Defects, title X, n. 13.

Chapter II. On the Form

148 **I. The legitimate and usual form is:**

1. For the Latin Church: **For this is my body. For this is the chalice of my blood, of the New and Eternal Testament, the mystery of faith, which for you and for many shall be poured out unto the remission of sins.** "The words of consecration," says the Roman Missal,[1] "which are the form of this sacrament, are these: **For this is my body**, and: **For this is**, etc."
2. For the Greek Church: **Take and eat: this is my body, which is broken for you unto the remission of sins. Drink ye all of this: for this is my blood of the New Testament, which is poured out for you and for many unto the remission of sins.**

Now the form is to be uttered not merely recitatively or historically, that is, as uttered by Christ Himself, but also assertively or significatively, that is, with the mind of asserting that this is the body and blood of Christ (St. Alphonsus, VI, 220).

Note. The epiclesis, as it is called, does not pertain to the form. Now the epiclesis is an invocation of the Holy Spirit by which the Church prays that the bread and wine may become for us the body and blood of Christ. It occurs in the Roman Liturgy before the consecration, in the Eastern liturgies after the consecration. Now that this epiclesis is either the sole or at least the principal form of the Most

Holy Sacrament, as having the sole or principal force of effecting transubstantiation, several Greek schismatics have admitted from the fourteenth century, and a few Catholics agreed with them. But this opinion is to be rejected, as is clear from the Decree for the Armenians to be cited under II; likewise from the letter of Pius VII, *Adorabile Eucharistiae*, 8 May 1822, to the Antiochian Patriarch and the bishops of the Greek Melchites. The epiclesis, as the Greeks confessed with Bessarion[2] in the Council of Florence,[3] on the one hand is a ceremony by which that which the words of consecration effect is explained, and on the other hand is a prayer by which the Church asks that the body and blood of Christ may not only simply be such, but may also become fruitfully for the faithful, by the grace of the Holy Spirit, the body and blood of Christ (cf. St. Thomas, III, q. 83, a. 4, ad 7).

[1] Roman Missal, On Defects, title V, n. 1.

[2] *De Sacr. Euch.* (Migne, *Patrologia Graeca*, 161, col. 514 and following).

[3] Session 25 (Hardouin, vol. 18, col. 512 D-536 inclusive).

149 **II. The essentials of the form** are determined in these things:

1. These are certainly essential: **This is my body**; and: **This is my blood**, or: **This is the chalice of my blood.** This is a certain opinion. "The form of this sacrament," says Eugene IV in the Decree for the Armenians, "is the words of the Savior, by which He confected this sacrament. For the priest, speaking in the person of Christ, confects this sacrament."

2. These are certainly not essential:

a) The word **for**, both in the consecration of the bread and in the consecration of the wine.

b) The words preceding the form, namely **Who the day before**, etc., and **In like manner**, etc., almost certainly do not pertain to the essence, since in the instruction of Eugene they are not reckoned among those things which pertain to the form (St. Alphonsus, VI, 222).

3. There is dispute about the words **New** through **of sins**. Some judge that they pertain to the essence, because it must be expressed that the consecration is sacrificial, or that the presence of Christ is an immolative presence. Nevertheless the contrary opinion is more common and more probable, both because St. Paul has only these words: **This chalice is the new Testament in my blood**; and because in different liturgies different words from the cited words are omitted; and because the analogy of the consecration of bread is added. Nevertheless in practice the first opinion must be followed, as is clear (St. Alphonsus, VI, 223).

Corollary I. The forms are invalid: 1. **This body is mine**; **this blood is mine**; for then before the consecration the body and blood are asserted to be present, though they are constituted present through the consecration. It is otherwise if someone only transposed the words, so that the sense would be: "This, it is my body." 2. If someone deliberately used the word **this** adverbially; otherwise if by error. 3. If someone omitted **is**, because the circumstances do not sufficiently indicate that that word is understood, or at least do not sufficiently signify that it is understood in the sense which imports production.

Corollary II. The forms are doubtful: 1. **That is my body**; **that is the chalice**, etc., because although the pronoun *that* is rather often used for *this*, nevertheless it does not certainly signify a thing present to the speaker. The forms are still more doubtful: **That over there is my body**; **that over there is the chalice**, etc. 2. **This is my flesh**, because flesh, strictly speaking, does not signify the whole body.

Corollary III. The form is valid: **This thing, this substance, is my body.** It is otherwise: **This bread is my body** (cf. St. Alphonsus, VI, 221-223).

150 **III. With respect to liceity, observe** that an omission, addition, or change knowingly made, even if it does not obstruct validity, easily constitutes grave sin. Nevertheless there can be only venial sin, for example if someone omitted only the word **for**. For the rest, the words should be uttered distinctly, reverently, and, as the Missal admonishes, secretly, not in a loud voice or with vehement expulsion of words from the mouth. In order that every danger of erring may be avoided, it is better to read the form from the altar card.

IV. With respect to errors to be corrected, note that if the form must be repeated, one must always begin from the words **Who the day before**, or **In like manner**.[1] For the rest, receive these things from the Missal: "If the celebrant does not remember that he said those things which are commonly said in the consecration, he ought not for that reason be troubled. If, however, it is certain to him that he omitted something of those things which are of the necessity of the sacrament, that is, the form of consecration, or part of it, let him resume the form itself and continue the rest in order. But if he very probably doubts that he omitted something essential, let him repeat the form at least under a tacit condition. But if the things are not of the necessity of the sacrament, let him not resume them, but proceed further."[2]

[1] Roman Missal, On Defects, title III, nn. 5, 6, 7; title IV, nn. 3, 4; title X, nn. 3, 13.

[2] Roman Missal, On Defects, title V, n. 2.

Section III. On the Effects of the Sacrament of the Eucharist

The primary effect of the Most Holy Eucharist, to which the others are reduced, is perfect union with Christ in charity and with neighbor in Christ. Specifically, the following are enumerated:

151 **I. With respect to the soul.** 1. Sanctifying grace, per se second grace, per accidens more probably first grace (St. Thomas, III, q. 79, a. 7, ad 2; St. Alphonsus, VI, 269; n. 6).

2. Sacramental grace; this consists in the fact that the sanctifying grace which the Holy Eucharist confers is both ordered to perfecting charity, or union with God and the faithful, and confers a right to actual graces to be received in order to that effect.

3. Fervor of charity, to which spiritual sweetness is attached. "But the love of God is not idle; for it does great things if it exists; and therefore through this sacrament, so far as concerns its power, not only is the habit of grace and virtue conferred, but it is also excited into act, according to that passage of 2 Corinthians 5: The charity of Christ urges us. And thence it is that by the power of this sacrament the soul is spiritually refreshed, by the fact that the soul is spiritually delighted and in a certain way intoxicated with the sweetness of the divine goodness, according to that passage of Canticles 5: Eat, friends, and drink, and be inebriated, dearly beloved" (St. Thomas, III, q. 79, a. 1, ad 2).

4. Remission of venial sins[1] (St. Thomas, III, q. 79, a. 4; St. Alphonsus, VI, 269). But it is disputed whether the Most Holy Eucharist remits venial sins both immediately, or *ex opere operato*, and mediately, or *ex opere operantis*, or only mediately, namely by exciting acts of charity by which venial sins are directly remitted; concerning this, compare what is to be said in the treatise on Penance.

5. Remission of temporal punishment (St. Thomas, III, q. 79, a. 5; St. Alphonsus, VI, 269). Again it is disputed whether both immediately, or *ex opere operato*, and mediately, *ex opere operantis*, or only mediately, by moving to acts of charity by which not only guilt but also punishment is remitted; concerning this, again compare what is to be said in the treatise on Penance.

[1] Council of Trent, Session 13, chapter 2.

152 **II. With respect to the body,** the Most Holy Eucharist especially diminishes concupiscence of the flesh (St. Alphonsus, VI, 269). But whether it effects this immediately and mediately, or only mediately, is doubtful (St. Alphonsus, VI, 269).

153 **III. With respect to body and soul.** 1. Spiritual sweetness, of itself overflowing into the body (St. Thomas, III, q. 79, a. 1, ad 2; St. Alphonsus, VI, 269).

2. The glorious resurrection of the body.[1]

[1] John 6:55.

154 **IV. With respect to others,** it is useful to note specifically a certain social effect, namely mutual union among the faithful, to which effect attention is already given more today. "For we, being many, are one bread, one body, all who partake of one bread."[1]

Question. At what time does the Eucharist confer grace?

Response 1. It certainly confers it at the time at which the species are eaten and drunk, that is, are carried into the stomach. Hence: 1. "The species are not to be retained in the mouth so long that they wholly perish, because then Christ would not be eaten, nor would the grace of the sacrament be conferred" (St. Alphonsus, VI, 227). 2. If someone had received the host indisposed, and then, disposed, received the blood, he would receive grace (St. Alphonsus, loc. cit.).

Response 2. It is disputed whether the Eucharist, with disposition increased, continues to confer grace for as long as the species remain uncorrupted. It seems it must be affirmed, because the Eucharist is rightly judged to operate after the manner of nourishing food.

[1] 1 Cor. 10:17.

Section IV. On the Necessity of the Sacrament of the Eucharist

The necessity both of means and of precept must be examined, yet only of divine precept, because the ecclesiastical precept was discussed in vol. I, n. 1108.

Chapter I. On Necessity of Means

155 I first note these words of the Council of Trent: "If anyone says that Eucharistic Communion is necessary for little children before they have arrived at the years of discretion, let him be anathema."[1] Wherefore note that here the matter concerns real reception of the Most Holy Eucharist; hence it is of faith that such reception is not necessary for little children. These things being noted, with respect to necessity of means I say:

I. It is disputed whether or not the Most Holy Eucharist is necessary by necessity of means for justification, this necessity being taken in the proper sense, namely so that it is necessary by way of efficient cause. Some affirm this because of these words of St. John: "Unless you eat the flesh of the Son of man and drink His Blood, you will not have life in you."[2] Hence in their opinion the Most Holy

Eucharist, if it can conveniently be done, must be received in reality; if this cannot conveniently be done, it must be received in desire; but little children receive it in this way through the Church. In this opinion it must also be admitted that Baptism and Penance do not justify except with desire for the Most Holy Eucharist.

Others deny that the Most Holy Eucharist is necessary by necessity of means for obtaining justification, both because Sacred Scripture[3] assigns Baptism as a sufficient means for acquiring first grace, and because the Most Holy Eucharist is the sacrament of the living and therefore per se supposes grace, and because it is very difficult to admit that a sacrament which by a great part of human beings, that is, by little children per se, or by force of natural condition, cannot conveniently be received in reality, and therefore must be received in desire, that such a sacrament, I say, has been constituted necessary by necessity of means. I said: cannot conveniently be received in reality, and this indeed in such a way that it is forbidden by the Church to give the Most Holy Eucharist to little children.

Nevertheless a peculiar necessity of means is rightly admitted, namely by way of final cause, insofar, namely, as the Most Holy Eucharist is the end of all the sacraments, so that they, even Baptism and Penance, do not confer grace except by looking toward the Most Holy Eucharist (St. Alphonsus, III, 192).

II. It is disputed besides whether or not the Most Holy Eucharist is necessary by necessity of means for preserving grace. Some deny this, because there are other means also for preserving grace. Others affirm it, "because just as the life of the body cannot long be preserved without material food, so the life of the soul cannot be preserved without this spiritual food, at least in desire, and indeed explicit desire in one who notices the necessity of this sacrament" (St. Alphonsus, VI, 193). At least moral necessity seems commonly to be admitted.

With respect to the opinion of St. Thomas on the necessity of the Most Holy Eucharist, cf. III, q. 73, a. 3; III, q. 79, aa. 1 and 3; III, q. 80, aa. 2 and 11.

[1] Session 21, canon 4; cf. chapter 4.

[2] John 6:54.

[3] Mark 16:16; Gal. 3:27; Titus 3:5.

Chapter II. On Necessity of Divine Precept

156 **I. The existence of a divine precept** is clear first from Sacred Scripture. "Unless you eat the flesh of the Son of man and drink His blood, you will not have life in you";[1] these words, if they do not exhibit necessity of means, at least exhibit a precept. Then, according to the Council of Trent, the Lord "commanded us in its reception to cherish His memory and to announce His death."[2] Finally, it is insinuated from the fact that Christ, by instituting the sacrament by way of food and drink, sufficiently hinted that its reception is commanded, just as the use of bodily food is commanded. Now that the precept is grave follows both from the gravity of the matter and from the most grave punishment by which it was sanctioned by Christ (St. Alphonsus, VI, 295).

[1] John 6:54.

[2] Session 13, chapter 2.

157 **II. The subject of the divine precept** is adults who enjoy the use of reason, and indeed all of them. It is said:

1. **Adults who enjoy the use of reason.** Therefore little children are not bound, nor those who are equated with them, that is, the perpetually insane (cf. canon 88, § 3); this is clear already from the fact that the Church prohibits the Eucharist from being conceded to them (canon 854; Roman Ritual).[1]

2. **And indeed all of them,** even: 1. unbelievers, insofar, namely, as they are bound to receive Baptism and, Baptism having been received, to communicate; 2. children. With respect to children this is first proved from the words of Christ cited above, which are pronounced without restriction and therefore must be judged to regard all who are capable of the precept. Then the ecclesiastical precept also binds children. But the Church only determines divine law. Then the decree of the Sacred Congregation of the Sacraments *Quam singulari*[2] insinuates this, both by alleging reasons which militate equally for the divine precept and for the ecclesiastical, and by citing testimonies of authors who defend the divine precept. Pius X sufficiently signifies the same in his Letter to the Archbishop of Cologne.[3] Finally no reason can be assigned why the divine-positive law would not comprehend children, since they are capable of law equally as other adults are.

[1] Title IV, chapter 1, nn. 10 and 11. In the Eastern Church the Eucharist has customarily been given to infants.

[2] 8 August 1910.

[3] 31 December 1910 (*Acta Apostolicae Sedis*, vol. 3, p. 18).

158 **III. The time at which it obliges.** 1. The divine precept obliges per se: 1. several times during the course of life; 2. in danger of death. It is said:

a) **Several times during the course of life.** This is deduced from the fact that Christ, by instituting the Holy Eucharist by way of nourishment, sufficiently signifies that it must be received at least several times. Now the one who fulfills the ecclesiastical precept certainly satisfies the divine precept of communicating several times during the course of life (St. Alphonsus, VI, 295).

b) **In danger of death.** For if the Eucharist is to be received several times in life, it certainly must be received at that moment at which it is of the greatest interest, and is more difficult, to preserve and nourish the spiritual life. There are added the most ancient law and practice[1] of ministering the Eucharist to those constituted in danger of death, even with harm to the minister;[2] these introduce the suspicion that the Holy Eucharist must be received in danger of death by precept of Christ (St. Alphonsus, VI, 291).

Now grave danger of death is understood; this is present either physically, as if someone is gravely ill; or, morally speaking, as if there is imminent execution of a capital sentence, a dangerous operation, battle, shipwreck, difficult childbirth, or a journey full of danger.

Moreover, the precept of communicating in grave danger which is physically present is to be understood so that as soon as someone is gravely ill, he can fulfill the precept, but when death is more imminent, he must fulfill it.

2. The divine precept obliges per accidens when the Eucharist is held as a morally necessary means of avoiding sins, namely insofar as other means are lacking or at least are not applied; concerning this, note that for the most part those who do not approach the Holy Eucharist attend neither to prayer

nor to mortification. "But in that case... a man by omitting it would not sin against its precept, but against the virtue against which he suffers temptation" (St. Alphonsus, VI, 295).

Question 1. Whether one is bound to communicate when danger of death is imminent, if he communicated a few days before when he was not yet constituted in danger.

Response. Several deny it, but with St. Alphonsus (VI, 285) it seems it must be affirmed, because according to what was said above the obligation seems attached to the danger of death itself, so that it cannot be satisfied before.

Question 2. Whether one is bound to communicate when danger of death is imminent, if he communicated the same day when he was not yet constituted in danger.

Response. Such a person certainly can communicate again on the same day; indeed this is urged for him by canon 864, § 2. For the rest, some judge that he is not bound, because the divine precept has already been satisfied, and there is no ecclesiastical precept. There is added the fact that canon 804, § 2 declares: Even if they have been refreshed by Holy Communion on the same day, nevertheless it is strongly to be urged that those brought into danger of life communicate again. But with St. Alphonsus (VI, 285, doubt 3) we judge that he is bound, because according to the things said in the response to the first question he has not yet satisfied the divine precept. As regards canon 864, § 2, I respond that the Code abstracts from the interpretation of divine law, concerning which there is dispute among doctors; and therefore by the cited canon our question is not settled, but, while the dispute stands, the legislating Church, so far as depends on her part, proceeds only by urging. Therefore one who communicated in the morning is bound to communicate again if, for example, in the course of the day he was dangerously wounded or suddenly seized by illness.

It must be said otherwise if at the time of the prior Communion, even one received from devotion alone, grave danger was already present, although afterward it grows worse. In such a case one is neither bound nor able to communicate. He is not bound because he has already satisfied the divine precept. Nor can he, because in this hypothesis there is no reason why the prohibition of communicating twice should be judged not to urge. St. Alphonsus (loc. cit.) also applies this doctrine to the case of apoplexy or something similar, because the illness is presumed already to have pre-existed. Here, however, note that in doubt whether grave danger was present at the time of Communion, its reception can be repeated.

Note. From ecclesiastical law I add these things: Holy Viaticum is not to be deferred too much for the sick; and those who have care of souls should carefully watch that the sick be refreshed by it while fully in possession of themselves (canon 865). Likewise, "while danger of death endures, Holy Viaticum, according to the prudent counsel of the confessor, may and fittingly should be administered several times on distinct days" (canon 864, § 3).

[1] Already the First Council of Nicaea, canon 13, calls that law ancient (Hefele, *Histoire des Conciles*, Paris ed. 1907, vol. 1, p. 7, p. 593 and following).

[2] Nor does it stand in the way that Viaticum was once sometimes denied to some dying persons, for example those condemned to death; since this practice was not universal, was rather often disapproved by ecclesiastical authority, and rested on the opinion that the divine precept could not conveniently be fulfilled in such circumstances (Rath, *De Eucharistia*, n. 219). Indeed I would not even deny that such things, although pertaining to divine law, can be moderated by the Church because of the common good.

159 **IV. The manner of fulfilling the divine precept;** concerning this it suffices to note these things: there is no obligation of receiving the Eucharist under both species. This is of faith from the Council of Trent defining: "If anyone says that by the precept of God or by necessity of salvation all and each of Christ's faithful must receive each species of the Most Holy Sacrament of the Eucharist, let him be anathema." Indeed in the Latin rite it is not even permitted to minister the Eucharist under the species of wine (canon 852). But it is clear that the precept is not satisfied by sacrilegious Communion. Let the confessor see, however, whether it is expedient to warn the dying penitent about the obligation of communicating again. If Viaticum is ministered again, let this be done on another day under the pretext of Communion from devotion; indeed if otherwise the dying person would be exposed to danger of infamy, there is sufficient reason for ministering Viaticum secretly and even without the pastor's knowledge. If there is danger in delay, let it be ministered on the same day on which Communion was sacrilegiously received.

Part II. On the Ministration of the Most Holy Sacrament

By the word **ministration** we comprehend both the confection and the dispensation of the Eucharist. Hence:

Section I. On the Confection of the Most Holy Sacrament

160 **I. The minister of confection.** Only and every priest can confect the sacrament of the Eucharist; this proposition is of faith. The Fourth Lateran Council defines: "Certainly no one can confect this sacrament except a priest who has been duly ordained."[1] And the Council of Trent says: "If anyone says that by those words, **Do this in commemoration of me**, Christ did not institute the Apostles priests, or did not ordain that they and other priests should offer His body and blood, let him be anathema."[2] For the rest, note:

1. It is not permitted for several priests to concelebrate, except in the Mass of ordination of priests and in the Mass of consecration of bishops according to the Roman Pontifical (canon 803).
2. Even if several concelebrate, there is only one sacrament in number (n. 20).
3. In the case in which several concelebrate, according to some, each one confects the sacrament only when they pronounce the words at the same time. Hence if someone intended to consecrate independently of the others, and pronounced the words before the others, he alone would confect the sacrament. To guard against this, the concelebrating priests should intend to consecrate only then when they pronounce the words at the same time with the principal celebrant. According to others, the concelebrants form a college *in solidum*, which as such confects the sacrament, and therefore through the utterance of the words by each one constitutes, as it were, one form, which is completed only when all have pronounced the words. Hence all should intend a collegial consecration.[3]

In practice it suffices, and is better, to consecrate according to the mind of the Church.

[1] Denzinger-Bannwart, n. 430.

[2] Session 22, canon 2.

[3] Cf. de la Taille, *Myst. fidei*, Elucidation 28, Appendix D.

161 **II. The mode of confection.** 1. As regards valid confection, it suffices to add to, or emphasize in, those things which we have said about valid confection of the sacraments in general (n. 13), the following points: For the valid consecration of some matter it is required: 1. that the matter be present to the one consecrating; 2. that the intention of the one consecrating not be directed toward indeterminate matter; 3. that it truly be directed toward the present matter. But as regards validity it does not matter whether the quantity is great or small, provided it is perceptible by sense. It is said:

a) **That the matter be present,** namely in such a way that, according to the prudent judgment of men, it can be demonstrated by the pronouns **this** and **here**. But in order that it may be demonstrated in that way, "it is not required that the matter be seen, or touched, or struck by the sound of the words; whence the practice of those who bring their mouth very near so as to breathe their breath into the chalice and onto the bread is commonly not approved" (St. Alphonsus, VI, 212). It is required, however, that the matter: 1. not be too distant; 2. not be morally separated from the one consecrating by an intervening body. It is said **not be too distant**, "for example a hundred paces, even if it can be

seen... But how much nearness suffices is doubtful, and depends on the judgment of prudent men" (St. Alphonsus, VI, 213). A distance of thirty or even twenty paces would render the consecration doubtfully valid (St. Alphonsus, loc. cit.). It is said **not be morally separated from the one consecrating by an intervening body**. Now an intervening body does not morally separate the matter from the one consecrating if it is interposed only by way of containing, or only by way of covering; otherwise, if it is interposed by way of dividing (St. Alphonsus, VI, 213, 1).

Corollary I. Wine can be validly consecrated in a covered chalice, hosts in a closed ciborium, or in an open tabernacle.

Corollary II. "Matter placed behind a wall or behind the back, or enclosed in a tabernacle, is invalidly consecrated" (St. Alphonsus, VI, 213); yet it seems otherwise if the matter is held by the hand behind the back or is seen with the face turned.

Corollary III. A host hidden immediately under the corporal can doubtfully be consecrated; but it seems this must be denied of a host hidden under the altar cloth, in the missal, or under a cushion (cf. St. Alphonsus, VI, 212).

b) **That the intention of the one consecrating not be directed toward indeterminate matter;** "both because the pronouns **This** and **Here** require this, and because actions concern singular things, which must be certain and determinate" (St. Alphonsus, VI, 214).

Corollary. "If someone has eleven hosts before him, and intends to consecrate only ten, not determining which ten he intends, in this case he does not consecrate."[1]

c) **That the intention be truly directed toward the present matter;** this condition is clear, but it is often not so clear whether it has been fulfilled, as will become evident from what is to be said.

Corollary I. If someone "thinks that one or two or six hosts to be consecrated are present, when there are more, whether placed by himself or by another, all are consecrated; because a speculative and private error does not obstruct the practical and absolute intention of consecrating all that are present; and each one is judged to have this intention as conforming to the custom of the Church" (St. Alphonsus, VI, 216). Likewise, "if after the consecration the priest notices that there are two joined together, he will take both as consecrated" (St. Alphonsus, loc. cit.), because he is judged to have had the intention which he ought to have, namely of consecrating whatever he holds in his hands.[2] But if before the consecration, after he has offered, he notices the other, he will set it aside, and after Mass he himself or another will consume it as blessed bread.[3]

Corollary II. If someone has brought several hosts to the altar, or in a reasonable way has noticed that they were brought by another for him to consecrate, or before the sacrifice has been warned about hosts to be consecrated, all are consecrated, even if while he consecrates he does not remember them so expressly, or even if he does not uncover them at the oblation, at least if they are on the corporal; for this "opinion is safe in practice, because the preceding intention virtually perseveres with respect to them" (St. Alphonsus, VI, 216, compared with 217).

But what if a pyx has been placed outside the corporal, either by the celebrant himself, namely through error, or by another who nevertheless warned the celebrant that these hosts were to be consecrated?

Response 1. If the celebrant thought of it at the time of consecration or within the Mass, most affirm. Nevertheless, even in this hypothesis there remains a reason for doubting whether the mentioned

thought involves, or at least practically carries with it, the intention of consecrating the hosts thought of absolutely, that is, even though they are placed outside the corporal. This will become clearer from what will be said presently.

Response 2. If the celebrant did not think of it at the time of consecration or within the Mass, the matter is more doubtful. Several authors, especially more recent ones, judge that the pyx is morally certainly consecrated. But with St. Alphonsus (VI, 217) we hold the matter as doubtful. That is, the whole matter depends on the intention of the celebrant, or on whether his intention regarding the said pyx is to be interpreted in this way: "I will to consecrate those hosts absolutely or in any case, that is, whether they are placed on the corporal or outside it"; or in this way: "I will to consecrate them, provided they are placed on the corporal." Now if we attend to the fact that a priest habitually knows that the consecration of matter placed outside the corporal is prohibited under grave sin, it is neither clear, nor, as we shall see, proved by any argument of the adversaries, that the intention of the celebrant must be interpreted in the former way. Add that very many authors, and very grave ones, hold the consecration of the said hosts as doubtful. Thus, for example, besides St. Alphonsus (loc. cit.), Benedict XIV,[4] Suarez,[5] the Salmanticenses,[6] Billuart,[7] Roncaglia,[8] Patuzzi,[9] Concina,[10] Ferraris,[11] Tamburini,[12] Sporer,[13] Dens,[14] Voit,[15] Marc,[16] Lehmkuhl,[17] Aertnys-Damen,[18] Tanquerey,[19] Rath,[20] etc.

Objection 1. In the case as it is posed, all things required for consecration are present, namely matter, form, and intention.

Response. As is clear from what has been said, the question is precisely whether the required intention is present, in other words, whether the intention of the celebrant must be interpreted in the sense of the adversaries.

Objection 2. If hosts placed outside the corporal are not consecrated, because it is in itself prohibited under grave sin to consecrate them, likewise wine to which a small amount of water has not been mixed is not consecrated; for such a consecration is in itself prohibited under grave sin.

Response. I deny the parity. Namely, the priest principally intends to consecrate; from this it follows that in the case opposed to us he wills the consecration of the wine, notwithstanding the defect unknown to him. But it does not follow that he wills the consecration of hosts placed outside the corporal, because a consecration can occur without their consecration.

Hosts consecrated in this doubtful way, if they are few, should be consumed after the consuming of the Blood, or at least after the ablution, that is, before the purification; if they are many, they should be consecrated again conditionally in another Mass.

Response 3. If someone once and for all elicited the intention of not consecrating hosts which remained outside the corporal, he seems never to consecrate the aforesaid hosts, because the subsequent intention, and the specifically contrary one, seems to be interpreted in conformity with, or to respond to, the prior intention.

Corollary III. Hosts placed on the corporal but outside the altar stone are consecrated; this is not prohibited even under venial sin if the altar is fixed. The same must be said of hosts in a pyx which has been left closed, since the light rubric which prohibits that does not prevent the priest from being able, I will not say obliged, and therefore presumed, to have the intention of consecrating the pyx in any case, that is, even if through forgetfulness it was not uncovered.

Corollary IV. Hosts placed on the altar wholly without the priest's knowledge, and separated from the heap to be consecrated, are not judged consecrated, because the priest is presumed not to have the intention of consecrating them (St. Alphonsus, VI, 215).

Corollary V. Little drops of wine adhering externally to the chalice are not consecrated, because the priest is not presumed to comprehend them. But little drops adhering to the inside of the chalice, yet separated, about which the minister expressly intends nothing, are, according to some, consecrated; according to others, they are not consecrated. Others distinguish between drops near the bottom and remote ones. Others doubt. It is better to have the intention only of consecrating the wine which exists as one thing in the chalice. Similarly it is expedient to consecrate crumbs adhering to hosts, but not separated crumbs on the paten or corporal; nor is it an obstacle that, by consuming them, the fast is violated, for irreverence toward the sacrament is to be guarded against more than violation of the fast. But if the crumbs are in the ciborium, he should intend to consecrate them, since the danger of losing them is absent (St. Alphonsus, VI, 215).

Corollary VI. If it happens that consecrated and unconsecrated hosts are mixed together and cannot be distinguished, the heap, insofar as it is not consecrated, should be consecrated. Others say that it should be consecrated with the limited intention of consecrating the hosts not yet consecrated; but because some doubt whether the latter mode is sufficiently safe,[21] the former should be chosen.

d) **As regards validity, it does not matter whether the quantity is great or small, provided it is perceptible by sense.** Matter seems invalid if it is "so small that it cannot be perceived by sense; both because it cannot be demonstrated, and because a sacrament must be a sensible sign... Understand this if it is not within the whole, but outside it; because within the whole even its smallest particles are consecrated, as is clear from Trent" (St. Alphonsus, VI, 213, 3).[22]

[1] Roman Missal, *On Defects*, title VII, n. 1.

[2] Roman Missal, *On Defects*, title VII, n. 2.

[3] Roman Missal, loc. cit.

[4] *De Sacrificio Missae*, book 3, chapter 18, n. 6; in the same place he speaks of a pyx which is outside the sacred stone, but the reason is equal.

[5] *De Eucharistia*, disputation 43, section 6; in the same place he likewise speaks of hosts which are not placed upon the altar, but, as we have said, the reason is equal.

[6] *Cursus Theologiae Moralis*, tract 4, chapter 4, n. 125.

[7] *De Eucharistia*, dissertation 3, article 6.

[8] *Universa Theologia Moralis*, tract 18, chapter 2, question 8.

[9] *Theologia Moralis*, tract 10, dissertation 1, chapter 4, n. 9.

[10] Book 3, *De Eucharistia*, dissertation 1, chapter 2, n. 8.

[11] Word "Missa," article 8, n. 34.

[12] *De Sacrificio Missae*, book 2, chapter 1, section 3, case 4, nn. 11-20.

[13] *Theologia Sacramentalis*, part 2, section 2, n. 169.

[14] *De Eucharistia*, n. 11, question 4, ad 3.

[15] *De Eucharistia*, nn. 286 and 287.

[16] *Institutiones Alphonsianae*, n. 1527.

[17] *Theologia moralis*, vol. II, n. 168. Lehmkuhl (loc. cit.) doubts about the consecration, because it is doubtful whether in the proposed hypothesis the priest had the intention of consecrating the aforesaid hosts, or only the purpose of afterward taking them for the sacrifice, that is, of afterward eliciting the intention of consecrating them. But I think that there is ordinarily no place for this doubt; in other words, generally in the proposed hypothesis the intention of consecrating the hosts is already elicited beforehand. The doubt is, as we have said, in what sense the said intention is to be interpreted.

[18] *Theologia moralis*, vol. II, n. 117.

[19] *Synopsis Theologiae Dogmaticae*, 4th ed., vol. II, n. 94.

[20] *De Eucharistia*, n. 183.

[21] They doubt because in this case the matter to be consecrated seems not sufficiently determined to them.

[22] Session 13, canons 2 and 3.

162 2. For licit consecration it is required:

a) That the consecration of one matter not be made without the consecration of the other (canon 817). The consecration of only one matter is indeed valid, but is prohibited under grave sin. I said:

First, the consecration of only one matter is valid; this is clear: 1. from the fact that the Church adores the sacred Host before the wine has been consecrated; 2. from the fact that the form by which one matter is consecrated has a complete signification, so that it must be judged to effect what it signifies. Some, though few, except the case in which the minister would consecrate one matter with the intention of not consecrating the other, in other words, of not confecting the sacrifice. They judge, namely, that the power of consecrating in this way is lacking, because the said power has been granted in order to the sacrifice, for whose essence the consecration of both matters is more probably required (St. Alphonsus, VI, 196, doubt 3).

Second, the consecration of only one matter is prohibited under grave sin; namely, it is certainly prohibited under grave sin by ecclesiastical law (canon 817), and more probably also by divine law. This is deduced from the fact that, according to the will of Christ, consecration must at the same time be the oblation of the sacrifice, for which the consecration of both matters is more probably required. There is added the fact that Christ, after both consecrations, imposed the command of doing what He Himself had done. Hence it is commonly admitted that the consecration of only one matter is not licit even for the sake of Viaticum (St. Alphonsus, VI, 195).

b) That the consecration be made within the celebration of Mass, not outside it (canon 817).

c) That the consecration of bread precede the consecration of wine; this Christ both did, and it is commanded at least by ecclesiastical law under grave sin, except in the case in which the minister after the consecration of wine notices that he has not consecrated the bread.[1]

d) That it be consecrated: 1. on a fixed or portable altar; 2. upon a corporal. Therefore if the altar is fixed, it suffices that the matter be on the altar and upon the corporal. If the altar is portable, it is required that the matter be upon the corporal and on the consecrated stone. Moreover, it suffices that the foot of the ciborium exist for the greater part in the assigned place; for the rest, the aforesaid things are prescribed under grave sin (St. Alphonsus, VI, 217, 219).

e) That the pyx be opened at the time of the offertory and of the consecration.[2] This rubric obliges only under venial sin.

f) That the hosts to be consecrated together with the host of the Mass be present at least by the offertory. If after the offertory, but before the Preface has begun, they are offered, they are licitly consecrated, the oblation being supplied mentally. If they are offered after the Preface has begun, but before the Canon has begun, a moderate cause is required, because the rite of consecration, which is already begun by the Preface, must be observed. A reason would be present if otherwise one or another person would have to wait a long time for Communion; nevertheless in such a case it is also permitted to give him a particle of the large host. If they are offered after the Canon has begun, a grave cause is required, for example lest a multitude have to wait a long time, or lest a sick person die without Viaticum. Nevertheless the oblation of the hosts should always be supplied mentally (cf. St. Alphonsus, VI, 217).

[1] Roman Missal, *On Defects*, title III, nn. 4, 5, 6.

[2] Roman Missal, *Order and Rite of Mass*, title VII, n. 3; title VIII, n. 5.

Section II. On the Dispensation of the Most Holy Sacrament

Chapter I. On the Person Dispensing

In order that someone legitimately dispense the Eucharist, the power of order and the power of jurisdiction are required.

163 **I. The power of order.** Considered with respect to the power of order:

1. Only a priest is the ordinary minister of the dispensation of the Holy Eucharist (canon 845, § 1), that is, by virtue of his ordination he is deputed to dispense it principally, not secondarily, as a deacon is. For: 1. to the one alone to whom it belongs to confect the Holy Eucharist, to him alone it belongs to dispense it principally; 2. Tradition is added, which the Council of Trent attests in these words: "It was always the custom in the Church of God that the laity receive Communion from priests; ... this custom, as descending from Apostolic Tradition, must with right and merit be retained"[1] (cf. St. Thomas, III, q. 82, a. 3).
2. A deacon is the extraordinary minister of the dispensation of the Holy Eucharist (canon 845, § 2), that is, by virtue of his ordination he is deputed to dispense it only secondarily, that is, dependently upon the permission of the local Ordinary or the pastor, which cannot be granted except for a grave cause (cited canon). Hence a deacon is rightly called only an extraordinary minister. That a deacon is truly an extraordinary minister is clear from Tradition[2] (cf. St. Thomas, loc. cit., ad 1). It is said:

a) **Dependently upon the permission of the local Ordinary or the pastor.** To these is equivalent a quasi-pastor, but not the rector of a church or a religious superior as such.

b) **Permission cannot be granted except for a grave cause,** for example if the priest were impeded in his ministry and, unless the deacon dispensed the Holy Eucharist, its dispensation would be delayed longer than is fitting (St. Alphonsus, VI, 237, question 1).[3] If a grave cause is present and the pastor cannot conveniently be approached, permission is legitimately presumed (canon 845, § 2). But a deacon who illicitly dispenses the Holy Eucharist sins gravely; likewise the local Ordinary and the pastor who grant permission without a just cause, since in a grave matter they violate the hierarchical order (St. Alphonsus, VI, 234). Nevertheless the deacon does not become irregular, since, being a minister, even if only an extraordinary one, he does not entirely usurp an order not his own (cf. canon 985, 1).

[1] Session 13, chapter 8.

[2] St. Justin Martyr, *Apology* I, chapters 65, 67, Migne 6, 427-430; Fourth Council of Carthage, canon 38; it occurs among the ancient statutes of the Church, in Hefele, loc. cit., vol. 2, part 1, p. 166; *Apostolic Constitutions*, book 8, chapter 13, Funk ed. 1906, p. 519.

[3] Cf. S.R.C., 25 February 1777, n. 2504.

164 **II. The power of jurisdiction** is likewise required, and this either ordinary or delegated; delegated, I say, either by law or by him who has ordinary power. Ordinary power belongs to all who exercise a pastoral office, such as the Ordinary, the pastor, all who in law come under the name of pastor, etc. These things having been noted in general, something must be said specifically about the dispensation of the Eucharist on the occasion of Mass or outside it, about carrying Communion to the sick, and about the dispensation of Viaticum.

1. **Dispensation on the occasion of Mass or outside it.** a) Any priest can minister Holy Communion within Mass and, if he celebrates privately, also immediately before and immediately after it (canon 846, § 1).

b) Even outside Mass any priest has the same faculty. Nevertheless, if the priest is a stranger, that is, not assigned to the church, the at least presumed permission of the rector of the church is required (canon 846, § 2).

2. **Carrying Communion to the sick.** First note that a twofold carrying is distinguished, public and private. It is public if it is done manifestly, with solemnity; otherwise it is called private.[1]

a) **Public carrying.** First, public carrying is prescribed unless a just and reasonable cause suggests otherwise (canon 847).

Second, the right and office of carrying Holy Communion publicly to the sick, even non-parishioners, outside the church, belongs to the pastor within his own territory (canon 848, § 1). Other priests can do this only in a case of necessity or with the at least presumed permission of the same pastor or of the Ordinary (canon 848, § 2). It is said **only in a case of necessity**, for example if the pastor and another to whom permission perhaps has been granted are impeded for too long.

b) **Private carrying.** First, private carrying is licit only when a just and reasonable cause suggests it (canon 847). But the judge of a just and reasonable cause is only the local Ordinary.[2] If, however, he has judged that such a cause is present, and has signified this either explicitly or tacitly, for example by not contradicting custom or common opinion,[3] he cannot prevent it from being carried secretly. Now, when a just and reasonable cause has been posited and admitted by the Ordinary:

Second, any priest can carry Communion privately to the sick, with the at least presumed permission of the priest to whom custody of the Most Holy Sacrament has been committed (canon 849, § 1).

3. **Dispensation of Viaticum.** a) By the name **Viaticum** here is understood Communion which is considered, or, so to speak, is held in the external forum as fulfilling the precept of receiving the Holy Eucharist in danger of death, about which canon 864, § 1 speaks; but not that Communion which the sick person receives afterward, nor that which one constituted in danger of death previously received, although this Communion, speaking accurately, should be called fulfilling the precept.[4]

b) One who illegitimately administers Viaticum is judged to sin gravely, since he violates a grave right of the competent person.

c) As regards the persons who legitimately administer Viaticum, receive these points:

a) To carry Holy Communion by way of Viaticum, whether publicly or privately, to the sick, even non-parishioners, outside the church, belongs to the pastor within his own territory. Other priests can do this only in a case of necessity or with the at least presumed permission of the same pastor or Ordinary (canon 850 compared with 848).

b) Canons, according to the order of precedence, must minister the sacraments to a bedridden bishop (canon 397, 3).

c) Superiors in every clerical religious institute can and must, personally or through another, minister Eucharistic Viaticum and Extreme Unction to sick professed members, novices, and others dwelling day and night in the religious house for the sake of service, education, hospitality, or ill health (canon 514, § 1). These things also hold for conferring these sacraments outside the religious house, if it concerns professed religious or novices, yet with the right of the pastor preserved as regards the public carrying of the Holy Eucharist.[5]

d) In a house of nuns, the ordinary confessor, or the one who acts in his place, has the same right and office (canon 514, § 2). Under the name of nuns also come religious women whose vows by institute are solemn, but for some places by prescription of the Apostolic See are simple (canon 488, 7).

e) In another lay religious institute this right and office belongs to the local pastor or to the chaplain whom the Ordinary has substituted for the pastor (canon 514, § 3).

f) The rector of a seminary, not the pastor, or his delegate can minister Viaticum and Extreme Unction to all who are in the seminary and are gravely bedridden (canon 1368).

g) Particular law commonly permits those who have domicile or quasi-domicile in ecclesiastical colleges specially entrusted by the bishop to a director or rector, or approved by him, to be able to receive Viaticum and Extreme Unction from the rector himself or from his delegate. This right does not belong to the pastor if the particular law intends the said colleges to be withdrawn from the care of the pastor (cf. canon 464, § 2).

h) Finally, if priest and deacon are lacking, even a subdeacon, cleric, and layperson can with sufficient probability minister Viaticum, provided that scandal is absent or prevented. For the ecclesiastical prohibition is not judged to comprehend this case; all the more because in antiquity even laypeople brought the Eucharist home for the sake of communicating (St. Alphonsus, VI, 237, question 3). If the case concerns a dying priest or deacon, the layperson should only bring the ciborium, and the dying person himself, if he can, should give Viaticum to himself. Note besides that a priest is equivalently lacking if singular dexterity is required in communicating the dying person; hence at times it can be entrusted, for example to a sister, to give Viaticum, for instance, with a spoon. I add with St. Alphonsus (loc. cit.) that in a case of supreme necessity, which can occur for example in time of plague, the bishop can commit the ministration of Viaticum to a layperson.

Corollary. Although in itself no one except the celebrating priest can minister Communion to himself, nevertheless this is permitted:

1. If the case concerns Viaticum, to a priest and deacon, if another priest and deacon are lacking; to an inferior cleric, if priest, deacon, and another inferior cleric are lacking; to a layperson, if priest, deacon, and inferior cleric are lacking. This doctrine is rightly admitted both because the divine precept of receiving Viaticum seems to prevail, and because "formerly lay faithful carried the Eucharist into their homes and communicated themselves with their own hands; and this indeed was permitted because of necessity" (St. Alphonsus, VI, 237, question 2). It is confirmed by a response of the Sacred Congregation of Propaganda Fide,[6] which declared that in time of persecution it is permitted that confessors of the faith condemned to death, and to whom the sacrament of the Most Holy Eucharist is brought in prison, may secretly receive it in their hands and secretly communicate themselves, lest the priest communicating them in the ordinary manner be known and seized, provided nevertheless that so great a sacrament is not exposed to any irreverence or other danger.[7]
2. If the case concerns Communion to be received only for the sake of devotion, a priest can with sufficient probability minister Communion to himself if another priest is lacking (St. Alphonsus, VI, 238).
3. Where the necessity of preventing profanation of the Most Holy Sacrament is urgent, even laypeople can consume the species and distribute them to one another.

[1] Cf. Sacred Congregation of the Sacraments, 23 December 1912 (*Acta Apostolicae Sedis* 1912, p. 725, ad III).

[2] Sacred Congregation for the Discipline of the Sacraments, 5 January 1928.

[3] The Ordinary should be easy in admitting a just and reasonable cause. Hence the Sacred Congregation for the Discipline of the Sacraments, in the decree of 5 January 1928, adds "with this mind, which is the following: If from common experience and opinion there is no inconvenience in the diocese or in some particular place for the private carrying of Holy Communion to the sick, Ordinaries must beware lest, by rules too strictly defined or general rules prescribing public carrying, or by a reservation made to themselves of giving permission in individual cases of carrying the sacrament of the Eucharist privately, the consolation of Communion, even daily Communion, be impeded for the sick." And in the annotations to the Decree, the *Acta Apostolicae Sedis* warns: Most Reverend local Ordinaries must carefully watch lest in a matter of such great importance the end intended by the Church be frustrated in any way. For no one is unaware that in our times Holy Communion, even daily Communion, is commended most highly to the Christian faithful. Now who, more than a sick person, is to be said to need the help and consolation of so great a sacrament for bearing the distresses of illness?

[4] This Communion is also called Viaticum by the Code (canon 864, § 3).

[5] Pontifical Commission, 16 June 1931, under I (*Acta Apostolicae Sedis* 1931, p. 353).

[6] 10 August 1841.

[7] Gaude in the cited place of St. Alphonsus.

Chapter II. On the Things to Be Observed in the Dispensation of the Holy Eucharist

Something must be said about the time, place, and mode of distributing the Holy Eucharist, and about the mode of carrying it to the sick.

Article I. On the Time of Dispensing the Holy Eucharist

165 **I. Ordinary Communion;** under this name also comes Communion of devotion to be received by a sick person.

1. Ordinary Communion can be distributed on all days (canon 867, § 1), except Friday of Holy Week, on which it is permitted only to carry Sacred Viaticum to the sick (canon 867, § 2). Viaticum is understood as it was explained above (n. 164); therefore Communion cannot be ministered on Friday of Holy Week to a sick person to whom Viaticum so understood has already previously been conferred. Nevertheless, Easter Communion could be given to one who can receive it conveniently enough only on Friday of Holy Week, for the law of communicating at Easter prevails over the liturgical law of not distributing Holy Communion on the aforesaid Friday.

2. Ordinary Communion can be distributed only at those hours at which the sacrifice of Mass can be offered, and likewise at other hours if a reasonable cause suggests it (canon 867, § 4). A reasonable cause for ministering Communion earlier or later than is permitted in itself is present, for example, if a sick person cannot observe the fast until one hour before dawn, or if someone, prevented from receiving Communion earlier, has remained fasting beyond one hour after noon. For the rest, note:

a) The faculty of distributing Communion at the hours at which Mass can be celebrated is to be taken in a broad sense, so that at whatever time, whether by common law or by privilege, it is permitted to celebrate, Communion also can be distributed. Hence it can be distributed in the oratory of a religious or pious house, where according to canon 821, § 3 Mass can already be begun at midnight; this is clear from the cited canon itself. Likewise it can be distributed in a conventual or parochial Mass (canons 821, § 1; 867, § 4; 863).

b) An indult of anticipating Mass can, with sufficient probability, also be extended to the distribution of Communion, even if in fact Mass is not anticipated.

c) On Holy Thursday the Holy Eucharist seems able to be distributed only before and during the solemn Mass; both because after the solemn Mass another Mass can no longer be celebrated, and because according to the rubric of the Missal only some species are to be reserved for the sick.

d) On Holy Saturday Holy Communion cannot be ministered to the faithful except during the solemnities of Masses or continuously and immediately after they have been completed (canon 867, § 3). Hence it is prohibited in churches where Mass is not celebrated. Moreover, considering the obvious sense of the canon, it seems to be required that the distribution of Communion be made jointly with Mass, so that it forms one thing with it. Yet this does not prevent there from being a reason excusing from the law, as if men, after having completed spiritual exercises, could not wait for the solemnities of Masses. Indeed, considering also the custom persisting in Rome, it can seem to someone that canon 867, § 3 speaks only of the place where the solemnities of Masses take place, but not, for example, of a separate chapel.[1]

e) A celebrating priest is not permitted to distribute the Eucharist within Mass to faithful so distant that he himself loses the altar from view (canon 868). Therefore the interpretation of the Sacred Congregation of Rites, 7 February 1874 (n. 3322), according to which it would suffice that the voice of the celebrant be heard, even if the altar were lost from view, seems to fall away. But the decrees of the Sacred Congregation of Rites (n. 2672), 7 December 1844 (n. 2885), 24 March 1860 (n. 3099, ad I), and 11 May 1878 (n. 3448, ad VIII), which agree with the Code, remain. Nevertheless others judge that the canon is not to be urged in this way.

3. It is not necessary that Communion be united with Mass, but it can also be distributed outside it. But if it is united with Mass, it must be done within Mass immediately after the Communion of the

celebrant; and if Mass is celebrated privately, for a reasonable cause it can also be done immediately before and immediately after Mass (canon 846). These things also hold in a Mass for the dead.[2]

[1] Cf. Response of the President of the Commission for the Code, 10 July 1909 (*Il Monitore Ecclesiastico* 1922, p. 371; 1924, p. 21).

[2] Cf. Roman Ritual, title IV, chapter 2, n. 11. Cf. S.R.C., 19 December 1829, n. 2672, ad 1; 23 July 1868, n. 3177; 24 March 1860, n. 3099.

166 **II. Viaticum** can be ministered on any day, even Friday of Holy Week (canon 867, §§ 1 and 2), and at any hour of the day or night (canon 867, § 5).

Article II. On the Place of Dispensing the Holy Eucharist

167 **I. Ordinary Communion,** under which name also comes Communion of devotion to be carried to the sick. Now: Holy Communion can be distributed wherever it is permitted to celebrate Mass, even in a private oratory, unless the local Ordinary, for just causes, has prohibited this in particular cases (canon 869). These things are also to be applied to Easter Communion. It is said **wherever it is permitted to celebrate Mass**. Hence permission granted either by the local Ordinary or by a major superior according to canon 822, § 4 - that is, of celebrating outside a church and oratory, but in a decent place, never however in a bedroom; which permission can be granted by the said persons, only for a just and reasonable cause, in some extraordinary case, and by way of an act - carries with it permission to distribute Communion in the same place. This is deduced from canon 869 joined with canon 822, § 4.

Hence the Sacred Congregation for the Discipline of the Sacraments, to question I: "Whether the faithful living in mountain villages, whenever the Holy Eucharist is carried to the sick, can be refreshed by the Holy Synaxis in a sacred place, or even, since it concerns so sacred a thing, in a decent and honorable place which exists on the route, since they cannot go to church on that day"; to that question, I say, it responded: "Affirmatively according to canon 869 joined with canon 822, § 4, that is, provided the local Ordinary grants this according to the norm of the cited prescription, namely for individual cases and by way of an act."[1] And to question II: "Whether Holy Communion and the sacrament of Confession can be administered to those who are in the house of the sick person"; it responded: "As regards Communion, provision has been made in the first response." Moreover, note:

1. In the proposed hypothesis it is not required that Mass in fact be celebrated, but the faculty of celebrating in some place suffices.
2. The power of granting the permission of celebrating of which we have spoken is ordinary, and therefore can be delegated by the local Ordinary and by a major superior.

Corollary. Missionaries who enjoy the faculty of celebrating outside sacred places can minister the Eucharist in a place where in fact they do not celebrate, but where they can celebrate. Likewise pastors who enjoy a faculty received from the Ordinary of permitting Mass to be celebrated outside sacred places can permit Holy Communion to be ministered, even though Mass is not celebrated. But a just cause, some extraordinary case, and that it be done by way of an act are always required.

[1] 5 January 1928 (*Acta Apostolicae Sedis* 1928, p. 79).

168 **II. Viaticum** can be ministered in almost any place. In itself, indeed, it is unbecoming for Viaticum to be carried to a brothel; but if a penitent prostitute cannot in time be removed from such a house, it

seems Viaticum can be ministered to her, provided scandal and the danger of positive irreverence are absent. Moreover, let the priest take care not to be deceived and not to suffer harm to his reputation; hence let him have as companion a safe man and indeed, if it can be done, a public minister.

Article III. On the Mode of Dispensing the Holy Eucharist

169 The mode or rite of distributing the Holy Eucharist is set forth in the Roman Missal[1] and in the Roman Ritual.[2] Specifically, note:

1. The Most Holy Eucharist is to be given under the species of bread alone (canon 852); from this, as is taught sufficiently commonly, one cannot depart even for giving Viaticum (St. Alphonsus, VI, 245).

2. A priest of the Latin rite should distribute Communion with unleavened bread; a priest of an Eastern rite, with leavened bread, even to faithful of another rite. But where necessity urges and no priest of a different rite is present, it is permitted for an Eastern priest who uses leavened bread to minister the Eucharist in unleavened bread, and conversely for a Latin or an Eastern priest who uses unleavened bread to minister in leavened bread; but each must preserve his own rite of ministering (canon 851, §§ 1 and 2). Necessity urges sufficiently if on that day the faithful person could not receive Communion without grave inconvenience unless the priest gave him the species of another rite (cf. canon 866, § 1). Therefore it is required that a priest of the other rite be lacking and unable to be approached, and that the present priest be unable to consecrate bread of his own rite.

3. Sacred vestments and a light must be used, and the prayers assigned in the Ritual must be recited.[3] Now it would be a grave sin to omit every sacred vestment. It is venial to use only a stole or only a surplice, or to minister without a light, or to omit the preceding and following prayers. Nevertheless it would be permitted to minister Communion without a sacred vestment and without a light both in a case of necessity and for another truly grave cause, for example if someone sacrilegiously received Viaticum and it must again be carried secretly and clandestinely; likewise in houses where something prevents the inhabitants from suspecting that Communion is being brought (St. Alphonsus, VI, 241).[4]

Not only one who distributes Communion within Mass, but also one who distributes it immediately before or immediately after, can do this in the vestments of Mass; this also holds of a Mass for the dead.[5]

4. The Holy Eucharist must be distributed with the thumb and index finger of the right hand. Nevertheless, it would be permitted to offer it with other fingers if otherwise the people or the dying person would be deprived of Communion. Any just cause does not seem to suffice, since the index finger and thumb are deputed by the rite of the Church for this ministry. But if danger of contagion is feared, the sacred species can be placed in a vessel or in a spoon with a little water, and thus brought to the mouth of the sick person. If the sick person, because of dryness of the mouth, cannot swallow the host, either let the species be given in the mode explained, or after Communion has been taken let a draught of wine or a very small drink of cold, fresh, and, if possible, icy water be given to the sick person (St. Alphonsus, VI, 244, 288).

5. It is not permitted to give "several Eucharistic forms or particles, nor larger ones, but the customary ones."[6] Nevertheless, if a sufficient number of consecrated hosts is lacking, it is permitted to divide small hosts,[7] but at most into two or three parts, unless there is a special reason for dividing even into more parts, for example if the priest rarely comes somewhere. Likewise, if someone otherwise would have to wait too long, it is permitted to remove a particle from the host of the Mass (St. Alphonsus, VI, 245).

[1] *Order for Celebrating Mass*, title X, n. 6.

[2] Title IV, chapter 2.

[3] The Sacred Congregation for the Discipline of the Sacraments, 16 March 1929 (*Acta Apostolicae Sedis* 1929, p. 638), prescribed that besides the linen cloth extended before those communicating, a paten made of silver or gilded metal is to be used.

[4] Cf. Sacred Congregation of Propaganda Fide, 9 December 1822 (*Collectanea*, n. 778).

[5] S.R.C., 19 December 1829, n. 2672, ad 2; 23 July 1868, n. 3177.

[6] Decree of Innocent XI, 12 February 1679.

[7] S.R.C., 16 March 1833, n. 2704, ad 1.

Article IV. On the Mode of Carrying the Holy Eucharist to the Sick

170 As we said above (n. 164), public and private carrying are distinguished. Public carrying is set forth in the Roman Ritual.[1] In private carrying, according to canon 849, § 2, "reverence and decorum owed to so great a sacrament should be carefully provided for, with the norms prescribed by the Apostolic See being observed."

The norm is presented by the Roman Ritual in these words: "When, for a just and reasonable cause, Holy Communion is privately carried to the sick, the priest should at least always have a stole covered by his own clothes; he should place the pyx in a little bag or burse, which, suspended from his neck by cords, he should put in his bosom; and he should never proceed alone, but should be accompanied by at least one faithful person, in the absence of a cleric. But when he has arrived at the room of the sick person, the priest should also put on a surplice with the stole, if he has not already put it on."[2] For the rest, observe:

1. When the Holy Eucharist is carried openly, it is in itself forbidden to walk with covered head. But the prohibition seems to regard only public carrying. Moreover Ordinaries can - as it seems, now all - permit ministers, on account of cold or inclement weather, to use a small cap outside a city or town, even one so large that it covers the ears[3] (St. Alphonsus, VI, 241). Indeed, if otherwise harm to the priest's health is to be feared, there is an excusing cause. Nothing also prevents an artificial covering from being used against rain or snow.

2. It is also permitted, scandal nevertheless being excluded, for a sufficiently grave cause, for example because of weather or distance, to carry the Eucharist on horseback,[4] in a carriage (St. Alphonsus, VI, 243), likewise in an automobile, in a tram, or by railway. Likewise it is permitted in a case of necessity, namely lest someone be deprived of Viaticum, to run (St. Alphonsus, VI, 242), and likewise to use what is called a bicycle or motorcycle.[5] Particular statutes, which here are milder and there stricter, should moreover be attended to. For the rest, local Ordinaries should take care

"lest abuses creep into ecclesiastical discipline, especially concerning the administration of the sacraments" (canon 336, § 2). Moreover, note:

a) If Viaticum is ministered, it is to be said: "Receive, brother (sister), the Viaticum of the Body of our Lord Jesus Christ, who may guard you from the malignant enemy and bring you to eternal life. Amen."[6]

b) If for a just cause the priest has taken with him only one host, then, after it has been given to the sick person, the pyx or little case can be washed in the house of the sick person and the ablution given to the sick person; then the pyx should be wiped with a purificator (St. Alphonsus, VI, 251).

[1] Title IV, chapter 4.

[2] Title IV, chapter 4, n. 29. By force of a special indult of the Sacred Congregation of Propaganda Fide, 8 February 1875, which was abrogated neither by the general decree of the Sacred Congregation of the Sacraments, 23 December 1912, ad III, nor by canon 847 (cf. canon 4), private carrying is licit in the ecclesiastical province of Utrecht (*Supplementum ad Rituale Romanum pro usu cleri provinciae ecclesiasticae Ultraiectensis*, n. 22).

[3] Cf. *In Coloniensi*, S.R.C., 13 November 1862; *In Oriolensi*, 22 April 1871, n. 3246, ad I; *Supplementum ad Rituale Romanum pro usu cleri Provinciae ecclesiasticae Ultraiectensis*, n. 21.

[4] Roman Ritual, title IV, chapter 4, n. 13.

[5] Cf. Sacred Congregation of the Sacraments, 13 June 1919.

[6] Roman Ritual, title IV, chapter 4, n. 19.

Part III. On the Reception of the Most Holy Sacrament

We shall speak first about the notion and division of the reception of the Eucharist, then about the person receiving, and then about the mode of receiving it.

Section I. On the Notion and Division of Reception of the Holy Eucharist

171 The reception of the Eucharist can be distinguished as threefold, namely material, sacramental, and spiritual.[1]

I. Material reception is that by which it is so received that the sacrament is not applied to the one receiving, in other words, so that the sacrament does not become a title of grace applied to him. It is received materially: 1. by one not baptized; 2. by a baptized adult who lacks intention.

II. Sacramental reception is had when the sacrament is applied to the one receiving, or when it becomes a title of grace applied to the one receiving. Sacramental reception is twofold, namely sacramental only, and sacramental and spiritual, according as it is received with or without an obstacle to the effect, that is, to the grace to be received.

As regards the requisites for sacramental reception, receive these points:

1. For sacramental reception, eating is certainly required, whether true or equivalent. This is drawn from these words of Christ: "Unless you eat the flesh of the Son of man and drink His blood, you will not have life in you";[2] "Take and eat; this is my body";[3] "... drink ye all of this, for this is my blood of the New Testament, which shall be shed for many unto remission of sins."[4]
2. For sacramental reception, the passage of food into the stomach is certainly required. For if this is lacking, according to common estimation no one is said to eat.
3. It is disputed whether or not a vital passage into the stomach through the esophagus, whether natural or artificial, is required, or whether passage into the stomach by means of a tube inserted into the esophagus or into another part of the body suffices. Some judge that passage by means of a tube suffices, because there is at least equivalent eating. Others admit the contrary, because, considering the obvious sense of the words of Christ, there seems to be required an act which truly is, or at least according to common estimation is called, eating. Now one who is fed by means of a tube is not said to eat, but to be nourished artificially.

III. Spiritual reception is the desire or vow, conceived from faith and charity, of receiving the Eucharist really.[5] Now spiritual Communion produces *ex opere operantis* fruits very similar to those which real Communion effects *ex opere operato*. Hence the Council of Trent declares that those communicate spiritually "who, eating in desire that heavenly bread set before them, by living faith which works through love, perceive its fruit and usefulness."[6] But in order that someone may acquire the aforesaid fruits, let him elicit an act of faith, charity or perfect contrition, and desire toward Christ in the Eucharist. One who is only attrite concerning a mortal sin perhaps committed, by desiring Communion indeed performs a good work, but does not communicate spiritually, and therefore does not receive the special fruits annexed to spiritual Communion.

In the following, the discussion will be only about sacramental Communion.

[1] "As regards use, the Council of Trent speaks thus: 'Our fathers rightly and wisely distinguished three ways of receiving this holy sacrament. For they taught that some receive it sacramentally only, as sinners; others only spiritually, namely

those who, eating in desire that heavenly bread set before them, by living faith which works through love, perceive its fruit and usefulness; and thirdly, others both sacramentally and spiritually; and these are those who first so prove and prepare themselves that, clothed in the wedding garment, they approach this divine table'" (Session 13, chapter 8).

[2] John 6:54.

[3] Matthew 26:26.

[4] Matthew 26:27-28.

[5] Council of Trent, session 13, chapter 8.

[6] Loc. cit.

Section II. On the Person Receiving

172 **I. In order that the Holy Eucharist can be validly ministered to someone,** it suffices that he be baptized and, if he has arrived at the years of discretion, that he have the intention of receiving the sacrament (nn. 38, 40).

173 **II. In order that the Holy Eucharist be licitly ministered to someone,** indeed, if he asks for it, that it ought to be ministered, it suffices that he be baptized and not prohibited by law. It will be clear from what is to be said about children, about the insane, about the unworthy, etc., to what extent someone is prohibited by law.

1. **Children.** As regards the Communion of children, the Code, though with certain additions, briefly repeats what is contained more fully in the decree of the Sacred Congregation for the Discipline of the Sacraments *Quam singulari*.[1] Now:

a) The Eucharist is not to be ministered to children who, because of the weakness of age, do not yet have knowledge and taste of this sacrament (canon 854).[2]

b) As regards the required knowledge, these things now hold:

First, in danger of death, in order that the Most Holy Eucharist can and ought to be ministered to children, it is enough that they know how to distinguish the Body of Christ from common food and to adore it reverently (canon 854, § 2). Although these requisites, if the family is religious, can be presumed, it is nevertheless better to make oneself more certain about them. Moreover, a child who has attained the use of reason, if his condition permits it, should commonly, at least as a precaution, be expressly taught, and indeed before Communion is ministered, the things which must be known by necessity of means.

Second, outside danger of death, a fuller knowledge of Christian doctrine and a more accurate preparation is rightly required, namely that by which they themselves, according to their capacity, perceive at least the mysteries of faith necessary by necessity of means for salvation, and approach the Most Holy Eucharist devoutly according to the measure of their age (canon 854, § 3). "Therefore, to use the words of the decree cited above, not a perfect knowledge of matters of faith is required, since certain elements only are enough, that is, some knowledge." It is enough, therefore, that the child: 1. know the things to be known by necessity of means; 2. distinguish Eucharistic bread from common bread, and therefore know that under the host Christ, or the Infant Jesus, is present and that He is united with us through Communion. But in order that he sufficiently discern Eucharistic bread from common bread, he should moreover: 3. know that natural fasting and the state of grace are required for licit Communion. Finally, in order that he may understand what the state of grace involves and

requires, 4. he should have some notion of mortal sin and of the means by which lost grace must be recovered, namely the sacrament of Penance. Observe, however, that that knowledge of the aforesaid things suffices which a child can have who enjoys some use of reason, or who begins to reason.[3] Nor is it required that he hold in memory the formulas by which the aforesaid truths are presented in the Catechism. But if the required knowledge is present, the child can also approach the Most Holy Eucharist devoutly according to the measure of his age.

c) The obligation of the precept of Confession and Communion, which burdens the child, and generally the prepubescent, falls also and especially upon those who ought to have care of him, that is, upon parents, guardians, the confessor, teachers, and the pastor (canon 860). Therefore the obligation rests upon the aforesaid persons of taking care that the child, after he has begun to reason, learn the necessary things to be known and, once knowledge has been acquired, fulfill the precepts in due time.

d) Judgment about the sufficient disposition of children for first Communion belongs to the priest hearing their confessions and to their parents or those who are in the place of parents (canon 854, § 4), for example teachers in a college.

e) But it is the office of the pastor to watch carefully, even through an examination if he has prudently judged it opportune, lest children approach the Sacred Synaxis before having attained the use of reason or without sufficient disposition; and likewise to take care that those who have attained the use of reason and are sufficiently disposed be refreshed by this divine food as soon as possible (canon 854, § 5). From these things do not deduce that the pastor can of himself subject children to an examination. He can do this if he has prudently judged it opportune; and that happens only when he has a positive reason for doubting about the requisites for Communion.

[1] 8 August 1910.

[2] Concerning the contrary custom formerly in force and even now persisting among the Greeks and Orientals, the cited decree *Quam singulari* speaks thus: The Church "from its very beginnings took care to bring little children near to Christ through Eucharistic Communion, which it was accustomed to administer to them even as infants. This, as was prescribed in almost all Rituals up to the thirteenth century, was done in Baptism, and this custom obtained longer in some places; among the Greeks and Orientals it still perseveres. But to remove the danger that especially nursing infants might spit out the consecrated bread, the custom prevailed from the beginning of ministering the Eucharist to them under the species of wine alone. Nor were infants refreshed with the divine banquet only at Baptism, but afterward more often. For it was also the custom of certain churches to give the Eucharist to little children immediately after the clergy, and elsewhere, after the Communion of adults, to give them the remaining fragments. This custom then became obsolete in the Latin Church, and infants did not begin to become sharers of the sacred table unless they had some use of dawning reason and some knowledge of the august sacrament. This new discipline, already received by several particular synods, was confirmed by the solemn sanction of the Fourth Ecumenical Lateran Council, in the year 1215, by the promulgation of the famous canon XXI, by which sacramental Confession and Holy Communion are prescribed for the faithful after they have reached the age of reason."

[3] Cf. the decree *Quam singulari*, 8 August 1910.

174 **2. The insane** are some perpetually insane, others not perpetually insane, others insane only about one or another point, and others semi-insane.

a) **The perpetually insane.** To these, since they are equated with little children, the Holy Eucharist cannot be ministered,[1] not even in danger of death. The reason for the prohibition is that they neither have, nor ever had, knowledge and taste of the Holy Eucharist.

b) **The insane, but not perpetually so, the delirious, epileptics, the possessed, and those obsessed.**

First, outside danger of death, the Eucharist cannot be ministered to the aforesaid while they are not in possession of themselves. "Nevertheless it will be permitted, if at some time they have lucid intervals and show devotion while they remain in that state, if there is no danger of unworthiness"[2] (St. Alphonsus, VI, 302).

Second, in danger of death it should not be given: 1. if it is sufficiently certain that they are constituted in sin and impenitent, for example if in the act of sin, or after a scandalous life, they have fallen into insanity, delirium, or deprivation of the senses; 2. if a danger of positive irreverence is present. In doubt whether such danger is present, that is, the danger that the sick person may expel the Sacred Host or move indecently during the ministration, it is useful to give him an unconsecrated particle before the Holy Eucharist; 3. if it is clear that they lack and have always lacked sufficient knowledge and devotion toward the Eucharist (St. Thomas, III, q. 80, a. 9; St. Alphonsus, VI, 302). Nevertheless imperfect knowledge suffices; likewise devotion broadly taken, or such that someone can be presumed to will to receive the Eucharist in danger of death. Outside the enumerated cases, according to the opinion of almost all authors, it is permitted to minister the Eucharist to them.[3]

For the rest, nothing can obstruct liceity except the defect of actual devotion in the one receiving or the prohibition of the Church. But since the sacraments are for human beings, the greatest good of the one receiving prevails over the reverence owed in itself (St. Alphonsus, loc. cit.). The Roman Ritual[4] can be understood of ordinary circumstances, that is, abstracting from danger of death. But it is disputed whether there is an obligation of giving Viaticum to the aforesaid. Now with St. Thomas (III, q. 80, a. 9), St. Alphonsus (loc. cit.), and most theologians, against some, it must be affirmed. For if it is permitted to give that greatest good to the dying person, there is also an obligation of giving it; all the more because the dying person must be said at least implicitly to ask for the sacrament, namely because his intention or profession of the Christian religion involves at least an implicit petition for Viaticum (St. Alphonsus, loc. cit.). From these things it follows that the practice of not ministering Viaticum to the persons of whom we have spoken is truly an abuse.

c) **Those insane only about one or another point** can communicate at least sometimes, provided the insanity does not regard the substance of the Holy Eucharist. The reason is that at least it is doubtful whether human beings of this kind lack the faculty of placing human acts; and in doubt, favor must be shown to them.

d) **The semi-insane and the elderly becoming childish again.** Communion is to be given to these: 1. in danger of death; 2. at Easter (St. Alphonsus, VI, 303); 3. if they enjoy greater discretion, they can also communicate more often. These things also hold of those deaf and mute from birth, unless they have been specially instructed in some institute (St. Alphonsus, loc. cit.).

[1] Cf. Roman Ritual, title IV, chapter 1, n. 10.

[2] Roman Ritual, loc. cit.

[3] Cf. Fourth Council of Carthage (cause 26, question 6, chapter *Is qui poenitentiam*); First Council of Orange (cause 26, question 6, chapter *Qui recedunt*); Decretals of Gregory IX (*De poenitentiis et remissionibus*, chapter *Quod in te*), and the Roman Catechism (*De Eucharistia*, n. 64).

[4] Title IV, chapter 1, n. 10.

175 **3. The unworthy** are either publicly or occultly unworthy. Now:

a) The publicly unworthy are to be kept away from the Eucharist, such as the excommunicated, the interdicted, and the manifestly infamous, unless their repentance and amendment are clear and they have first made satisfaction for public scandal (canon 855, § 1). Besides those enumerated, all public sinners are to be counted among the publicly unworthy. Moreover, those who are indecently dressed seem able to be repelled, even if they cannot be said to be gravely guilty; but great prudence is needed in such a case. The publicly unworthy must be repelled whether they ask publicly or secretly, unless nevertheless the minister has positively known that they are repentant, and they have first satisfied for public scandal. See these things explained in the treatise on the sacraments in general, n. 28.

b) Occult sinners are to be repelled only when they ask secretly and the minister has positively known outside confession that they have not been amended; but not if they ask publicly and he cannot pass them over without scandal (canon 855, § 2).

176 **4. Those suffering from a cough.** To these, unless the cough is constant, Communion can be given. For the phlegm which is expelled by coughing comes not from the stomach and esophagus, but from the lungs or bronchi. Only then, if the sick person is suddenly afflicted by a very violent cough, is there danger that the sacred species may be ejected by the force of the cough.

177 **5. Those suffering from frequent vomiting** cannot communicate unless it is clear, for example from the declaration of those standing by, or more advisedly of a physician, that noteworthy danger is absent. Note, however, that often a particle of the host can be given to them without danger of vomiting.

178 **6. As regards those who cannot take the species except in an artificial way,** for example through a tube inserted into the esophagus or another part of the body, receive these points:

There is no obligation of communicating or of ministering in this way, not even in danger of death; both because it is doubtful whether such taking is sacramental (n. 171), and because the Holy Office, on 27 January 1886, concerning a similar case,[1] responded: "As it is explained, it is not expedient," which, considering the style of the Curia, seems to involve a prohibition; and on 27 November 1919, to a petition in which the faculty of taking the Holy Eucharist through a tube inserted into the stomach was asked, it responded: "Negative."[2] Nevertheless, considering the probability of sacramental taking together with the lack of a general prohibition, I would not condemn one who in danger of death communicated in this way.

The fact that someone uses an artificial esophagus does not prevent him from truly absorbing food, or passing it into the stomach through a vital act. Therefore such a person without doubt receives the Holy Eucharist sacramentally, and therefore can communicate just as others can.

Note. In doubt whether a dying person can swallow the species, those standing by should be asked whether he still takes food; or an experiment should be made by giving him some food or an unconsecrated host. In what way the Eucharist can be ministered if the dying or sick person cannot swallow the species because of dryness of the mouth, see n. 169.

[1] The case concerned a sick person for whom an opening for receiving food had been made below the chest; this case does not formally differ from the case of a tube inserted into the esophagus.

[2] In *Nederlandsche Katholieke Stemmen*, 1921, p. 16.

Section III. On the Mode of Receiving

Chapter I. On the Disposition of the Soul

179 **I. The state of grace.** That the state of grace is required is clear from Sacred Scripture,[1] and from what was said about the sacraments in general, n. 43. In the same place it was likewise proved that broad moral certitude about the state of grace is required.

1. One who is conscious to himself of mortal sin is bound per se to recover lost grace through Confession. Per accidens he sometimes satisfies by an act of contrition, as will be explained under 4. That Confession is required per se is clear from the Council of Trent: "One who wishes to communicate must recall to memory that precept of his, that is, of the Apostle: **Let a man prove himself.** But ecclesiastical custom declares that this proof is necessary, so that no one conscious to himself of mortal sin, however much he may seem to himself contrite, ought to approach the Holy Eucharist without previous sacramental Confession. This holy Synod has decreed that this must perpetually be observed by all Christians, even by those priests upon whom, by office, it is incumbent to celebrate, provided that a supply of a confessor is not lacking to them."[2] Canons 807 and 856 are added.

It is disputed, however, whether the precept of premising Confession is divine or ecclesiastical; likewise, if it is ecclesiastical, whether it was imposed by Paul or introduced by custom. Concerning this, note: 1. nothing can be deduced from the cited place of Trent, since from the history[3] and acts[4] of the Council it is clear that the Fathers adhered to different opinions and did not intend to reject any one. 2. It is difficult to admit that an obligation of this kind was imposed by Paul upon the whole Church, unless it is positively proved; but a solid argument is lacking. Hence the said precept seems either to be divine or to have been introduced by ecclesiastical custom; which is to be preferred, I do not know.

Nor should you object: According to Trent, ecclesiastical custom declares that the proof of which Paul speaks is placed in Confession; therefore custom did not introduce the obligation of confessing. Response: According to Trent, ecclesiastical custom does not declare that the proof of which Paul speaks is placed in Confession, but that proof through Confession is necessary; by this it is left undecided whether such proof was introduced by Christ, by Paul, or by ancient custom.

2. One who, all things considered, doubts whether after his last Confession he sinned gravely, is not bound to confess, but satisfies by an act of contrition. For the Council of Trent speaks only of one who is conscious of mortal sin; this cannot be said of one who doubts (St. Alphonsus, VI, 473). Nevertheless, if he does not confess, that he is bound to an act of contrition was proved in the treatise on the sacraments in general (n. 43). I said **all things considered**, because Confession is prescribed if from the circumstances it must be presumed that a grave sin was committed (*De Sacramentis in genere*, loc. cit.).

It is disputed whether before Communion one must confess again who, all things considered, doubts whether he has worthily confessed the sin committed. But according to the principles of St. Alphonsus it must be affirmed, because he doubtfully satisfied the law of worthy Confession. Nevertheless I again said **all things considered**; for if the doubt arises from doubt about the mode in which the Confession was made, for example whether it was instituted with true attrition or not, it can be presumed that it was rightly made (vol. I, n. 229).

3. One who confessed worthily, but forgot a mortal sin, with sufficient probability is not bound to confess again before he communicates. Most older theologians reject this doctrine, because the Council of Trent, which binds one who is conscious to himself of mortal sin to previous Confession, in the obvious sense speaks of the Confession of all mortal sins of which he is conscious to himself before Communion. But St. Alphonsus (VI, 257), and after him almost all more recent authors, hold as sufficiently probable that only a worthy previous Confession is prescribed, in other words, that it suffices that someone has been justified through Confession, or that sins have been remitted through Confession, whether directly, or, as in the case of a sin omitted through forgetfulness, indirectly. Considering the not-to-be-despised explanation of the Council of Trent and the authority of the authors, we hold this opinion as safe in practice.
4. One who per se is bound to Confession, per accidens is not bound to it, but satisfies by an act of perfect contrition, if both there is a necessity of communicating or celebrating, and the supply of a confessor is lacking (canons 807, 856).

a) The necessity of celebrating or communicating is understood as grave or urgent, as the Council of Trent, loc. cit., and the Code (cited canons) have it. Necessity is present:

First, if Communion or Mass cannot be omitted without infamy or scandal, as if a layperson has already approached the Communion rail; if a priest has already begun Mass, or has arrived at the altar, or is eagerly awaited by the faithful (St. Alphonsus, VI, 260). Necessity also seems to be present if someone, for example, goes to church with his family intending to communicate and is not absolved. As regards those who in colleges, etc., communicate daily, infamy does not seem to be a sufficient reason, nor one to be admitted by the confessor, because either they rarely sin, and then they can more easily allege another motive, for example a broken fast; or they sin more often, and then they are bound to arrange their Communions so that they are no longer known to communicate daily. Therefore the obligation of Confession is also to be urged more, especially in younger persons, lest the reverence due to the Eucharist be diminished, the horror of sin be lost, and the efforts to root out a depraved habit be lessened.[5]

Second, if Mass must be continued; namely: 1. if the consecration has already begun, the priest should not interrupt Mass in order to confess, but, having elicited an act of contrition, should continue it. 2. If the consecration has not yet begun, the same seems to be said of a priest who remembers a grave sin or becomes guilty of one, since the Missal states without distinction: "If in the very celebration of Mass the priest remembers that he is in mortal sin, let him be contrite with the purpose of confessing and satisfying."[6] But the priest who "remembers that he is excommunicated or suspended, or that the place is interdicted... if scandal is not feared, ought to leave the Mass already begun."[7] The reason of scandal, or infamy, will commonly excuse from leaving Mass, so that Mass should rather be continued, after an act of contrition has been elicited.

Third, if Viaticum must be consecrated for a dying person and another who may celebrate is lacking. Likewise if there is danger that the sacrament may be profaned and that danger cannot be averted in another equally safe way (St. Alphonsus, VI, 260).

Fourth, if there is, whether for a pastor or for an assistant, an obligation of celebrating by office, for example on a feast day so that the people may hear Mass, for funerals, or for blessing nuptials, and another who may celebrate in his place is lacking (St. Alphonsus, VI, 261). But there is not a necessity of celebrating or communicating which of itself is sufficiently grave if the priest suffers from the

omission of Mass only the privation of the stipend; likewise if he must celebrate only from a vow, or from the precept of a superior, or so that he himself may hear Mass of precept, or so that another may satisfy the precept of Easter Communion. But with sufficient probability a necessity of celebrating per se sufficiently grave is present if otherwise the priest himself cannot satisfy the precept of Easter Communion; likewise, for a layperson, a necessity of communicating per se sufficiently grave is had if otherwise he cannot fulfill the precept of Easter Communion. The reason is that annual Communion obliges in some way from divine law (St. Alphonsus, VI, 261).

b) The supply of a confessor is lacking:

First, if no one is present who can, and licitly can, and wills to hear Confession, and another cannot be approached without grave difficulty. But the difficulty which arises from the journey to be made can be increased on the one hand by infirmity, by the imminent time of celebrating, etc., and on the other hand lessened by the fact that the journey can be made by carriage, railway, etc. Abstracting from the aforesaid special circumstances, according to St. Alphonsus a journey of one and a half leagues excuses (VI, 264). Therefore the supply of a confessor is not lacking because the ordinary confessor cannot be had.

It is disputed whether or not the supply of a confessor is lacking if only a confessor is present, or can be approached, to whom someone cannot confess without extraordinary shame arising from an extraordinary circumstance; for example, if an uncle would have to confess a very shameful sin to his nephew. Some affirm, but it seems it must be entirely denied. For: 1. an intrinsic inconvenience does not excuse from law (*De Legibus*, vol. I, n. 169). But that extraordinary circumstance only causes the intrinsic inconvenience, namely shame, to become greater, not to become extrinsic. There is added that the more benign opinion gives occasion to laxity and weakens the law, since limits cannot be assigned. Finally, the aforesaid opinion was formerly commonly rejected, either explicitly or implicitly.

Objection. The law of premising Confession to Communion is probably only ecclesiastical. Hence it is permitted, at least by epikeia, to regard extraordinary shame as an excusing cause.

Response. Passing over the antecedent, I observe that the two latter arguments adduced by us also exclude epikeia.

Second, if no one is present except one ignorant of the language, or lacking jurisdiction, or an excommunicated person to be avoided. Concerning the case in which someone has fallen into a reserved sin and the priest present per se lacks jurisdiction over it, see the treatise on Penance.

Third, if someone cannot confess to a confessor who is present or can be approached without grave harm extrinsic to Confession; harm, I say, whether to himself, to the confessor, or to a third party, as is more fully explained in the treatise on Penance (St. Alphonsus, VI, 264).

[1] 1 Cor. 11:29.

[2] Session 13, chapter 7.

[3] Pallavicini, cited work, book 12, chapter 2.

[4] Theiner, cited work, vol. I, p. 488 and following.

[5] Cf. Vermeersch, *Epitome*, 3rd ed., vol. II, n. 120.

[6] *On Defects*, VIII, n. 4.

[7] Roman Missal, loc. cit., n. 5.

180 **II. Actual devotion.** Although a voluntary defect of this devotion does not simply prevent the fruit of Communion, it nevertheless causes one to receive much slighter fruits. Moreover, one who at the time of Communion is voluntarily distracted commits a venial sin of irreverence. Likewise he also seems to commit a venial sin of irreverence who communicates either from a venially evil motive, for example from vainglory, or with an actual or virtual affection for venial sin. In such a case there seems to be a certain positive irreverence. It must be said otherwise of one who communicates with habitual venial sin, because there is rather a defect of perfect reverence than positive irreverence (St. Alphonsus, VI, 270).

Corollary I. Nocturnal pollution, in relation to Communion to be received on the following day, is to be judged thus: It never prohibits it under grave sin, provided the grave sin perhaps committed has been removed by Confession. For the rest:

1. If it occurred with grave sin, although remitted by Confession, "one should abstain from Communion and celebration unless something else seems good to the confessor."[1]
2. If it occurred with venial sin or without sin, Communion is prohibited under venial sin by reason of the effects, namely if because of dishonorable fantasies it obstructs the required devotion. Yet it is prohibited only insofar as either one must abstain from Communion, or effort must be applied to removing the impediment[2] (St. Alphonsus, VI, 272).

Corollary II. Conjugal intercourse practically does not impede Communion; nor, for the most part, should spouses be positively advised to abstain from intercourse on the night before the day of Communion. To those asking, let it be said that it is licit, and at most let it be added that abstinence is a thing of greater perfection.

[1] Missal, *On Defects*, title IX, n. 5.

[2] Cf. Missal, loc. cit.

181 **III. Preparation and thanksgiving.** In order that one may receive richer fruits, he should not omit remote and proximate preparation, and thanksgiving.

1. Preparation can be distinguished as twofold: remote and proximate. Remote preparation consists especially in purity of heart; proximate preparation, in acts of faith, hope, charity, etc., and "let it be made according to the powers, conditions, and offices of each one."[1]
2. Thanksgiving should likewise be carried out carefully, and not be finished in a few minutes. For the rest, it too, as the cited Decree has it, "should be made according to the powers, conditions, and offices of each one" (cf. St. Alphonsus, *Praxis Confessarii*, n. 155).

Corollary. To eat or drink immediately after Communion is venial, unless a reasonable cause excuses (St. Alphonsus, VI, 283). To spit immediately after it has been cast into the stomach is unbecoming; if it were done with danger of ejecting a particle, it would be a sin.

[1] Decree of the Sacred Congregation of the Council *Sacra Tridentina Synodus*, 20 December 1905.

Scholion. On Frequent and Daily Communion

Canon 863 admonishes that the faithful are to be stirred up to be refreshed frequently, even daily, with the Eucharistic bread, according to the norms handed down in decrees of the Apostolic See. But the

norms of which the cited canon speaks are contained in the Decree of the Sacred Congregation of the Council *Sacra Tridentina Synodus*,[1] and in other documents to be cited insofar as needed.

[1] 20 December 1905.

182 **I. Requisites for daily Communion.** "Frequent and daily Communion, as being most desired by Christ the Lord and by the Catholic Church, should be open to all Christ's faithful of whatever order or condition; so that no one who is in the state of grace and approaches the sacred table with a right and pious mind can be prohibited from it" (cited Decree, n. 1). "But a right mind consists in this, that one who approaches the sacred table does not indulge custom, vanity, or human reasons, but wills to satisfy God's good pleasure, to be united to Him more closely by charity, and by that divine medicine to meet his infirmities and defects" (n. 2). Now:

1. An intention which is predominantly supernatural suffices to this extent, that one who approaches with such an intention cannot be kept away from Communion.
2. It suffices that the good ends assigned be intended implicitly.
3. Custom, whether one's own or that of others, will in practice rather often be more the occasion than the principal reason. Vanity will be the principal reason if someone becomes conceited because of frequency of Communion and willingly speaks about it to others in the manner of little devotees.[1]

[1] Instruction to the Bishops of Prussia, 8 December 1906.

183 **II. The office of the confessor.** 1. "In order that frequent and daily Communion may be done with greater prudence and be increased by richer merit, it is fitting that the counsel of the confessor intervene" (n. 5). Therefore the confessor, especially if he is asked, enjoys the right of judging about the state and disposition of the penitent; indeed it is entirely fitting that his counsel be sought. I said **it is fitting**, because it is disputed whether the word **it is fitting** in this case involves a true obligation. With sufficient probability it is denied, and the counsel of the confessor is declared necessary only insofar as, by seeking it, one proceeds with greater prudence and greater merit can be hoped for. In a word: the word **it is fitting** probably signifies only the necessity of greater prudence and greater merit. Moreover, the confessor does not grant permission to communicate daily, but only declares that the requisites for permission are present; the permission itself, or the right, is conferred by the Church or by Christ. Finally, a penitent who is certain about the required disposition is not bound to acquiesce in a confessor turning him away from daily Communion, but can use the right granted to him. But these things are merely theoretical.

2. "Let confessors nevertheless beware lest they turn anyone away from frequent or daily Communion who is found in the state of grace and approaches with a right mind" (n. 5).

Question. Whether the practice of daily Communion can finally be forbidden to one who permanently, without any amendment, falls back into venial sins.

Response. Some deny, because according to number 3 of the decree, it suffices "that those using frequent and daily Communion be free from mortal sins, with the purpose of never sinning in the future," certainly gravely. Others affirm, because the decree itself in n. 3 declares that it cannot happen "that those communicating daily should not little by little free themselves from even venial sins and from their effect." Therefore a permanent defect of amendment is a sign of a defect of right intention in the past, and it introduces a vehement prejudice for the future,[1] unless special circumstances or signs

remove the said prejudice. Hence the practice of daily Communion is finally to be forbidden unless there is now hope that the penitent will approach with a right intention. To the argument of the adversaries they respond that the words opposed from number 3 of the decree regard only the required state of grace, but by no means exclude the obligation of bringing a right intention in approaching Holy Communion. Yet one who adheres to this opinion should take care not to bring it into practice too hastily; moreover, let him stir the penitent to greater fervor, and as soon as a founded hope of bringing a right intention is present, let him cease from turning him away from daily Communion.

[1] This argument, however, is weakened somewhat by responding that the quoted words, which are not judged to pertain to the doctrinal part, are not to be urged too much.

184 **III. The office of others.** 1. The faithful are to be stirred up to be refreshed frequently, even daily, with the Eucharistic bread, according to the norms handed down in the decrees of the Apostolic See; and those assisting at Mass, being duly disposed, should communicate not only by spiritual affection, but also by sacramental reception of the Most Holy Eucharist (canon 863). The cited Decree, n. 6, inculcates the same upon pastors, confessors, and preachers. Add the response of the Sacred Congregation of the Council,[1] by which it is declared that "the frequency of Holy Communion is commended according to the first article of the Decree even to children, who, once admitted to the sacred table... must not be prohibited from frequent participation in it, but rather are to be exhorted to it; with the contrary practice in force in some places being reproved."

2. Frequent and daily Communion is also to be promoted as much as possible in seminaries of clerics, whose students long for service of the altar; likewise in other Christian schools of every kind[2] (cited Decree, n. 7). Religious superiors should promote among their subjects the frequent, even daily, reception of the Most Holy Body of Christ; and frequent, indeed even daily, access to the Most Holy Eucharist should be freely open to religious who are rightly disposed (canon 595, § 2). As regards religious, observe besides:

a) If there are religious institutes of either solemn or simple vows in whose rules or constitutions, or even calendars, Communions are found to be assigned or ordered on certain days, these norms have only directive force (canon 595, § 4).

b) But if after the last sacramental Confession a religious has been a grave scandal to the community, or has committed a grave and external fault, the superior can prohibit him from approaching Holy Communion until he has again approached the sacrament of Penance (canon 595, § 3). The words **scandal**, and **grave and external fault**, are now to be taken at least in the theological sense. The prohibition falls away as soon as the subject has confessed.

Note. The law of reading the Decree *Sacra Tridentina Synodus* annually in religious houses is no longer in force (cf. canon 6, 6).

[1] 15 September 1906 (*Monitore Ecclesiastico*, vol. 18, p. 346).

[2] Under the name of schools are comprehended "all pious institutes in which boys or girls are instructed and educated" (*Acta Sanctae Sedis*, vol. XXI, p. 506).

185 **IV. Daily Communion is commended to all** by: 1. the desire of Christ and the Church, as is more fully explained in the prior part of the cited Decree; 2. the end and fruit of Communion. Concerning this observe that its end consists especially in this, "that Christ's faithful, united to God through the sacrament, may thence take strength to restrain lust, to wash away the slight faults which

occur daily, and to prevent the graver sins to which human frailty is liable; but not principally that the honor and veneration of the Lord be consulted, nor that it be, as it were, wages or a reward of their virtues for those receiving" (cited Decree).

Corollary. The practice of persuading either the faithful or the members of some community to abstain from Communion on one or another day each week must be disapproved. For this practice cannot be reconciled with the cited decree and other ecclesiastical documents, which exhort daily Communion to be brought into practice and promoted, and prohibit the confessor "from turning anyone away from frequent or daily Communion who is found in the state of grace and approaches with a right mind" (n. 5). Nor should members of a community be persuaded to abstain from daily Communion on the occasion of spiritual exercises.

Chapter II. On the Disposition of the Body

186 The disposition of the body comprehends cleanliness of body, decency of dress, and the natural fast.

As regards cleanliness of body, it suffices to note these things:

1. Dirt adhering to the body and appearing should be washed away before the reception of the Eucharist.
2. Stains inherent in the body are commonly not attended to, unless they are apparent, notable, and removable. If there is hope that they will soon be removed, and Communion can conveniently be deferred, it is fitting to defer it. Nevertheless, a priest infected with a disease that brings horror should not celebrate publicly; he can celebrate secretly (St. Alphonsus, VI, 275).

As regards decency of dress, observe that it depends much on the custom of places and the condition of persons. For the rest:

1. So far as can be done, one should not approach in torn and dirty clothes.
2. Women should avoid superfluous ornament and especially immodest or indecent dress. One who approached too immodestly would have to be kept away from Communion; but one must proceed with the greatest prudence.
3. It is fitting that soldiers approach with arms laid aside.
4. "If Communion is to be given to priests or others from the clergy, let it be given to them kneeling at the steps of the altar, or, if it can conveniently be done, let them be distinguished from the laity within the altar rail. But let priests communicate with a stole."[1] Deacons, if they approach Holy Communion privately, do so with a stole worn transversely over the cotta.[2] Those who acted otherwise would sin venially (St. Alphonsus, VI, 275-276).

As regards the natural fast, several things must be noted:

[1] Roman Ritual, title IV, chapter 2, n. 4.

[2] Sacred Congregation of Rites, 4 July 1879, n. 3499, ad II.

187 **I. The existence of the precept.** The precept of the natural fast, introduced formerly by custom and confirmed by several councils,[1] was established by canon 858, § 1, in these words: "One who has not observed the natural fast from midnight cannot be admitted to the Most Holy Eucharist, unless

danger of death urges, or there is necessity of preventing irreverence toward the sacrament." It is a precept only of ecclesiastical law (St. Alphonsus, VI, 278).

[1] Council of Hippo, year 393, canon 28; Council in Trullo, canon 29; Council of Constance, year 1415, session 13.

188 **II. The object of the precept** consists in this, that from midnight the communicant has transmitted nothing digestible and coming from outside into the stomach or another organ serving the digestion of foods, and retained it there. Therefore, in order that the natural fast be violated, it is required:

1. That something be taken after midnight. Now:

a) Midnight, according to canon 33, § 1, can be computed according to: 1. usual time; 2. local time, both true and mean; 3. legal time, both regional and other extraordinary time (vol. I, n. 167).

b) Midnight must be taken physically, not morally; but the completed hour is commonly indicated by the first stroke of the clock (St. Alphonsus, VI, 282), and sometimes by the last stroke.

Here it is customary to ask what one can do who, while eating or drinking, hears the first stroke of the clock; namely, whether someone can communicate even if he does not spit out what he has in his mouth. Several more recent authors affirm, because, they say, the Church is not judged to oblige one to such rusticity. But the Church does not oblige one to that, even if it commands: "If you swallow, it is not permitted for you to communicate." Hence if, considering the circumstances, you cannot spit out without rusticity, swallow it and abstain from Communion. Thus theoretically; for in practice it will scarcely be clear that the fast has been violated, because approved clocks will scarcely be lacking which indicate midnight somewhat later and which it is permitted to follow (St. Alphonsus, loc. cit.).

What if someone passes from one place to another, in which a different time prevails; for example, someone eats at Maastricht at 11:30, then departs for Aachen and communicates there, although 11:30 at Maastricht is 12:30 at Aachen? I think he acts illicitly, because the time of the fast seems to be computed in order to the time at which Communion is received; but the time of Communion must be computed according to the time of the place in which someone communicates.

2. That something be taken which comes from outside. Hence the swallowing of saliva, or blood from the gums, or fluid flowing from a pustule which exists in the mouth, does not obstruct the fast; nor the skin of the lips, for these pertain to the interior parts of the mouth, whose extremities and curvature they are. It is otherwise if someone, for example, sucks blood from a wound on the finger, or tears flowing from the eyes. Nevertheless, it is not required that something be put into the mouth from outside after midnight, but it suffices that after midnight it be swallowed. Hence the fast is violated if someone at night puts sugar into his mouth to be dissolved and swallowed after midnight, even partly (St. Alphonsus, VI, 279).

3. That something be taken which has the character of food or drink. Certainly that which is not digestible does not pertain here (St. Alphonsus, VI, 281). Nor does that seem to pertain here which can only in some way be altered in the stomach and, according to common estimation, does not have the character of food, such as fingernails. For the rest, "it does not matter," says St. Thomas (III, q. 80, a. 8, ad 4), "whether something nourishes or does not nourish"; nor does it matter at all that the thing is taken by way of medicine.[1] Considering all these things, the following do not violate the fast, although some of the things to be enumerated, according to chemists, are not excluded from every alteration in the stomach: glass, hair, silk, wool, linen, a pebble of metal, little

fruit-stones wholly cleansed, wood, straw, fingernails. The following violate it: bones, wax, chalk, metal dust, artificial silk.

4. That what is taken not be retained in the mouth, but transmitted into the stomach. If the thing taken is not passed into the stomach, there is neither eating nor drinking nor, as we suppose, nutrition. It is the same, however, whether food or drink is introduced into the stomach in a natural or artificial manner (n. 171). Considering this condition, one is not bound, unless perhaps by reason of danger, to abstain from Communion who vomits whole the food taken,[2] or washes the stomach by means of a tube and ejects the water. Nevertheless one should abstain from using a tube anointed with oil, because some oil will almost certainly remain. Moreover, he who is nourished by a clyster seems to violate the fast, because although foods are not received in the stomach, nevertheless nutrition takes place, so that Christ is no longer the first food of those communicating. The Holy Office,[3] indeed, responded, when a priest sought the faculty of proceeding in this way: "The Most Holy Father is to be petitioned for the grace, according to the prayers"; and this grace was afterward granted by the Supreme Pontiff. But it seems to be a dispensation rather than a declaration.

[1] Roman Missal, *On Defects*, title IX, n. 1.

[2] But these things are merely theoretical, because it will not be sufficiently clear that everything has been vomited.

[3] 23 April 1890.

189 **III. Further determination of the object.** Lest the ecclesiastical law smell of pharisaical superstition, certain, so to speak, exceptions are admitted. Namely, the following do not violate the fast:

1. One who by chance swallows remains of foods adhering to the teeth; this is clear from the Roman Missal.[1] The same is said with sufficient probability of one who does this voluntarily (St. Alphonsus, VI, 279).[2]

2. One who by chance or voluntarily inhales the smoke of foods, tobacco, incense, etc. (St. Alphonsus, VI, 280, doubt 2); likewise one who uses a medicine which sends the medicine into the bronchi under the form of vapor.

3. One who by chance or voluntarily swallows a very small quantity wholly joined with saliva, for example of water after someone has washed his mouth and spat out the water, or of the juice or very small particle of tobacco which remains inseparably mixed with the saliva when someone crushes tobacco with his teeth and spits out the phlegm. Nevertheless chewing of this kind is prohibited under venial sin because of irreverence, unless a just cause is present (St. Alphonsus, VI, 280, doubt 3).

4. One who by chance swallows a sufficiently small quantity, for example a fly, dust, snow, rain, or a little drop of blood flowing from the nose (St. Alphonsus, VI, 280, doubt 1). The fact that passage into the stomach is merely noticed does not impede Communion.

5. One who uses nasal tobacco and by chance passes something into the stomach (St. Alphonsus, VI, 280, doubt 1). For the rest, it should be advised that the use of tobacco, both nasal and smoking, be omitted before Communion, although it is not prohibited.

The reason for all these things is that the law is to be taken in a human way, lest, as we have hinted, it smell of pharisaical superstition. There is added that otherwise it would give occasion to continual anxieties.

6. Finally, sometimes an exception is had from the disposition of the liturgy, namely if an adult is baptized, "with the salt," says the Sacred Congregation of Propaganda Fide,[3] "tasted beforehand by catechumens in the conferral of Baptism, even if it seems to break the fast, nevertheless there is still no doubt that after Baptism has been received they, the adults, can be admitted to Holy Communion, indeed ought to be." Finally, the law does not regard the case in which the ablution is given to one licitly communicating, or together with the host a little water or wine, although something is swallowed before the sacred species (St. Alphonsus, VI, 288).

Corollary I. One who doubts whether he has violated the fast, in other words whether he has taken something, whether he took it after midnight, whether that which he took obstructs the fast, can communicate, because in a doubt of fact founding the law the condition of liberty is better. But in all the cases mentioned, the fact founding the law is doubtful (St. Alphonsus, VI, 282; I, 38, 39).

Corollary II. One who at night does not know what hour it is, and, without asking the hour, eats with the intention of afterward communicating, sins, because he rashly admits the danger of violating the law. Nevertheless after the fact, if the truth can no longer be investigated, it is permitted to him, the things to be posited being posited, to communicate.

[1] *On Defects*, title IX, n. 3.

[2] The Roman Missal, loc. cit., says thus: "If the remains of food remaining in the mouth are swallowed, they do not impede Communion, since they are swallowed not by way of food, but by way of saliva."

[3] 13 February 1906.

190 **IV. The gravity of the precept.** The precept is grave from its whole genus, both as regards the time and as regards the thing to be taken. This is clear both from the consensus of all authors and from the ends of the precept.

"One end is mystical, namely that it may be signified that Christ is the first food of man. Other ends are that those communicating may be more disposed to devotion, and that every danger of the sacrament being vomited may be avoided; which danger indeed sometimes arises from the disordered use of food or drink. But the said ends are not obtained with sufficient certainty unless every use of food or drink before Communion is absolutely prohibited" (St. Thomas, III, q. 80, a. 8; St. Alphonsus, VI, 278).

191 **V. The causes because of which it is permitted to communicate not fasting** are:

1. Urgent danger of death (canon 858, § 1), namely such that Communion can be given by way of Viaticum; this was explained in n. 158. But danger of death exempts from the law of fasting, even if someone could observe it without inconvenience, since the cited canon speaks absolutely. And this holds as regards all, both as regards those for whom danger of death threatens from outside, for example from imminent battle or from the sentence of a judge, and as regards the gravely sick; for the canon does not distinguish.

Corollary I. A sick person constituted in danger, as long as the danger endures, can communicate as often as desired, or daily, not fasting, and this even if when healthy he had been accustomed to

communicate rarely. The reason is that one constituted in danger of death is absolutely exempted from the law (St. Alphonsus, VI, 285; cf. canon 864, § 3).

Corollary II. Just as it is permitted for one constituted in danger to communicate not fasting, so also a priest can celebrate not fasting in order to give Viaticum to himself, because to celebrate is not more than to communicate. The same is permitted with sufficient probability in order to give Viaticum to another, because by divine precept, to which ecclesiastical law yields, he is bound to receive Viaticum; but the case is of little practical importance, because the Eucharist is usually reserved (St. Alphonsus, VI, 286).

2. Long infirmity. The sick, however, who have already been bedridden for a month without certain hope that they will recover soon, can, by the prudent counsel of the confessor, receive the Most Holy Eucharist once or twice a week, even if they have previously taken some medicine or something by way of drink (canon 858, § 2).[1] As regards the interpretation of this canon, observe that it seems one must incline toward the more benign side, because it concerns a favor, and one universal and granted by way of derogation from the law, not by way of dispensation. These things having been noted, I explain briefly the faculty granted. Therefore, in order that someone may enjoy the privilege, it is required:

a) That he be sick, or affected by some illness. Nevertheless it suffices that someone be worn out by old age, because old age itself is judged to be a certain infirmity.

b) That he be bedridden. Yet this must be understood so that the privilege also belongs to the sick who, as the Sacred Congregation of the Council[2] responded, "cannot lie in bed, or can rise from it for some hours of the day." The same seems to be said of those who, suffering from a chronic disease, according to the different condition of the disease, now lie in bed, now perform some domestic tasks, yet cannot go out without notable inconvenience. But those are excluded who can attend to domestic cares and go out conveniently enough. For the word **bedridden** cannot sufficiently be applied to the aforesaid. Then the more benign interpretation can give occasion to scandal and to a looser application; namely, there is fear lest gradually several persons, with necessity as a pretext, will wish to communicate not fasting.

c) That he has been bedridden for a month. Therefore the sick person cannot use the privilege before he has lain ill for a month.

d) That, after he has lain ill for a month, there is absent certain hope, that is, moral certitude, of recovery to be attained soon, for example after three or four days.

e) That one proceed by the prudent counsel of the confessor. Nevertheless, the request for counsel and the approval of the confessor are not judged to be a condition which, if neglected, would cause the sick person to sin gravely by communicating not fasting. Indeed, I think that per se there is not even an obligation of seeking counsel, although it is especially fitting, and per accidens can even be necessary, namely so that there may be sufficient certainty about the required conditions. The confessor can give counsel both within and outside Confession; for no restriction occurs in the concession of the privilege. Yet let him proceed prudently, namely by seriously inquiring whether the required conditions are present. For the rest, observe:

First, when the explained conditions have been fulfilled, the sick can use the indult even if they would be able to observe the fast, since the canon requires nothing besides the explained conditions. There is

added that the stricter opinion would give occasion to anxieties. They can communicate both at home and in church; yet the latter commonly cannot be done by the bedridden.

Second, by force of the concession "they can receive the Most Holy Eucharist once or twice a week, even if they have previously taken some medicine or something by way of drink" (canon 858, § 2). Medicine can be taken even if it is solid, such as, for example, a pill. But it is required that the matter to be taken directly serve the curing of the illness, so that solid foods used to recover strength are excluded. Besides medicine it is permitted to take something by way of drink. Yet it is not required that what is taken have the character of drink, but it suffices that it be taken by way of drink, like liquid food. Therefore the response of the Holy Office[3] can be applied, by which it is permitted "to take broth, coffee, milk, or another liquid food, even if some substance has been mixed into it, for example light little pills of flour (*semolino*), grated bread reduced to crumbs (*pangratto*), a diluted egg, etc., provided the mixture does not lose the nature of liquid food." Chocolate can be added, but not sugar or solid chocolate, not even when they are not swallowed except after they have been dissolved in the mouth; for it is clear that the taking which occurs by mouth must be considered. Moreover, the sick person can also take some medicine or something by way of drink several times before Communion.

Third, nothing prevents one who can use the explained privilege and therefore communicates not fasting twice in a week from receiving Communion also on other days, after accepting the burden of the fast.

Question. Whether Easter Communion to be received excuses from the law of fasting in the case in which someone otherwise would be deprived of it, because on the one hand he cannot observe the fast without very grave inconvenience even if Communion were given very early, and on the other hand he cannot use the indult of which we have spoken.

Now several think this must be denied, because canon 858, § 1 declares that the fast must be observed unless danger of death urges, or the necessity of preventing irreverence toward the sacrament. But the cited canon cannot be so urged that other cases, for example infamy and scandal to be avoided, are excluded.[4] Whether our case truly ought to be excluded is theoretically doubtful to me; but, with the doubt posited, in practice one can stand for the spiritual good of the person about to communicate and for the somewhat divine law of annual Communion, while the ecclesiastical law of the natural fast is set aside. Nevertheless scandal and abuses must be guarded against. Moreover, if the difficulty would vanish by deferring Communion, let the delay be made. Finally, in the proposed case it would also be permitted to minister the Holy Eucharist at night (canon 867, § 4).

3. Scandal, that is, the sin of one's neighbor, to be avoided; for example if Mass cannot be omitted without the danger of rash judgments or backbiting; likewise without the danger that several persons will omit, with grave sin, to assist at another Mass. Observe, however, that the sole reason that the people on a feast day would lack Mass does not suffice. Nevertheless it suffices with sufficient probability that otherwise a dying person could not receive Viaticum (St. Alphonsus, VI, 286, 287). To avoiding scandal there is often added:

4. Infamy to be avoided. This reason is present if the priest is already at the altar, unless he is of known probity (St. Alphonsus, VI, 287); likewise if a layperson is already sitting at the Communion rail.

5. Irreverence toward the Most Holy Sacrament to be guarded against (canon 858, § 1), as if there is danger that the species may perish or be profaned.
6. The sacrifice to be completed. This reason can be present in three cases, namely: 1. if after the consecration the priest remembers that he is not fasting, he must continue Mass. 2. If after the consuming of the host or chalice he notices that the matter is invalid, he must consecrate and communicate again.[5] 3. If after the consecration, even of bread alone, the priest dies or faints, and no fasting priest is present, a priest who is not fasting must complete the Mass from the place where the prior one stopped.[6]

Finally, partly because of moral union with the completed sacrifice, partly because of irreverence toward the sacrament to be avoided, it is permitted for one not fasting to consume particles of the consecrated species, as is explained in n. 274.

[1] Cf. Decree of the Sacred Congregation of the Council, 7 December 1906.

[2] 6 March 1907.

[3] 7 September 1897.

[4] The same once had to be said about ecclesiastical documents brought forward by adversaries, namely the Council of Constance, session 13, and the Constitution of Benedict XIV *Quadam de more*, 24 March 1756.

[5] Roman Missal, *On Defects*, title III, n. 5 and title IV, n. 5.

[6] Roman Missal, *On Defects*, title X, n. 3.

192 **VI. Dispensation,** which can be obtained from the Holy See, and is granted through the Sacred Congregation for the Discipline of the Sacraments if it concerns seculars, and through the Sacred Congregation of Religious if it concerns religious.[1] Moreover, Nuncios, Internuncios, and Apostolic Delegates can concede to the bedridden of whom canon 858, § 2 speaks that even before the end of the month they may communicate once a week, without observing the fast according to the norm of the cited canon. They can grant the same to sick persons not bedridden who labor under such a disease that, in the judgment of a physician, they cannot observe the fast without danger. Finally, the faculties of the Sacred Congregation of Propaganda Fide grant to bishops, vicars, and prefects apostolic the power "of granting to bedridden sick persons about whom there is no certain hope that they will recover soon, even before the end of the month from which they have been bedridden, that they may receive Holy Communion two or three times a week, and, if it concerns priests or religious, even daily, without observing the fast, that is, even if they have previously taken some medicine or something by way of drink."[2]

[1] Thus the meeting of Cardinals, 7 December 1922 (cf. *Acta Apostolicae Sedis* 1929, p. 39).

[2] Vermeersch, *Commentarius de Formulis faciendis*, n. 57.

193 **VII. Epikeia** is also admitted in this matter, but with the greatest difficulty, so that scarcely a case occurs in which Communion can be received by one not fasting from epikeia alone. It is disputed whether the case would be present if a newly ordained priest about to celebrate his first Mass had broken the fast, and very grave inconveniences would follow, considering the circumstances, if the Mass were not celebrated. In such a case, the reason of avoiding infamy will not easily be present, because such a man will rather be ridiculous than infamous. Sometimes the reason of scandal will not be entirely lacking. Observe, however, "that scandal is then said to exist when an occasion is given for

detracting or judging rashly, but not when an occasion of mere wonder is given" (St. Alphonsus, VI, 257).

Dissertation III. On the Most Holy Eucharist as Sacrifice

(St. Thomas, II-II, q. 85; q. 86, a. 1; q. 100, a. 2, ad 2; III, q. 22; q. 79, a. 7, ad 2; q. 82; q. 83; q. 85; q. 86, a. 1; q. 100, a. 2, ad 2; St. Alphonsus, *Theologia Moralis*, book VI, nn. 304-424; *Homo Apostolicus*, tract 15, nn. 59-88.)

194 **I. The notion of sacrifice.** Sacrifice is the offering of a sensible thing, through some change of it, made to God, and that legitimately, to testify to His supreme dominion and our subjection (St. Alphonsus, VI, 304).

1. The sensible thing itself is the remote matter; the offering of the sensible thing through some change of it is the proximate matter of sacrifice. The end of professing the supreme dominion of God and our subjection is the form of the sacrifice, which, namely, informs the whole act.
2. All admit that some change is required. But it is disputed whether a change for the worse, or destructive change, is required, or a change for the better, insofar, namely, as the thing offered through its sacrification becomes morally more perfect and more pleasing to God.
3. Of those who require a destructive change, some demand a real change, whether physical, as in the killing of an animal, or moral, by which, namely, the thing becomes unfit for common use, as in the pouring out of oil. Others judge that a mystical change suffices.

195 **II. The division of sacrifice.** Sacrifices are distinguished:

1. By reason of matter, into victims or hosts, oblations, and libations, according as an animal, or an inanimate solid thing, or an inanimate liquid thing is offered.
2. By reason of mode, into bloody and unbloody.
3. By reason of end, into latreutic, eucharistic, propitiatory or expiatory, and impetratory, according as they are principally offered in homage to God, or in thanksgiving, or for remission of guilt or punishment, or for obtaining goods (St. Alphonsus, VI, 304).

196 **III. The principal sacrifices of the Old Testament** were:

1. Holocausts, which were principally offered in homage to God. In these the whole thing was consumed by fire.
2. Peace offerings, which were chiefly offered in thanksgiving or for obtaining benefits. In these one part was consumed by fire, another fell to the use of the priests, who ate it in the court of the temple.
3. Offerings for sin, which were principally offered for the remission of guilt or punishment. In these one part was consumed by fire, another fell to the use of the priests, and a third to the use of those offering, who consumed it as a sign of union with God.

Now all the sacrifices of the Old Testament prefigured:

197 **IV. The sacrifice of Christ on the cross,** by which Christ offered Himself on the cross, and by which He perfected the redemption of the human race, that is, so consummated satisfaction for sins and merit for obtaining all graces that satisfaction and merit cannot be further increased, according to that saying of the Apostle: "For by one oblation He has perfected forever those who are sanctified."[1]

Nevertheless the sacrifice of the cross does not exclude the sacrifice by which the satisfaction and merit completed on the cross are continually applied, that is:

[1] Heb. 10:14.

198 **V. The Eucharistic sacrifice, or the Mass,** about which something must be said specifically. We shall treat first of the sacrifice of the Mass considered in itself, then of the celebration of the sacrifice of the Mass.

Part I. On the Sacrifice of the Mass Considered in Itself

199 The sacrifice of the Mass is aptly defined: **the unbloody sacrifice of the New Testament, in which Christ, through the priest, offers Himself under the species of bread and wine to His Father.**[1]

This definition having been given, something must be said briefly first about the existence and essence, then about the efficacy and effects of the sacrifice of the Mass.

[1] Cf. Council of Trent, session 22, chapter 1.

Section I. On the Existence and Essence of the Sacrifice of the Mass

200 **I. The existence of the sacrifice of the Mass.** In the Mass a true and properly so-called sacrifice is offered; this proposition is of faith from these words of the Council of Trent: "If anyone says that in the Mass a true and proper sacrifice is not offered to God, or that to be offered is nothing other than Christ being given to us to be eaten, let him be anathema."[1]

[1] Session 22, canon 1.

201 **II. The essence of the sacrifice of the Mass.** It suffices to note briefly the principal things which pertain here:

1. The victim to be sacrificed is Christ as existing under the species. It is said:

a) **Christ;** this the Council of Trent teaches in these words: "In this divine sacrifice which is performed in the Mass, that same Christ is contained and immolated unbloodily who once offered Himself bloodily on the altar of the cross."[1]

b) **As existing under the species.** For the Mass is a true and properly so-called sacrifice, and therefore the offering of a visible victim, namely a visible sacrifice. But Christ is not visible to us, nor can He be visibly sacrificed by us, except insofar as He exists under the species. Hence the Council of Trent says: "Our Lord... at the Last Supper, on the night on which He was betrayed, in order that He might leave to His beloved spouse the Church a visible sacrifice, as the nature of human beings requires,... offered His body and blood under the species of bread and wine to God the Father, and under the symbols of those same things commanded the Apostles... and their successors in the priesthood to offer them."[2]

Note. Bread and wine are only the matter from which the victim is confected. But the species of bread and wine are not constitutive or essential parts of the victim, but are the condition without which the victim is not given.

2. The principal offerer is Christ Himself; the secondary offerer is the priest.[3] Co-offerers are added, that is, the Church or the whole faithful people, the minister, and those assisting (St. Alphonsus, VI, 307).

3. What the sacrificial action is, or the constitutive act, or the properly so-called essence of the sacrifice of the Mass, is not one opinion among authors. Now:

a) According to the opinion of all today, consecration pertains to the sacrificial action; and according to the more common opinion, the consecration of both species. It is disputed whether Communion also pertains to the essence. Those who deny this admit that it is an integral part of the sacrifice.

b) Of those who judge that the essence of the sacrifice of the Mass is constituted by consecration alone, some formally place the sacrificial action in consecration insofar as it places Christ in the more abased state of food and drink; others place it in consecration insofar as in it there is a mystical destruction, either because the words of themselves tend toward the real separation of body and blood, or because the sacramental species exhibit a sacramental representation of that separation.

[1] Session 22, chapter 2.

[2] Session 22, chapter 1.

[3] Session 22, chapter 2.

202 **III. The character of the sacrifice of the Mass.** The sacrifice of the Mass is both an absolute and a relative sacrifice: absolute, insofar as considered in itself it has all the elements of a true sacrifice; relative, insofar as it essentially says relation to the sacrifice of the cross, or insofar as it is essentially representative and commemorative of the sacrifice of the cross[1] (St. Thomas, III, q. 79, a. 7; q. 83, a. 1).

[1] Council of Trent, session 22, chapter 1.

203 **IV. The agreement of the Mass with the sacrifice of the cross, and its difference from it.**

1. Both sacrifices agree as regards substance, namely as regards the victim and the principal offerer. Therefore the Mass, by reason of substance, is identified with the sacrifice of the cross, so that this sacrifice is truly repeated as often as Mass is celebrated.
2. They differ:

a) In the fact that the sacrifice of the cross was absolute, as it is called, while the Mass is essentially also relative, or is referred to the sacrifice of the cross.

b) By reason of the secondary offerer, namely, on the cross there was only the principal offerer, namely Christ; in the Mass there are the principal offerer, namely Christ, and the secondary offerer, namely the priest.

c) By reason of the mode of offering, which was bloody on the cross, but is unbloody in the Mass.

d) By reason of the end and effects, insofar as the sacrifice of the cross perfected satisfaction and merits, whereas the Mass applies them to us.

Section II. On the Efficacy and Effects of the Sacrifice of the Mass

204 By the efficacy of the sacrifice of the Mass is understood the very power of effecting which it has by reason of the thing offered and of the principal offerer. Now it is clear that this efficacy is infinite. But if it is asked whether the effects produced are themselves also infinite, one must distinguish. The effects which directly regard God, namely the latreutic and eucharistic effects, are infinite; in other words, the sacrifice of the Mass exhibits to God infinite or condign adoration, praise, and thanksgiving. But the effects which directly regard man, namely the propitiatory and impetratory, are limited.

As regards the effects of the Mass, we shall investigate further what the effects of this sacrifice are, in what way they are produced, in what measure different effects come to different persons, and what is required so that a special fruit may come to someone.

205 **I. The effects of the Mass correspond to its ends.** Hence, just as the end is fourfold, so also the effect is fourfold, namely latreutic, eucharistic, propitiatory, and impetratory; in other words: 1. it renders adoration and praise to God; 2. it gives thanks to God for benefits received; 3. it placates offended divine justice and obtains remission of guilt and punishment; and 4. it obtains other spiritual and temporal goods.

Of the said effects, those which directly tend to our utility, namely the propitiatory and impetratory, are customarily indicated by the name **fruits**.

206 **II. The mode by which the effects are produced.** The effects of the Mass can be understood to be produced in three ways:

1. *Ex opere operato* and *ex opere operantis*, according as the effect proceeds by reason of the sacrifice itself, that is, by reason of the victim offered and the principal offerer, or by reason of the work of the co-offerers, that is, of the Church, the minister, and the faithful.
2. Immediately and mediately, according as the effect proceeds not through an intermediate effect, or through an effect of this kind.
3. Infallibly and fallibly. Now:

1. The latreutic and eucharistic effects are produced:

a) *Ex opere operato*, and indeed immediately and infallibly.

b) *Ex opere operantis*, and indeed immediately, and: 1. certainly and infallibly from the work of the Church co-offering; 2. whether or not, and how much, from the work of the other co-offerers depends on their disposition.

2. The propitiatory and impetratory effects are produced:

a) *Ex opere operato*; moreover *ex opere operantis*, namely of the Church co-offering, which moves God in a special way; likewise of the other co-offerers, the priest and the faithful, who can contribute to the aforesaid effects according to greater or lesser disposition.

b) Immediately are produced the placation of divine justice, relaxation of temporal punishment after guilt has been remitted, actual graces, and other spiritual and temporal goods. Mediately are produced remission of guilt, namely through the grace of repentance, and increase of habitual grace, namely through actual graces.

c) Some remission of temporal punishment after guilt has been remitted is produced infallibly, if the Mass is offered for the just. Other fruits are produced fallibly, because something can stand in the way either on the part of Christ, or on the part of the subject placing an obstacle. Nevertheless, it can be said that all fruits are produced infallibly in first act, insofar as the impetration of Christ is of itself always heard.

207 **III. The measure according to which the effects come to those for whom Mass is offered.**

Preliminary note I. Here the discussion concerns the effects which directly regard our utility, in other words, the propitiatory and impetratory effects, which effects, as we have already noted, are called fruits.

Preliminary note II. By reason of those to whom the fruits of the Mass come, a threefold fruit is distinguished, namely general, special or middle or ministerial, and most special or personal. The general fruit is that which comes to the whole Church; namely, since the priest always offers in the name of Christ and of the Church for the whole Church, it cannot happen that every sacrifice does not produce a fruit coming to the whole Church. The special fruit is that which comes to the one or ones to whom the priest specially applies the Mass. The most special fruit is that which comes to the celebrant. Namely, it cannot happen that a peculiar fruit does not come *ex opere operato* to the one offering worthily. But more commonly they judge that the priest cannot yield this fruit. To this fruit is referred that which comes to those contributing to the sacrifice (St. Alphonsus, VI, 312, 318). These things having been noted beforehand, I say:

1. The measure according to which the general fruit is distributed seems to be judged from the greater or lesser dignity and holiness of the members of the Church, and from the special commemoration made by the priest.

2. The measure of the most special fruit, insofar as it comes to the celebrant, is greater to the degree that the disposition and devotion of the priest are more perfect. Insofar as this fruit comes to the co-offerers, it will be greater or lesser according to the measure of cooperation in the sacrifice, disposition, and devotion. Nor is this fruit diminished by the greater number of co-offerers.

3. The measure of the special fruit is determined by these things:

a) It will be more abundant to the degree that the disposition of the one for whom Mass is offered is more perfect. Since this disposition can be increased indefinitely, the special fruit, equally with the general and most special fruit, is therefore called intensively indefinite.

b) It is disputed whether the special fruit is extensively infinite; in other words, whether the same measure comes to each one, whether Mass is offered for one or for several. Now some simply affirm. Others affirm with respect to the impetratory fruit, and deny with respect to the propitiatory. Others simply deny;[1] and we agree with them. For the Church approves and commends the practice of celebrating for a determined person. But if the opinion of the adversaries were true, a determination of this kind would be useless, because in it, with respect to the determined person, it would not matter whether the celebration were made for one or for all. Indeed it would be altogether better always to celebrate for all, because by the application of a determined person the rest would lack the fruit, without utility for that determined person.

[1] As regards St. Alphonsus, in the moral work, n. 312, he says both opinions are probable, but the first seems to him more probable. But in two later works, namely in the work *In Tridentinum*, session 22, n. 22, and in the little work on Mass stipends, whose title is *De abusibus in acceptandis Missis*, nn. 26-28, he teaches the second opinion absolutely and calls it common. Whence he seems to have changed his opinion (Aertnys-Damen, *Theologia Moralis*, vol. II, n. 185).

208 **IV. The application of the special fruit.** I said **of the special fruit**; for the general and most special fruits do not need application. The former, by the very fact that the sacrifice is offered, comes to the whole Church; the latter, by the very fact that he offers worthily, comes to the priest offering. But the special fruit needs the application of the priest; hence something must be said about it.

1. **The notion and division of application.** Application is the intention of the priest of specially offering Mass for some cause or causes, or for some person or persons. Application can be distinguished as twofold, public and private. Public application is had when the faithful are publicly advised of the Mass to be offered for such a one, or when someone's name is inserted into the

prayers. Private application is had when neither are the faithful publicly advised nor is a name inserted into the prayers.

2. **The power of applying.** The priest can apply the special fruit; this is clear both from universal practice and from the condemned doctrine of the Synod of Pistoia.[1] If the application is positively excluded, the special fruit remains in the treasury of the Church. If it is applied expressly to no one, or to one incapable, according to some the fruit remains in the treasury of the Church; according to others, it comes to the priest himself or to those for whom he is specially bound to offer, because they judge that the priest implicitly intended this (St. Alphonsus, VI, 336).

3. **The persons for whom application can be made.** It is permitted to apply Mass for any of the living, and also for the dead expiating their sins in the fire of purgatory, with the prescription of canon 2262, § 2, n. 2 saved (canon 809). Therefore:

a) As regards the living, Mass can be applied for all. Nevertheless: 1. it is permitted only privately, and scandal being removed, to apply it for the excommunicated; heretics and schismatics are regarded as such by the external judgment of the Church, but not unbelievers. Hence, if scandal is absent, it can also be applied publicly for these;[2] a fortiori catechumens are not excluded from it. 2. For an excommunicated person to be avoided, it is permitted to apply it only privately and for his conversion alone (canon 2262, § 2, 2).

b) As regards the dead, the damned being excluded, Mass can likewise be applied for all. Nevertheless for those excluded from ecclesiastical burial (canon 1240), it is permitted to apply it only privately; for any funeral Mass, even anniversary, and other public funeral offices must be denied to these (canon 1241).

Note 1. Let the priest take care that there is not something of evil, error, or superstition in unbelievers offering alms.[3]

Note 2. Even if someone were excluded by the Church from application, nevertheless the priest could pray for him by private intention in the Memento of the living; likewise he could apply to him the fruits coming to the priest *ex opere operantis*, insofar as this is of the priest, but not the fruits *ex opere operato*, or *ex opere operantis* insofar as this is done in the name of the Church.

Note 3. Masses can also be offered or applied in honor of the Saints; this is clear from these words of the Council of Trent: "If anyone says that it is an imposture to celebrate Masses in honor of the Saints and for obtaining their intercession before God, as the Church intends, let him be anathema."[4] In what sense, or for what end, this is done, the same Council teaches in these words: "And although the Church has sometimes been accustomed to celebrate certain Masses in honor and memory of the Saints, nevertheless she does not teach that sacrifice is offered to them, but to God alone, who crowned them. Hence neither is the priest accustomed to say: I offer sacrifice to you, Peter or Paul; but giving thanks to God for their victories, he implores their patronage, so that they may deign to intercede for us in heaven, whose memory we make on earth."[5]

4. **The requisites for valid application** are:

a) That it be made by the celebrant himself, who cannot leave it to be made by anyone, not even Christ. Namely, Christ, who conferred upon the priest the power of applying, is judged to have committed its exercise to the priest alone. Hence the application would be invalid: "I apply the Mass to

him to whom Christ applies it." It must be said otherwise of this application: "I apply the Mass to him to whom Christ is more pleased that it be applied" (St. Alphonsus, VI, 334).

b) That it be made before the sacrifice is perfected as regards its essence; hence according to some, before the consecration of the blood; according to others, before every consecration. In practice, so that every danger of frustration may be guarded against, let it be made before the consecration. Indeed, it is better to make it before the Offertory, or rather before Mass, so that both the Offertory and the other liturgical prayers and actions may benefit the one giving the stipend.

c) That it be made through at least a habitual intention, that is, one made and not retracted. A habitual intention suffices, because application is made by way of donation, which obtains its effect even if time or acts intervene between the conceived intention and the execution given to it (St. Alphonsus, VI, 335). Nevertheless, it is advised that application not be extended for too long a time, and that at least sometimes, for example at the beginning of the month for the whole month, it be determined. An interpretative intention, since it does not truly exist, does not suffice.

d) That it be determined as regards the person or cause. Hence if someone has received a stipend from five persons, or five stipends for different deceased persons, the intention of applying for one of the five does not suffice if no one has been determined explicitly or implicitly. Nevertheless an implicit determination suffices, for example the intention: 1. of applying for him who offered the stipend, or who has been assigned by the celebrant in the booklet for this day; 2. of applying according to the mind of him who transmitted the stipend, provided that he formed the intention; 3. of applying according to the order established by another, for example by a superior or by the rector of the church. It is no obstacle that the celebrant perhaps does not know the intention or errs about it. Likewise a disjunctive determination suffices, as if someone says: "I say Mass for the intention of the pastor, if he has established one for me; otherwise for that intention" (St. Alphonsus, VI, 335).

If a priest has collected a heap of stipends and does not know in what order they were given, the intention of celebrating according to the order in which they were in fact given or accepted suffices; or, with respect to several stipends given at the same time for different persons, according to the order in which they were destined by the one giving, if the designation occurred; otherwise, in proportion to the right of each one comprehended in the number. All these things are at least known to God. Likewise the intention of applying all and each Masses, in proportion to the right, to all for whom they were given suffices. Namely, since the fruit of the Mass is divisible, after all the Masses have been celebrated each one has obtained his own.

If the priest himself did not collect the Masses but received a heap from another, for example from a bishop or from the administrator of a pious place, it is per se the part of the distributor to set the order beforehand, and of the celebrant to apply according to the order set beforehand. But if the distributor did not set the order beforehand, the priest can celebrate according to either order explained above (St. Alphonsus, VI, 335).

e) That it not be made under a suspensive condition, for example for the intention of him who will first offer the stipend. For an application made in this way regards a future intention, and therefore would involve suspension of the effect. Hence canon 825, 1: "It is never permitted to apply Mass to the intention of one who, after an alms has been offered, is going to ask for the application, but has not yet asked, and to retain the alms given afterward for a Mass previously applied." Nevertheless this does not prevent a Mass from being celebrated, for example, for a deceased person for whom it is foreseen that a

Mass will be requested; and afterward, if a Mass is requested, from signifying that some Mass has been said, and from accepting the stipend if it pleases the one asking. Such an application does not depend on a future intention, and therefore does not suspend the effect (St. Alphonsus, VI, 337), nor does it depend on the intention of the one who will ask for the application. For the rest, an intention under a condition about the past or present is always valid, except in the case about which we are now going to speak.

f) That it not be made under a condition not naturally knowable; since God, who has disposed things conformably to a human mode of acting, is not judged to have conferred upon the priest the faculty of applying dependently upon such a condition. Hence the application seems invalid: "I apply the Mass for you, if you are predestined."

What if someone has elicited two contrary intentions?

Response 1. The later prevails, if he conceived it while mindful of the prior intention.

Response 2. If he conceived the later while forgetful of the prior intention, the later likewise prevails, unless, as it seems must be said, he made the prior intention in such a way that he willed it to prevail even if through forgetfulness he were going to elicit another. For the rest, in doubt which intention prevails, afterward let Mass be celebrated for the intention which did not prevail, and thus all things are safe.

[1] Denzinger-Bannwart, n. 1530.

[2] Sacred Congregation of Propaganda Fide, 11 March 1848 (*Collectanea*, n. 1028); Holy Office, 12 July 1848 (*Collectanea*, n. 1274).

[3] Holy Office, 12 July 1865 (*Collectanea*, n. 1274).

[4] Session 22, canon 5.

[5] Session 22, chapter 3.

Part II. On the Oblation of the Sacrifice of the Mass

(St. Thomas, II-II, q. 100, a. 2, ad 2; III, q. 82; St. Alphonsus, *Theologia Moralis*, book VI, nn. 307, 313-333; *Homo Apostolicus*, tract 15, nn. 59-88.)

Section I. On the Person Offering

209 **I. The principal minister is Christ the Lord.** "It is the same one," says the Council of Trent, "now offering through the ministry of priests, who then offered Himself on the cross."[1]

II. The secondary minister is every and only priest. "If anyone says," the same Council of Trent says, "that by those words: **Do this in commemoration of me**, Christ did not institute the Apostles priests, or did not ordain that they and other priests should offer His body and blood, let him be anathema."[2]

III. In some sense all the faithful can be called ministers of the sacrifice of the Mass, namely insofar as they contribute something to the sacrifice. They do this insofar as they are members of the Church, in whose name the priest celebrates; insofar as they assist at the sacrifice and conform themselves to the intention of the principal and secondary minister; and insofar as they causally concur in the sacrifice, for example by giving a stipend or by serving the priest celebrating (St. Alphonsus, VI, 307).

Corollary I. Several priests can indeed offer the sacrifice of the Mass together, but this is illicit except in the Mass of the ordination of priests, and in the Mass of the consecration of bishops according to the Roman Pontifical (canon 803; n. 20).

Corollary II. A priest who is a stranger to a church, that is, not assigned to the church in which he asks to celebrate, can be admitted as follows:

1. If he shows authentic and still valid commendatory letters from his Ordinary if he is secular, or from his superior if he is religious, or from the Sacred Congregation for the Oriental Church if he is of an Oriental rite, he is to be admitted to the celebration of Mass, unless meanwhile it is clear that he has committed something on account of which he ought to be repelled from the celebration of Mass (canon 804, § 1).
2. If he lacks those letters, but his probity is very well known to the rector of the church, he can be admitted. But if he is unknown to the rector, he can still be admitted once or twice, provided that, clothed in ecclesiastical dress, he receives nothing, under any title, from the celebration from the church in which he sacrifices, and signs his name, office, and diocese in a special book (canon 804, § 2). It is said **provided that he is clothed in ecclesiastical dress**, that is, provided that the stranger, by the form of his dress, manifests that he is a priest.
3. Special norms concerning this matter, given by the local Ordinary, with the prescriptions of this canon saved, must be observed by all, even exempt religious, unless it concerns admitting religious to celebrate in a church of their own religious institute (canon 804, § 3).

[1] Session 22, chapter 2.

[2] Session 22, canon 2.

Section II. On the Obligation of Offering

The obligation of offering can arise from order received, from office, from the precept of a superior, from promise, and from stipend. Hence:

Chapter I. On the Obligation by Reason of Order Received

210 **I. Christ imposed upon the college of the Apostles and of priests the precept of celebrating repeatedly.** This is of faith from the Council of Trent,[1] which declared: "If anyone says that by those words: **Do this in commemoration of me**, Christ did not institute the Apostles priests, or did not ordain that they and other priests should offer His body and blood, let him be anathema."

II. Individual priests also are bound to celebrate repeatedly, according to canon 805: All priests are bound by the obligation of sacrificing several times a year; but let the bishop or religious superior take care that they do this sacred work at least on each Sunday and on other feasts of precept. It is said **several times a year**, that is, three or four times per year.

It is disputed whether the obligation of individuals to celebrate repeatedly is of divine law or only ecclesiastical law. Now most authors with St. Thomas (III, q. 82, a. 10) maintain divine law, because a true disorder seems to exist in the fact that one ordained for rendering so great honor to God and for providing so great utility to human beings frustrates such an end (St. Alphonsus, VI, 313; *Examen Ordinandorum*, n. 111).

III. One who can conveniently celebrate and does not celebrate because of sloth, according to several authors sins lightly, because a venial disorder is had in the fact that one ordained for celebrating neglects so great a good of God and human beings, which he can provide with such ease (St. Alphonsus, VI, 359). For the rest, the same things which commend daily Communion to the faithful persuade priests to daily celebration.

[1] Session 22, canon 2.

Chapter II. On the Obligation by Reason of Office

Those who have care of souls are bound by office either to celebrate or to take care that Mass be celebrated on those days on which the people committed to them are bound to hear Mass. Hence the Council of Trent says: "Let the bishop take care that those... who have had care of souls celebrate Mass as frequently as is sufficient to satisfy their office."[1]

[1] Session 23, chapter 14, on reform.

211 **I. The source of the obligation is divine right or law,** as the Council of Trent expressly teaches.[1] Now bishops are bound by absolute or immediate divine law; namely, the Holy Spirit Himself placed them to rule the Church of God, so that they cannot be lacking in the organism of the Church. But to the office of ruling and feeding is annexed the obligation of applying. Pastors are bound by hypothetical or mediate divine law; namely, on the hypothesis that by the Supreme Pontiff or by the bishops they are called into a share of pastoral solicitude, or for ruling a part of the flock. Thus from the Constitution of Leo XIII *In suprema*.[2] From these things it is also explained why pastors obtain some moderation of the obligation more easily than bishops (St. Alphonsus, VI, 324, question 2).

[1] Session 23, chapter 1, on reform.

[2] 10 June 1882.

212 **II. The subject and object of the obligation.** 1. Bishops, after having taken possession of the see, with every excuse from scantiness of revenues or any other exception removed, must apply Mass for the people committed to them on all Sundays and other feast days of precept, even suppressed ones (canon 339, § 1).

a) The feast days on which application is prescribed, according to the declaration of the Pontifical Commission,[1] are to be taken according to the catalogue established by Urban VIII in the Constitution *Universa*,[2] and again promulgated by the Sacred Congregation of the Council,[3] with the feast of the Immaculate Conception of the Blessed Virgin Mary added from the Constitution of Clement XI *Commissi nobis*,[4] and by force of the cited canon. They are therefore: the Nativity of the Lord, Circumcision, Epiphany, Easter with the two following days, Ascension, Pentecost with the two following days, Trinity, Corpus Christi, Invention of the Holy Cross, Purification, Annunciation, Assumption, Nativity of the Blessed Virgin, Immaculate Conception, Dedication of St. Michael, Nativity of St. John the Baptist, all the Holy Apostles, St. Stephen, Holy Innocents, St. Lawrence, St. Sylvester, St. Joseph, St. Anne, All Saints, and the feast of one of the principal patrons in any kingdom or province, and likewise of another principal patron in any city, town, or village where it happens that these patrons are had and venerated. Moreover, if somewhere by concession of the Holy See a particular feast of precept is celebrated, on this feast too there is the obligation of applying for the people (canon 339, § 1).

There is dispute about the obligation on feast days which previously were of precept from particular law, but now have been suppressed by force of the Code. Now the obligation seems to be maintained, both because of a particular response issued,[5] and because canon 466, § 1 generally declares that on feast days of precept, even suppressed ones, the obligation persists.

b) Although a bishop governs two or more dioceses equally principally united, or besides his own diocese has another or others in administration, nevertheless he satisfies the obligation by the celebration and application of one Mass for the whole people committed to him (canon 339, § 5).

As regards titular bishops, canon 348, § 2 states: It is fitting from charity, yet without obligation, that they sometimes apply the sacrifice of the Mass for their diocese.

2. A capitular vicar is bound in the same way as a bishop to apply Mass for the people (canon 440).

3. Vicars and prefects apostolic must apply the sacrifice of the Mass for the peoples committed to them at least on the solemnities of the Nativity of the Lord, Epiphany, Easter, Ascension, Pentecost, the Most Holy Body of Christ, the Immaculate Conception and Assumption of the Blessed Virgin Mary, St. Joseph her spouse, the holy Apostles Peter and Paul, and All Saints (canon 306).

4. An apostolic administrator, if he has been constituted permanently, is bound to apply as a bishop; if he has been given for a time, he is not bound by the obligation, which burdens a bishop, of applying Mass for the people (canon 315).

5. Pastors,[6] after having taken possession of the parish, are bound on the same days and by the same obligation as bishops to apply Mass for the people committed to them (canon 466, § 1). Nevertheless:

a) A pastor who perhaps governs several parishes equally principally united, or besides his own parish has another or others in administration, must apply only one Mass for the peoples committed to him on the prescribed days (canon 466, § 2). The same holds of a vicar-economus who governs several

parishes during a vacancy.[7] If, however, the matter concerns the feast of the patron of the place, the pastor who, besides his own parish, has another or several others in administration, is bound to apply Mass for the people not only on the feast day of the patron of his own parish, but also on the feasts of the patrons of the other parish or parishes, unless the patrons occur as to be honored on the same day, either because the same one is the patron, or because the feast of the patrons is celebrated on the same day from liturgical laws.[8]

b) The local Ordinary can for a just cause permit the pastor to apply Mass for the people on another day than the one on which he is bound by law (canon 466, § 3); this permission can also be granted habitually.

c) The pastor should celebrate the Mass to be applied for the people in the parish church, unless circumstances of things require or suggest that Mass be celebrated elsewhere (canon 466, § 4); for example if because of a special feast there is a concourse of the people in some chapel or succursal church within the limits of the parish. Likewise one who applies through another must per se take care that the other celebrate in the parish church.[9]

d) A solemn or sung Mass is not prescribed, but a private Mass suffices.[10]

6. Quasi-pastors are bound on the same days as vicars and prefects apostolic, under 3, to apply Mass for the people committed to them (canon 466, § 1).

7. A vicar-economus, constituted while the parish is vacant, is bound as a pastor (canon 473, § 1).

[1] 17 February 1918, ad II (*Acta Apostolicae Sedis* 1918, p. 170).

[2] 13 September 1642.

[3] 28 December 1919 (*Acta Apostolicae Sedis* 1920, p. 42).

[4] 6 December 1708.

[5] In *Il Monitore Ecclesiastico* 1920, p. 72.

[6] Who come under the name of pastor and quasi-pastor, see in the treatise on Matrimony.

[7] Pontifical Commission, 14 July 1922, ad VI (*Acta Apostolicae Sedis*, p. 528).

[8] Sacred Congregation of the Council, 12 November 1927 (*Acta Apostolicae Sedis* 1928, p. 84).

[9] Sacred Congregation of the Council, 23 December 1872.

[10] Sacred Congregation of Rites, 27 February 1847, n. 2939, ad IV; 22 July 1848, n. 2967.

213 **III. A fuller explanation of the object of the obligation.** 1. On the feast of the Nativity of the Lord, and if some feast of precept falls on a Sunday, it suffices that they apply one Mass for the people (canon 339, § 2). If a feast is transferred in such a way that on the day to which it is transferred not only is the office with the Mass of the transferred feast performed, but also the obligations of hearing Mass and abstaining from servile works are observed, the Mass for the people must be applied on the day to which it is transferred; otherwise on the day from which it is transferred (canon 339, § 3).

2. One who is bound by the obligation of applying must himself apply Mass personally (canon 339, § 4, compared with canons 306 and 466, § 1). Nevertheless, a legitimately absent pastor can apply Mass for the people either personally in the place where he is staying, or through the priest who takes his place in the parish (canon 466, § 5). If someone on the same day is urged by the burden of

both Masses, namely for the people and conventual, let him celebrate and apply the latter personally, and the former through another or personally on the following day (canon 419, § 2).

3. A pastor legitimately absent, if he does not apply personally, and likewise one legitimately impeded from personally applying Mass for the people, should apply through another on the appointed days.

Legitimately impeding causes are: 1. physical or moral inability; 2. the obligation of celebrating conventual Mass, if the pastor is also a canon (canon 419, § 2). But the following do not legitimately impede: 1. the mere custom of applying through another;[1] 2. the custom of applying now personally, now through another, for example through a chaplain, if the latter celebrates solemn Mass;[2] 3. the liturgical precept which wills that the Mass for the people be conformed to the office. Hence if the external solemnity of some feast is transferred, and in the transfer a votive Mass is sung, the pastor cannot, so that he himself may celebrate that votive Mass, leave the application for the people to the chaplain or another; 4. the celebration of a funeral Mass, even with the corpse present.[3]

4. One who can apply neither personally nor through another on the appointed days should apply as soon as possible, either personally or through another, on another day (cited canon).

5. The real obligation, that is, either of applying for the people or of taking care that it be applied for them, is grave. The obligation of applying personally, at the fixed time, and, if the matter concerns a pastor, in the parish church, is grave from its genus, so that he would sin gravely who frequently neglected these things.

6. One who has not satisfied the obligation should as soon as possible apply for the people as many Masses as he omitted (canon 339, § 6, compared with canons 306 and 466, § 1).

7. One who applies Mass for the people in place of the pastor can receive a stipend for that Mass; but an impeded pastor is bound at his own expense to take care that it be applied for the people.

[1] Sacred Congregation of the Council, 22 September 1847.

[2] Sacred Congregation of the Council, 9 April 1881.

[3] Sacred Congregation of the Council, 26 January 1771.

Chapter III. On the Obligation by Reason of Precept or Promise

214 **I. The celebration of Mass can be commanded by a competent superior.** This is clear from what was said about the object of law and precept (vol. I, n. 117).

II. The application of Mass can be commanded as follows:

1. The Supreme Pontiff can certainly do this, insofar as he determines divine law, as if he prescribes that those having care of souls should sometimes celebrate for the people.

2. Religious superiors can do the same, at least by force of dominative power, with respect to their subjects, provided that the vow emitted in religion is so understood;[1] they can transfer to subjects the obligation of justice annexed to a stipend received (St. Alphonsus, VI, 317, question 4).

3. It is disputed whether ecclesiastical superiors who enjoy only the power of jurisdiction can do the same; likewise whether the superior of a religious institute can do the same by force of the same power. The Sacred Congregation of the Council, in the Vigevano case,[2] admits the affirmative opinion (cf. vol. I, n. 117).

III. One who has promised a Mass gratuitously is bound under venial sin, namely from fidelity, to stand by what was promised, unless he intended to bind himself under grave sin, or from justice (St. Alphonsus, VI, 317, question 4; vol. I, n. 864).

[1] Sacred Congregation of Religious, 3 May 1914.

[2] 8 May 1920 (*Acta Apostolicae Sedis* 1920, p. 536).

Chapter IV. On the Obligation by Reason of Stipend

Article I. On the Stipend Considered in Itself

215 **I. Notion and origin.** A stipend is an offering, that is, money or a thing estimable by price, which someone offers to a priest under this burden: that the priest apply the special fruit of the Mass to his, that is, the offerer's, intention. Hence the contract constituted once the stipend has been accepted takes on the nature of the contract: I give that you may do (cf. canon 1544, § 2).

The most remote origin is found in the offerings which the faithful in antiquity, when they came together for performing sacred rites, brought to the altar within the Mass itself (at the Offertory), both as a sign of communion with the Church and of participation in the Sacrifice itself, and also to provide for the necessary expenses of divine worship and for the support of the clergy (who were leading a common life) and of the poor.

In the first centuries of the Church, indeed, offerings of this kind were made only in bread and wine, then also in produce, oil, and incense. But already long before the eighth century the custom prevailed that, in place of the aforesaid offerings, or at least together with them, money was contributed as an offering for the sacrifice, destined for the common chest or treasury of the church. Then, as the common life of clerics gradually ceased, and especially as the private Masses of individual priests multiplied, the faithful began also to bestow an offering in money specifically upon individual priests for a sacrifice to be specifically applied for them. Traces of this practice are already found in documents of the eighth century; its universal use already came down in the twelfth century.[1]

[1] Vlaming, *Institutiones Iuris Ecclesiastici*, n. 349.

216 **II. Division.** Stipends are divided into manual stipends, stipends after the manner of manual stipends, and founded stipends. Manual stipends are those which are offered by the faithful for Masses, either from their own devotion, as it were into the hand, or from an obligation, even perpetual, imposed by a testator upon his own heirs (canon 826, § 1). The latter burden the patrimony of some family. Stipends for founded Masses are called "after the manner of manual stipends" when they cannot be applied in their own place, or by those who ought to apply them according to the tables of the foundation, and therefore by law or by indult of the Holy See must be handed over to other priests so that satisfaction may be made for them (canon 826, § 2). Thus stipends of founded Masses become after the manner of manual stipends when they are transmitted to others who satisfy them. Founded stipends are those which are received from the revenues of foundations (canon 826, § 3; n. 233).

217 **III. Lawfulness.** According to the received and approved custom and institution of the Church, it is lawful for any priest celebrating and applying Mass to receive an alms or stipend (canon 824, § 1). The reason is that the stipend is not given and accepted after the manner of a price, that is, as a thing with which the Mass is exchanged - which would be simoniacal - but as a thing which is owed to the

priest insofar as it is just that one who must serve the utility of others be supported by those others, according to these words of Sacred Scripture: "The laborer is worthy of his food";[1] "Who ever serves as a soldier at his own expense?"[2] (St. Thomas, II-II, q. 100, a. 2; St. Alphonsus, VI, 316, 320, doubt 4).

Thus it is lawful, even for a wealthy priest, to accept a stipend for a Mass. Nevertheless it would be little praiseworthy to celebrate principally on account of the stipend. Indeed, St. Alphonsus judges that one who acts thus is not easily excused from venial sin, "since it is a certain disorder to direct spiritual things to temporal things" (VI, 317; III, 55, question 6).

Note 1. It is also lawful, as Benedict XIV teaches,[3] for priests celebrating with the bishop, for example in the Mass of ordination, to accept a stipend. Likewise it is permitted for newly ordained priests to receive an alms for the three Masses imposed upon them by the bishop (St. Alphonsus, VI, 829).

Note 2. One who celebrates several times in a day, if on one occasion he applies from a title of justice, cannot, except on the day of the Nativity of the Lord, receive an alms for another Mass, apart from some remuneration from an extrinsic title (canon 824, § 2). It is said:

1. **From a title of justice,** for example because of a stipend received, or if a pastor from office applies for the people; in this case, therefore, the pastor cannot receive a stipend for either Mass. For the rest, it is the same whether the Mass which has a stipend annexed is said in the first place or in the second place.
2. **He cannot receive an alms for another Mass.** Nevertheless nothing prevents him - provided that he does not receive an alms - from saying another Mass from a title of fidelity or charity; or even of justice, provided that the title of justice is not founded in stipend or in office.[4]
3. **From an extrinsic title,** for example of chant, hour, or place.[5]

Note 3. From canon 825 it is never lawful:

1. To apply a Mass to the intention of one who is going to request the application with an alms offered, but has not yet requested it, and to retain the alms afterward given for the Mass previously applied (n. 1; cf. n. 208).
2. To receive an alms for a Mass which is owed and applied by another title (n. 2). By another title, whether of justice, fidelity, obedience, etc. The reasons are: both because in the case the one who gave the stipend is more probably deprived of some fruit to which he has a right (n. 207); and because the one giving the stipend, according to received usage, judges that the Mass is applied for himself alone, while the priest accepting the stipend tacitly binds himself to that.
3. To accept a double alms for the application of the same Mass (n. 3; cf. n. 207).
4. To receive one alms for the celebration alone and another for the application, unless it is certain that one offering was made for celebration without application.

[1] Matthew 10:10.

[2] 1 Corinthians 9:7.

[3] *De sacrificio Missae*, book III, chapter 11.

[4] Cf. Sacred Congregation of the Council, 14 September 1878 (*Collectio*, n. 1500).

[5] By these words the prohibition of the Sacred Congregation of the Council (15 October 1915), which existed on 2 November, was removed (Pontifical Commission, 13 December 1923, *Acta Apostolicae Sedis* 1924, p. 116). Moreover, Pius

IX, by decree of the Sacred Congregation of Propaganda Fide, 15 October 1863, granted to Ordinaries of missions the faculty of allowing, when a just and grave cause intervenes, that priests subject to them may receive a stipend even for a second Mass to be celebrated on the same day. Even outside mission territory such indults are sometimes granted, but only conditionally, namely under the condition that the Masses be applied according to the mind of the bishop, who will receive the alms so that he may expend them for pious causes. If these pious causes are not further indicated, it is also lawful, indeed preferable, that the bishop expend them "in favor of poor priests, not excluding those who repeat the Sacred rite, insofar as they need assistance" (Decree of the Sacred Congregation of the Council, 7 August 1909, *Acta Apostolicae Sedis* I, pp. 767-771; cf. especially the report of the consultor prefixed to this decision). In the case, however, the whole alms is to be sent to the bishop (Sacred Congregation of the Council, 27 February 1905; *N. K. St.*, p. 134). Thus Aertnys-Damen, vol. II, n. 202.

218 **IV. The just stipend.** It belongs to the local Ordinary to define the manual stipend for Masses in his diocese by decree, issued as far as possible in diocesan synod; nor is it lawful for a priest to demand more than this (canon 831, § 1). Where a decree of the Ordinary is lacking, the custom of the diocese is to be observed (canon 831, § 2). Even religious, although exempt, must stand, concerning the manual stipend, by the decree of the local Ordinary or by the custom of the diocese (canon 831, § 3). Moreover:

1. A larger stipend than the local Ordinary or the custom of the diocese has established cannot be demanded. Nevertheless, when more ample stipends are generally provided, it does not seem illicit to say: "I cannot personally discharge your stipends unless you give as much as others have given."[1] Besides, it is not per se prohibited to require compensation for extraordinary labor or inconvenience, for example if a sung Mass is requested, or one to be said at a certain time or place, or if a journey must be made (St. Alphonsus, III, 55).

Corollary. One who demands a stipend larger than the statute permits sins against religion, for the law obliges from this virtue; likewise he sins against justice if he demands more than is fitting. He is not, however, guilty of simony unless he sells something spiritual, for example by demanding a larger stipend because of an indulgence annexed to an altar.

2. A larger stipend freely offered can be accepted (canon 832); nor can the bishop prohibit a larger one from being offered.[2]

3. Likewise a smaller stipend can be accepted, unless the local Ordinary has prohibited it (canon 832). If a prohibition has been made, it is not judged prohibited to accept a smaller stipend if a reason of mercy requires it.

4. If someone has offered a sum of money for the application of Masses, without indicating their number, this number is to be computed according to the alms of the place in which the offerer was staying, unless it ought legitimately to be presumed that his intention was otherwise (canon 830). These things are also to be applied to a testator.

[1] Aertnys-Damen, II, n. 207.

[2] Sacred Congregation of the Council, 16 January 1649.

Article II. On the Acceptance of Stipends and on the Obligation Arising from It

219 **I. Acceptance of stipends.** 1. It is lawful for no one to receive so many burdens of Masses to be celebrated by himself that he cannot satisfy them within a year - understand: from the day the obligation was undertaken - (canon 835), whether because the number offered exceeds the days of the

year, or because the priest has already undertaken so many burdens that he cannot fulfill new ones within a year. The decree *Ut debita* contained the same disposition, with this addition: "yet always preserving the contrary will of those offering"; since this addition has been omitted in the Code, the liberty seems more restricted. Nor, however, should the new law be taken in such a way that, for example, it would be considered illicit to receive a stipend for twelve anniversary Masses.

2. In churches in which, on account of the peculiar devotion of the faithful, alms for Masses flow in such abundance that all the Masses cannot be celebrated there in due time, the faithful are to be warned, by a notice placed in a conspicuous and obvious place, that the Masses offered will be celebrated either there, when this can conveniently be done, or elsewhere (canon 836).

220 **II. The obligation arising from a stipend** regards both the celebration and application according to the intention of the one giving the stipend, and the circumstances intended by him, and the time determined either by him or by the Church. It is, moreover, an obligation of justice; nor does it stand in the way of this obligation that the one giving the stipend is ignorant of the norms established by the Church concerning time. It suffices that he intends the Mass as it is to be said according to the Church; but the priest, by accepting the stipend, tacitly binds himself to the norms established by the Church.

221 **1. Celebration and application according to the intention of the one giving the stipend is imposed principally,** and indeed for each individual stipend. Hence canon 828: "There are to be celebrated and applied as many Masses as there have been stipends, even small ones, given and accepted." Moreover, the omission of even only one Mass is certainly grave if the matter of the stipend with respect to the giver is grave, and there is not question of a large number of Masses to be celebrated for the same intention.

It is disputed, first, whether the omission of one Mass to be celebrated because of a stipend whose matter is light is grave. Several deny it; but with St. Alphonsus (VI, 317, q. 3) and others we affirm it. For an obligation owed from justice is grave if there is question of a grave thing, such as a Mass is. But that he who is deprived of the good of the Mass can obtain another Mass with a small stipend in no way prevents the one who is bound from justice to furnish a grave good from being bound under grave sin to do this.

It is disputed, second, whether the omission of one Mass is grave if there is question of a large number of Masses to be celebrated for the same intention. But the argument alleged above seems also to support the opinion which teaches that the omission is grave in this case too.

It is disputed, third, whether one who has received a small stipend is bound under grave sin to restore it in the case in which he can neither say the Mass himself nor take care that it be said by another, for he is bound to these things. Now this seems altogether to be denied, since it does not appear that the obligation of restoring a light thing is grave.

222 **2. Due circumstances.** On this point, first let canon 833 be noted: The offerer is presumed to have asked only for the application of the Mass; if, however, the offerer expressly determined that certain circumstances were to be observed in the celebration of the Mass, the priest, accepting the alms, must stand by his will. These points are especially to be noted:

a) **The circumstance of place.** Founded Masses must be celebrated in the place designated by the founder. It would be a grave sin often and without just cause to depart from this rule (St. Alphonsus, VI, 329). Nevertheless the beneficiary is not bound personally to celebrate the Masses, unless the

founder expressly established this (St. Alphonsus, VI, 330). Moreover, the bishop can, by interpreting the will of the founder, permit by way of dispensation that for a just cause the Mass be celebrated in another place (St. Alphonsus, VI, 329).

As regards manual Masses, the circumstance of place must be observed under grave sin if, considering the circumstances, the place must be judged to pertain to the substance of the obligation, as easily happens if there is question of a nuptial Mass, a funeral Mass, or a Mass to be celebrated before a miraculous image. If the assigned place does not pertain to the substance of the obligation, neglect of it is light, and for a just cause not foreseen it becomes lawful.

b) **The circumstance of a privileged altar.** Concerning this, note:

alpha) One who is bound to celebrate at a privileged altar does not satisfy by applying another plenary indulgence to the deceased.[1]

beta) A priest having the personal privilege of a privileged altar satisfies, even though he celebrates at an altar that is not privileged.[2]

gamma) The quality of a Requiem Mass, feria, or vigil, and likewise the addition of the prayer for the deceased, is no longer required for the value of the indulgence.[3]

delta) One who has not satisfied the circumstance of a privileged altar is bound to compensation, for example to applying another plenary indulgence to the soul of the deceased; he can accomplish this, for example, by saying the prayer *En ego*, etc. (St. Alphonsus, VI, 329).

c) **The circumstance of the quality of the Mass** - for example, of a Requiem or votive Mass - if it is expressly determined,[4] must be observed under venial sin, but not under grave sin, because there is no question of the substance, but only of an accessory of the contract. But if the rubrics prohibit the quality of the Mass from being observed, generally, from the presumed consent of the one giving the stipend, the obligation is satisfied by another Mass. It is more advisable, however, that if it can conveniently be done, the requested Mass be said on another day.[5] If the priest foresees that the requested quality of the Mass cannot be observed on the assigned day, the offerer should be forewarned.

d) **The circumstance of Gregorian Masses** entails that thirty Masses be celebrated for the same deceased person (by one priest or by several priests), and this through thirty uninterrupted days. Moreover, one who voluntarily interrupted the series is bound to begin it anew; if someone did this involuntarily, it suffices that he complete the number and in some way compensate the detriment, for example by applying a plenary indulgence.

[1] Sacred Congregation of Indulgences, 2 May 1852; 24 July 1885 (*Acta Sanctae Sedis*, vol. 18, p. 94).

[2] Sacred Congregation of Indulgences, 15 March 1852.

[3] Holy Office, 19 February 1913 (*Acta Apostolicae Sedis* 1913, p. 122).

[4] The quality of the Mass is expressly determined if a Mass **of Requiem** or a votive Mass, for example of St. Gerard, is requested; but not if it is requested for a certain intention. It is disputed whether or not it is sufficiently determined if a Mass is requested for a deceased person, or in honor of St. Gerard, or for a living person. Most deny it; indeed they rightly judge that generally only the application is intended, and in no way the quality of the Mass. Others say otherwise, but the response of the Sacred Congregation of Rites (3 March 1761, n. 2461, ad VII), on which they rely, does not settle our question when rightly posed. For the Sacred Congregation responded: "On days on which private votive Masses or Masses of the dead can be said, a priest bound to them by reason of a foundation or an accepted manual stipend does not

satisfy his own obligation by saying the Mass of the occurring day; for the expressed will of testators or petitioners, provided it is reasonable, must be fulfilled." But we ask when he is bound to the quality of the Mass.

[5] Cf. Sacred Congregation of Rites, 30 June 1896, n. 3922, General Decree, § IV, n. 3; 13 June 1899, n. 4031, ad IV.

223 **3. Due time.** Founded Masses and Masses after the manner of manual Masses must be celebrated on the day and at the hour designated by the founder. It would be a grave sin often and without just cause to depart from this rule (St. Alphonsus, VI, 329). Nevertheless the bishop can, by interpreting the will of the founder, permit by way of dispensation that for a just cause the Mass be celebrated on another day or at another hour (St. Alphonsus, VI, 329).

As regards manual Masses, receive these points:

a) If the offerer has expressly assigned a time, the Masses must absolutely be celebrated at that time (canon 834, § 1). A lengthy delay is a grave sin; likewise a slight delay is grave if it is such that a Mass requested for an instant necessity is not said in good time, according to what is to be said under c.

b) If the offerer has expressly left the time to the judgment of the priest, the priest will be able to celebrate them at the time which is more pleasing to himself, with the prescription of canon 835 remaining firm (canon 834, § 3); compare that canon with n. 219.

c) If the offerer has expressly assigned no time for the celebration of manual Masses:

alpha) Masses offered for an urgent cause must be celebrated as soon as possible within the useful time (canon 834, § 2, 1). Neglect of the useful time is gravely illicit and carries with it the obligation of restoring the stipend.

beta) In other cases the Masses must be celebrated within a moderate time, according to the greater or smaller number of Masses (canon 834, § 2, 2). In this matter, the decree *Ut debita* can be taken as a norm; it established that "the useful time for fulfilling obligations of manual Masses is one month for one Mass, six months for one hundred Masses, and another longer or shorter space of time more or less, according to the greater or smaller number of Masses" (n. 2).[1] Besides, the Sacred Congregation of the Council responded that the prescribed terms are to be understood separately with regard to each one who offers a stipend, not cumulatively with regard to all who offer. For the rest, a delay greater than is just, such as by force of natural law seems to be one which exceeds the time assigned above, is gravely or lightly illicit, according as it is notable or light. Moreover, a delay longer than a month beyond the legitimate time, and indeed even a shorter delay if there is question of the recently deceased, seems notable. Finally, it is equitable that some number from the Masses for the recently deceased be celebrated as quickly as possible (St. Alphonsus, VI, 317, question 2).

[1] As regards intermediate numbers, the Sacred Congregation of the Council responded on 27 February 1905: "the matter is left to the discreet judgment and conscience of priests according to the decree and the rules handed down by approved doctors." Hence these can be established:

Time	Number of Masses
2 months	20
3 months	40
4 months	60
5 months	80

Time	Number of Masses
6 months	100
12 months	200

Moreover, a further delay can be granted by the Holy See. 27 February 1905, ad XI.

224 **III. Cessation of the obligation.** Although the alms for Masses already received have perished without the fault of the one who is burdened with celebrating, the obligation does not cease (canon 829). The reason is clear: for the fact that the priest is deprived of his own thing, that is, of the stipend received, does not deprive another of the right, received and perfected through the handing over of the stipend, that Mass be applied to his intention. Nevertheless, one who has lost the alms, for example, can take care that another celebrate the Mass for a smaller stipend.

Article III. On the Distribution and Transmission of Masses

225 **I. To what extent someone must or can distribute or transmit Masses** you may gather from these points:

1. One who has Masses to be celebrated by others should distribute them as soon as possible, with the prescription of canon 841 remaining firm; but the legitimate time for their celebration begins from the day on which the priest who is going to celebrate them received them, unless something else is clear (canon 837). There is question, for example, of the administrator of a pious cause, of an executor of a testament, of an heir. Let them distribute the Masses as soon as possible, lest the celebration be delayed too much.

2. Those who have a number of Masses of which they may freely dispose can give them to priests acceptable to themselves, provided they know well that these priests are above every exception or are recommended by the testimony of their own Ordinary (canon 838).[1] It is said **to priests**; hence it is not lawful to hand them over, for example, to booksellers, etc. Nevertheless nothing prevents their being handed over to a priest who distributes them among other priests. They can also be handed over to priests who live or are staying in another diocese,[2] since the Code does not distinguish and requires only that the priest be above every exception, that is, truly trustworthy, or recommended by his own Ordinary, that is, the Ordinary of the one accepting, although perhaps he is living in another diocese. Moreover, the disposition of some provincial councils, by which it is forbidden for stipends to be sent to another diocese without the permission of the Ordinary, is sustained only - unless a privilege is added[3] - with respect to founded Masses, Masses after the manner of manual Masses, or manual Masses given with regard to a pious cause.[4] From these things you may deduce what the local Ordinary can do in this matter.

3. All and individual administrators of pious causes, or persons bound in any way to fulfill Mass burdens, whether clerics or laypersons, at the end of each year should hand over to their Ordinaries, according to the manner to be defined by these Ordinaries, the Mass burdens for which satisfaction has not yet been made. This time, however, is to be taken in such a way that in Masses after the manner of manual Masses the obligation of depositing them runs from the end of that year within which the burdens ought to have been fulfilled; but in manual Masses, after a year from the day the burden was undertaken, with the different will of those offering preserved (canon 841,

§§ 1 and 2). Namely, those offering manual stipends can grant that the Masses be delayed more than a year.

[1] Cf. Sacred Congregation of the Council, 17 July 1655.

[2] By these provisions the decree of the Sacred Congregation of the Council (22 May 1897, *Acta Sanctae Sedis*, vol. 40, p. 344), by which stipends could not be transmitted to priests residing outside the diocese except through their Ordinary, or at least after he had been heard and had consented, was removed. Likewise the decrees which prohibited the direct transmission of Masses to Oriental priests seem to have been removed.

[3] A privilege of this kind was granted for a time to the bishops of Holland.

[4] Sacred Congregation of the Council, 19 February 1921.

226 **II. Those who hand over to others for celebration Masses received from the faithful or in any way committed to their trust** are held by the obligation until they have obtained testimony from them of the obligation accepted and of the stipend received (canon 839). Thus positive law does not extend itself more broadly; but with natural law considered, one would not be immune from obligation if he transmitted a Mass whose obligation of celebration he himself had undertaken, and afterward learned that the celebration of the Mass was being neglected (cf. n. 224).

227 **III. One who transmits Masses is bound to transmit the stipend,** as follows:

1. One who transmits manual Mass stipends to others must transmit what has been accepted in full, unless either the offerer expressly permits something to be retained, or it is certainly clear that the excess above the diocesan tax was given in consideration of the person (canon 840, § 1). Thus, per se, the celebrant has the right to receive the whole stipend, and indeed either in its own species, or, if the priest who is going to celebrate consents, in an equivalent,[1] for example in books. Likewise, even without the consent of the celebrant, if there is question of vicars living in the pastor's house, the excess of the common stipend can be given to them in board and service.[2] Finally, as regards the same vicars, the custom can be sustained that they always celebrate according to the intention of the pastor, who grants them board and service, while they receive a determined pension from the treasury of the church or from the pastor.[3]

One who transmits a manual offering can retain something: 1. when the offerer expressly permits it; 2. when it is certain that the excess above the diocesan tax was given in consideration of the person, for example because the one to whom the Mass was offered is poor, or a relative, friend, or even pastor of the offerer;[4] 3. if the excess of the customary tax pertains to stole fees, as if there is question of a nuptial or funeral Mass.[5] In other cases the one who is going to celebrate has the right to the whole stipend. Nothing, however, prevents him, by yielding his right altogether spontaneously, from leaving the offering or part of it to the one transmitting. But now, just as before, it seems illicit to ask the one who is going to celebrate to yield the stipend or part of it. For, considering the Constitution of Benedict XIV *Quanta cura*,[6] where a request of this kind is called an execrable abuse, and canon 827, it must be doubted whether the old law has been changed. In doubt, however, one must not depart from the old law (canon 6, 4).

2. In Masses after the manner of manual Masses, unless the mind of the founder stands in the way, the excess is legitimately retained, and it suffices to remit only the manual alms of the diocese in which the Mass is celebrated, if the ample alms takes the place in part of the endowment of the benefice or pious cause (canon 840, § 2). Whether or not the added condition has place is to be gathered: 1. from the tables of the foundation themselves, when they expressly testify that the

whole annual fruit of the foundation was designated as stipend; 2. from the nature of the benefice to which the foundation is annexed, namely if all or the greatest part of the revenues of the benefice consist in these stipends; 3. from custom, when more ample stipends have always been held as a part of the revenues; and 4. from an authentic declaration of the Ordinary.[7]

[1] The decree *Ut debita* prescribed that stipends were to be handed over in full and in their own species (article 9).

[2] Sacred Congregation of the Council, 25 February 1905, in the Breda case, ad I (*Acta Sanctae Sedis*, vol. 38, p. 15); 25 February 1910, in the Luxembourg case (*Acta Apostolicae Sedis* 1910, p. 203).

[3] Sacred Congregation of the Council, in the Breda case, ad III (*Acta Sanctae Sedis*, loc. cit.); 10 January, in the Montesson case (*Acta Apostolicae Sedis* 1920, p. 70).

[4] Cf. Sacred Penitentiary, 6 April 1742 (*Collectio*, n. 336); Sacred Congregation of the Council, 31 January 1880.

[5] Cf. Sacred Congregation of the Council, 25 July 1874 (*Collectio*, n. 1422); 11 May 1888.

[6] 30 June 1741.

[7] *N. K. Stemmen*, 1918, p. 9; Aertnys-Damen, II, n. 212.

228 **Corollary I.** At the request of either party it is lawful to exchange intentions, while the unequal stipend is retained, if this is done so that offices are exchanged;[1] otherwise, if it is done principally for the sake of taking profit.[2] The reason for the former is that every base gain is absent. The reason for the latter is that illicit gain does not seem to be absent; cf. canon 827 (St. Alphonsus, VI, 322, doubt 4).

Corollary II. One who by office has care of distributing stipends can demand a moderate payment from those to whom the Masses are distributed (St. Alphonsus, VI, 322, doubt 8). And generally, one who transmits Masses can deduct expenses of administration and transfer.[3] Administrators of churches, however, cannot retain part of the stipend for the expenses of altars, servers, light, wine, hosts, etc., unless the church is pressed by poverty[4] (St. Alphonsus, 322, doubt 5). Nor is it lawful to subtract anything from the manual alms which the faithful are accustomed to hand over to more celebrated shrines, in order to provide for their dignity and ornament.[5]

Corollary III. One who unduly retains part of a stipend sins against strict justice, and therefore is bound to restitution from the same virtue, as follows:

1. An executor of a testament who retains part of the sum to be expended in Mass stipends certainly violates strict justice. The same, according to the Constitution of Benedict XIV *Quanta cura*, § 1 sq., must be said of those who collect stipends for this end: that Masses be celebrated elsewhere, where stipends are smaller.

2. There is dispute about others; but with St. Alphonsus (VI, 322, doubt 1) it seems altogether to be affirmed. For ownership of the stipend is not acquired except according to the intention of the giver. But the intention of the giver seems to be that the one who fulfills the burden also receive the stipend. **Objection.** Nothing prevents the recipient of the stipend from fulfilling the burden through another. **Response.** Granted; but from the intention of the one giving the stipend, in other words, by force of this contract, that other person who fulfills the burden seems to receive a right in the stipend given. From what has been said, against some authors it is also deduced that the stipend must be restored to the celebrant, not to the one giving the alms (St. Alphonsus, VI, loc. cit.).

[1] For example, a missionary occupied with spiritual exercises takes upon himself the Mass and intention announced for the sixth hour, so that a chaplain, a sufficiently sick old man, may be able to celebrate; and he hands over to this chaplain his own intention to be discharged, without any discussion about exchanging stipends.

[2] For example, someone has a Mass with an ample stipend to be celebrated today. But, hindered unexpectedly from celebrating, he summons another priest and proposes to him, who has a smaller stipend, that the Masses be exchanged, namely so that he himself takes upon himself the other priest's intention to be discharged on the following day.

[3] Sacred Congregation of the Council, in the Breda case, 25 February 1905, *Mens est*.

[4] Constitution of Innocent XII, *Nuper*, ad VII.

[5] Decree of the Sacred Congregation of the Council *Ut debita* (article 11).

Article IV. On Abuses to Be Avoided in Accepting Stipends

229 From Mass stipends, thus canon 827, every kind even of negotiation or commerce is altogether to be kept away. This canon is neglected: 1. by those who of their own accord retain part of the stipend (n. 227); 2. by those who ask others that, when Masses have been transferred, they may retain part of the stipend (n. 227); 3. by booksellers or merchants who collect stipends and, in place of them, give books, periodicals, or other merchandise to priests who are going to celebrate the Masses,[1] whether with profit (commerce) or without profit (a species of commerce). The author of the stipend, however, can offer other things to the one who is going to celebrate, in place of money.

[1] Decree *Ut debita* of the Sacred Congregation of the Council, 11 May 1904 (article 8); cf. Sacred Congregation of the Council, 9 September 1874; decree *Vigilanti studio*, 23 May 1893.

Article V. On the Safeguards of the Law

230 **I. Supervision.** The right and duty of watching so that Mass burdens are fulfilled belongs, in churches of seculars, to the local Ordinary; in churches of religious, to their superiors (canon 842).

231 **II. Notation of Masses.** 1. Rectors of churches and of other pious places, whether secular or religious, in which alms for Masses are customarily received, should have a special book in which they accurately note the number, intention, alms, and celebration of the Masses received (canon 843, § 1). Ordinaries are held by the obligation of examining books of this kind, either personally or through others, at least once each year (canon 843, § 2). Ordinaries, that is, local Ordinaries or major superiors in exempt clerical religious institutes (canon 198, § 1).

2. Likewise local Ordinaries and religious superiors who entrust Masses to be celebrated to their own subjects or to others should quickly enter in order into a book the Masses which they have received with their alms, and should take care according to their powers that they be celebrated as soon as possible. Indeed, all priests, whether secular or religious, must accurately note which Mass intentions each one has received and which he has satisfied (canon 844). It suffices, however, that one note the Masses through another.

232 **III. Penalties.** Those who have offended against the prescription of canon 827, 828, or 840, § 1 are to be punished by the Ordinary according to the gravity of the fault, not excluding, if the matter bears it, suspension or privation of an ecclesiastical benefice or office, or, if there is question of laypersons, excommunication (canon 2324). The penalties of *latae sententiae* previously established have been abrogated.

Scholion I. On Pious Foundations

233 **I. Notion and nature.** By the name of pious foundations are signified temporal goods given in any way to some moral person in the Church, with the burden, in perpetuity or for a long time, of celebrating some Masses from the annual revenues, or of fulfilling other predefined ecclesiastical functions, or of performing some works of piety and charity (canon 1544, § 1). A foundation, once legitimately accepted, takes on the nature of a synallagmatic contract: I give that you may do (canon 1544, § 2).

Note. It belongs to the local Ordinary (or, if there is question of pious foundations in churches, even parochial ones, of exempt religious, to the major superior) to prescribe norms concerning the amount of endowment below which a pious foundation cannot be admitted, and concerning the proper distribution of its fruits (canon 1545, compared with canon 1550).

234 **II. Acceptance of a foundation.** 1. In order that foundations of this kind can be accepted by a moral person, the consent of the local Ordinary is required, given in writing (or, if there is question of exempt religious, the consent of the major superior), who should not furnish it before he has legitimately ascertained that the moral person is able to satisfy both the new burden to be undertaken and the old burdens already undertaken. Above all, he should take care that the revenues correspond altogether to the burdens annexed, according to the custom of each diocese. In the acceptance, constitution, and administration of a foundation, the patron of the church has no right (canon 1546).

2. Foundations, even those made orally, are to be committed to writing. One copy of the records is to be kept safely in the archive of the Curia (or of the major superior), and the other in the archive of the moral person to which the foundation pertains (canon 1548).

Note 1. Money and movable goods assigned under the name of donation are immediately to be deposited in a safe place, designated by the same Ordinary (or major superior), for this end: that the same money or the value of the movable goods be preserved and, as soon as possible, be invested cautiously and usefully according to the prudent judgment of the same Ordinary, after those whose interest is involved and the diocesan council of administration (or the council of the major superior) have been heard, for the benefit of the same foundation, with express and individual mention of the burden (canon 1547).

Note 2. With the prescriptions of canons 1514-1517 and canon 1525 observed, in any church there is to be drawn up a table of the burdens incumbent from pious foundations, which is to be kept by the rector in a safe place (canon 1549, § 1). Likewise, besides the book of which canon 843, § 1 speaks, another book is to be kept and preserved by the rector, in which the individual perpetual and temporary burdens, their fulfillment, and the alms are noted, so that an exact account of all these things may be rendered to the local Ordinary (or major superior) (canon 1549, § 2).

Note 3. If there is question of churches, even parochial ones, of exempt religious, all the things set forth above must be observed, but in such a way that the assigned rights and duties belong exclusively to the major superior (canon 1550). But if there is question of churches of non-exempt religious, the rights set forth are reserved to the local Ordinary, even if the parish has been united to the religious house with full right (cited canon, compared with the response of the Pontifical Commission).[1]

[1] 25 July 1926, ad IV (*Acta Apostolicae Sedis* 1926, p. 393).

235 **III. The obligation of a foundation, as regards Masses,** is both to celebrate as many Masses as have been established, and to fulfill the other things imposed by the founder, for example as to the quality of the Mass, place, altar, hour, etc. (n. 220). The obligation of celebrating as many times as is expressed in the foundation is grave. How great the obligation of the other adjuncts is must be gathered from what has been said generally about the obligation arising from a stipend (n. 222). Neglect of the adjuncts does not induce the obligation of celebrating another Mass, or of restoring the stipend or part of it, unless the priest accepted an excess of stipend in consideration of a greater inconvenience; for example, if he accepted a larger stipend for a sung Mass and did not sing it. For the rest, note:

1. Unless it is otherwise expressed, someone can fulfill the burden either personally or through another (St. Alphonsus, VI, 330).
2. If it is not determined for whom the Masses are to be applied, the obligation of applying them to the founder himself is presumed;[1] and all things are safeguarded if the application is made according to the intention of the founder.
3. If the founder did not order all the Masses to be celebrated for himself, but ordered a certain number from them to be celebrated for himself or according to his intention, he is presumed to have left free the application of the remaining Masses (St. Alphonsus, loc. cit.).
4. To a benefice there is sometimes annexed the burden either of celebrating daily or of celebrating and applying daily. Moreover:

a) One who is bound personally to celebrate can sometimes omit Mass for a just cause. Nevertheless he is bound to supply through another if the burden immediately falls upon the church or community; otherwise, if it immediately falls upon the beneficiary. Just causes for sometimes omitting Mass are:

alpha) Religion; namely, the beneficiary can, for the sake of reverence, according to some authors abstain from celebrating once a week, according to others once a month.

beta) A reasonable impediment, such as a journey to be made, spiritual exercises to be performed, etc. To this also belongs:

gamma) Illness. If this is brief, the beneficiary is not bound to supply through another; if it is more lasting, he is bound to supply through another. Illness is judged brief, according to some, if it is of fifteen days; according to others, of one month; according to others, of two months. This last opinion is held by St. Alphonsus as sufficiently probable[2] (VI, 333).

b) One who is bound personally to celebrate and apply can, just as one who is bound only to celebrate, sometimes omit the sacred rite for a just cause. He can also sometimes - for example six times a year - offer for himself or for others, but he cannot accept a stipend.[3] If he does not personally apply, he is bound, as was said of one who must personally celebrate daily, to supply through another if the burden was imposed immediately upon the church, etc.; otherwise, if it was imposed directly upon the beneficiary.

[1] Sacred Congregation of the Council, 18 March 1668; 26 March 1718.

[2] The declarations of the Sacred Congregation of the Council, 4 June 1689 and 17 November 1695, do not seem to settle the question.

[3] Sacred Congregation of the Council, 18 September 1683 (*Collectio*, n. 228); Pontifical Commission, 14 July 1922 (*Acta Apostolicae Sedis* 1922, p. 529).

236 **IV. Cessation or change of the obligation.** The causes of cessation are assigned as reduction, total defect of revenues, and condonation. Reduction is the concession of diminishing the works, for example the number of Masses, established by a pious foundation. Condonation is the concession of omitting works, for example Masses, which ought to have been celebrated in past time. That the Holy See enjoys the faculty of condoning and reducing Masses is clear from c. 2, Clem., *de religiosis domibus* (III, 11), and from the practice of the Church. For the rest, the Holy See can compensate the loss arising to founders, both by supplying from the treasury of the Church and by enjoining other works. Moreover:

1. The reduction of burdens which weigh upon pious foundations is reserved to the Apostolic See alone, unless something else is expressly provided in the tables of the foundation (canon 1551, § 1). Nevertheless, with the reduction of Masses excepted, these words of canon 1517, § 2 hold: "If, however, the execution of the imposed burdens, because of diminished revenues or another cause, without any fault of the administrators, has become impossible, then the Ordinary too, after those whose interest is involved have been heard, and with the will of the founder preserved in the better way possible, will be able equitably to diminish the same burdens." Moreover, an accidental change made for a time and for a just cause, for example the transfer of a Mass from one hour to another, does not seem to exceed the faculty of the bishop, unless there was a special reason for assigning a certain hour.

"The causes, moreover, on account of which the Apostolic See is accustomed to reduce Masses are: scarcity of priests, slenderness of the stipend or increase of the current stipend, diminution of the revenues of a monastery, or greater necessary expenses for sustenance, etc.; finally, if the necessity of the brethren, or of the fabric of the church or monastery, should press" (St. Alphonsus, VI, 331). For reduction recourse should be had to the Sacred Congregation of the Council.

Note 1. An indult of reducing founded Masses is not extended either to other Masses owed from contract or to other burdens of the pious foundation. But a general indult of reducing the burdens of pious foundations is to be understood, unless something else is clear, in such a way that the holder of the indult should reduce other burdens rather than Masses (canon 1551, §§ 2 and 3).

Note 2. It is advised that the founder insert into the document of foundation the faculty of diminishing the number of Masses if the revenues do not furnish an equitable stipend for the individual Masses.

2. Total defect of revenues; for when these fail, the title on which the burdens rest falls.[1] That the revenues are diminished, or for another reason no longer constitute an equitable stipend, does not per se suffice for the burdens to be diminished; this follows from what was said above. But if the founder assigned a stipend for individual Masses, or did not determine the number of Masses, the number can indeed be diminished proportionately according to the stipend determined for the individual Masses or according to the diocesan tax.
3. Condonation of burdens[2] is altogether reserved to the Apostolic See. Recourse is to be had for the external forum to the Sacred Congregation of the Council; for the internal forum to the Sacred Penitentiary.

[1] Cf. Sacred Congregation of the Council, 7 July 1686; 18 August 1705.

[2] Note from canon 1509, 5, that burdens of Masses are not extinguished by prescription.

Scholion II. On Several Masses to Be Offered on the Same Day

237 **I. Except on the day of the Nativity of the Lord and on the day of the Commemoration of All the Faithful Departed,** on which there is the faculty of offering the Eucharistic Sacrifice three times, it is not lawful for a priest to celebrate several Masses in a day, unless by apostolic indult or by power granted by the local Ordinary (canon 806, § 1). Note, however:

1. **As regards the day of the Nativity of the Lord:** a) One who says only one Mass should take that Mass which corresponds to the hour of celebration, that is, at night the first, at dawn the second, during the day the third.[1] One who - as is lawful[2] - celebrates only two Masses, if he separates them and does not say both during the day, should proceed in such a way that the Masses correspond to the hour of celebration; if he does not separate them and reads both at night, he should take the first and the other; if at dawn or during the day, he should celebrate the other and the third.

b) One who by apostolic indult can celebrate daily a votive Mass or a Mass of the dead can, even on the day of the Nativity of the Lord, say the same Mass three times,[3] that is, either the votive Mass, or, as it seems, one of the three Masses of the Nativity.[4]

2. **As regards the day of the Commemoration of All the Faithful Departed:**

a) One who says three Masses must apply one gratuitously for all the faithful departed, another gratuitously according to the intention of the Supreme Pontiff; he can celebrate the third for a stipend. It is also illicit, with the Masses for the departed and according to the intention of the Supreme Pontiff transferred to another day, to say three Masses for a stipend on the day of the Commemoration. But it does not matter which of the three Masses is celebrated for the departed, according to the intention of the Supreme Pontiff, or for a stipend.[5]

b) One who reads only one Mass should take the first Mass of the day, and he can apply it for a stipend. "Let him use the same Mass, that is, the first Mass, who is going to celebrate Mass with chant, with the power granted him of anticipating the second and third."[6] One who celebrates only two Masses should take the first two Masses of the day; he can apply one for a stipend, and is bound to say one of the two for the departed.[7]

c) One who by apostolic indult can daily celebrate a votive Mass or a Mass of the dead can, even on the day of the Commemoration of All the Faithful Departed, say the same Mass three times.[8]

[1] Sacred Congregation of Rites, 19 June 1875, n. 3354; 13 February 1892, n. 3767, ad 21.

[2] Sacred Congregation of Rites, 19 June 1875, n. 3355.

[3] Sacred Congregation of Rites, 26 January 1920, n. 4356.

[4] Sacred Congregation of the Council, 15 October 1915, ad 1, 2, and 3.

[5] Sacred Congregation of Rites, n. 4331.

[6] Sacred Congregation of Rites, 28 February 1917, n. 4342.

[7] Sacred Congregation of Rites, 29 January 1920, n. 4356.

[8] Sacred Congregation of Propaganda Fide, 28 September 1837.

238 **II. The Ordinary cannot impart the faculty of celebrating several times in a day** unless, in his prudent judgment, because of a scarcity of priests, a notable part of the faithful cannot assist at Mass on a feast day of precept; nor is it in his power to permit more than two Masses to the same priest (canon 806, § 2). Thus:

1. The power of the Ordinary regards only feast days of precept, that is, days on which the faithful are in fact bound to hear Mass; therefore suppressed feast days are excluded.[1]

2. The power of the Ordinary regards circumstances in which, if bination is excluded, a notable part of the faithful could not hear the sacred rite. The case is present: 1. if a pastor has two parishes so distant from one another that the people of both cannot conveniently come together in the same church, and there is no priest who may celebrate in the other parish; 2. if a pastor has two groups of people in the same parish distant in the aforesaid way, and there is no priest who may celebrate the other Mass; 3. if a notable part of the parishioners - for example twenty persons[2] - cannot come together to hear one and the same Mass, whether because of domestic circumstances or because of the narrowness of the church, and no other priest is present who may say the other Mass. But the Ordinary cannot grant bination in favor of those who wish to satisfy the precept in their own private oratories;[3] nor does mere custom suffice,[4] unless it is centenary and the Ordinary judges that it cannot prudently be removed (canon 5). Moreover, since the faculty of binating has been granted in order that necessity may be met, it cannot be exercised if by chance another priest arrives who can and wishes to say the other Mass. For the rest, note:

a) A faculty granted that in a determinate church Mass may be celebrated twice by the same priest is local, so that it is communicated to another who takes his place. Otherwise one must speak of a faculty granted to someone that he may use it, because of an occurring case, now here, now there; this faculty is personal and cannot be communicated to another, unless the faculty of subdelegating has been added.

b) In a case of sudden necessity, for example if another priest suddenly falls ill and no other can be summoned, the license of the bishop can be presumed,[5] unless the statutes require that the judgment of the vicar forane intervene.

[1] Cf. Instruction of the Sacred Congregation of Propaganda Fide, where it is said that the concession is to be interpreted rather benignly.

[2] Instruction of the Sacred Congregation of Propaganda Fide, 24 May 1870, n. 6 (*Collectio*, n. 792).

[3] Benedict XIV, Constitution *Declarasti nobis*.

[4] Cf. Instruction of the Sacred Congregation of Propaganda Fide, 24 May 1870, nn. 13-17 (*Collectio*, n. 792).

[5] Cf. Instruction of the Sacred Congregation of Propaganda Fide, 24 May 1870, nn. 13-17 (*Collectio*, n. 792).

239 **III. Finally, it is sufficiently probable that it is lawful to binate if otherwise a dying person would be deprived of Viaticum.**

240 **IV. Whenever someone celebrates several times in a day,** if he applies one Mass from a title of justice, the priest, except on the day of the Nativity of the Lord, cannot receive an alms for another Mass, apart from some remuneration from an extrinsic title (canon 824, § 2); see these things explained in n. 217.

Chapter II. On the Place of Offering

244 **I. Notion of sacred places.** The sacred places which come to be considered here are churches and oratories.

1. By the name of church is understood a sacred building dedicated to divine worship, chiefly for this end: that it may serve all the Christian faithful for publicly exercising divine worship (canon 1161).
2. An oratory is a place destined for divine worship, yet not chiefly for this end: that it may serve the whole faithful people for publicly cultivating religion (canon 1188, § 1). An oratory is distinguished as threefold: public, semi-public, and private.

a) It is public if it has been erected principally for the benefit of some college or even of private persons, yet in such a way that all the faithful have a legitimately established right of approaching it, at least during the time of divine offices (canon 1188, § 2, 1).

b) It is semi-public if it has been erected for the benefit of some community or group of the faithful assembling there, and it is not free for everyone to approach it (canon 1188, § 2, 2).

c) It is private or domestic if it has been erected in private homes for the benefit only of some family or private person (canon 1188, § 2, 3).

245 **II. Consecration and blessing of sacred places.** 1. The consecration of a church, although it belongs to regulars, belongs to the Ordinary of the territory in which the place itself is found, provided the Ordinary is marked with the episcopal character, but not to the vicar general without a special mandate, with the right of Cardinals of the Holy Roman Church to consecrate the church and altars of their title remaining firm (canon 1155, § 1). Cardinals, even non-bishops, can consecrate churches everywhere with the consent of the Ordinary (canon 239, § 1, 20); abbots and prelates nullius can do the same (canon 323, § 2).

b) The right of blessing a sacred place, if it belongs to the secular clergy or to a non-exempt religious institute, or to a lay institute, belongs to the Ordinary of the territory in which the place is found; if it belongs to an exempt clerical religious institute, to the major superior. Each, however, can delegate another priest for this (canon 1156).

Note. Notwithstanding any privilege whatever, no one can consecrate or bless a sacred place without the consent of the Ordinary, whether territorial or religious, according as the circumstances bear (canon 1157); and this also holds for Cardinals, if there is question of a church other than the church of their own title.

246 **III. Places in which Mass can be celebrated.** Mass can be celebrated:

1. In consecrated or solemnly blessed churches and public oratories (canons 822, § 1; 1165, § 1; 1191).
2. In legitimately erected semi-public oratories, all divine offices or ecclesiastical functions can be celebrated, unless the rubrics stand in the way or the Ordinary has excepted something (canon 1193). The oratories of Cardinals of the Holy Roman Church and of bishops, whether residential or titular, although private, nevertheless enjoy all the rights and privileges by which semi-public oratories rejoice (canon 1189).
3. In legitimately erected private oratories,[1] as follows:

a) If they have been erected from an indult of the Apostolic See, unless something else is expressly provided in the same indult, after the Ordinary has visited the oratory personally or through another and found it decently furnished, one Mass can be celebrated, and that a read Mass, on individual days, except the more solemn feasts; but other ecclesiastical functions are not to be performed there (canon 1195, § 1). The Ordinary, however, provided just and reasonable causes are present, different from those on account of which the indult was granted, can permit the celebration of Mass by way of an act even on the more solemn feasts (canon 1195, § 2).

b) Even if they have not been erected from an indult of the Holy See but by the authority of the Ordinary, the Ordinary can, in some extraordinary case, for a just and reasonable cause, permit one Mass by way of an act, even repeatedly, but not habitually (canon 1194).

c) In private cemetery chapels, of which canon 1190 speaks, the local Ordinary can permit habitually even the celebration of several Masses (canon 1194).

d) Nuncios, internuncios, and apostolic delegates, from the faculties granted to them, can grant to sick priests, during infirm health, and likewise to priests advanced in age, an indult of a private oratory in which they may celebrate Mass, with the canonical rules observed. Several bishops can do the same.

e) Regulars, by force of the communication of privileges, enjoy the privilege which Gregory XIII granted to the Society of Jesus, that Provincials can, personally and without the permission of the bishop, erect oratories in houses and colleges and in other places where some of the Society will reside; in these oratories several Masses can be celebrated on the same day even by outsiders, and those assisting can fulfill the precept.[2] Finally, Regulars, by force of the communication of privileges, have the faculty granted to several institutes of erecting private oratories in granges or rural houses; everyone who assists at Mass there can satisfy the precept.

4. Outside a church and oratories, it is lawful to celebrate as follows:

a) The privilege of a portable altar imports the faculty of celebrating everywhere upon a sacred stone, yet in an honorable and decent place, but not at sea (canon 822, § 3).

This privilege is conceded either by law or by indult of the Apostolic See alone (canon 822, § 2). By law it has been conceded to Cardinals and bishops, who can also permit another Mass to be celebrated while they are present (canon 239, § 1, 7; 349, § 1, 1).

b) The local Ordinary, or, if there is question of a house of an exempt religious institute, the major superior, can grant permission of celebrating outside a church and oratory upon a sacred stone and in a decent place, but never in a bedroom, only for a just and reasonable cause, in some extraordinary case and by way of an act (canon 822, § 4). It is said, however, **never in a bedroom**, that is, in a bedroom in which someone is actually lying sick.[3] For the rest, the said faculty must be interpreted restrictively.[4]

c) In order that Mass can be said at sea or on a river, a special indult of the Holy See is required, so that the privilege of an altar does not suffice (canon 822, § 3). The special indult belongs to Cardinals of the Holy Roman Church and to bishops (canon 239, § 1, 8; canon 349, § 1, 1).

The indult is customarily granted under this law: that the sea be so calm that no danger is present of spilling the sacred species from the chalice; that another priest, if present, assist; and that, if on the ship there is not a proper chapel or fixed altar, nevertheless the chosen place bear nothing indecent or

unbecoming. Nor is celebration in cabins prohibited when all the circumstances remove dangers of irreverence.[5]

d) If necessity urges, and recourse cannot be had to the Ordinary, it is lawful by epikeia to celebrate anywhere, even in the open air, provided the place has nothing unbecoming. Necessity urges, for example, if a church has collapsed and a Sunday or feast still in force as a day of precept is at hand; if an army is in camp and Mass must be heard from precept; if otherwise Viaticum cannot be administered, etc. (St. Alphonsus, VI, 356, 359).

[1] Oratories, both semi-public and private, must be reserved for divine worship alone and free from all domestic uses (canon 1196, § 2).

[2] Constitution *Decet Romanum Pontificem*, 3 May 1575.

[3] Sacred Congregation for the Discipline of the Sacraments, 23 December 1912.

[4] Pontifical Commission, 16 October 1919, ad 12 (*Acta Apostolicae Sedis* 1919, p. 478). Then the Sacred Congregation for the Discipline of the Sacraments, in its letters to the Ordinaries of Italy, 26 July 1924, declared that this just and reasonable cause must be taken from the good of divine worship and the spiritual good of souls (*Acta Apostolicae Sedis* 1924, p. 370). From the response of the same Sacred Congregation, 3 May 1926, the Ordinary also cannot permit celebration at home, with the corpse present in a place commonly called *camera ardente*, except in some extraordinary case, when a just and reasonable cause exists. Such an extraordinary case together with a just and reasonable cause, according to the response of the same Sacred Congregation, is had on the occasion of the death of the local Ordinary or of a person from a princely family, or otherwise distinguished because of merits and good deeds toward the Church or the state, or because of most munificent largesses to the poor and needy. In this case, provided that the due obsequies are always fulfilled in the church, the Ordinary can permit the celebration of one or another Mass, but not more than three Masses, the indult of the Sacred Congregation of Rites of 29 April 1894 having been abrogated (*Acta Apostolicae Sedis* 1926, p. 388). Thus Aertnys-Damen, II, n. 232.

[5] Cf. Sacred Congregation of Propaganda Fide, 1 March 1902, compared with 13 March 1902.

247 **IV. Places in which Mass cannot be celebrated.** Mass cannot be celebrated in the temple of heretics or schismatics, even if it was formerly rightly consecrated or blessed (canon 823, § 1); nor in an execrated, violated, or interdicted church or public oratory, until it has again been consecrated or blessed or reconciled, or the interdict has ceased (canons 822; 1170; 1173, § 1; and 2270, § 1, compared with canon 1191, § 1).

1. **Execration** is had when the holiness of a church or public oratory, inhering in it from dedication, is lost. This, with canon 1170 considered and explained, happens: 1. when the whole building is simultaneously destroyed or collapses; 2. when the greater part of the walls is simultaneously destroyed or collapses; 3. when the building is reduced by the local Ordinary to profane uses. But it does not happen: 1. when the plaster partly or entirely falls from the walls or is removed;[1] 2. when a part which is not the greater part collapses, for example only the roof or only the facade of the church; 3. when walls fall or are destroyed and restored at intervals, even if the whole church becomes new, provided, however, that the greater part does not fall or be destroyed at once (St. Alphonsus, VI, 367, 368).

Note. Once a church has been execrated, the title perishes, as does the recitation of the office and commemoration of the titular patron. An execrated church must again be consecrated or blessed as new.

2. **Violation** consists in this: that the holiness inhering in a church or public oratory is not indeed lost, but nevertheless is contaminated. This happens through certain criminal or at least very

indecent acts. Moreover, "a church is violated only by the acts listed below, provided that they are certain, notorious, and placed in the church itself: 1. the crime of homicide; 2. injurious and grave shedding of blood; 3. impious or sordid uses to which the church has been assigned; 4. the burial of an infidel or of an excommunicated person after a declaratory or condemnatory sentence" (canon 1172, § 1). See these things set forth in vol. I, n. 616. Now:

a) In a violated church, before it is reconciled, it is forbidden to celebrate divine offices (canon 1173, § 1); moreover, a violated church must be reconciled as quickly as possible (canon 1174, § 1).

b) The rector of the same church or any priest with at least the presumed consent of the rector can reconcile a blessed church (canon 1176, § 1). The valid reconciliation of a consecrated church belongs to the bishop or, if it belongs to an exempt clerical religious institute, to the major superior; each can delegate another priest for this (canon 1176, § 2, compared with canon 1156). In a case of grave and urgent necessity, if the Ordinary cannot be approached, it is permitted to the rector of a consecrated church to reconcile the same church, after the Ordinary has afterward been informed (canon 1176, § 3).

c) The reconciliation of a blessed church can be done with common holy water; but the reconciliation of a consecrated church should be done with water blessed for this according to liturgical laws, which nevertheless not only bishops but also the priests who reconcile the church can bless (canon 1177).

3. An interdict of a church, insofar as it prevents the celebration of Mass, is explained in the treatise on ecclesiastical penalties.

[1] Once the plaster has been renewed, the crosses made in testimony of consecration should again be painted or applied (Sacred Congregation of Rites, 4 May 1882, n. 3545).

Chapter III. On the Time of Offering

248 **I. Days of oblation.** The sacrifice of the Mass can be celebrated on all days, except those which are excluded by the priest's own rite (canon 820). Now, with the Latin rite considered:

1. On Thursday in the Supper of the Lord and on Holy Saturday, one Mass is permitted, and indeed only a solemn one. But:

a) If some feast of precept falls on Thursday in the Supper of the Lord, "it must be accurately provided by the local Ordinaries that on that day some private Masses, to be celebrated before the celebration of the customary conventual Mass, are not lacking for the fulfillment of the precept; but nevertheless for this reason the ancient custom of the Communion of the clergy in the solemn Mass of that day, on which the Church recalls the institution and memorial of the sacrament of the Most Holy Eucharist, retained until now with the greatest religious care, is in no way omitted."[1] If the feast is no longer of precept, it is not lawful to celebrate several Masses.[2]

b) Cardinals and, provided they are not bound to celebrate in the cathedral, bishops enjoy the privilege of celebrating, or of permitting another to celebrate before them, one Mass on Thursday of the greater week (canons 239, § 1, 4; 349, § 1, 1).

c) Among Regulars, if the solemn functions of the Greater Week are not performed, the superior can personally or through another celebrate a solemn or private Mass to administer Communion to the subjects, but in a domestic chapel or in a church with closed doors.[3] "Indeed," says Vermeersch, "although the solemn functions are held, writers concede that on the same day one Mass may be read

in the oratory or in the church with closed doors, for the convenience of the sick. And it is clear from the privilege which Gregory XVI granted to the Province of the Society of Jesus which was then called Upper Germany, 4 December 1841."[4]

d) It is fitting that on Thursday of the greater week all clerics, even priests who abstain from offering the sacred rite on that day, be refreshed with the Most Holy Body of Christ in the solemn or conventual Mass (canon 862).

2. On the day of Parasceve, Mass cannot be celebrated unless it would be necessary for confecting Viaticum; in that case the Mass of the Passion of the Lord should be taken. But the Mass which is called the Mass of the Presanctified is not a sacrifice.

[1] Sacred Congregation of Rites, 13 September 1692, n. 1883; 10 January 1693, ad VI, n. 1890.

[2] Sacred Congregation of Rites, 26 September 1868, n. 3179.

[3] Sacred Congregation of Rites, 31 August 1839, n. 2799.

[4] *De religiosis institutis et personis*, vol. I, n. 467.

249 **II. Hour of oblation.** 1. **Object of the precept.** The beginning of a Mass to be celebrated should not take place earlier than one hour before dawn or later than one hour after noon (canon 821, § 1). Dawn, or morning twilight, begins generally when the sun enters the eighteenth degree below the horizon. It differs according to different regions, insofar as they approach the pole more or less; generally it begins two hours before sunrise, but more than two hours before sunrise in northern regions, for there dawn is prolonged for a longer time. For the rest, tables inserted into calendars are accustomed to indicate the hour of dawn. Where dawn does not appear through some time of the year, it is lawful during that time to begin Mass from the beginning of civil, moral, and usual life, that is, at the time when people are accustomed to rise in the morning for work.[1] The same seems to be applicable to the time when dawn is very late in some regions. Finally, where dawn endures through the whole night during some part of the year, it seems lawful to begin at midnight. Nevertheless, it is not becoming to begin before the second morning hour, because the Church scarcely ever grants the faculty of beginning earlier. Exceptions from the ordinary rule are:

a) On the night of the Nativity of the Lord, only the conventual or parochial Mass can be begun at midnight, but not another without apostolic indult (canon 821, § 2).

b) Nevertheless, in all religious or pious houses having an oratory with the faculty of habitually reserving the Most Holy Eucharist, on the night of the Nativity of the Lord, one priest can celebrate the three ritual Masses, or, with the things to be observed being observed, only one Mass which may also avail for satisfaction of the precept for all those present, and can administer Holy Communion to those requesting it (canon 821, § 3). Moreover, the Holy Office, 26 November 1908, declared that the said Masses cannot be celebrated with the doors of the oratories open, nor in churches which serve the public use of the faithful people.

c) Cardinals and, provided they are not bound to celebrate in the cathedral, bishops enjoy the privilege of celebrating, or of permitting another to celebrate before them, three Masses on the night of the Nativity of the Lord (canons 239, § 1, n. 4; 349, § 1, n. 1).

d) It is disputed whether privileges granted to Regulars before the Council of Trent have been revoked. But the dispute is merely theoretical, since "today, from a privilege granted to the Congregation of the

Purity erected at Naples, Regulars can always and everywhere celebrate two hours before dawn and after noon."[2] Likewise Gregory XVI, by his rescript of 13 May 1838, granted that the Superior General of the Society of Jesus could give the faculty to missionaries that, whether for the sake of a journey or for the sake of devotion, "for themselves or for the people, or for the sake of giving Communion to the faithful waiting, they may celebrate at the second hour after midnight."[3]

2. **Gravity of the precept.** The obligation of the precept is grave from its genus, as is gathered both from the Council of Trent[4] and from the Constitution of St. Pius V *In Christo Pater*.[5] Moreover, it would be a grave sin, without proportionate reason, to begin Mass one hour earlier or later than is lawful by law or privilege.

3. **Causes for anticipating or deferring Mass are:**

a) That Viaticum may be given to a dying person; in this case no hour is excepted.

b) An existing reasonable custom, for example that workers and servants may be able to hear the sacred rite very early in the morning; likewise, if on a feast day a solemn Mass is extended an hour and more beyond noon, it is lawful, if there is a custom, to celebrate a private Mass after the solemn sacred rite, lest a part of the people be without Mass.

c) A reasonable cause, for example a journey to be made, excuses if there is question of anticipating or deferring Mass briefly, for example by half an hour.

d) Finally, a bishop and the major superior of exempt clerical religious can dispense themselves and their subjects in an urgent case (canon 81; St. Alphonsus, VI, 343 and 344), indeed, as it seems, also from a just cause.[6]

[1] Sacred Congregation of Rites, 2 November 1634, n. 614.

[2] *Compendium Privilegiorum Piorum Operariorum*, part 2, chapter 5, § 7.

[3] Thus Gaude, *Opera Moralia S. Alphonsi*, book VI, n. 342, note.

[4] Session 22, Decree concerning the things to be observed and avoided.

[5] 29 March 1566.

[6] Sacred Congregation of Rites, 7 July 1899, n. 4044, ad IV.

Chapter IV. On the Rite of Offering

Article I. On the Altar and its Ornament

In order that Mass be celebrated according to the prescribed rite, the following are required:

250 **I. An altar, and that consecrated** (canon 822, § 1). Now either the whole altar must be consecrated, if there is question of an immovable altar, or only the portable altar-stone, if there is question of a movable altar (canon 1199, § 1). Moreover, per se Mass must be celebrated on an altar of the proper rite; but when such an altar is lacking, it is lawful for a priest to celebrate according to his own rite on an altar consecrated for another Catholic rite, but not upon the antimensions of the Greeks (canon 823, § 2).[1] Finally, on papal altars no one may celebrate without apostolic indult (canon 823, § 3). With these things summarily noted, several things about the altar must be noted.

1. **Notion of an altar.** In the liturgical sense it is understood: 1. by the name of an immovable or fixed altar, the upper table together with the supports consecrated with it as one thing; 2. by the name of a movable or portable altar, a stone, usually small, which alone is consecrated and which is also called a portable altar-stone or sacred stone; or the same stone together with a support which nevertheless was not consecrated together with it (canon 1197, § 1).

In a consecrated church at least one altar, especially the major altar, must be immovable; but in a blessed church all altars can be movable (canon 1197, § 2).

2. **Construction of an altar.** a) Both the immovable table and the sacred stone should consist of one natural stone, whole and not friable (canon 1198, § 1).

b) In an immovable altar the stone slab or table must extend to the whole altar and suitably cohere with the support; the support should be of stone, or at least the sides or little columns by which the table is supported should be of stone (canon 1198, § 2).

c) The sacred stone should be so large that it holds at least the host and the greater part of the chalice (canon 1198, § 3).

d) Both in an immovable altar and in a sacred stone there should be, according to the norm of liturgical laws, a sepulcher containing relics of Saints, closed with stone (canon 1198, § 4). Concerning this, observe that for due consecration it is required that relics from the bodies of at least two martyrs be deposited in the sepulcher, and that these be enclosed with a stone cover. Nevertheless, for the validity of consecration the relics of only one martyr suffice.[2] For the rest, relics of other Saints can be added.

3. **Consecration of an altar.** Portable altar-stones can be consecrated validly and licitly by Cardinals (canon 239, § 1, 20), all bishops (canon 1199, § 2), vicars and prefects apostolic within the limits of their territory and while their office endures (canon 294, § 2), and abbots and prelates nullius (canon 323, § 2). Immovable altars can be validly consecrated by the same persons who validly consecrate portable altar-stones, excepting, however, vicars and prefects apostolic who lack the episcopal character. In order that they act licitly, the Ordinary of the territory must grant permission, with the right of Cardinals to consecrate altars of their own title remaining firm (canons 1155; 1199, § 2). The consecration of an immovable altar, which is done without the dedication of a church, although it can be done on any day, is nevertheless more fittingly done on a Sunday or another feast of precept (canon 1199, § 3).

4. **Execration of an altar.** a) An immovable altar loses consecration if the slab or table is separated from the support even for a moment of time; in this case the Ordinary can permit a presbyter to perform the consecration of the altar again with the shorter rite and formula (canon 1200, § 1). It is not execrated if the table, not separated from the support, is transferred to another church or to another place of the same church.[3]

b) Both an immovable altar and a sacred stone lose consecration: 1. if they are broken enormously, whether by reason of the quantity of the fracture or by reason of the place of anointing (canon 1200, § 2, 1), but not if they are merely scraped; 2. if the relics are removed or the cover of the sepulcher is broken or removed, except in the case in which the bishop himself or his delegate removes the cover in order to secure, repair, or replace it, or to inspect the relics. But a slight fracture of the cover does not induce execration, and any priest can secure a little crack with cement (canon 1200, § 2, 2 and 3).

c) The execration of a church does not carry with it the execration of altars, whether immovable or movable; and conversely (canon 1200, § 4).

5. **The title of an altar.** a) Just as a church, so any altar of a church, at least an immovable one, should have its own title. The primary title of the major altar must be the same as the title of the church (canon 1201, §§ 1 and 2).

b) Altars cannot be dedicated to Blessed persons, even in churches and oratories to which their office and Mass have been granted, without an indult of the Apostolic See (canon 1201, § 4).

c) With the permission of the Ordinary, the title of a movable altar can indeed be changed, but not the title of an immovable altar (canon 1201, § 3).

6. **Necessity of an altar.** The precept of consecrating on a consecrated and not execrated altar is grave.[4] Moreover, according to some it is never lawful to celebrate outside an altar; according to others this is lawful in a most grave necessity, for example for confecting Viaticum, because, they say, the precept of receiving Viaticum is divine, while the prohibition of celebrating outside an altar is ecclesiastical.

7. **Things to be noted.** a) The altar-stone, that is, the portable altar-stone or sacred stone, must be inserted in an altar made of wood or of another material.[5]

b) Both an immovable and a movable altar must be reserved only for divine offices and especially for the celebration of Mass, any profane use being altogether excluded (canon 1202, § 1).

c) No corpse should be hidden under the altar; but corpses which perhaps are buried near the altar should be distant from it by a space of at least one meter. Otherwise it is not lawful to celebrate Mass on the altar until the corpse is removed (canon 1202, § 2).

[1] An antimension is a consecrated cloth in which there are relics, and which, spread upon any table, can be used for saying Mass.

[2] Sacred Congregation of Rites, 16 February 1906, n. 4180, ad III.

[3] The decree of the Sacred Congregation of Rites, 3 September 1879, n. 3504, ad I, which is opposed, seems to speak of the transfer of the table alone, separated from the support.

[4] Roman Missal, General Rubrics, title XX; *De defectibus*, title X, n. 1.

[5] Roman Missal, loc. cit.

251 **II. Three altar cloths** - or two, one of which is doubled - blessed by the bishop or by another having the faculty; this faculty belongs to the same persons who enjoy the faculty of blessing sacred vestments (n. 266). The altar cloths must be made of linen or hemp.[1] The upper cloth should be long, descending to the floor on both sides; the custom of using a shorter cloth cannot be observed.[2]

It is a grave sin to celebrate without any altar cloth; nevertheless this is lawful in grave necessity. The other things oblige under venial sin, for example the precept of using several cloths, of using blessed cloths, etc. Hence a respectively just cause excuses from every sin (St. Alphonsus, VI, 375).

[1] Sacred Congregation of Rites, 18 May 1819, n. 2600.

[2] Sacred Congregation of Rites, 9 June 1899, n. 4029, ad I.

252 **III. A cross with the image of the Crucified,** placed between the candlesticks and projecting in such a way "that the celebrating priest and the people assisting at the Sacrifice can easily and

conveniently look upon the same Crucifix; which cannot happen if only a small cross is displayed."[1] Another cross is not required if there is a large statue of the Crucified on the altar, or if the image of the Crucified is painted on the altar panel as holding the first place;[2] nor is a blessed cross prescribed.[3] If the Most Holy Sacrament is exposed, a cross can be used or not used, according as custom bears.[4] Finally, the use of placing the cross on the throne which serves for the public exposition of the Most Holy Sacrament cannot be tolerated.[5]

The obligation of using a cross is light.

[1] Constitution of Benedict XIV *Accepimus*, 16 July 1746; Sacred Congregation of Rites, 16 June 1663, n. 1270, and 17 September 1822, n. 2621.

[2] Constitution of Benedict XIV, cited.

[3] Sacred Congregation of Rites, 12 July 1704, n. 2143.

[4] Sacred Congregation of Rites, 2 September 1741, n. 2365.

[5] Sacred Congregation of Rites, 2 June 1883, n. 3576, ad III; 11 June 1904, n. 4136, ad II.

253 **IV. Two lighted candles.**[1] Besides this, according to the rubric,[2] near the altar a candle is to be prepared, to be lighted at the elevation of the sacrament; but a contrary custom can be observed. The candles must be made of wax.[3]

Nevertheless, to the question: "Whether, considering even the great difficulty either of having true beeswax or of eliminating improper mixtures with other wax, the candles to be placed upon altars must be wholly and entirely of beeswax; or whether they can be mixed with other material, whether vegetable or animal?" the Sacred Congregation of Rites[4] responded: "Considering the asserted difficulty, Negative to the first part; Affirmative to the second and according to the mind. The mind is that bishops should, according to their powers, take care that the paschal candle, the candle to be immersed in the baptismal water, and the two candles to be lighted at Masses be of beeswax, at least in the greatest part; but it is necessary that the material of the other candles which are to be placed upon altars be of the same wax in a greater or notable quantity. In this matter pastors and other rectors of churches and oratories will be able safely to stand by the norms handed down by their respective Ordinaries, nor are private priests who are going to celebrate Mass bound to inquire anxiously about the quality of the candles." Besides, the Sacred Congregation of Rites[5] granted to missionaries in Oceania that they might use candles made and formed from whale fat, which in those regions are called *bougies a l'etoile*.

The candles must be placed upon the altar, not fixed to a wall almost touching the altar.[6] For the rest, note:

a) Apart from an indult, by reason of some personal distinction it is not lawful for priests below a bishop - not even for the vicar general - to use more than two candles; by reason of some greater solemnity of a feast or Mass, it is lawful.[7]

b) It is a grave sin to celebrate without any light; this is lawful only by reason of administering Viaticum or by special permission. Likewise, it is more probably mortal to celebrate without any wax light, or with only lights from tallow or oil. Nevertheless this is lawful in a case of necessity, for example so that Viaticum may be administered or so that the people may hear Mass on a Sunday (St. Alphonsus, VI, 394, doubt 1). The other things oblige under venial sin; hence, for example, if two wax

candles are lacking, it is lawful for a reasonable cause, even by reason only of devotion, to celebrate with one wax candle (St. Alphonsus, VI, 394).

c) If either light goes out during the celebration, the priest can continue while it is lighted again. If every light fails and no other can be had, if this happens after the consecration the Mass must be continued; but if before it, more probably it must be interrupted (St. Alphonsus, VI, 394).

d) It is illicit above or within the altar, besides wax candles, to use stearin candles,[8] gas illumination, or electric light.[9] Moreover, "electric light is forbidden not only together with wax candles upon altars, but also in place of candles or lamps"[10] which are prescribed before the Most Holy Sacrament or relics of Saints.[11] For other places of the church and other cases, electric illumination is permitted according to the prudent judgment of the Ordinary, provided that in all things the gravity which the holiness of the place and the dignity of the sacred liturgy demand is preserved. Nor is it lawful, during private or public exposition, to illuminate the interior part of the ciborium with electric lamps placed in that very interior part, so that the Most Holy Eucharist can be better seen by the faithful;[12] these things are also to be applied to stearin candles and gas illumination.

[1] Roman Missal, General Rubrics, title XX.

[2] Sacred Congregation of Rites, 9 June 1899, n. 4029, ad II.

[3] Roman Missal, *De defectibus*, title X, n. 1.

[4] 14 December 1904, n. 4147.

[5] 7 September 1850, n. 2985.

[6] Sacred Congregation of Rites, 16 September 1865, n. 3137.

[7] Sacred Congregation of Rites, 12 September 1857, ad IX, n. 3059.

[8] Sacred Congregation of Rites, 4 September 1875, n. 3376.

[9] Sacred Congregation of Rites, 4 June 1895, n. 3859; 16 May 1902, n. 4097; 22 November 1907, n. 4206; 17 January 1908, n. 4210, ad I; Secretariat of State to the bishops of Italy, 3 October 1923.

[10] Namely, so that it is substituted in their place.

[11] Namely, on the occasion of their solemn exposition.

[12] Sacred Congregation of Rites, 24 June 1914, n. 4322.

254 **V. An antependium;** namely, from the rubric:[1] "The altar is also to be adorned with a frontal of the color, as far as possible, corresponding to the feast day or office." It is required more probably under venial sin, unless the altar is of marble or another precious material, or has the form of a tomb (St. Alphonsus, VI, 395). No determinate material is prescribed, nor is it required that it be blessed. There are also those who judge that, from custom, celebration can take place without an antependium.

[1] General Rubrics, title XX.

Article II. On Sacred Vessels with Accessories

255 The following are required:

I. Chalice and paten; both of which must be consecrated.[1]

1. **Matter.** The chalice must be gold or silver, at least as regards the cup;[2] by reason of poverty one made of tin is permitted,[3] and, under certain conditions, one made of aluminum mixed with other

metals;[4] but not one of bronze, glass, or wood. The cup, unless it is gold, must be gilded under grave obligation (canon 1305, § 2). As regards the form of the chalice, the Sacred Congregation of Rites[5] prescribed: "let them not differ from the traditional forms, because of the danger of spilling the sacred species and of exciting astonishment."

The paten should be of the same material as the chalice,[6] and unless it is gold, it must be gilded under grave obligation (canon 1305, § 2).

2. **Consecration.** Chalices and patens can be consecrated by: 1. Cardinals (canon 239, § 1, 20); 2. bishops (canon 1147, § 1); 3. vicars and prefects apostolic, but if they lack the episcopal character, only within the limits of their territory and while their office endures (canon 294, § 2); 4. abbots and prelates nullius, but if they are not adorned with the episcopal character, only for their churches (canon 323, § 2).

a) They lose consecration: 1. if they have undergone such injuries or changes that they have lost their former form and are no longer held suitable for their uses (canon 1305, § 1, 1), for example when a chalice is pierced in the bottom or near the bottom; when the cup is separated from the foot, unless the chalice is turnable; when it is broken or struck in such a way that it can no longer decently serve the sacrifice. They lose consecration, 2. if they have been used for indecorous uses or exposed to public sale (canon 1305, § 1, 2).

b) They do not lose consecration because of the wearing away or renewal of the gilding, with the grave obligation of gilding them again remaining safe, however, in the former case (canon 1305, § 2).

3. It is a grave sin to celebrate without a chalice or paten, likewise without consecrated ones, likewise with a chalice or paten made from prohibited material or not gilded (cf. canon 1305, § 2).

4. It is an abuse to execrate sacred vessels before they are handed over to an artisan to be repaired or recast.[7]

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Roman Missal, loc. cit.

[3] Roman Missal, *De defectibus*, title X, n. 1.

[4] Sacred Congregation of Rites, 9 December 1866 (*Acta Sanctae Sedis* VI, p. 590).

[5] Sacred Congregation of Rites, 30 June 1922 (*Acta Apostolicae Sedis* 1922, p. 437).

[6] Roman Missal, Rite to be observed, title I, n. 1; *De defectibus*, title X, n. 1.

[7] Sacred Congregation of Rites, 20 April 1822, n. 2620.

256 **II. A blessed corporal.**[1] It must be made of linen or hemp.[2] It is a grave sin to celebrate: 1. without a corporal; 2. without a blessed corporal; 3. with an enormously unclean corporal (St. Alphonsus, VI, 387). Grave necessity of celebrating excuses, for example so that the people may hear a Mass of precept. If it is not very unclean, strange priests are excused.

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Sacred Congregation of Rites, 18 May 1819, n. 2600. From this decree it is clear that linen and hemp are equated.

257 **III. A blessed pall,**[1] made of linen or hemp; nevertheless it is lawful to use a pall covered on the upper part with silk, or with gold or silver interwoven and embroidered, provided the upper material is not black and does not represent signs of death.[2]

To the question: "From the decree of the Sacred Congregation of Rites n. 3832, *Resolution of Doubts*, 17 July 1894, ad IV, it is permitted that the chalice pall on the upper part be covered with silk cloth, or with gold or silver, and embroidered, provided that the linen pall joined beneath covers the chalice and that the upper part is not black nor with any sign of death. It is asked: Can this pall joined beneath be a linen cloth furnished with a cross and sewn beneath, after the manner of a pall, and not removable?" the Sacred Congregation of Rites responded: "Negative, and the pall joined beneath, properly so called, should be linen, clean, and easily removable."[3]

The pall, and likewise its blessing, are sufficiently probably prescribed only under light obligation. If it is lacking, the chalice should be covered with the purificator, burse, or corporal (St. Alphonsus, VI, 388).

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Roman Missal, Rite to be observed, loc. cit., compared with Sacred Congregation of Rites, 17 July 1894, ad 4, n. 3832.

[3] 24 November 1905, n. 4174.

258 **IV. A purificator;** this can be blessed, but need not be.[1] If a purificator cannot easily be had, in its place a small towel can be used, which afterward is not to be used for another use (St. Alphonsus, VI, 389).

[1] Sacred Congregation of Rites, 7 September 1816, n. 2572, ad XII.

259 **V. The chalice veil** is required under venial sin; it can be blessed, but need not be.[1] If it is not had, it is lawful to celebrate without it (St. Alphonsus, VI, 395).

[1] Roman Missal, General Rubrics, title 20.

260 **VI. The burse and hand towel,** which likewise can be blessed, but need not be.[1] It is fitting to use these (St. Alphonsus, VI, 390).

[1] Sacred Congregation of Rites, 28 April 1866, n. 3149.

261 **VII. A small spoon,** by which water is placed into the chalice, can be used. It does not need a blessing, and can be made from any material.

262 **VIII. Cruets** per se must be glass,[1] but by legitimate custom gold and silver ones are permitted;[2] it is fitting to bless them.

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Roman Missal, loc. cit.

263 **IX. A little bell,** by which a sign is given, is prescribed under venial sin.

264 **Note 1.** The blessings about which there was mention above can be imparted by the same persons who enjoy the faculty of blessing sacred vestments (n. 266).

Note 2. Some have erroneously judged that vessels and other things do not need consecration or blessing if they have been used in the celebration of the sacrifice before they were consecrated or blessed (St. Alphonsus, VI, 380).

265 **Question 1. To whom is it lawful to touch sacred vessels and sacred linens?**

Response 1. While they contain the Holy Eucharist, they are licitly touched only by priests and deacons. To others this is prohibited under grave sin, except in a case of necessity.

Response 2. While they do not actually contain the Holy Eucharist, canon 1306, § 1 should be considered: "Care should 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."

The canon regards: 1. chalices and patens, as soon as they have been consecrated; 2. purificators, palls, and corporals that have been used and not afterward washed; 3. by parity of reason, ciboria and lunules that have been used, that is, after they have in fact touched the Holy Eucharist; but not ostensories, since they do not immediately touch the Holy Eucharist.

The canon permits touching: 1. to clerics; 2. to those who have custody of these things, such as sacristans, both men and women. Nevertheless, to others it is prohibited at most under venial sin; and a just cause excuses (St. Alphonsus, VI, 382).

Question 2. What things are to be observed as regards the washing of linens used in Mass?

Response. Three washings are prescribed. The first cannot be done except by a cleric constituted in major orders. The second and third, however, can also be done by laypersons. The water of the first washing should be put into the sacrarium or, if this is lacking, into the fire (canon 1306, § 2). For the rest, the first washing is prohibited at most under venial sin, so that a reasonable cause excuses (St. Alphonsus, VI, 387).

Article III. On Sacred Vestments, Etc

266 **I. Sacred vestments,** considered according to their importance, are distinguished into greater and lesser. The greater are the alb, chasuble, and more probably also the stole and maniple. The lesser are the amice and cincture (St. Alphonsus, VI, 377). The following things are to be explained:

1. **The existence and object of the precept.** "A priest about to celebrate Mass," says canon 811, § 1, "shall wear a becoming garment reaching to the ankles and the sacred ornaments prescribed by the rubrics of his rite." If such a garment cannot be had, for example by an outsider, there is an excusing reason. As regards the sacred ornaments, the amice, alb, cincture, stole, maniple, and chasuble are prescribed. Therefore the sacred vestments should be:

a) **Made of the due material; likewise entire, becoming, clean, and beautiful.**[1] As regards the material, the amice and alb should be of linen or hemp.[2] The cincture, without another material being reprobated, can be woolen,[3] also silken, but more fittingly[4] linen; it should not be a band but a cord.[5] The stole, maniple, and chasuble, although they need not be made of silk, should nevertheless be made of precious material, not of cotton, linen, or wool; a semi-silk or silk-threaded material suffices.[6]

b) **Made according to the customary form.** The Sacred Congregation of Rites declared that "it is not lawful, in making and using vestments for the sacrifice of the Mass and sacred functions, to depart from the usage received in the Church, and to introduce another mode and form, even an ancient one."

c) **Blessed.**[7] The blessing can be imparted by: 1. all Cardinals of the Holy Roman Church and all bishops; 2. local Ordinaries lacking episcopal character, for the churches and oratories of their own territory; 3. the pastor for churches and oratories situated in the territory of his parish, and rectors of churches for their own churches; 4. priests delegated by the local Ordinary, within the limits of the delegation and of the jurisdiction of the one delegating; 5. religious superiors - and therefore even non-

exempt superiors - and priests of the same religion delegated by them, for their own churches and oratories and for the churches of nuns subject to them (canon 1304).

A sacred vestment loses its blessing: 1. if it has undergone such injuries or changes that it has lost its former form, and is no longer held suitable for its uses (canon 1305, § 1, 1); and this is valid even if one vestment is made from another. Therefore the blessing is lost if the cincture is so broken that neither part suffices for girding the minister, if the alb loses a sleeve, if a maniple is made from a stole, etc. A sacred vestment loses its blessing, 2. if it has been used for indecorous uses or exposed to public sale (canon 1305, § 1, 2).

2. **The gravity of the precept.** a) It is mortal to celebrate without any sacred vestment; indeed, not even the ministering of Viaticum is held to be an excusing cause. It is disputed whether fear of death excuses, scandal and contempt being excluded (St. Alphonsus, VI, 377).[8] Likewise it is grave to celebrate without any blessed sacred vestment.

b) It is also mortal to celebrate without an alb or chasuble, or with them unblessed; likewise to celebrate without a stole and without a maniple, or with them unblessed. A most grave cause would excuse, for example lest a dying person lack Viaticum (St. Alphonsus, loc. cit.).

c) More probably it is mortal to celebrate without a stole or without a maniple, or with either one unblessed. The reason is that the aforesaid vestments seem, according to the mind of the Church, to be numbered among the greater; and this mind of the Church is evident both from the doctrine of the ancient theologians, who rather commonly hold the aforesaid vestments as greater, and from the fact that, just like the chasuble, they must be made from precious material. Nevertheless a grave cause excuses, for example that the people may hear the prescribed Mass (St. Alphonsus, loc. cit.).

d) It is light to celebrate without an amice or cincture. A just cause excuses, for example "fervor of devotion or the opportunity of alms for a priest who is not wealthy" (St. Alphonsus, loc. cit.).

e) The color assigned by the rubrics is of precept, as is clear both from what is to be said about rubrics in general (n. 270), and from responses of the Sacred Congregation of Rites.[9] The obligation, however, apart from grave scandal, is light, so that a just cause excuses; indeed, as St. Alphonsus (VI, 378, doubt 5) teaches with Sporer, it is better "on any day whatever to say Mass in any color whatever than to omit it."

3. **Things to be noted.** a) Besides sacred vestments, it is prescribed that the priest about to celebrate Mass wear a becoming garment reaching to the ankles (canon 811, § 1). Moreover, he should be shod.[10] The shoes should be such as approved clerics of the diocese commonly use in public.[11] "For this, however, it suffices that he be dressed in slippers commonly called *pianelle* or *pantofele*" (St. Alphonsus, VI, 402).

b) He should abstain from the skullcap and ring, unless he is a Cardinal of the Holy Roman Church, a bishop, or a blessed abbot, or unless an apostolic indult permits him to use them in celebrating Mass (canon 811, § 2).

Moreover, it would be mortal to use the skullcap throughout the whole Mass; outside the Canon, however, it is venial, scandal nevertheless being excluded. Hence it is not "illicit to celebrate without a dispensation with the skullcap (except during the Canon and with scandal set aside) for a reasonable cause, if it is evident to those standing by the celebration, for example because of the priest's old age or

the coldness of the place, so that one could not celebrate with head uncovered without notable inconvenience" (St. Alphonsus, VI, 397, doubt 1).

c) The use of artificial hair is illicit.[12] Authors note, however, that this prohibition has become obsolete in many regions.

d) To no celebrating priest, except bishops and other prelates enjoying the use of pontificals, is it lawful, solely for the sake of honor or solemnity, to have an assisting priest (canon 812).

[1] Roman Missal, Rite to be observed, title II, n. 1.

[2] Linen and hemp are equated (n. 257).

[3] Sacred Congregation of Rites, 23 December 1862, n. 3118.

[4] Sacred Congregation of Rites, 22 January 1701, n. 2067.

[5] Sacred Congregation of Rites, 24 November 1899, n. 4048.

[6] Cf. *Ephemerides liturgicae* I, 24, 32; 9 December 1925 (*Acta Apostolicae Sedis* 1926, p. 58).

[7] Roman Missal, Rite of Mass, title II, n. 2; *De defectibus*, title X, n. 1.

[8] Cf. Constitution of Benedict XIV, *Aestas anni*, 11 October 1828†.

[9] Sacred Congregation of Rites, 10 December 1829, n. 2675; 12 November 1831, ad 5, n. 2682.

[10] Roman Missal, Rite to be observed, title I, n. 2.

[11] Sacred Congregation of Rites, 31 August 1872, n. 3268, ad 3.

[12] Sacred Congregation of Rites, 4 April 1699, n. 2027, ad 5; indeed it was prohibited by Innocent XI under pain of suspension (in St. Alphonsus, VI, 388).

267 **II. The Missal is required,** although the priest should know by memory the Mass which he intends to say;[1] indeed, considering the danger of erring gravely, it is commonly prescribed under grave obligation. Nevertheless, rather probably one celebrating without a Missal does not sin gravely "if he could not easily have one and, because of past experience, the moral danger of erring were absent. Hence they probably infer that a priest celebrates licitly who, because of weakness of sight, recites the Mass from memory, provided that, to avoid notice, he has the Missal on the altar, or another book in its place" (St. Alphonsus, VI, 390).

[1] Roman Missal, *De defectibus*, title X, n. 1.

268 **III. A cushion or small lectern for the Missal, and the altar cards of the secrets,** are not of precept; nevertheless they are fittingly used.

269 **IV. A server assisting at Mass is required, and indeed a male.** If a man is lacking, a woman can be employed for a just cause, under this law, however, that she answer from a distance and in no way approach the altar (canon 813). Even devotion alone involves a just cause for employing a woman. When the case occurs, however, everything required for the sacrifice should first be conveniently arranged (St. Alphonsus, VI, 392, doubt 2).[1] Moreover:

1. It is mortal to celebrate without any server; nevertheless a grave cause excuses, for example the necessity of ministering Viaticum; likewise, more probably, that the people may hear a Mass of precept. Besides this, rather probably, "once Mass has begun, especially if the oblation has been made, the celebrant is permitted to proceed without a server if the latter has gone away and is not going to return shortly" (St. Alphonsus, VI, 391, doubt 1). Indeed, since nowadays celebration

without a server is easily conceded if no one can be found, and this even on a weekday and without a woman answering from afar, therefore, if unexpectedly a priest in a particular case lacks a server, it seems that permission can be presumed even by reason of devotion alone.

2. It is also mortal to employ a woman who ministers immediately; nor does grave necessity excuse, because it is preferable to celebrate without a server than with a woman immediately ministering.

3. It is more easily lawful to celebrate with a server who does not know how to answer than without a server; not, however, so easily as with a woman answering from afar. For the rest, "let the celebrant not make a scruple if the server pronounces badly, nor easily correct errors, lest he disturb himself or those standing around or the order of the Mass, although Croix with Gobat admonishes that the celebrant should supply what has been omitted by the server" (St. Alphonsus, VI, 391).

[1] Cf. Sacred Congregation of Rites, 27 August 1836, n. 2745, ad 8; 18 March 1899, n. 4015, ad 6.

Article IV. On Rubrics to Be Observed

Canon 818 states: "Any contrary custom being reprobated, the celebrating priest shall accurately and devoutly observe the rubrics of his ritual books, and shall take care not to add other ceremonies or prayers at his own discretion." And canon 819: "The sacrifice of the Mass is to be celebrated in the liturgical language of each one's rite approved by the Church." Therefore Mass in general is to be celebrated according to the rite or rubrics assigned by the Church in the Roman Missal. But authors disagree somewhat about the solution of the question, which rite or which rubrics are in fact prescribed. Hence the matter must be explained more fully:

I. The object of the precept; concerning which the following points seem to be established.

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1. **The rubrics to be observed within Mass are preceptive.** This assertion, which more recent authors commonly admit, is clear from the Council of Trent;[1] likewise from the Bull *Quo primum tempore* of St. Pius V,[2] placed at the beginning of the Roman Missal: "commanding and strictly enjoining upon all... in virtue of holy obedience, that they sing and read Mass according to the rite, manner, and norm which are now handed down by Us through this Missal, and that in the celebration of Mass they not presume to add or recite other ceremonies or prayers than those which are contained in this Missal." Canon 818 is added to this. The opinion which excepts certain lesser things is scarcely reconcilable with the words cited (St. Alphonsus, VI, 399).

2. **It is disputed whether the rubrics to be observed outside Mass,** that is, before or after Mass, are preceptive or merely directive. Moreover, with St. Alphonsus (VI, 399) and most more recent authors, it seems that one must say that they are generally merely directive, unless they present those things which are obligatory from the nature of the matter. The reason is that the Bull cited speaks only of rubrics to be observed in the celebration of Mass, and canon 818 speaks only of the celebrating priest.

3. **In particular it is disputed** - even among those who admit the assertions under 1 and 2 - whether the following are truly prescribed or not:[3]

a) **The prayers assigned before Mass in the Roman Missal.** Rather commonly, and rightly, it is denied that they are truly prescribed, because they are said to be "to be said according to the

opportunity of the priest" (St. Alphonsus, VI, 410, doubt 2). The same must be said of the prayers assigned after Mass.

b) **The washing of hands before Mass.** This seems truly to be prescribed, namely by reason of reverence toward the sacrifice, and in view both of its spiritual signification (namely, of spiritual cleanness) and of the precept given in the Old Law. It obliges under venial sin; but from the nature of the matter under grave sin, if the hands are very unclean. After Mass, however, it can be omitted, since it is not prescribed (St. Alphonsus, VI, 409).

c) **The prayers to be recited while the vestments are being put on.** More commonly they teach that these are truly prescribed, because they seem morally to pertain to Mass (St. Alphonsus, VI, 410, doubt 2).

d) **The canticle *Benedicite*.** Some affirm that it is imposed, because in the Order of Mass it is said: "The priest says"; but rather probably it is not truly prescribed, because by the rubric of the Roman Missal[4] it is equated with the other prayers assigned after Mass (cf. St. Alphonsus, VI, 410, doubt 2).

4. **The Ceremonial of Bishops obliges just as the Roman Missal does.** This is clear both from the three Bulls prefixed to it and from the declaration of the Sacred Congregation of Rites[5] (St. Alphonsus, *Examen ordinandorum*, n. 112).
5. **Responses of the Sacred Congregation of Rites present obligation** if they regard rubrics to be observed within Mass; otherwise they are merely directive, unless the contrary is to be drawn from the tenor.
6. **As regards custom against the rubrics, note:**

a) Any custom contrary to the rubrics is reprobated (canon 818), and therefore is not reasonable (canon 27, § 2); nevertheless, when circumstances have changed, more probably it can become reasonable (vol. I, n. 194).

b) Custom cannot derogate from rubrics contained in liturgical books by way of prescription; but it can by way of connivance, or by force of the legislator's personal consent (vol. I, n. 193). Besides this, a usage contrary to the rubrics can be tolerated until it can conveniently be removed by the bishop (vol. I, n. 193). If a decree of the Sacred Congregation of Rites contrary to the custom is added, the custom is of itself abrogated;[6] if it cannot conveniently be removed, the Ordinary should propose the matter to the Sacred Congregation and await the response.

[1] Session 6, canon 13; session 22, decree on what is to be observed and avoided.

[2] 12 July 1570.

[3] On the recitation of Matins with Lauds before Mass, see the treatise on the duties of clerics, n. 2.

[4] Rite to be observed, title XII, n. 6.

[5] Sacred Congregation of Rites, 8 January 1904 (*Acta Sanctae Sedis* XXXVI, p. 428).

[6] Sacred Congregation of Rites, 17 August 1894, n. 3839.

Article IV. On Rubrics to Be Observed

271 **II. The gravity of the precept.** The precept or obligation of rubrics that are truly preceptive is grave from its genus. But the gravity of the matter must be judged not only from the quantity but also

from the quality of the rites, as will be clearer from the corollaries. Moreover, one can sin against the precept by omission, addition, change, breaking off, and interruption.

1. **Omission.** Concerning this, notice with St. Alphonsus (VI, 404 sq.): 1. that the ordinary parts, that is, those which occur in every Mass (such as the principal prayers, Epistle, Gospel, etc.), oblige more gravely than the extraordinary parts (such as the Gloria, Creed, Commemorations); 2. that among the ordinary parts, those oblige more gravely which must be said or performed within the Canon, especially from the Consecration to Communion. With these points noted, with the Doctor mentioned we resolve:

a) It is grave to omit an essential or integral part; the Confession with the other prayers to be said at the foot of the altar; the Epistle; the Gospel; the principal prayers; the mixing of water in the chalice; the oblation of the bread and wine; the Preface; the *Pater noster*; the *Libera nos*; the breaking of the host and the mixing of it with the Blood; the purification of the chalice after Communion. Likewise in the Canon it is grave to omit any prayer whatever; or to change its words so that the sense is varied; or to omit some word such that, once it is removed, the remaining words do not make sense; or to omit, for example, ten names of Saints; or finally to omit several extraordinary parts together (St. Alphonsus, VI, 404, 405).

b) It is light to omit the washing of hands before Mass with the accompanying prayers; the prayers to be said while the priest clothes himself in the sacred vestments; the Psalm *Judica*; Kyrie; Gloria; Creed; Commemorations; or, in place of the proper Preface, *Communicantes*, or *Hanc igitur*, to take the said prayers as they occur in the common (St. Alphonsus, VI, 409).

c) An omitted part must always be supplied when it belongs to the essence or integrity of the Mass; likewise the mixing of water in the chalice, if it is noticed before the Consecration. For the rest, one who by error or forgetfulness has omitted something: if indeed it is light, should proceed; if it is grave and the error is noticed shortly afterward, that is, after a few words, he should resume what was omitted. Hence the Gloria or Creed are not to be resumed if the following prayers have already been begun; nor the Epistle, Gospel, Preface, or *Communicantes*, if he has taken one for another, unless, for example, he detects the error from the beginning of the false Epistle (St. Alphonsus, VI, 403).

2. **Addition.** a) It is a grave sin to add anything with the intention of introducing a new rite; likewise - even without the aforesaid intention - to add something notable (St. Alphonsus, VI, 411).

b) It is light to add: 1. a collect,[1] Gloria, Creed, *Pater*, *Ave*, or something similar; 2. at the elevation, even in a low voice, certain pious words;[2] otherwise, if it is done only mentally; 3. while the Gloria and Creed are being sung in Mass, to recite a canonical Hour from a book[3] (St. Alphonsus, loc. cit.).

3. **Change.** It is light: 1. scandal being excluded, to change the office, that is, to celebrate a Mass which cannot be celebrated on that day; 2. not to sing in solemn Mass the things which are prescribed to be sung; 3. to pronounce the words in a voice other than that prescribed. This, however, is grave: a) when someone pronounces a notable part, especially of the Canon, or the words of Consecration alone, in so loud a voice that they can be heard at a great distance, for example forty paces; b) when the priest forms the words of Consecration so secretly that he cannot even hear himself, unless perhaps deafness or noise prevents hearing. The reason is that he exposes the sacrament to the danger of nullity (n. 24; St. Alphonsus, VI, 413-416). According to the Roman Missal:[4] 1. those things which are to be said in a clear voice must be pronounced "neither... in a

voice too loud, lest he disturb others who perhaps are then celebrating in the same church, nor so low that he cannot be heard by those standing around." 2. "But those things which are to be said secretly he should pronounce in such a way that he himself hears himself, and is not heard by those standing around."

4. **Breaking off** consists in this, that Mass begun is not continued but is dismissed. Moreover, breaking off can and must take place:

a) **Before the Consecration:** 1. if the priest before the Consecration notices that he is not fasting, and can withdraw without infamy or scandal; 2. if the church is polluted before the Canon; 3. if before the Canon it is known that a vitandus excommunicate is present and cannot be expelled (St. Alphonsus, VI, 353).

b) **Before and after the Consecration:** 1. if danger threatens, for example because of an attack by enemies, danger of death, or profanation; in which case the priest, according to the circumstances, should at once consume the sacrament or carry it with him while fleeing; 2. if, once the Consecration has certainly or doubtfully been performed, the priest fails; in which case the following should be observed: If the priest who fails is foreseen after some time - even after taking food or drink - to recover his strength, he should be awaited, so that he may complete the sacrifice. If he cannot complete the sacrifice, another should be sought - even one not fasting, if one fasting is lacking[5] - who may complete the sacrifice, beginning where the other left off; if the other still lives and can communicate, and another consecrated Host is not available, the priest who supplies the Mass should divide the Host, and give one part to the sick man, and take the other himself[6] (St. Alphonsus, VI, 355). If, however, Mass cannot be continued within an hour, it need not be completed, because the required unity is probably lacking; nevertheless it can - even after a longer time - be completed, because the said unity is also probably present (St. Alphonsus, loc. cit.). If the sacrifice is not completed, the Host and chalice should be placed in the tabernacle, and on the next day they should be consumed by the celebrant before the purification.

5. **Interruption is lawful:** 1. if an instruction or sermon must be given, or certain things must be announced to the people, which is customarily done after the Gospel; 2. if a religious profession is made within Mass,[7] or if it is permitted by liturgical law for another reason; 3. if necessity befalls the priest; 4. if one's neighbor falls into danger of death. But if this takes place before the Consecration, the priest can minister Baptism or Penance, Viaticum, and Extreme Unction to the dying person. If it occurs after the Consecration, he can confer Baptism or Penance upon him; he must defer the conferral of Viaticum and Extreme Unction until he has finished Mass, or at least has taken the Most Holy Blood; nevertheless Viaticum can be ministered if the dying person is so near that it is not necessary to take off the sacred vestments[8] (St. Alphonsus, VI, 353, 354). Besides this, if the necessity of one's neighbor urges after the Consecration, "let the priest take care that the Sacrament meanwhile be guarded, or let him enclose it in the tabernacle; and after he has returned, let him continue Mass from the point where he interrupted it. If the Consecration has not been made, and a short delay has intervened, for example within an hour, let him proceed where he left off; but if the delay is longer, let him begin from the beginning."[9]

[1] Sacred Congregation of Rites, 27 March 1779, ad VI, n. 2514.

[2] Cf. Sacred Congregation of Rites, 6 November 1925, ad I (*Acta Apostolicae Sedis* 1926, p. 21).

[3] Sacred Congregation of Rites, 20 March 1869, ad IX, n. 3201.

[4] General Rubrics, title XVI, n. 2.

[5] Indeed, if no other is available, even an excommunicate, who in the case must, after grace has been recovered, complete the sacrifice.

[6] Roman Missal, *De defectibus*, title X, n. 3.

[7] Sacred Congregation of Rites, 27 August 1894, n. 3836; 5 June 1896, n. 3912.

[8] Sacred Congregation of Rites, 19 December 1829, n. 2672, ad 1.

[9] Aertnys-Damen, *Theologia moralis*, n. 259.

272 **III. The excusing cause.** One who because of illness or another cause cannot observe all the rubrics can nevertheless celebrate both privately and publicly, if he must omit or change only certain things that are of lesser importance, for example deep inclinations, genuflections down to the ground. If the matter is of greater importance, for example if the priest cannot approach the altar without a cane, or cannot celebrate except with both arms placed on the altar, privately indeed it is lawful to celebrate; publicly, provided the people are warned (St. Alphonsus, VI, 402). Finally, if the matter is wholly extraordinary, for example if the priest cannot celebrate except sitting or by briefly interrupting Mass or while continuously supported by another, a dispensation must be sought from the Holy See, or, for a transitory case, from the bishop.

273 **Corollary I.** In view of the things explained above, St. Alphonsus and most authors rightly teach with Benedict XIV[1] that "Mass should not be shorter than a third of an hour, nor longer than half an hour, because in a shorter space everything cannot be performed with due decorum, and in a longer space it would be tedious to those standing by. Hence we say that a priest who would finish Mass in under a quarter of an hour could with difficulty be excused from mortal sin, even if the Mass is among the shorter ones, or of St. Mary on Saturday; because in so brief a time he must necessarily commit two grave defects, one of grave irreverence toward the Sacrament, the other of grave scandal toward the people... But it is impossible for Mass to be completed in under a quarter of an hour without either words or ceremonies being omitted; or at least without the decency and gravity due to so great a Sacrifice being notably diminished. This must be carefully noticed; for someone perhaps will say that he pronounces the complete words of the Missal well and fulfills all the ceremonies of the Mass well. But although there may be someone so expeditious in tongue and movement that within such a time he would satisfy all the words and ceremonies of the Missal, nevertheless it is at least morally impossible that he celebrate without notably detracting, on the one hand, from the reverence to be offered by him toward the Sacrifice, and, on the other, without himself being the cause that the people assisting fail in the veneration which is owed to that same Sacrifice" (St. Alphonsus, VI, 400).

Corollary II. In conformity with the doctrine stated, St. Alphonsus (loc. cit.) notes with others that "bishops and prelates of regulars are bound under grave obligation to root out disgraceful and scandalous speed."

[1] *De Sacrificio Missae*, section 2, n. 217.

Scholion. On Defects to Be Corrected Both in the Dispensation of the Holy Eucharist and in the Oblation of Mass

274 **I.** "If a consecrated host, or some particle of it, falls to the ground, it should be reverently taken up, and the place where it fell should be cleaned and somewhat scraped, and the dust or scraping of this kind should be put into the sacrarium. If it falls outside the corporal onto the altar cloth, or in any

other way onto some linen, the altar cloth or linen of this kind should be diligently washed, and the washing itself poured into the sacrarium."[1] The prescribed washing does not oblige under grave sin. Hence it should rather be omitted whenever it would excite wonder, for example if the host should fall into the beard or clothing of the communicant. If it has slipped into a woman's bosom, she herself should look for it and hand it to the priest, or herself put it into her mouth with her own hands (St. Alphonsus, VI, 250). If the host has fallen inside the enclosure of nuns, the priest should enter the enclosure.

II. If through negligence something of the Blood of Christ has fallen, one must proceed as follows:

1. If indeed it has fallen upon the ground or upon a board, it should be licked with the tongue, and the place itself scraped as much as is enough, and the scraping burned; the ashes, however, should be stored in the sacrarium.
2. But if it has fallen upon the altar stone, let the priest absorb the drop, and let the place be well washed, and let the washing be cast into the sacrarium.
3. If it has fallen upon the altar linen, and the drop has reached another linen; if even to the third, the linens are to be washed three times where the drop fell, with the chalice placed underneath, and the water of the washing is to be cast into the sacrarium.
4. But if it has fallen only on the corporal itself or on the priestly vestments themselves, it should similarly be washed, and the washing cast into the sacrarium. If it has fallen on the cloth spread under the feet, or on a carpet, it should be well washed, as above.[2]

Moreover, in the spilling of the Blood, at least some washing must be done under grave obligation.

III. If in winter the Blood freezes in the chalice, the chalice should be wrapped in warmed cloths; if this does not help, it should be placed in boiling water near the altar, provided the water does not enter the chalice, until it liquefies.[3]

IV. If the priest "discovers after the consumption of the Body and Blood, or even after the ablution, that some consecrated remnants have been left behind, let him consume them, whether they are small or large, because they pertain to the same sacrifice."[4] Let him do this also if the priest is already in the sacristy, with the vestments not yet removed. If he has removed the vestments, let him place the fragments in the tabernacle or reserve them for a priest who is to celebrate that same morning; and let him proceed in the same way if the fragments are remnants of another sacrifice, because the Rubric permits him to consume only remnants which pertain to the same sacrifice (St. Alphonsus, VI, 251, question 3). But if an entire consecrated Host has been left, "let him put it in the tabernacle with the others; if this cannot be done, let him leave it for the following priest who is to celebrate there, decently covered on the altar over the corporal, to be consumed together with the other which he is going to consecrate; or if neither of these can be done, let him preserve it decently in the chalice itself or on the paten until either it is put into the tabernacle or consumed by another; but if he has no way in which it can be preserved honorably, he can consume it himself."[5]

V. If a ciborium which another priest needs must be purified, and the server through forgetfulness took the purification of the chalice before it had been purified, it is lawful - although the natural fast has ceased - to consume the small remnants found in the ciborium, because the consumption can be counted as by way of one act with Communion. It is more difficult to say that it is lawful to consume an entire host, since it can be kept for the following day.[6]

VI. If a sick person, or "a priest, vomits the Eucharist, if the species appear whole, they should be reverently consumed, unless nausea occurs; for then the consecrated species should be carefully separated and placed in some sacred place until they are corrupted, and afterward they should be cast into the sacrarium. But if the species do not appear, the vomit should be burned, and the ashes put into the sacrarium."[7] If the sick person cannot swallow the host, or, after receiving Viaticum, immediately dies, the host, if it still appears in the mouth, should be extracted and preserved until it is corrupted.

[1] Roman Missal, *De defectibus*, title X, n. 10.

[2] Roman Missal, *De defectibus*, title X, n. 12.

[3] Roman Missal, *De defectibus*, title X, n. 11.

[4] Roman Missal, *De defectibus*, title VII, n. 2.

[5] Roman Missal, *De defectibus*, title VII, n. 3.

[6] Tamburini, *De methodo communicandi*, chapter 2, n. 37.

[7] Roman Missal, *De defectibus*, title X, n. 14.

Article V. On Confession of the Dying

475 I. A dying person can be absolved who gives a sign of confession to the priest present, for example by a nod of the head, pressure of the hands, the eyes, etc. For all things required for validity, namely intention, manifested contrition, and confession, are present, or at least by law are presumed to be present.[1]

II. Likewise a dying person deprived of the senses can be absolved who showed a desire of confession before the priest approached.[2]

It is disputed whether in this case the dying person is to be absolved absolutely or under condition. Several think that he is to be absolved absolutely, because the Roman Ritual, in the cited place, seems to equate this case with the prior case and makes no mention of a condition. Others teach that absolution must be given under condition, because the accusation required for the validity of the sacrament is not certainly present, and consequently one can also doubt about the disposition (St. Alphonsus, VI, 481).

III. A dying person deprived of the senses, who neither gives a manifest sign of confession to the priest present, nor showed a desire of confession before the arrival of the priest, can be absolved under condition, whenever it is somewhat probable that the things required for validity are present. For in extremities, extreme things are to be tried. Now commonly the intention of receiving the sacrament is not certainly lacking, and perhaps some sign of confession and sorrow is exhibited by the dying person, for example a sigh, although the priest does not notice it. Added to this is that the doctrine is not certainly false which teaches that internal contrition alone, or internal attrition alone, is the necessary condition for the validity of the sacrament. Hence the following can be absolved: 1. a Catholic, whether he lived in a Christian manner or did not live in a Christian manner; 2. a Catholic who is deprived of the senses in the very act of sin, for example drunkenness or suicide; 3. an apostate who before his defection did not reject the priest, because, placed in extreme danger, he perhaps came to his senses; 4. one concerning whom it is doubted whether or not he is Catholic (St. Alphonsus, VI, 482, 483).

Observe that hearing commonly persists longer than the other senses; hence let the priest address the dying person in a loud voice, and suggest to him a general accusation and an act of contrition.

[1] Council of Orange I, chapter 12 (in Labbe, vol. 4, col. 703 sq.); Council of Carthage IV, chapter 76 (in Labbe, cited place, col. 1443; cf. canon *Is qui* 8, cause 26, question 6); St. Leo the Pope, Epistle 108 (otherwise 83) to Theodore, chapter 5 (in Migne, *Patrologia Latina*, vol. 54, col. 1013 sq.); Roman Ritual, title III, chapter 1, n. 25.

[2] Council of Orange I, chapter 12 (in Labbe, vol. 4, col. 703 sq.); Council of Carthage IV, chapter 76 (in Labbe, cited place, col. 1443; cf. canon *Is qui* 8, cause 26, question 6); St. Leo the Pope, Epistle 108 (otherwise 83) to Theodore, chapter 5 (in Migne, *Patrologia Latina*, vol. 54, col. 1013 sq.); Roman Ritual, title III, chapter 1, n. 25.

476 **Question 1.** Whether one can be absolved who, before he was deprived of the senses, rejected the priest.

Response. Having regard to the reverence due to the sacrament, it is better, as it seems, not to absolve him, unless the privation of the senses lasts rather long, or the dying person gives a sign which with some probability can be held as a declaration of a changed will.

Question 2. How often a dying person can be absolved.

Response 1. "While the sick person is still vigorous in his senses, it will help for absolution to be conferred on him several times after a brief reconciliation.

Response 2. "If the sick person now lacks the senses, it is not expedient that absolution be imparted to him more often within the same day. But in this matter the priest ought to direct himself by the conscience which they know of the sick person; for if he was habituated in evil thoughts, if he is dying from some wound, or is ensnared by some passion of hatred or impure love; if the illness is exceedingly bitter and he does not suffer with a willing spirit, then absolution can be given more often; but otherwise it suffices that a space of three or four hours intervene; more frequently, however, if he is already now about to die" (St. Alphonsus, *Praxis Confessarii*, n. 276).

Note. "It will not be beside the point to warn the sick person, while he is in possession of his mind, that, if he cannot speak, he should give some determinate sign while he seeks absolution, or while the priest wishes to confer it on him: for example, let him close or open his eyes, raise his hand, incline his head, and the like" (St. Alphonsus, *Praxis Confessarii*, n. 276).

477 IV. **The apparently dead.**[1] The instant of death, or of the separation of the soul from the body, can be determined by no one. As regards signs that death has followed, not even cadaveric rigidity, but only advanced putrefaction, is held as a certain sign of death. There have been and there are physicians who think that not only in a case of asphyxia, but also in other cases, life persists latently for some time after the ordinary signs of life have ceased; and this both in sudden cases and when disease has had its ordinary outcome.[2] As regards sudden cases, it is reported that several apparently dead persons have returned to the activity of life. As regards ordinary disease, they rely especially on experiments in higher animals. Therefore, having regard to those things which are asserted by some physicians, and which are not to be held as certainly false, it seems one must speak as follows:

1. In a case in which someone has died, apparently, whether from a sudden accident or from a disease which lasted for a brief time, it is strongly to be advised that the necessary sacraments - more safely first Extreme Unction, then Absolution - be administered under condition, and this even two or more hours after someone seems to have died.

2. In a case in which someone seems to have died in the ordinary way, they say that latent life commonly persists for a shorter time, say for a quarter hour or a half hour; hence during that time it is licit to administer the necessary sacraments.

3. Where there is suspicion that a case of asphyxia is present, a still longer time is admitted for administering the sacraments. Such a case can occur after uremia, epilepsy, and other diseases, concerning which Antonelli[3] and Capellmann-Bergmann[4] speak.

[1] Cf. Ferreres-Geniesse, *La mort réelle et la mort apparente, et leurs rapports avec l'administration des Sacrements*; *Revue de Lille*, 1905-1906, p. 442 sq., 481 sq.; *Nouv. Rev. Théol.*, 1906, p. 606 sq.; 1907, p. 497 sq.

[2] Cf. Lacroix, *De Poenitentia*, VI, n. 1104.

[3] Antonelli, *Medicina pastoralis*, II, n. 612 sq.

[4] Capellmann-Bergmann, *Pastoral-Medizin*, p. 358 sq.

Article VI. On Confession of Baptized Non-Catholics

478 We are speaking of baptized non-Catholics who are in good faith, or at least are not certainly in bad faith. Now:

I. Outside danger of death, baptized non-Catholics cannot licitly be absolved. "It is forbidden," thus canon 731, § 2, "to minister the Sacraments of the Church to heretics or schismatics, even those erring in good faith and asking for them, unless first, having rejected their errors, they have been reconciled to the Church."

II. **In danger of death.** We distinguish between non-Catholics who admit confession and those who reject it.

1. Those who admit confession, as for example schismatics, can be absolved as follows:

a) If they are already deprived of the senses, they can be absolved, according to this response of the Holy Office:[1] "Whether absolution and extreme unction can be conferred on schismatics at the point of death when deprived of the senses? Response: under condition, affirmatively, especially if from the circumstances it may be lawful to conjecture that they at least implicitly reject their errors, scandal nevertheless being effectively removed, namely by making manifest to those standing by that the Church supposes that they returned to unity at the last moment."

b) If they are not deprived of the senses, of themselves they cannot be absolved, because of themselves they must first be taught revealed doctrine and fulfill the obligation of embracing it. Added to this is canon 731, § 2, cited above. They seem, however, scandal being removed, to be able to be absolved as if incidentally, whether, after warning has been given, they are judged to persevere in error in good faith, or whether they are not warned, lest perhaps they be deprived of good faith. For first, it is in no way clear what from the nature of the matter stands in the way of the defended opinion. But a merely positive prohibition, where the salvation of a person placed in danger of death is at issue, should not easily be admitted. Then the Holy Office[2], to the question "Whether material schismatics who are in good faith can ever be absolved," the Holy Office, I say, responded to that question: "Since scandal cannot be avoided: negatively; except in danger of death; and then, scandal having been effectively removed."

Objection 1. Canon 731, § 2 absolutely forbids administering the sacraments to schismatics unless first, having rejected their errors, they have been reconciled to the Church; therefore neither in danger of death is it licit.

Response. A priori it is difficult to admit that the canon cannot be combined with the response of the Holy Office. And in fact the canon can well be understood in such a way that it establishes what ought of itself to be done, which does not prevent departure from the rule on account of a very grave cause; and such a cause is certainly present in the case posited.

Objection 2. The Holy Office, on May 17, 1916, to question II, "Whether the sacraments of either absolution or extreme unction can be conferred on material schismatics placed at the point of death, asking for them in good faith, without abjuration of errors," responded: "Negatively, but it is required that, in the best manner possible, they reject their errors and make a profession of faith."[3] Therefore schismatics, at least before they are deprived of the senses, cannot be absolved.

Response. Again, a priori it is difficult to admit that this response cannot be combined with the response of July 20, 1898. And indeed the response can be understood in such a way that schismatics of themselves cannot be absolved unless they reject their errors and make a profession of faith. Indeed the Holy Office, by adding that these things are to be performed "in the best manner possible," perhaps hints that an explicit rejection of errors and profession of faith is not always to be urged.

2. Those who reject confession should not be absolved. Nevertheless, I would not condemn one who conditionally absolves them after they have been incited to penance, according to what was said in n. 41; yet proceed prudently, and especially endeavor to bring them to perfect contrition.

Corollary I. In doubt whether a dying non-Catholic, deprived of the senses, admits confession, he can be absolved under condition.

Corollary II. One who assists a dying non-Catholic should not omit to bring him to perfect contrition and to an act of charity with the other preliminary acts, so that he may be saved more securely.

[1] May 17, 1916, to 2 (in *Theol.-prakt. Quartalschrift*, 1916, p. 692-695).

[2] July 20, 1898 (*Collectanea*, n. 2012).

[3] In *Theol.-prakt. Quartalschrift*, 1916, p. 692-695.

Section III. On the Things to Be Observed in the Oblation of Mass

We must speak of the disposition of the one offering, of the place, time, and rite of offering.

On the Disposition of the One Offering

The priest who is going to celebrate should be fasting from midnight, in the state of grace, and duly prepared.

241 **I. The natural fast.** It is not lawful for a priest to celebrate unless the natural fast from midnight has been observed (canon 808). See the things which regard the natural fast set forth in n. 187 sq. Add canon 247, § 5: "It, that is, the Congregation of the Holy Office, alone is competent concerning all those things which regard the Eucharistic fast for priests celebrating Mass." Finally, the Holy Office declared[1] that priests dispensed from the Eucharistic fast can, before the second Mass, take the ablution in the first.

[1] 16 November 1923 (*Acta Apostolicae Sedis* 1923, p. 584).

242 **II. The state of grace** is required both for carrying out the consecration worthily (n. 26), and for receiving Communion (n. 179).

1. One who has lost the state of grace is bound per se to recover it through sacramental confession (canon 807); per accidens an act of perfect contrition suffices, namely if necessity urges and availability of a confessor is lacking (cited canon). See each of these things more fully explained in n. 179.
2. But if a priest conscious to himself of mortal sin has celebrated, availability of a confessor being lacking and necessity urging, yet after eliciting an act of perfect contrition, let him confess as soon as possible (canon 807).[1] It is said:

a) **A priest**; and so the law does not bind a layperson or a cleric not yet initiated into the priesthood (St. Alphonsus, VI, 268).

b) **Availability of a confessor being lacking and necessity urging, yet after eliciting an act of perfect contrition**; hence the law does not regard a priest who has celebrated without confession when either availability of a confessor was not lacking, or necessity was not urging, or the act of contrition was neglected. Those who celebrate thus commit sacrilege; but the reason why the law does not include sacrilegious persons is that it would become useless and an occasion of a new transgression (St. Alphonsus, VI, 260).

c) **Without sacramental confession having been made beforehand**; and so a priest is not held by the law if he celebrated after a confession in which he inculpably forgot a mortal sin, because he did not celebrate without a previous confession (St. Alphonsus, VI, 267).

d) **Has celebrated**; therefore a priest who has merely communicated is excepted. It is disputed, however, whether the law includes a priest who, while celebrating, remembers a grave sin or becomes guilty of one. Several deny this, because in the rubric[2] it is said that a priest who before Mass remembers a sin and celebrates from necessity, not having availability of a confessor, is bound afterward to confess at the first opportunity. But speaking of one who remembers a sin in the celebration itself, the rubric[3] says: Let him be contrite with the purpose of confessing, without adding: at the first opportunity (cf. St. Alphonsus, VI, 267).

e) **Let him confess as soon as possible.** Moreover:

alpha) Here there is a true precept; hence Alexander VII condemned the proposition: "The mandate of Trent made to a priest sacrificing from necessity with mortal sin, to confess as soon as possible, is counsel, not a precept."[4] Moreover, that precept by the consent of all obliges under grave sin.

beta) This "as soon as possible," according to the common opinion, is understood as within three days, or in such a way that it is not lawful to wait beyond three days.[5] The obligation of confessing exists even if someone is not going to celebrate except after a longer time. Moreover, meanwhile the priest cannot again celebrate without previous confession unless both necessity of celebrating is present and availability of a confessor is lacking. Finally, if someone can confess now and foresees that afterward the occasion of confessing will be lacking, he is bound to confess now, for example already on the first day (St. Alphonsus, VI, 266).

[1] Council of Trent, session 13, chapter 7.

[2] *De defectibus*, title VIII, n. 3.

[3] *De defectibus*, title VII, n. 4.

[4] Denzinger-Bannwart, n. 1138.

[5] Alexander VII condemned the proposition: "That particle 'as soon as possible' is understood as, when the priest will confess in his own time" (Denzinger-Bannwart, n. 1139).

243 **III. Preparation and thanksgiving.** Let the priest not omit to dispose himself by pious prayers for the oblation of the Eucharistic sacrifice, and, once it has been completed, to give thanks to God for so great a benefit (canon 810).

Treatise V. On Penance

(St. Thomas, part 3, questions 84-90; Supplement, questions 1-28; St. Alphonsus, *Theologia moralis*, book VI, nn. 425-705; *Homo Apostolicus*, treatise 16.)

Before we discuss the sacrament of Penance, we shall undertake a discourse on the act itself of doing penance: both because the act of doing penance and the sacrament are intimately connected, indeed in such a way that the act of doing penance constitutes a part of the sacrament; and because, once the very act of doing penance has been explained, many things to be said about the sacrament are perceived better. Hence:

Dissertation I. On the Act of Doing Penance

(St. Thomas, part 3, question 85; St. Alphonsus, *Theologia moralis*, book VI, nn. 433-442.)

We shall speak of the notion, necessity, and effects of the act of doing penance; namely, of the salutary act, with which alone we are concerned.

Part I. On the Notion of the Act of Doing Penance

275 The act of doing penance consists essentially in detestation and sorrow concerning a committed sin, insofar as it is an offense against God, with the purpose of no longer sinning, or, in other words, in contrition.[1] Therefore the act of doing penance requires:

I. Detestation and sorrow. This is laid down against Luther, who taught that penance consists in recognition of one's former error and a change of purpose, with detestation and sorrow excluded. But the doctrine stated is clear:

1. From Sacred Scripture, which, besides amendment of life, requires detestation and sorrow concerning sin: "Be converted to me with all your heart, in fasting and in weeping and in mourning, and rend your hearts."[2] Again: "Now I rejoice, not because you were made sorrowful, but because you were made sorrowful unto penance."[3]
2. From the testimonies of the Fathers. Thus Tertullian,[4] St. Cyprian,[5] St. Augustine,[6] St. Ambrose.[7]
3. From reason. By sinning, a man has inflicted injury upon God. But one who has inflicted injury upon God cannot expect pardon unless he repairs the injury, at least by detesting it and sorrowing over it.

II. Concerning the sin committed, insofar as it is an offense against God, or, in other words, concerning sin taken formally, so that the offense against God is the object which the sinner detests. And indeed, in order that penance be salutary, that is, that it help to reconcile man with God, the sinner must detest his very aversion from God, or sin taken formally.

III. The purpose of no longer sinning. That this is required is clear both from Sacred Scripture,[8] and from the fact that no one can be reconciled with God unless the will is simply opposed to offense against God. But such a will involves the purpose, at least implicit, of no longer sinning.

Corollary I. The act of doing penance can proceed from the motive both of the virtue of penance and of another virtue to which sin is opposed. Moreover, to some virtues, for example charity, religion, gratitude toward God - which are called universal - all sins are opposed; hence from the motive of these virtues we can repent of all sins. But to others, which are called particular, only particular sins are opposed, for example lust to chastity; hence from the motive of those virtues an act of doing penance cannot be elicited except concerning a particular sin.

Corollary II. The act of doing penance concerning sin considered under the aspect of an offense against God is simply an act of the virtue of penance. But if the said act is elicited under the influence of the motive of another virtue, there is an act elicited by the virtue of penance, but commanded by that virtue whose motive is specifically proper. The reason for the former is that an act is specified from the formal object *which*; but in this case sin is considered under the aspect of offense against God, which is the formal object *which* of the virtue of penance. The latter is set forth by St. Thomas in these words: "This is the difference between eliciting an act and commanding: that a habit or power elicits that act which it produces with no intermediary; but it commands an act which is produced by means of an inferior power or habit concerning the object of that power" (3, distinction 27, question 2, article 4, solution 3).

[1] Cf. Council of Trent, session 14, chapter 4.

[2] Joel 2:12.

[3] 2 Corinthians 7:9.

[4] *De Poenitentia*, chapter 9.

[5] *De lapsis*, n. 35 (Migne, *Patrologia Latina*, vol. 4, col. 492).

[6] Sermon 351, chapter 5, n. 12 (ed. Gaume, vol. 5, col. 2019).

[7] *De Poenitentia*, book II, chapter 10.

[8] Cf. Ezekiel 18:31 sq.

Scholion. On the Virtue of Penance

276 The virtue of penance is a habit inclining man to the destruction of his own past sin, insofar as it is an offense against God (St. Thomas, part 3, question 85, article 2). Moreover:

The remote material object is every personal sin, even one remitted. The proximate material object is its acts, whether elicited or commanded. The chief elicited acts are detestation, sorrow, and the purpose of not sinning further; the commanded acts are all those acts of other virtues which the penitent performs from the motive of penance, or which he directs to expiating the offense.

The remote formal object is the violated divine right as to be repaired by satisfaction; but the proximate formal object is the special moral goodness shining forth in repairing, by satisfaction, the violated divine right.

Corollary I. Penance is a special virtue. "The species of habits," says Aquinas, "are distinguished according to the species of acts; and therefore, where a special praiseworthy act occurs, there it is necessary to posit a special habit of virtue. But it is manifest that in penance there is found a special aspect of a praiseworthy act, namely, to work for the destruction of past sin, insofar as it is an offense against God, which does not belong to the aspect of another virtue. Hence it is necessary to posit that penance is a special virtue" (part 3, question 85, article 2).

Corollary II. The special virtue of penance is a potential part of the cardinal virtue of justice; or, in other words, it participates in the nature of justice, yet is not perfect justice. The former is clear from the fact that justice regards those things which are owed to another (vol. I, n. 755). But penance regards the reparation of an offense owed to another, that is, to God. The latter follows from the fact that perfect justice renders what is owed according to equality (vol. I, n. 755). But man cannot render according to equality the reparation of the offense owed to God.

Part II. On the Necessity of the Act of Doing Penance

The act of doing penance is necessary by necessity both of means and of precept.

277 **I. Necessity of means.** We are not asking whether God, absolutely speaking, can remit sin to one who does not repent - concerning which there is dispute - but we are asking whether, in the present order of Providence, penance is necessary for the sinner. Now then: some penance[1] is necessary by necessity of means for those fallen into mortal sin. This is clear:

1. From Sacred Scripture, which presents penance as a necessary condition for obtaining remission.[2]
2. From the Council of Trent: "Penance was indeed necessary at all times for all men who had defiled themselves by some mortal sin, in order to obtain grace and justice, even for those who had sought to be washed by the sacrament of Baptism, so that, perversity having been cast off and amended, they might detest so great an offense of God with hatred of sin and pious sorrow of soul."[3]
3. From the holy Fathers. Thus teach, for example, St. Ambrose,[4] St. Augustine,[5] St. Jerome.[6]
4. From the reason of fittingness. For it is not fitting that sin, that is, an injury inflicted upon God, be remitted unless the sinner repairs it - which is done by detesting it - and now wills not to afflict God with a new injury (St. Thomas, 3, question 86, article 2).

In what way the proposition proved can be reconciled with the certain doctrine which teaches that an act of charity justifies is explained in n. 282.

[1] Namely, perfect contrition, or imperfect contrition together with the sacrament, or - as others add - together with martyrdom.

[2] Cf. Sirach 2:22; Ezekiel 18:21-32; Luke 13:5; Matthew 3:7; Acts 3:19.

[3] Session 14, chapter 1.

[4] Letter 51, n. 11 (Migne, *Patrologia Latina*, vol. 16, col. 1162).

[5] Letter 93, chapter 13, n. 53 (ed. Gaume, vol. 2, col. 377).

[6] Commentary on Ecclesiastes 8:12 (Migne, *Patrologia Latina*, vol. 23, col. 1077 C).

278 **II. Necessity of precept.** This brings it about that he who neglects the act of doing penance not only does not obtain justification, but also commits a new sin.

1. **The existence of the precept** is clear from the fact that penance is prescribed in the Scriptures by imperative words.[1] Next, every act necessary by necessity of means is also prescribed. Finally, reason dictates that an injury inflicted upon God must be repaired.
2. **The object of the precept.** The precept obliges either to an act of perfect contrition in the absence of the sacrament, or at least to attrition with the sacrament of Penance (or of Baptism as regards an unbeliever); likewise to undergoing the punishments inflicted by God because of sin. It seems that, in itself, no special precept is given of taking away or lessening the debts of temporal punishment, so that in itself the sinner does not sin who defers the expiation of the temporal punishment owed into the other life. I said in itself, because often from elsewhere there is an obligation of doing works which in fact diminish temporal punishment.
3. **The time of the obligation.** The precept of doing penance obliges the sinner:

a) **In itself,** that is, by reason of penance itself: 1. in danger of death or madness, because one who then neglects penance is judged in no way to will it. 2. It is disputed whether, in itself, there is an obligation not to defer penance for a long time after sin has been committed. St. Alphonsus rightly holds the negative opinion as sufficiently probable (VI, 437); for if a long delay of reparation owed to God is injurious, it seems that the same, by the same right, must be said of every delay. But no one admits that.

b) **By accident,** that is, by reason of another virtue: 1. when someone must or wishes to confect a sacrament; 2. when someone must or wishes to receive a sacrament of the living; 3. when someone would suffer grave temptations which he believed he could not resist unless he elicits an act of contrition; likewise, 4. when generally the delay of penance would expose someone to grave danger of sinning gravely. Concerning this, note these words of St. Thomas: without sanctifying grace, "that one remain for a long time without mortal sin is not possible" (1-2, question 109, article 8); likewise these words of St. Gregory: "Sin... which penance does not quickly wash away... by its own weight soon draws one to another";[2] 5. when the precept of charity toward God urges, and the memory of sin occurs to the sinner (St. Alphonsus, VI, 437). "Nevertheless, I do not deny that sinners, especially the rude, can for the most part, indeed almost always, be excused from this sin of delayed penance by reason of lack of advertence" (St. Alphonsus, loc. cit., doubt 1).

[1] Matthew 4:17; Acts 2:38.

[2] *Moralia*, book 25, chapter 9, n. 22; in Migne, *Patrologia Latina*, vol. 76, col. 334. St. Alphonsus, having considered this cause, judges a delay for the space of one year excessive (VI, 437, doubt 1).

279 **Corollary I.** One who neglects penance obligatory from the virtue of penance commits the sin of impenitence; one who omits penance prescribed from another source sins against that virtue from which penance is prescribed.

Corollary II. The faithful can indeed be taught the obligation of not deferring penance for a long time; nevertheless no statement should be made about a span of time which would constitute grave sin. Besides this, they should be stirred up to elicit perfect contrition every morning and evening, and also soon after committing a grave sin.

Part III. On the Effects of the Act of Doing Penance

After we have explained that the act of doing penance is necessary for the remission of any sin whatever, or, in other words, that sins are not remitted without penance, it must be seen whether and to what extent the very act of doing penance remits sins, both mortal and venial; likewise whether and to what extent it produces other effects, for example the remission of remaining temporal punishment, etc. For the sake of completeness and clarity, we shall treat the individual effects in distinct sections, and we shall explain all the things which regard each effect.

Section I. On the Remission of Mortal Sins

280 **I. Mortal sins can be remitted without the remission of venial sins.** The reason is that one can detest mortal sins without detesting venial sins, and the formal cause of the remission of mortal sin, which is sanctifying grace, is not opposed to venial sin.

281 **II. One mortal sin cannot be remitted without another.** For a mortal sin is formally remitted through the infusion of grace, or at least in this order of Providence it is not remitted without that infusion. But sanctifying grace does not exist with any mortal sin.

282 **III. The following proximately dispose for the infusion of sanctifying grace, and in this sense remit mortal sins:**

1. **Formal contrition, perfected by charity.** This is clear: 1. from Sacred Scripture;[1] 2. from the Council of Trent;[2] 3. from the condemned proposition 71 of Baius.[3] But the arguments proposed also prove that no certain degree of intensity is required in order that perfect contrition proximately dispose for justification. For the documents adduced teach absolutely, with no mention made of a degree of intensity, that perfect contrition justifies.
2. **An act of charity, even without formal detestation of sin.** This is proved: 1. from Sacred Scripture;[4] 2. from the condemned propositions 31, 32, and 70 of Baius;[5] 3. by theological reason. For an act of charity explicitly contains that whole motive on which the dignity of perfect contrition depends, which, as was said under 1, proximately disposes for justification.

It is disputed in what way the efficacy of perfect charity must be reconciled with the necessity of penance. Moreover, some say that charity does not justify except dependently on formal penance, or except insofar as it contains the desire of formal penance. That this desire is contained at least implicitly in the act of charity is clear from the fact that one who loves God wills the things which God wills. But God wills or commands formal penance. Others judge that charity justifies because it is virtually formal penance. For it is the perfect conversion of the soul to God loved above all things, and therefore a true detestation of sin, though virtual, from the most perfect motive. Whatever the case may be, it is certain that a baptized sinner is not justified, either by perfect contrition or by charity, except dependently on the sacrament of Penance, or except insofar as these involve the reception of the sacrament in desire; but reception of the sacrament does not take place without formal penance.

3. **Imperfect contrition together with the sacrament,** whether of Baptism (n. 61), or of Penance (n. 357),[6] or, as others add, together with martyrdom (vol. I, n. 418).

[1] Ezekiel 18:21; 33:14 sq.

[2] Session 14, chapter 4.

[3] Denzinger-Bannwart, n. 1071.

[4] 1 John 4:7.

[5] Denzinger-Bannwart, nn. 1031, 1032, 1070.

[6] As regards the sacraments of the living, cf. the treatise on the sacraments in general (n. 6).

Section II. On the Conferral of Sanctifying Grace

283 That sanctifying grace is conferred upon the penitent follows from the fact that the remission of mortal sins formally takes place through the infusion of grace, or at least in this order does not take place without that infusion.

But supernatural virtues and the gifts of the Holy Spirit accompany sanctifying grace.

Section III. On the Remission of Venial Sins

284 **I. No venial sin is remitted while mortal sin remains.** For one who remains in divine enmity and does not offer fitting compensation for the grave injury inflicted upon God is unworthy for pardon of a lighter injury to be granted to him (St. Thomas, 3, question 87, article 4).

II. One venial sin can be remitted without another being remitted. The reason is that one can detest one venial sin, namely because of its greater malice or from its own proper motive, without detesting another.

III. Venial sins are remitted by:

1. **An act of perfect contrition,** according to some, remits the venial sins to which it extends formally or virtually. But others say better that perfect contrition concerning one venial sin necessarily extends itself to all, and therefore remits all. For just as in relation to mortal sins contrition is detestation and sorrow concerning sin insofar as it is an offense against God loved above all things, and therefore necessarily extends itself to all mortal sins, so also in relation to venial sins, which are offenses against God in a qualified sense, contrition is detestation and sorrow concerning venial sin insofar as it is an offense in a qualified sense against God loved above all things, and therefore necessarily extends itself to all venial sins.[1]
2. **An act of perfect charity** remits venial sins, of which it involves virtual penance. Hence all venial sins are pardoned by charity "when someone is borne in affection toward God and divine things in such a way that whatever should occur to him which would hinder him from this movement would displease him, and he would sorrow that he had committed it, even if he is not actually thinking about it" (St. Thomas, part 3, question 87, article 1).
3. **Any attrition, whether formal or virtual,**[2] seems to suffice for the remission of certain venial sins (St. Thomas, 3, question 87, article 2 and ad 3, and article 3): both because the light offenses of friends are more easily pardoned than the grave injuries of enemies, so that perfect contrition does not seem to be required for the remission of venial sins as it is - at least in the absence of the sacrament - for the remission of mortal sins; and because this attrition, as a meritorious act of a friend and son, has a greater proportion to pardon than the act of an unjust man attrite concerning mortal sins. Nevertheless, it is disputed whether any attrition suffices to destroy all venial sins to which it extends formally or virtually, or whether a more perfect attrition is required if the matter concerns a graver venial sin.[3]

4. **The sacraments.** Concerning these, note:

a) It is certain that Baptism, Extreme Unction, Penance, and the Holy Eucharist, at least in some sense, remit venial sins. For Baptism is a perfect washing; absolution extends itself to all things which are subjected to the keys; and the form of Extreme Unction is universal. As regards the Holy Eucharist, this is established from Trent.[4] The same is taught rather commonly concerning the three other sacraments (St. Thomas, part 3, question 87, article 2).

b) The sacraments certainly remit venial sins insofar as they move one to the acts explained under 1, 2, and 3, that is, to perfect contrition, to perfect charity, and to attrition.

It is disputed whether, besides this, the sacraments remit venial sins in another way. Moreover, some who deny that outside the sacrament any attrition suffices for destroying the venial sins to which it extends judge that in the sacrament any attrition suffices for the sacraments directly to remit the venial sins to which the attrition extends. Others - such as Suarez and many of those who teach that any attrition of itself alone suffices for the remission of venial sins - think that in the sacraments, at least in the Holy Eucharist, it is enough that "a man approach without actual complacency in venial sin and with the desire of receiving the sacrament and its fruit."[5] Finally, others teach that venial sins are never remitted immediately through the sacraments, but only by means of pious movements which are opposed to venial sin either explicitly or implicitly; concerning these see pp. 209-210, under 1, 2, and 3.

5. **Sacramentals.** Of these, some remit venial sins because and insofar as they have joined to them an act remissive of venial sins, for example attrition, as the striking of the breast, the *Confiteor*. Others conduce to their remission insofar as, from the impetration of the Church, God often - not infallibly - confers some pious movement upon those using them, for example blessed water.

Note. It is disputed in what way venial sins are remitted in those who have departed this life with the guilt of venial fault. St. Thomas, to whom St. Alphonsus adheres (*Opera dogmatica*, vol. I, p. 675), says as follows: "Venial sins are remitted in them after this life even as regards guilt by an act of charity toward God, repugnant to the venial sins committed in this life. Yet because after this life there is not the state of meriting, that movement of love in them indeed removes the impediment of venial fault, but does not merit absolution or diminution of punishment, as in this life" (*De Malo*, question 7, article 11).

IV. Venial sins are formally remitted by a contrary act, not by the infusion of grace, although this remission does not take place without a concomitant infusion or increase of grace, or at least without a right to this increase. The reason for the former is that no degree of sanctifying grace is incompatible with venial sin; this is clear from the fact that a man having however much grace can sin venially without losing anything of sanctifying grace. Therefore no degree of grace formally expels venial sins. The latter is clear from the fact that no venial sin is remitted without some penance, and therefore without a work meritorious of an increase of grace, or of a right to this increase.

[1] Cf. the Salmanticenses, Commentary on part 3, question 87, article 1, nn. 3-4, and *De sacramentis in communi*, disputation 10, doubt 2, n. 11.

[2] Virtual attrition is involved, for example, by a petition for pardon from God, the purpose of not committing such a sin again, an act of the opposite virtue, and any meritorious act referred to obtaining pardon (cf. St. Thomas, part 3, question 87, article 3).

[3] There are also some, though few, who require an act of formal penance for the remission of venial sins. Thus, for example, Durandus (IV Sentences, distinction 16, question 2).

[4] Session 13, on the Eucharist, chapter 2.

[5] Suarez, disputation 12, section 1, n. 9.

Section IV. On the Remission of Punishment

285 **I. By sinning, man contracts:** 1. the guilt of fault, by which he is formally constituted a sinner; 2. the guilt of punishment, by which, because of the guilt of fault, he becomes liable to punishments to be undergone. Moreover, while the fault remains, the punishment which follows the fault cannot be taken away. But when the fault has been removed, the guilt of eternal punishment is necessarily taken away, but not the guilt of temporal punishment. For the former cannot consist with the friendship of God and a right to eternal beatitude; but the latter must be spoken of otherwise. Indeed:

II. In fact, the whole temporal punishment is not always remitted with the fault. This is of faith from the Council of Trent.[1] It is also clear from Sacred Scripture.[2]

III. The punishment remaining after the remission of fault is remitted, or at least diminished, by:

1. **Ex opere operato:** the sacraments, the sacrifice, indulgences, and sacramental satisfaction, each of which applies the satisfaction of Christ.
2. **Ex opere operantis:** satispassion and satisfaction. Satispassion consists in this, that someone suffers the punishments which God of himself has appointed for sin. Satisfaction is situated in this, that someone performs a penal work or works which God accepts in compensation for the punishment appointed of itself. Satisfaction, however, can be offered through all good works, because all are penal to some extent. Besides this, one just person can satisfy for another just person,[3] as is deduced: 1. from the fact that we can satisfy for the souls in purgatory; 2. from the communion of Saints, by which it comes about that the members of the Church can aid one another. Nevertheless, it is not altogether certain that God always accepts satisfaction of this kind for others.
3. It is disputed whether the remission of temporal punishment can also be obtained by impetration. It seems that it must be answered affirmatively, because the Church herself in the office of the dead asks God that through the intercession of the Blessed Virgin Mary and of the other Saints he free the souls from purgatory; but it is clear that the works of those Saints are not penal.

Corollary. Sins are remitted through penance in such a way that they do not return in any way on account of a subsequent sin, neither as regards the guilt of fault nor as regards the guilt of punishment. The guilt of fault does not return; this is clear: 1. from Sacred Scripture;[4] 2. from the fact that through justification sin is truly remitted and destroyed; but what has truly been destroyed cannot be imputed again. Nor does the guilt of punishment return; for this cannot return unless the guilt of fault returns.

[1] Session 14, on Penance, canon 12.

[2] Numbers 12:14 sq.; 20:1 sq.; 27:12 sq.; Deuteronomy 34:1 sq.; 2 Samuel 12:13 sq.

[3] It is required that each be in the state of grace: the one satisfying, so that his work may be satisfactory; the one for whom satisfaction is made, so that the punishment can be remitted.

[4] Isaiah 1:18; Ezekiel 33:12, 16; Micah 7:19.

Section V. On the Reviviscence of Merits

286 **I. Works are distinguished into living, death-bearing, dead, and mortified.** Living works are those which are done in the state of grace, and therefore proceed from a living principle, and merit eternal life. Those are called death-bearing which deprive man of the life of grace and of the right to eternal life, or, in other words, mortal sins; likewise - others add - venial sins, since they lead to mortal sins. Dead works are called good works which are done in the state of sin, and therefore do not proceed from a living principle, nor merit eternal life. Mortified works are those which were done in the state of grace, and therefore proceeded from a living principle and merited eternal life, but because of a supervening sin have been deprived of vital force, or of value for eternal life. Moreover:

II. Mortified works, once sin has been remitted through penance, revive, or recover the value for eternal life which they had lost. This is deduced: 1. from Sacred Scripture;[1] 2. from the Council of Trent;[2] and it is affirmed by St. Thomas (3, question 89, article 5), who teaches that mortified merits remain so far as they are in themselves, and in fact do not efficaciously lead to eternal life because of the impediment of supervening sin; but this impediment is supposed to be set aside through penance.

III. As regards the mode or degree of reviviscence, it must be said that the justified person immediately receives a right to all grace previously possessed and to the total essential reward. It is disputed, however, whether the grace previously possessed is immediately infused into the soul - and indeed either all of it, or, as others wish, according to the measure of the present disposition - or only in the first instant after death. Moreover, the preferred opinion is that which teaches that all the grace possessed is immediately infused. For this alone sufficiently preserves the reviviscence of merits such as seems to be deduced from the arguments, and this alone agrees with the proper notion of reviviscence, according to which penance seems to have itself toward reviviscence as removing what prohibits, not by way of disposition.

[1] Ezekiel 33:12.

[2] Session 6, on Justification, canon 32.

[3] Other opinions seem less probable.

Dissertation II. On the Sacrament of Penance

(St. Thomas, part 3, questions 84-90; Supplement, questions 1-28; St. Alphonsus, *Theologia moralis*, book VI, nn. 425-705; *Homo Apostolicus*, treatise 16.)

287 Before we speak of the sacrament of Penance, it is pleasing to premise certain things concerning the power of the Church to remit sins. And we do this both for the sake of completeness, and so that the connection of the whole theological doctrine on this matter may be clear; since the very use of the power to be explained constitutes the form of the sacrament, so that, once that power has been explained, we shall pass by a natural path to explaining the sacrament of Penance itself. Therefore let these points be set down:

I. Christ granted to the Apostles the power of remitting sins. This is of faith from these words of the Council of Trent: "If anyone says that those words of the Lord Savior, 'Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained,' are not to be understood of the power of forgiving and retaining sins in the sacrament of Penance, as the Catholic Church has always understood from the beginning, but twists them, contrary to the institution of this sacrament, to the authority of preaching the Gospel: let him be anathema."[1]

II. The power of remitting and retaining sins differs from the power of baptizing. For the former, as we shall immediately say, is judicial, and therefore does not regard any except subjects, that is, the baptized, or those upon whom the power of baptizing has already been exercised. It is added that the power of baptizing cannot be exercised again upon the same person; otherwise than the power of remitting sins.

III. The power of remitting sins is judicial. This is of faith from the Council of Trent: "If anyone says that the sacramental absolution of the priest is not a judicial act, but a bare ministry of pronouncing and declaring that sins have been forgiven to the one confessing... let him be anathema."[2] And indeed three things are required for judicial power: 1. that the power be instituted by the supreme prince of the society; 2. that through it the application of law to a particular case be made; 3. that the application be made according to the merit of the cause. And all these things concur in the power of remitting and retaining sins. For: 1. the said power was instituted by Christ, the Prince of the Church (n. I); 2. through it the application of the divine law to a particular case is made, by which God has established that through his ministers he at one time remits, at another time retains, the sins of the baptized; 3. this application is made according to the merit of the cause, namely in such a way that the ministers remit or retain sins not according to their own whim, but according to the conditions required by Christ.

IV. The power of remitting sins extends itself to all sins of the baptized. This is clear from the breadth of Christ's words which were cited above. I said, however, of the baptized, because this power, as judicial, can be exercised upon subjects alone, that is, the baptized. For the rest, it is clear from elsewhere that sins committed before Baptism are remitted through Baptism (n. 61).

V. The power of remitting and retaining sins is perpetual in the Church. This is clear: 1. from the immutability with which Christ willed his Church to be furnished; 2. from the fact that until the end of the world there will exist sinners to be reconciled in the Church.

VI. The Church is bound to use the power explained, so that it is not lawful arbitrarily to repel anyone rightly disposed from the benefit of pardon to be obtained through the power of the keys. Theologians dispute concerning the right, for the public good, of repelling certain sinners in determinate cases; just as there also exists a controversy among dogmatic-historical writers concerning the existence of a universal discipline of excluding certain kinds of sin from pardon to be obtained through the ministry of the keys.[3]

With these points premised, we shall speak first of the sacrament of Penance considered in itself, then of the ministration, and then of the reception of the sacrament of Penance.

[1] Session 14, canon 3.

[2] Session 14, canon 9.

[3] *Ned. Kath. Stemmen,* 1909, p. 304 sq.

Part I. On the Sacrament of Penance Considered in Itself

288 Penance is the sacrament in which, through judicial absolution imparted by a legitimate minister, sins committed after Baptism are remitted to a rightly disposed member of the faithful (canon 870).

Once this definition has been handed down, we must treat first of the existence, then of the essence, then of the effects, and finally of the necessity of the sacrament of Penance.

Section I. On the Existence of the Sacrament of Penance

289 **I. Penance is a true sacrament of the New Law;** this proposition is of faith from the Council of Trent: "If anyone says that in the Catholic Church Penance is not truly and properly a sacrament... instituted by Christ our Lord, let him be anathema."[1]

Note. As regards the time of institution of this sacrament, the Council of Trent teaches:[2] "But the Lord instituted the sacrament of Penance especially[3] then, when, raised from the dead, he breathed upon his disciples, saying: 'Receive the Holy Spirit; whose sins you shall forgive...' By so signal a deed and by words so clear, the consensus of all the Fathers has always understood that the power of remitting and retaining sins, for reconciling the faithful fallen after Baptism, was communicated to the Apostles and to their legitimate successors."

II. Penance is a sacrament really distinct from the sacrament of Baptism; this proposition likewise is of faith from the Council of Trent: "If anyone, confounding the sacraments, says that Baptism itself is the sacrament of Penance... let him be anathema."[4]

[1] Session 14, canon 1.

[2] Session 14, chapter 1.

[3] It is said "especially" because Christ had already promised the sacrament earlier (Matthew 16:19 and 18:18).

[4] Session 14, canon 2.

Section II. On the Essence of the Sacrament of Penance

The sacrament of Penance supposes remote matter; and once that has been posited, it is integrally constituted by proximate matter, form, and an integrating part. Now then:

290 **I. The remote matter of Penance,** that is, that around which the sacramental action can be concerned, is all sins committed after Baptism (n. 293; canon 902).[1]

[1] Roman Ritual, title III, chapter 1, n. 1.

291 **II. Proximate matter.**

1. **Proximate matter strictly so called** - that is, that which with absolution constitutes the essence of the sacrament - is the contrition and confession of the penitent. Thus St. Thomas (part 3, question 84, article 2), St. Bonaventure,[1] St. Alphonsus (VI, 425), the Thomists, some Scotists, and most more recent authors. But Scotus[2] and most Scotists teach that contrition and confession, externally manifested nevertheless, are only conditions required for the validity of the sacrament. Finally, some[3] hold as probable that internal contrition or attrition alone is the condition necessary for the validity of the sacrament; for the rest, that the essence of the sacrament is completed by the form alone, which, insofar as it is an external ceremony, constitutes the matter, and insofar as it has

the power of signifying, constitutes the form. This opinion is almost commonly rejected. Of the opinions explained, the first is much more common and more probable; and the Roman Ritual[4] and the Roman Catechism[5] favor it. For the rest, note:

a) Contrition and confession become the matter of the sacrament insofar as by the minister, through absolution, they are assumed or elevated into parts or matter. But it is disputed whether and to what extent the aforesaid acts must be referred to the sacrament by the penitent himself; concerning this dispute there will be discussion later.

b) Contrition, which in itself is internal and spiritual, is not an essential part of the sacrament, that is, of the external sign, except insofar as it becomes sensible through confession or through the petition for or expectation of absolution (St. Alphonsus, VI, 445, 459).

c) It is disputed whether satisfaction in purpose, or the will of fulfilling the imposed satisfaction, is an essential element, or, in other words, whether it pertains to proximate matter strictly so called. Many affirm this, because the Council of Florence and the Council of Trent speak in the same way about satisfaction as about contrition and confession, so that satisfaction must be called, at least in some sense, an essential element. But satisfaction actually performed certainly is not an essential element. It remains, therefore, that we say it is essential at least in purpose. Others deny this, because ecclesiastical documents - besides the fact that they do not settle the controversy about the proximate matter of Penance[6] - understand by the word satisfaction, in the obvious sense, satisfaction actually performed, just as by the words contrition and confession they designate contrition and confession actually exhibited. Therefore from the aforesaid documents nothing can be drawn as regards satisfaction in desire.

2. **Proximate matter taken more broadly** - that is, that which, informed by absolution, constitutes the complete sacrament - is satisfaction actually performed. The said satisfaction is not an essential part of the sacrament of Penance, because it is not ordered to its primary effect, that is, to the remission of fault; nevertheless, it is an integrating part of it, insofar as it brings it about that the sacrament can fully attain its effect, which is the remission not only of fault, but also of punishment.

Corollary I. Contrition, confession, and satisfaction are not only the proximate matter of the sacrament of Penance, but also, together with absolution, produce the effect of the sacrament. The contrary is taught not only by many Scotists, but also by some of those who hold the acts of the penitent to be essential parts of the sacrament; and St. Thomas also at one time taught that (distinction 22, question 2, article 1, solution 1, ad 2 and 3); afterward, however, he expressly corrected that opinion (part 3, question 86, article 6). The proposition is especially supported by the fact that according to the Council of Trent[7] the force of the sacrament is situated in absolution as the form "principally" (therefore not totally, as the adversaries wish). It is added that, just as in physical things, so also in moral things, the effect must be attributed not to the form alone, but also to the matter, or, in other words, to the whole.

Corollary II. Practically it does not matter whether the acts of the penitent are called parts of the sacrament or merely conditions required for validity;[8] nor whether the effect of the sacrament is ascribed also to the aforesaid acts or to absolution alone. But it does matter somewhat, as will be clear from what is to be said later, whether or not internal contrition or attrition alone is the condition required for validity, as Ballerini teaches.

[1] IV Sentences, distinction 17, part 2, article 1, conclusion 3; distinction 22, article 2, question 1, conclusion.

[2] Disputation XVI, question 1, n. 5 sq.

[3] For example, Ballerini, *Opus theologicum de Poenitentia*, n. 4 sq.

[4] Title III, chapter 1, n. 1.

[5] Part 2, chapter 5, question 12.

[6] Pallavicini, *Historia Concilii Tridentini*, book 12, chapter 16.

[7] Session 14, chapter 3.

[8] Many Scotists indeed do not require of itself that contrition be external; but because they also hold confession as a necessary condition, and confession in fact manifests contrition, practically the matter comes back to the same thing.

292 **III. The form of Penance is the words of absolution,** as the Decree of Eugene IV for the Armenians and the Council of Trent expressly teach.[1]

And thus, once the summary notion of the sacrament of Penance has been handed down, we shall explain the essence of this sacrament more fully, speaking distinctly first of remote matter, then of proximate matter, then of form, and finally of the integrating part, or satisfaction. Hence:

[1] Session 14, chapter 3; Roman Ritual, title III, chapter 1, n. 1.

Chapter I. On Remote Matter

293 **I. Object.** Remote matter, or that around which the sacramental action is concerned, is sins committed after Baptism, and these alone and all of them (n. 287).

Question 1. Whether the sacrilegious reception of Baptism is remote matter of Penance.

Response. Most affirm it, because the reception is sacrilegious insofar as it places an obstacle to the infusion of grace. But what here and now prevents the sacrament from infusing grace seems to be posterior to the sacrament. Others deny or doubt, because the argument adduced does not convince them (St. Alphonsus, VI, 427). The same seems to have to be said of other sins, such as hatred or lust, if perhaps they are committed in the very reception. For the rest, it is certain that both sacrilegious reception and other sins are matter of penance insofar as, as usually happens, after Baptism has been received the will actually continues to adhere to them. If you posit that sacrilegious reception or other sins are at least by nature prior to Baptism itself, it must be said that they are remitted by the force of Baptism afterward reviving.

Question 2. Whether sins committed after doubtfully valid Baptism, but before the sacrament has been repeated under condition, are remote matter of Penance.

Response. They are or are not remote matter according as Baptism was in fact valid or not valid. But it is another question whether there is an obligation of confessing such sins; concerning this, later.

294 **II. Division.** Remote matter is chiefly distinguished into necessary and free.

1. **Necessary matter** is called that which must be confessed by divine precept. This is constituted by mortal sins committed after Baptism, but not yet duly submitted to the keys, or not yet directly remitted by absolution.

Moreover, a sin directly remitted is called that which - whether completely or not completely[1] - has been subjected to the keys and remitted by absolution. A sin indirectly remitted is one which was not

subjected to the keys, but nevertheless was remitted by absolution insofar as the infusion of grace also carries with it the expulsion of mortal sins which are not subject to the power of the keys.

Therefore necessary matter is:

1. Mortal sins not yet submitted to the keys; and it is the same whether they have been omitted culpably or inculpably,[2] and likewise whether they have already been remitted (namely through perfect contrition or through attrition together with a sacrament of the living) or have not been remitted.
2. Mortal sins submitted to the keys, but not completely declared, as can happen, for example, in a case of necessity.
3. Mortal sins submitted to the keys, and indeed completely, but not remitted by the judge, for example because of omission of absolution, or because of defect of contrition (St. Alphonsus, VI, 425, 480).

2. **Free matter** is that which can, but need not, be subjected to the keys. This is constituted by:

a) Mortal sins committed after Baptism, and both duly submitted to the keys and remitted by absolution. That these can again be remitted by absolution is clear both from tradition, from the consensus of theologians and the practice of the faithful, and from canon 902. Some deduce this from the fact that the total remission of punishment is not established, and therefore the sin can again be subjected to the keys; others from the fact that one can again and again remit an injury inflicted (St. Alphonsus, VI, 425, 427, doubt 2); these things will be explained more fully in their own place.

b) Any venial sins whatever, whether already declared and remitted, or not yet declared or not yet remitted. That venial sins also are matter of Penance is clear: 1. from the Council of Trent[3] and from canon 902; 2. from the consensus of theologians and the practice of the faithful (St. Alphonsus, VI, 425).

Corollary I. Sufficient matter is any sin whatever committed after Baptism, whether remitted or not yet remitted (canon 902).

Corollary II. Not sufficient matter are moral defects which lack the nature of sin. Nevertheless, "confessors should not be rebuked because they do not hinder penitents in saying these things; both because many of those things which seem mere imperfections are not done without some venial fault, and also because it is not necessary that all the things which the penitent says in confession be determinately and absolutely matter of absolution. For many things are said because it belongs more to the confessor to discern what is and what is not matter of absolution, and so that the confessor may have a clearer view of the penitent's conscience and be able to judge better concerning his whole state, in order to apply the due remedy."[4]

[1] For example, if some sin (for instance, in a case of necessity) is declared only generically. Nevertheless, according to some authors, in that case absolution falls directly upon the generic aspect, but not upon the specific aspect of the sin, and therefore it is not called directly remitted by them.

[2] The following proposition was condemned by Alexander VII: "Sins omitted in confession or forgotten because of imminent danger of life or because of another cause, we are not bound in the following confession to subject to the absolution of the priest" (Denzinger-Bannwart, n. 1111).

[3] Session 14, chapter 5 and chapter 7.

[4] De Lugo, Disputation XVI, Section II, n. 103.

Chapter II. On Proximate Matter

Proximate matter is constituted by contrition and confession or accusation of the penitent (n. 291). Hence:

Article I. On Contrition

Contrition taken integrally comprises detestation, sorrow concerning sin, and purpose. We shall treat first of contrition taken integrally, then of purpose specifically.

§ I. On Contrition Taken Integrally

295 **I. Notion.** Contrition is "sorrow of soul and detestation concerning a committed sin, with the purpose of not sinning for the future."[1] It is said concerning a committed sin, so that sorrow over the fact that one does not sorrow over sin does not suffice; in which case not sin, but the defect of sorrow, is the object of sorrow. Nevertheless, one who sorrows over the defect of sorrow is commonly to be judged also to sorrow over the sin itself. Contrition comprises three things, namely detestation, sorrow, and purpose. Moreover:

1. **Detestation** is the act by which the will abhors the committed sin, turns itself away from the committed sin, and expels every affection for sin; this act of the will is expressed in this way: I would wish not to have sinned; it displeases me that I committed sin. Detestation pertains to the essence of contrition. For contrition must formally be opposed to sin; this happens through detestation, by which the sinner now does not will what he previously willed (St. Alphonsus, VI, 435).
2. **Sorrow** is a certain sadness of the will arising from the fact that the evil of sin is apprehended as present (St. Thomas, 1-2, question 35, article 8; question 36, article 1). In man as wayfarer sorrow necessarily follows detestation, so that it must at least be called a necessary element of contrition. But it is disputed whether sorrow pertains to the very essence of contrition. Whatever the case may be, at least this must be admitted: contrition consists principally in detestation, which is the cause of sorrow and specifies sorrow, which of itself is indifferent, and renders it morally good (St. Alphonsus, VI, 435).

The acts of detestation and sorrow, although they are distinguished from one another, nevertheless are morally so conjoined in man as wayfarer that they are regarded after the manner of one.

3. What purpose is will be explained in n. 301.

[1] Council of Trent, session 14, chapter 4.

296 **II. Division.** Contrition is distinguished into perfect and imperfect.

1. **Perfect contrition** is that which is conceived from the motive of charity. Moreover:

a) It is certainly conceived from the motive of charity if it is elicited from love of God loved above all things because of the divine goodness or perfection, insofar as this comprises the essence of God with all the attributes. But note that from love of this kind there is also elicited contrition which is conceived from the desire of possessing God, not insofar as this possession is good for the penitent,

but insofar as it is pleasing to God, who is most perfectly loved in possession (St. Alphonsus, II, 24, doubt 1).

b) It is not conceived from the motive of charity if it is elicited from love of God loved because of some relative attribute, for example beneficence, as such, or insofar as it is not considered as a divine perfection pertaining to God.

c) It is disputed whether it is conceived from the motive of charity if it is elicited from love of God loved because of some divine attribute, whether absolute or relative, provided this is considered as a divine perfection pertaining to God, considered separately through formal abstraction. Many affirm this: 1. because Sacred Scripture stirs us up to charity by the motive of God's goodness toward us: "Let us therefore love God, because God first loved us";[1] therefore because of an attribute of God, a relative one; 2. because the divine attributes are not really distinguished from his essence, nor can they be conceived by us with objective precision from the other perfections and the essence of God; 3. because preachers commonly exhort the faithful to charity by unfolding the relative attribute, namely God's goodness toward us. Others, whose opinion St. Alphonsus holds as more probable, teach that some divine attribute taken separately is not sufficient for eliciting an act of perfect contrition from love of God, but that the formal object of love is constituted from the essence of God together with all his attributes. For in order that someone love God as the supreme good - which is required for an act of charity - he must antecedently conceive God thus by an act of the intellect, according to the familiar saying: nothing is willed unless known. Moreover, in the concept of one attribute taken separately, for example wisdom, God as the supreme good is contained only virtually and implicitly; but what is known only virtually and implicitly is not yet known in relation to reducing the will to act. It is added that, according to the truer opinion, the act of charity of the homeland and of the way is specifically the same; but it is established that the act of charity of the homeland subjectively has the whole divine goodness as its formal motive. Therefore it follows that this whole goodness is also subjectively required for the formal object of the act of charity of the way (St. Alphonsus, VI, 436). Nevertheless, the controversy is not practical, because commonly the case supposed does not occur except in appearance; in other words, God sometimes seems to be loved because of an attribute considered separately, but in reality he is loved because of the supreme goodness. Hence preachers do not take account of this controversy.

Corollary I. It was formerly disputed whether perfect contrition is that which is elicited from the motive of some moral virtue which has an order to God, for example gratitude, religion, obedience, penance. But this opinion is now very commonly denied, and it is taught that contrition elicited from the motives of those virtues is not that which proximately disposes for justification, that is, perfect contrition.[2]

Corollary II. Someone can elicit perfect contrition even if he does not explicitly add that he loves God for God's sake or because of his infinite perfection; in other words, even if he does not say, for example: My God, I detest my sins because I love Thee because of Thy infinite goodness; but only: I detest my sins, the offenses against Thee, because Thou art supreme goodness. Nor is it required for an act of perfect contrition that one attend to the meaning of the individual words of the formula; it suffices that he grasp with the intellect and will in the soul the general sense of the formula.

Corollary III. Besides this, for perfect contrition it is not required that one detest sin from fear of hell or another inferior motive.

2. **Imperfect contrition, which commonly is called attrition,** is that which is conceived from an honorable motive distinct from the motive of charity, for example from the motive of hope, gratitude, penance, etc.

[1] 1 John 4:19.

[2] Council of Trent, session 14, chapter 4.

297 **III. Required contrition.** Not only perfect contrition, concerning which there is no doubt, but also imperfect contrition or attrition suffices for rightly receiving the sacrament of Penance. This opinion, which today is almost commonly admitted,[1] is proved by these arguments:

1. The Council of Trent calls contrition taken generically a part and quasi-matter of the sacrament,[2] and thus sufficiently indicates that it - whether or not it is called proximate matter - suffices for the sacrament of Penance. But imperfect contrition also is contained as a species under generic contrition as circumscribed by the Council.
2. The same Council says this about imperfect contrition: "Although without the sacrament of Penance it cannot of itself lead the sinner to justification, nevertheless it disposes him to obtain the grace of God in the sacrament of Penance."[3] Therefore, according to these words of the Council, attrition disposes to justification in one way within the sacrament and in another way outside the sacrament. Now outside the sacrament it disposes remotely to justification. It remains, therefore, that we say that within the sacrament it disposes proximately to it.
3. Then it is wholly improbable that the power of remitting sins is in act never exercised upon sin not yet remitted. But this would happen if in the sacrament of Penance attrition did not suffice, but perfect contrition were required, that is, a disposition which of itself would already bring with it the remission of sin before absolution.
4. Finally, since the more benign opinion has now for many centuries been almost common, it is hard to understand why it has not been reprobated by the Church, if it were not safe; especially since this sacrament is of such frequent use.

Objection. The Council of Trent, among those things which are required for receiving justification in Baptism, lists: "and they begin to love Him as the font of all justice";[4] these words you may deservedly apply also to the sacrament of Penance.

Response 1. It cannot be admitted that an act of true charity is required by the Council for receiving justification in Baptism; for the contrary opinion as regards Baptism was almost common both before the Council (cf. St. Thomas, 4 Distinction 6, question 1, article 3) and after the Council.

Response 2. Initial love can well be understood of some good affection toward God, who is the font of our justice; one who is affected by this good affection toward God is deservedly said to begin to love God, according to these words of St. Thomas, whose doctrine the Council of Trent so greatly attended to: "Insofar as hope regards him through whom something becomes possible for us, love is caused by hope, and not conversely. For from the fact that through someone we hope goods can come to us, we are moved toward him as toward our good; and thus we begin to love him" (1-2, question 40, article 7; St. Alphonsus, VI, 442). Others explain the words of the Council differently.

[1] Otherwise Périnelle, O.P., *L'attrition d'après le Concile de Trente et S. Thomas d'Aquin*.

[2] Session 14, chapter 3 and canon 4.

[3] Session 14, chapter 4.

[4] Session 6, chapter 6.

298 **Corollary I.** From what has been said, it is gathered in what sense the solemn expression is true: the attrite, by the power of the keys, becomes contrite. Namely, he becomes equivalently contrite, insofar as the attrite person with the sacrament passes from the state of the attrite to the state of the contrite, that is, he is justified equally as one perfectly contrite. Others explain it otherwise.

Corollary II.

It is useful, in order that what has been said about imperfect contrition may be unfolded more fully, to assign the diverse motives from which it can be elicited. Moreover, the Council of Trent teaches that "attrition is commonly conceived from consideration of the baseness of sin, or from fear of hell and of punishments."[1] Now, by adding "commonly," it sufficiently indicates that, besides the motives enumerated, others are given; or it can also be said that all motives are implicitly contained in the motives assigned by the Council. Namely, the motive of the baseness of sin contains all motives of the virtues distinct from charity. Besides, the motive of hope is contained in the motive of fear of punishments, because it is equivalent whether someone detests sin from hope of eternal life or from fear of hell, that is, of losing eternal life. All these things will be clearer from what is to be said. Therefore contrition conceived, for example, from the following motives suffices:

1. From the motive of obedience: "I detest my sins because by sinning I have transgressed Thy law."
2. From the motive of special penance: "because by sinning I have injured Thy right"; "that I may compensate Thy injured right."
3. From the motive of religion: "because by sinning I denied Thee the worship owed."
4. From the motive of gratitude: "because by sinning I have shown myself so ungrateful toward Thee"; "because Thou hast heaped benefits upon me."
5. From the motive of hope, for example:

a) From hope of eternal beatitude: "I grieve concerning my sins because by sinning I have lost the right to eternal beatitude"; "that I may recover the right to eternal beatitude."

b) From hope of justification: "because by sinning I have lost sanctifying grace"; "that I may recover sanctifying grace."

c) From hope of a temporal supernatural good: "that I may embrace a salutary state of life."

Here also belongs contrition conceived:

6. From fear, simply servile,[2] of punishments. Namely:

a) From fear of hell, for example: "because by sinning I have deserved eternal punishments"; or: "lest I be eternally damned." That this motive suffices is expressly taught by the Council of Trent in the place cited. The same must be said of fear of purgatory.

b) From fear of temporal punishments of this life, as the same Council seems to signify by saying "from fear of hell and of punishments"; for these words seem to be taken not in a composite sense, as some wish, but in a divided sense, because the Council, in the place cited, adduces the example of the Ninevites, who were being struck by a temporal punishment, namely the destruction of the city. For

the rest, temporal punishments must be viewed as inflicted by God, and insofar as they in some way begin the divine punishment, unless we amend ourselves. Otherwise they cannot ground contrition that is estimatively highest (n. 299). Nor then is the matter outside every controversy (St. Alphonsus, VI, 443).

7. From the motive precisely of that virtue to which the committed sin is opposed, for example: "I detest the sin of lust because chastity is so beautiful." Here also belongs attrition conceived:

8. From the special baseness of the sin committed, for example: I detest the sin of lust because lust is so foul. Likewise attrition elicited from the general baseness of sin suffices, for example: "I detest sin because it has deprived me of supernatural brightness; because my soul has been so greatly defiled through it."

Corollary III. Salutary attrition is not so difficultly resolved into perfect contrition. For the attrite person is already tending toward God; hence he easily apprehends sin as an evil to God, or as injurious to infinite Goodness, and detests it also under this respect. These things especially hold for attrition conceived from the motive of a virtue which is referred to God, namely religion, obedience, penance, and gratitude. But they hold most of all for the motive of gratitude; since one who is grateful easily wills good to his benefactor, and consequently grieves over sin insofar as it is an evil to God. But since gratitude is especially stirred up by considering the incarnation, passion, and death of Christ, and his presence in the Holy Eucharist, he who is also himself God, therefore meditation on those mysteries is the easiest way of arriving at perfect contrition.

Corollary IV. Let confessors indeed commonly exhort penitents who are not sufficiently disposed to attrition, for motives of this kind especially move such men. Nevertheless, generally let them not omit at the end, and in some way, to propose to them and also to others the motives of perfect contrition.

[1] Session 14, chapter 4.

[2] Attrition from fear or dread is twofold: attrition from filial fear and attrition from servile fear. Attrition from filial fear is had when someone detests sin because it is an offense against God, the best Father; from servile fear, when someone detests sin because of fear of punishment. Attrition from servile fear is likewise twofold: attrition from fear simply servile, and attrition from fear servilely servile. The former is detestation of sin because of fear of punishment, born from ordered love of one's own good, that is, from love subordinated, or at least subordinable, to the divine good or to our last end. The latter is detestation of sin because of fear of punishment, born from disordered love of one's own good, that is, born from love not subordinated to the divine good or to our last end; in other words, born from love of one's own good as the last end. The former is honorable; the latter is dishonorable.

299 **IV. Properties of contrition.** The summary of the doctrine is this: 1. For the sacrament of Penance to be received validly and fruitfully there is required contrition: a) true, b) internal, c) formal, d) supernatural, e) estimatively highest, f) universal as regards mortal sins, g) external; 2. for the sacrament of Penance to be received validly there is likewise required contrition: a) true, b) internal, c) formal, d) supernatural, e) external; but it is disputed whether, considering only validity, contrition estimatively highest and universal is required. We shall weigh the individual points.

1. **True,** or not merely thought to exist. Several of the ancients taught that contrition merely thought to exist, but in good faith, suffices for the validity - though not for the fruit - of the sacrament. But that opinion today is commonly and deservedly rejected. For the Council of Trent teaches that contrition is required for the essence of the sacrament (n. 297). But doctrine of this kind must manifestly be understood of true contrition, not of that which is present merely putatively (St.

Alphonsus, VI, 433, 2). Note, however, that most of those who think they grieve over sins also truly grieve over them.

2. **Internal;** for contrition, which by Trent is called a part and quasi-matter of the sacrament, is defined by the same Council as "sorrow of soul."

3. **Formal,** so that virtual contrition does not suffice, that is, that which is contained especially in an act of charity. Several older authors judged that virtual contrition sufficed for the validity and fruit of the sacrament. But: 1. this opinion is now almost commonly rejected; 2. the Council of Trent teaches that contrition is a part and quasi-matter of the sacrament. Moreover, that word in its obvious sense signifies formal contrition, not virtual contrition (St. Alphonsus, VI, 449).

Note, however: 1. Formal contrition can well be conceived in the very recollection or confession of sins; hence it is not required that someone has used a formula of contrition. 2. It will scarcely happen that someone about to receive the sacrament of Penance, and therefore thinking about his sins, elicits an act of perfect charity without formally grieving over his offenses against God.

4. **Supernatural.** Now:

a) Certainly it must be supernatural by reason of the eliciting principle; in other words, it must be elicited through the help of grace, which elevates the act above the order of nature. This is clear: 1. from the Council of Trent;[1] 2. it is established that no salutary act can be done by man, that is, one positively conducive to salvation, without the help of grace. Therefore neither can man salutarily repent without the help of grace.

b) It is disputed whether contrition must be supernatural by reason of the motive; in other words, whether it must be conceived from a motive apprehended through faith. For the rest, the controversy is less practical; since it is certain that for the genesis of contrition which prepares for justification, faith and hope are required,[2] although it is not required that someone reflexively elicit an act of faith and hope, but it suffices that he perform it in act exercised, as they say (St. Alphonsus, VI, 439). Moreover, it can scarcely happen that one who believes and hopes, and fulfills the other conditions required for salutary contrition, does not grieve from a motive apprehended through faith.

5. **Estimatively highest.** Contrition estimatively or appreciatively highest consists in this: that the penitent detests sin from a motive which, while it persists, he cannot be induced to sin; or - as others state the doctrine - in this: that the penitent detests sin more than any evil by fear of which he can be induced to sin. Moreover:

a) By the consent of all, it is required for the fruit of the sacrament. For in order that the sinner be reconciled with God, there is required a will which perfectly efficaciously, or absolutely, or with respect to every possible hypothesis, turns away from sin. But a will of this kind is lacking in one who lacks contrition estimatively highest. For the will extends itself no further than the motive on which it rests. Now one who lacks contrition estimatively highest lacks a motive which, while it persists, he cannot be induced to sin. Therefore he lacks a will which absolutely turns away from sin.

b) It is disputed whether it is required for the validity of the sacrament. Many authors deny this, or at least hold the negative opinion as probable; but the affirmative seems to be held. For: 1. the Council of Trent defines contrition, which it proposes as necessary for the existence or validity of the sacrament,[3] in this way: "sorrow of soul and detestation concerning a committed sin, with the purpose of not sinning for the future."[4] But these words in their obvious sense signify a will which absolutely detests

the committed sin and absolutely purposes to abstain from sin; in other words, contrition estimatively highest. Therefore this is required for validity. 2. Contrition which is presented by the Council of Trent as necessary for validity, from the same Council, suffices with the sacrament[5] for justification or for the fruit of the sacrament. But only contrition estimatively highest suffices for justification or for the fruit of the sacrament. Therefore it is also required for validity (cf. St. Thomas, Supplement, question 29, article 8).[6] 3. True contrition is certainly required for the validity of the sacrament. But contrition which is not appreciatively highest is not true contrition. The minor is proved from the fact that true contrition consists in the act of turning oneself away from every habitual attachment to mortal sin. But contrition which is not appreciatively highest does not involve aversion from every habitual attachment to mortal sin except conditionally, or aversion under some respect.

For the will turns itself away from something insofar as the motive by which it is moved objectively excludes turning toward that thing. Hence, if the motive is only of such objective power that, while it stands, the will can still be joined with mortal sin, there is no aversion except conditionally, or aversion under some respect. But contrition not appreciatively highest has a motive which is only of such objective power that, while it stands, the will can still be joined with sin. Therefore the will in contrition not appreciatively highest is not properly an aversion from mortal sin, or is not true contrition, but only aversion or contrition conditionally or under some respect (St. Alphonsus, VI, 433, 7).

Objection 1. Contrition is matter of the sacrament only insofar as it is sensible or is manifested. But contrition is not manifested insofar as it is estimatively highest. Therefore as such it is not matter of the sacrament.

Response. I distinguish the major: contrition is matter of the sacrament only insofar as it is sensible or manifested, according to itself, I concede; according to its qualities, I deny; otherwise it would also have to be manifested as supernatural.

Objection 2. Only that penance is the object of judgment in the sacramental forum which can be known sufficiently certainly through an external act of the penitent. But this cannot be said of contrition estimatively highest.

Response. I deny the minor; for of itself confession suffices so that the contrition required for receiving the sacrament rightly may be sufficiently certainly admitted. But for receiving the sacrament rightly, contrition estimatively highest is demanded.

Corollary I. From the fact that contrition estimatively highest is required, do not infer that contrition highest intensively, that is, highest in degree of vehemence, is also required. For this does not pertain to the substance of contrition, which it is established from the Council of Trent suffices.

Corollary II. Nor is it required that a comparison be instituted between sin and temporal evils; indeed, commonly this is not even expedient, and it is dangerous (St. Thomas, Quodlibet 1, article 9; St. Alphonsus, VI, at the cited place).

6. **Universal.** The universality of contrition consists in this: that it extends itself to all committed sins. This takes place: 1. when someone grieves from a universal motive, even if the penitent does not recall individual sins; 2. when he grieves from particular motives which comprehend all committed sins. Now the universality of contrition:

a) As regards committed mortal sins, is certainly required for the fruit of the sacrament, since one mortal sin is not remitted without another. Hence, if contrition is lacking as regards one mortal sin, none would be remitted.

It is disputed whether universality is required for the validity of the sacrament. Some affirm this, and their principal reason seems to us to be that which we have already alleged on p. 226: "Contrition which by the Council of Trent is called the quasi-matter of the sacrament, and therefore is required for validity and suffices for it, from the same Council seems also to suffice, at least with the sacrament, for justification."[7] But particular contrition does not suffice for justification. Therefore neither does it seem to suffice for validity. St. Alphonsus (VI, 444) and most other authors deny this, and judge that particular sorrow - that is, sorrow which does not extend itself to other mortal sins, but to one only or to certain sins from those committed - suffices for the validity of the sacrament. The reason alleged is that in the case there is true contrition, so that all things required for validity seem to be present. The case would be if someone, in good faith, grieved solely from the special baseness of some sin; but this will happen very rarely, because commonly penitents grieve either from a universal motive alone, or also from one.

Finally note: if a penitent, questioned by the confessor, states sins about which he did not previously think, it is indeed useful, but not necessary, to stir him up to a new act of sorrow, because an act elicited from a universal motive is presumed to have been conceived.

b) As regards venial sins, universal contrition is required only insofar as a venial sin is not remitted to which sorrow does not extend itself. For the rest, cf. the Scholion on contrition and purpose as regards venial sins.

Corollary. From what has been said it is gathered how far the sacrament of Penance can be *informe*, that is, valid but not fruitful. Many deny this, but St. Alphonsus (VI, 444) and most more recent authors affirm it, namely in the case in which someone grieves solely from a particular motive concerning one or some mortal sins.[8] Others add the case in which the sinner lacks contrition estimatively highest (p. 226). But the sacrament of Penance, though *informe*, probably revives when the obstacle has been removed (n. 11).

7. **External,** that is, manifested or sensible in some way. For contrition more probably is an essential part of the sacramental sign itself; but it cannot be this unless in some way it is externally disclosed or manifested. It can be manifested, for example, by oral recitation of contrition, by confession either actually instituted or - if it has followed confession - morally enduring, or by expectation of absolution.

[1] Session 14, chapter 4; session 6, canon 3.

[2] Council of Trent, session 6, chapter 6.

[3] Session 14, chapter 3.

[4] Session 14, chapter 4.

[5] Session 14, chapter 4.

[6] On the opinion of St. Thomas, see Ter Haar, *De occasionariis et recidivis*, n. 237 sq.

[7] Session 14, chapters 3 and 4.

[8] Some judge that the sacrament, even in this case, is valid and fruitful, because, when the sinner grieves in order that he may receive grace, his sorrow, although in appearance particular, in reality virtually extends itself to all sins. They add that particular sorrow does not suffice without a universal purpose. But a universal purpose will scarcely be present without universal sorrow.

300 **V. Relation between contrition and the other parts of the sacrament.** Here note:

1. Contrition or detestation of sins must, as is clear, precede absolution from them; but it makes no difference whether it precedes or follows the act of confessing, although it is better to elicit it before confession and repeat it after confession (St. Alphonsus, VI, 445).[1]

2. It is disputed whether contrition must be referred by the penitent to absolution. Some deny this, both because it belongs to the minister, not the penitent, to refer the matter of the sacrament to the form; and because from Trent[2] attrition, which excludes the will to sin, suffices in the sacrament for justification, without there being any mention of some relation to be made by the penitent. Others affirm it, because the minister cannot assume the acts of the penitent as matter unless they have been referred by the penitent to the sacrament. Others add that, just as one receiving, for example, Orders must order the touching of the matter to the sacrament, so also one receiving the sacrament of Penance must refer contrition to it. Nor should it be objected that sometimes those can be absolved who are ignorant of the sacrament, and therefore do not refer contrition to absolution. For they can, with the necessary conditions posited, be absolved conditionally, because the opinion of which we are speaking is not certain. St. Thomas seems to adhere to the affirmative opinion (3 p., question 86, article 6). Whatever the case may be, in practice you should follow the safer part (St. Alphonsus, VI, 447); but the question itself does not seem practical, because contrition, by the very fact that someone wishes to be absolved, seems sufficiently ordered to absolution.

3. It is not required that contrition actually or virtually endure until absolution, but it suffices that it persist habitually, that is, that it has not been retracted, with the things to be observed nevertheless observed, that is, those to be set forth under 4. The reason is that the penitent - although his acts are the matter of the sacrament - nevertheless is not the minister of the sacrament. Many indeed seem to require that contrition persevere actually or virtually, that is, in some effect; but in reality - many of them at least - do not speak of virtual perseverance properly so called (cf. St. Alphonsus, VI, 446). For the rest, it is difficult to determine how long contrition virtually endures. St. Alphonsus says this: "I, however... do not hesitate to assert that whenever confession derives from sorrow for sins, sorrow always virtually perseveres at least for one or another day, while that confession is the effect of sorrow. It is otherwise, however, if someone should confess from mere devotion, or to fulfill a vow, or a penance" (*Homo Apostolicus*, tract 16, n. 20).

4. As regards the space of time which can intervene between contrition actually elicited, likewise between confession, and absolution, some judge that only so much can intervene as can intervene between the parts of a civil judgment, because the sacrament of Penance was instituted after the manner of a judgment. But most reject that, nor does the reason alleged settle the question, because from elsewhere it is clear that a sacramental judgment is a judgment of its own kind (St. Alphonsus, VI, 446); for the rest, the space of time of which we are speaking cannot be determined. In practice, however, there will be no difficulty, since one who is absolved a rather long time after contrition has been elicited and confession instituted will commonly repeat both contrition and, at least in some way, confession before absolution.

Question. Whether a new absolution requires a new act of contrition, so that one who, after receiving absolution, declares a sin inculpably omitted, or again confesses sins already declared, must, I say, in order to be absolved again, elicit a new act of sorrow.

Response. Most more recent authors, against St. Alphonsus (VI, 448) and others, hold the negative opinion as morally certain; but undeservedly. The reason for doubting is this: just as a new act of confessing is required for a new judgment, so also, at least probably, a new act of contrition is required. Nevertheless, commonly there is no obligation of imposing a new penance; but it suffices that the imposed penance, insofar as it regards sins previously declared, be commuted, and insofar as it ought to regard the sins now declared, be left unchanged.

Objection. Even if a new act of contrition is not elicited, all things necessary for the sacrament are had, namely absolution, confession, and contrition morally persevering.

Response. It is doubtful whether contrition morally persevering suffices; since probably, as we have proved, a new act of contrition is required.

For the rest, the controversy seems less practical, because the penitent, by confessing the omitted sin or by again confessing sins already declared, commonly, at least in act exercised, will elicit a new act of contrition.

[1] Some older authors taught the contrary, relying on nearly these reasons:

1. Contrition must be manifested through confession, and therefore must be prior to it. Response: contrition can also be manifested in other ways, for instance by oral recitation. Besides, contrition elicited after confession is well manifested through confession, insofar as this morally perseveres, or at least through the petition or expectation of absolution.
2. Confession must not be a mere narration of sins, but a sacramental accusation; hence let it be informed by sorrow. Response: besides the fact that confession, insofar as it morally perseveres after contrition has been elicited, is informed by sorrow, it becomes sacramental by the fact that it is instituted in order to absolution.

[2] Session 14, on Penance, chapter 4.

§ II. On Purpose Specifically

301 **I. Notion.** Purpose here is understood as the deliberate will of not sinning in the future. Purpose differs: 1. from a promise strictly so called, by which we intend to contract an obligation of furnishing the promised thing at its proper time, while by purpose we show only the present disposition of the soul for doing or omitting something; 2. from a vow, which is a promise strictly so called made to God. Yet this does not prevent both confessor and penitent from using the words promising and promise, namely in a broad sense, without a new obligation arising from a promise of this kind. Hence also the sinner is said only in a broad sense to have broken or violated his promises.

302 **II. Division.** Purpose is twofold, explicit and implicit. Implicit purpose is that which is contained in detestation and sorrow concerning committed sins. For one who truly detests the sin committed implicitly wills to abstain from sin in the future.

303 **III. Necessity of some purpose** for receiving the sacrament of Penance is clear from the fact that without purpose there is no contrition, since contrition is defined by the Council of Trent as "sorrow of soul and detestation concerning a committed sin, with the purpose of not sinning for the future."[1]

[1] Session 14, on Penance, chapter 4.

304 **IV. Required purpose.** An explicit purpose seems to be required[1] in the case in which the sinner grieves only from a particular motive; otherwise there is no universal purpose, not even implicit, for sorrow from a particular motive implicitly contains only a purpose of abstaining from those sins concerning which one grieves. Authors add the case in which the penitent thinks about future life, since in this case it can scarcely happen that one who truly grieves does not elicit an explicit purpose, so that the defect of a formal purpose would show a defect of true sorrow.

Besides the cases alleged, it is disputed what sort of purpose is required. Moreover, most authors hold as morally certain that explicit purpose is not demanded, but that implicit purpose suffices. But St. Alphonsus (VI, 450, question 1) and others deservedly teach that the opinion which teaches that explicit purpose is required is not lacking in probability. To prove this, we first note these things: 1. The question is not settled by an *a priori* argument, since the whole matter at last depends upon the positive institution of Christ; 2. the Council of Trent - which certainly does not intend to impose an end on this controversy - uses terms which are sufficiently explained in either opinion, so that a strict argument cannot be deduced from it. With these things posited, we reason thus: contrition consists of three elements, namely detestation, sorrow, and purpose, of which the first two regard past life and the third regards future life. Moreover, the first two must be explicit, and implicit ones do not suffice. This admitted, I do not see by what right it is said: the third, which touches future life, certainly does not have to be explicit, but an implicit one suffices. Thus, besides St. Alphonsus, among older authors especially Suarez[2] and St. Bellarmine,[3] and among more recent authors Haine[4] and Augustinis.[5]

Objection. The Council of Trent teaches that attrition disposes for justification in the sacrament when it "excludes the will of sinning."[6] But detestation of committed sin, conceived from a universal motive, does this even without an explicit purpose.

Response. The words of Trent certainly signify the same thing as those which occur in its description of contrition: "with the purpose of not sinning for the future."[7] But by these words the Council - which does not intend to settle the controversy - leaves in the middle whether or not an explicit or implicit purpose or will is required.

For the rest, let confessors commonly stir up penitents to explicit purpose, at least that they may perceive richer fruit from confession; but after the fact, in doubt they rightly presume that a sufficiently explicit purpose was not lacking.

[1] I say "seems" on account of what was said on p. 228, note 1.

[2] Disputation 20, section 4, nn. 32 and 33.

[3] *De Poenitentia*, book 2, chapters 6 and 7.

[4] *Theologia Moralis*, III, p. 242.

[5] *De re sacramentaria*, II, p. 253 sq.

[6] Session 14, on Penance, chapter 4.

[7] Session 14, on Penance, chapter 4.

305 **V. Properties of purpose.** Purpose must be:

1. **Firm,** that is, of such a kind that the penitent wills not to sin in the future, at least not mortally, for the sake of obtaining any advantage or avoiding any evil. Moreover, firmness of purpose is not

opposed by: 1. the fact that someone is not certain that he will not sin any more; 2. the fact that someone gravely fears that he is going to relapse; indeed, 3. of itself and speaking speculatively, even the fact that someone judges certainly that he will sin again is not opposed to it. Namely, the present will of not sinning can be combined not only with fear but even with certainty of relapse or of a change of will. Nevertheless, if the penitent is certain of relapse, in practice it must be feared that he lacks firm purpose, and his will must be strengthened. I said if he is certain, because these and similar expressions commonly signify fear rather than true certainty. Hence if the penitent, otherwise of good will, says: "I do not wish to sin any more, but I foresee that I am going to relapse," the confessor, after strengthening the faint-hearted person's spirit, should commonly impart absolution. But true despair is opposed to firmness of purpose; one who despairs must be disposed so that he may hope (St. Alphonsus, VI, 451).

2. **Efficacious,** that is, of such a kind that the penitent also wills to employ the means necessary for avoiding sins, for example to remove voluntary proximate occasions.

3. **Universal,** namely as regards mortal sins, not only as regards those which have been committed, but as regards all. For the Council of Trent demands a purpose "of not sinning for the future"; likewise contrition which "excludes the will of sinning."[1]

[1] Session 14, on Penance, chapter 4.

Scholion. Sorrow and Purpose Regarding Venial Sins

306 **I.** If someone confesses venial sins together with a mortal sin, he receives the sacrament validly and fruitfully, even if sorrow and purpose comprehend only the mortal sin.

II. If someone confesses only venial sins, sorrow and purpose must enjoy the same properties as sorrow and purpose concerning mortal sins, except the property of universality (St. Thomas, 3 p., question 87, article 1, ad 1; St. Alphonsus, VI, 449, 451). This is not required, because one venial sin can be remitted without another. Therefore sorrow and purpose suffice:

1. Concerning all the venial sins which someone confesses.

2. Concerning some or one of those which he confesses, as follows:

a) Concerning only those fully deliberate, because someone can detest the greater malice without detesting the lesser (St. Thomas, at the cited place; St. Alphonsus, at the cited place).

b) Concerning only venial sins of a determined species, because we can detest one baseness without detesting another different from it (St. Thomas, at the cited place; St. Alphonsus, at the cited place).

3. Concerning the multitude or frequency of venial sins. Some teach absolutely that this suffices, but they suppose that then one grieves concerning determined sins, namely at least concerning the later ones, which constitute the multitude. Finally, others admit this as regards semi-deliberate sins, but not as regards fully deliberate sins (cf. St. Alphonsus, VI, at the cited place, and *Praxis Confessarii*, n. 71). St. Thomas declares that the purpose "of preparing oneself for diminishing venial sins" suffices (3 p., question 87, article 1, ad 1).

III. Sorrow - which I note for the sake of completeness - which according to what has just been explained does not extend itself to all venial sins, cannot be perfect contrition concerning some venial

sin, because perfect contrition concerning one venial sin necessarily extends itself to all venial sins, as was explained in n. 284.

Corollary I. One who confesses only venial sins concerning which he does not grieve sins gravely, because the sacrament is rendered invalid. But one who, with the value of the sacrament preserved, confesses venial sins without sorrow sins only venially; for grave irreverence is not found in this (St. Alphonsus, VI, 449, doubt 1).

Corollary II. Penitents who are accustomed to commit only venial sins should be advised to add a mortal sin, if they have committed one before, or a more serious venial sin of their past life (St. Alphonsus, *Praxis Confessarii*, nn. 71, 99, 188).

Article II. On Confession

We shall speak first of confession considered in itself, then of the qualities of confession generally, and then of the quality of integrity specifically.

§ I. On Confession Considered in Itself

307 **I. Notion.** Confession, insofar as it pertains to the sacrament, can be defined: The accusation of one's sins committed after Baptism, made to a priest having jurisdiction and - most add - in order to sacramental absolution. I said insofar as it pertains to the sacrament, for something slightly different must be said if the matter concerns confession insofar as it obliges to the seal; what things are required and suffice for confession considered in that way will be said later.

308 **II. Division.** Confession is distinguished:

1. By reason of mode, into secret or auricular and public, insofar as it is made to the priest alone or before a multitude.
2. By reason of object, into distinct and generic, insofar as someone confesses sin according to its lowest species, or only the genus of sins. Generic confession can be subdivided three ways, namely: 1. into confession of the proximate genus, that is, of the genus which has the lowest species under itself, for example, "I accuse myself of sins of lust against nature." To this is almost equivalent confession of the less proximate genus, that is, of that which contains several proximate genera, for example, "I accuse myself of sins of lust"; 2. into confession of the remote genus, that is, of that which contains proximate and less proximate genera, for example, "I accuse myself of mortal sins"; 3. into confession of the highest genus, that is, of that which contains all sins, for example, "I accuse myself of my sins." Confession of this kind, which is also called wholly generic, can also be made by a sign, for instance by sighs, striking of the breast, inclination of the head, etc.

309 **III. Necessity of confession** is clear first from the Council of Trent, which expressly teaches the necessity of confession.[1] Next, it is elicited from the fact that the sacrament of Penance was instituted after the manner of a judgment, and therefore, in order that it be rightly exercised, it requires in the judge knowledge of the matter with which it is concerned, that is, of sins. But this knowledge must be supplied by the penitent himself, since he alone is a suitable witness, namely of internal acts, of many external acts, and at least of culpability.

Corollary. Confession is necessary by necessity of means. For it is necessary, as follows from what has been said, from the fact that the sacrament of Penance was instituted by Christ after the manner of a

judgment. But what is required because of the nature of the sacrament is necessary by necessity of means, because the sacrament itself is required by necessity of means (n. 358).

[1] Session 14, chapter 5 and canon 7.

310 **Question.** How far generic confession suffices.

Response 1. Confession, even wholly generic confession, suffices both for validity and for liceity: 1. in a case of necessity, that is, when someone cannot confess otherwise, whether because of defect in the use of the senses, for instance in one dying, or because of lack of time, for instance when shipwreck or battle is imminent;[1] 2. when someone knows that he has sinned gravely, but remembers neither the species nor the proximate or less proximate genus; 3. when someone is so uneducated that no distinct accusation can be drawn out.

As regards one dying, this is clear from the Roman Ritual,[2] from the First Council of Orange,[3] from the Third[4] and Fourth[5] Councils of Carthage; namely, the cited documents declare that one deprived of the senses is to be absolved, although in the case there can be question only of wholly generic confession (St. Thomas, Opusculum 65, § on the Sacrament of Anointing; St. Alphonsus, VI, 481).

As regards the other cases enumerated, the same reason holds as in one dying, namely inability to confess distinctly.

Response 2. Outside the cases just assigned, confession, even wholly generic confession, suffices for validity if someone does not have necessary matter, but only, for example, venial sins or mortal sins already distinctly confessed and remitted.[6] For: 1. that which in a case of necessity suffices for the essence of the sacrament, with the necessary conditions posited,[7] is deservedly presumed also to suffice outside a case of necessity; 2. by the consent of all, a confession generic in some degree, that is, of the proximate and even the remote genus, suffices for validity, so that formally distinct confession is not required. But if we posit that formally distinct confession is not required, but a generic confession in some degree suffices, it is no longer apparent why a more generic confession does not suffice, especially because the arguments which are brought against wholly generic confession seem also to militate against generic confession in some degree, that is, of the proximate and less proximate genus, and therefore to prove less (cf. St. Alphonsus, VI, 502, doubt 3).

It is disputed whether wholly generic confession in the case of which we are speaking is also licit. Those who deny this argue from the nature of a judgment, which of itself must be instituted concerning determined matter; likewise from the practice of the faithful; likewise from the inconveniences that would follow from admitted liceity. The sacrament would be exposed to danger of nullity because of defect of sorrow; penitents would lack admonitions and counsels, etc. But since all admit that confession of the lowest species, or even of the proximate genus, is not prescribed if the matter is free, it is no longer clear that wholly generic knowledge does not suffice. Next, the practice of the faithful proves an obligation in this matter no more than, for example, as regards the accusation of doubtful sins. Finally, the confessor must watch lest the assigned danger persist; and the admonitions and counsels of which there is question here pertain to perfection, not to necessity. Nevertheless, because of the reasons alleged, it is better to accuse oneself more determinately, and that custom should be promoted.

Objection 1. From the fact that wholly generic confession is valid in a case of necessity, it does not necessarily follow that it is also valid outside a case of necessity; this is clear from the fact that

confession made through a messenger in the article of death is valid, but otherwise is not valid.

Response. I deny that confession made through a messenger in the article of death is valid; you may see that it is not valid proved in n. 312.

Objection 2. The sacrament of Penance is a moral institution, namely it has itself after the manner of a judgment. But a moral institution accommodates itself to the condition of things and persons, or according to circumstances now requires these things, now those, for validity. Hence from the fact that wholly generic confession sometimes suffices for validity, it is undeservedly deduced that it always suffices.

Response. The sacrament of Penance certainly was instituted after the manner of a judgment; nevertheless, of a judgment which is of its own kind, that is, primarily reconciliatory. Moreover, I concede that even from such a moral institution, from such a judgment, now these things and now those are required so that it may be exercised prudently. But that for validity also now these things and now those are required needs proof; until it is proved, it is permitted to presume the contrary. It is added that the contrary can also be demonstrated positively. Namely, from the fact that confession of the proximate and even of the remote genus, in other words quasi-generic confession, suffices for validity even when the circumstances bear a more determined confession, from this, I say, it is rightly deduced that by no means, according to the circumstances, now these things and now those are required for the validity of this moral institution.

Objection 3. More distinct knowledge is required for the validity of a judgment; therefore also for the validity of Penance, which was instituted after the manner of a judgment.

Response. I distinguish the major: more distinct knowledge is required for the validity of a secular judgment, I concede; for the validity of a sacramental judgment, which is primarily reconciliatory, more distinct knowledge is required, I deny, because of the arguments alleged.

Objection 4. According to the Council of Trent,[8] a sacramental judgment cannot be instituted when the case is unknown.

Response. The Council treats of the prudent institution of this judgment, not of its valid institution. For it speaks of wholly distinct knowledge, that is, knowledge of sins according to their lowest species; but no one admits that this is required for validity.

[1] In circumstances of this kind let the confessor stir all to elicit a brief act of contrition and to repeat mentally what he himself is about to say; 2. to signify by a sign, for example by inclination of the head, the will of receiving absolution. Then let him say: I absolve you from all your censures and sins; in the name of the Father, and of the Son, and of the Holy Spirit. Amen.

[2] Title 3, chapter 1, n. 24.

[3] Chapter 12, in Labbe, t. 4, col. 703 and following; cf. Decretum Gratiani, canon *Qui recedunt* 7, cause 26, question 6.

[4] Chapter 34, in Labbe, t. 2, col. 1404.

[5] Chapter 76, in Labbe, at the cited place, col. 1443; cf. canon *Is qui* 8, cause 26, question 6.

[6] If someone has necessary matter, he is bound under grave obligation to confess distinctly, and therefore, if he confessed only generically, he would receive the sacrament invalidly because of defect of disposition. Except if he proceeded in good faith.

[7] With the necessary conditions posited, namely that the penitent has sufficient sorrow and purpose.

[8] Session 14, on Penance, chapter 5.

§ II. On the Qualities of Confession Generally

Confession must be made: 1. to a priest as judge; 2. to a present priest; 3. secretly; and 4. vocally. Let it be made, I say:

311 **I. To a priest as judge,** so that, for example, confession, or rather a narration of sins, made to a priest as friend does not suffice. For the word "confession," which the Council of Trent uses, considering both its obvious sense and the very matter treated there,[1] signifies the exposition of sins made in sacramental judgment. Nevertheless, it suffices for validity if someone, after a friendly narration has been made, says: "I accuse myself of the sins just narrated."

Question. Whether an accusation of this kind also suffices for liceity.

Response 1. Affirmatively, if the confessor has retained a distinct memory of the sins narrated. The reason is that then the subsequent accusation, although in appearance indistinct, is in reality distinct (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 44).

Response 2. Otherwise it is disputed. Now with St. Alphonsus (VI, 502, doubt 1) it seems it must be said that this manner of acting does not suffice for liceity. For the Council of Trent declares that confession is required,[2] and that, in order that judgment be exercised prudently, it is required according to species and number.[3] But in the hypothesis posited there is no confession according to species and number: the prior narration is not such, since it was not confession; nor is the general accusation that follows such, since it was not confession according to species and number. It is added that the confessor, before he gives sentence, must have had distinct judicial knowledge. But this is not had in our case: neither by force of the prior narration, since it was made before the confessor could exercise the office of judge in relation to this person; nor by force of the subsequent confession, since it was not distinct and therefore did not supply distinct judicial knowledge. Some indeed judge that judicial knowledge is present if the priest, as friend receiving the narration of sins, already suspected in some degree that he could lead the man, who then was thinking nothing of confession, to sacramental confession. But a suspicion, or even persuasion, of this kind does not suffice for the confessor to be constituted here and now as the judge of this man.

[1] Session 14, on Penance, chapters 3 and 5.

[2] Session 14, on Penance, chapter 3.

[3] Session 14, on Penance, chapter 5.

312 **II. To a present priest.** For Clement VIII[1] condemned the proposition: "that it is licit, by letters or by an intermediary, to confess sins sacramentally to an absent confessor and to obtain absolution from the same while absent"; and at the same time he prohibited that "it ever be defended as probable in any case, printed, or in any way brought into practice." Moreover, from the fact that this opinion can never be brought into practice, not even in a case of necessity, it is deservedly deduced that confession of this kind is invalid; for no other reason can be assigned for that absolute prohibition. Nor should it be said that the particle "and" in the condemned proposition is to be taken in a copulative sense, not in a disjunctive one; since the Holy Office[2] declared: "The Most Holy One, namely Paul V, decreed that the said interpretation does not stand and therefore must be removed from his [Suarez's] books" (St. Alphonsus, VI, 428).

Nor from the fact that one dying, deprived of the senses, who before deprivation of the senses manifested a desire of confessing while the priest was absent, can afterward be absolved by a present priest, nor, I say, from that fact should you deduce that confession made to an absent priest in the article of death is valid. For one dying in this way can be absolved either because the testimony of the said desire, brought forward by a witness, is judged to be the confession of the dying person himself; or because the confession of the dying person, made while the priest was absent, morally perseveres when the priest is present, and as such is made here and now to the present priest; or because the dying person, with the priest present, perhaps expresses by some sign the desire of absolution. This suspicion suffices so that absolution may at least be granted conditionally (St. Alphonsus, VI, 481). From these things it is clear that our case is not comprehended by the condemnation of Clement VIII, namely because there is not, or at least probably there is not, confession made to an absent priest.

[1] July 20, 1602 (Denzinger-Bannwart, n. 1088).

[2] July 14, 1605; likewise June 7, 1603 and January 24, 1632 (Denzinger-Bannwart, n. 1089).

313 **III. Secretly,** that is, let confession be made to the priest alone, considering a usage which is not destitute of force.[1] Nevertheless, those who cannot confess otherwise are not prohibited, if they wish, from confessing through an interpreter, with abuses and scandals guarded against (canon 903). For the rest, confession through an interpreter can be made in such a way that the interpreter does not know the responses given by the penitent; for instance, if the confessor questions the penitent, the interpreter repeats the questions in the language of the penitent, and the penitent responds to them by signs perceived by the confessor alone.

[1] Cf. Council of Trent, session 14, on Penance, canon 6; response of the Sacred Congregation of the Council, January 10, 1920 (*A.A.S.* 1920, p. 43); likewise Lateran Council, chapter *Omnis utriusque sexus*.

314 **IV. Vocally.** The precept of confessing vocally was introduced by custom beyond the law,[1] and therefore is judged to persist.[2] It is also more commonly taught that the precept obliges at least under grave obligation insofar as one who, without an excusing cause, does not make the whole confession vocally sins mortally. A moderate cause suffices so that it is licit to confess by nods, signs, or writing, for example if someone because of shame cannot express a sin by mouth, or because of an impediment of the tongue confesses with difficulty by mouth; if the confessor is somewhat deaf, so that confession made by mouth could be heard by others (St. Alphonsus, VI, 493). Indeed, a just cause seems to suffice so that someone, after handing over a written confession and after it has been read by the confessor, may add: "I accuse myself of the sins read by you." Nor in practice should those who confess in writing be disturbed, nor should the confessor inquire why they proceed in that way.

[1] "Unless," as in the Extravagant *Inter cunctas*, on privileges, "an article of necessity occurs, oral confession is to be made to a priest."

[2] Cf. response of the Sacred Congregation of the Council, January 10, 1920 (*A.A.S.* 1920, p. 43).

§ III. On the Quality of Integrity Specifically

We shall treat first of the notion, division, and necessity of integrity; then of the scope of material integrity; then of the causes excusing from material integrity; finally of the means of procuring integrity, or of the examination of conscience.

Point I. On the Notion, Division, and Necessity of Integrity

315 **I. Notion.** Integrity consists in this: that in confession someone declares those things which must be declared by him.

316 **II. Division.** Integrity is distinguished as twofold, material and formal. Material integrity is had when someone declares those things which of themselves must be declared; in other words, all mortal sins committed after Baptism and not yet duly declared and directly remitted (n. 294). Formal integrity is when someone declares those things which he is bound to declare here and now.

317 **III. Necessity.** 1. Material integrity is required of itself. This is clear first from these words of the Council of Trent: "From the already explained institution of the sacrament of Penance, the universal Church has always understood that the complete confession of sins was also instituted by the Lord, and that it exists as necessary by divine right for all who have fallen after Baptism"[1] (cf. canon 901). Next, it is deduced from the fact that the sacrament of Penance was instituted after the manner of a judgment. But it belongs to a judge to have distinct knowledge of the matter - in the case, of sins - concerning which sentence is to be given; both lest he be constituted a blind instrument, and so that he can impose an equitable punishment.

Corollary. Material integrity is necessary by necessity of means. For, to apply to integral confession what we said of confession as such, it is necessary, as follows from what has been said, from the fact that the sacrament of Penance was instituted by Christ after the manner of a judgment. But what is required because of the nature of a sacrament instituted by Christ is necessary by necessity of means, because the sacrament itself is required by necessity of means.

2. Accidentally, material integrity sometimes is not required in reality, namely if it is physically or morally impossible; in that case material integrity in desire, or formal integrity, suffices. This is deduced from the fact that otherwise the sacrament of Penance would have been instituted unfittingly. Hence the Council of Trent: "For it is established that nothing else is required in the Church from penitents than that, after each one has examined himself more diligently and has explored all the folds and hidden places of his conscience, he confess those sins by which he remembers that he mortally offended his Lord and God; but the remaining sins which do not occur to one thinking diligently are understood to be included universally in the same confession."[2] And again: "If anyone shall say that in the sacrament of Penance for the remission of sins it is not necessary by divine right to confess all and individual mortal sins, of which memory is had with due and diligent premeditation... let him be anathema."[3]

[1] Session 14, chapter 5.

[2] Session 14, chapter 5.

[3] Session 14, canon 7.

Point II. On the Scope of Material Integrity

318 We set forth first the principal ecclesiastical documents which pertain here. Moreover, the Council of Trent says this: "For it is established that priests could not have exercised this judgment with the case unknown, nor indeed could they have preserved equity in imposing punishments, if they had declared their sins only in genus and not rather in species and individually. From these things it is gathered that all mortal sins must be recounted by penitents in confession... even if they are most hidden, and committed only against the last two precepts." Besides: "It is further gathered that those

circumstances must also be explained in confession which change the species of sin, because without them the sins themselves are neither integrally exposed by penitents nor made known to the judges, and it cannot happen that they can judge rightly concerning the gravity of the crimes and impose on those penitents the punishment which is fitting."[1] Finally: "If anyone shall say that in the sacrament of Penance for the remission of sins it is not necessary by divine right to confess all and individual mortal sins... even hidden ones, and those which are against the last two precepts of the Decalogue, and circumstances which change the species of sin... let him be anathema."[2] Canon 901 teaches the same: one who after Baptism has perpetrated mortal sins which have not yet been directly remitted through the keys of the Church must confess all of which, after diligent discussion of himself, he has consciousness, and explain in confession the circumstances which change the species of sin.

With these things set forth, we conclude:

[1] Session 14, chapter 5.

[2] At the cited place; session 14, chapter 5, canon 7.

319 **I. Mortal sins committed after Baptism and not yet directly remitted must be confessed.** This follows from the cited documents.

Disputation 1. Whether a sin must be confessed: a) in doubt whether it was committed; b) in doubt whether it was grave.

Response 1. One who opines either that a sin was committed or that the sin which was committed was grave is bound to confess it. For according to the Council of Trent[1] and canon 901 penitents must confess mortal sins "of which, after diligent discussion of themselves, they have consciousness." But one who opines that he sinned has in some way consciousness or knowledge of the sin committed (t. I, n. 215). It is added that each person is bound to observe a law if he opines that the fact founding the law has taken place (t. I, nn. 232 and 233 at the end). But one who opines that he has sinned gravely opines that the fact, that is, sin, founding the law, namely of confessing, has taken place. Finally, one who opines that he has sinned gravely opines that he is liable to the ordinary means for obtaining remission of sin, that is, to the sacrament of Penance. But one who opines in this way seems to be bound to apply that means, with liberty excluded of using only the supplying means, that is, perfect contrition or charity.

Response 2. One who strictly doubts is bound in this way:

1. If he strictly doubts about the commission of sin, he is not bound to confess it. For, as we just noted, the Council of Trent and canon 901 teach that mortal sins of which consciousness is had must be confessed, so that a further obligation should at least practically be excluded. But in strict doubt there is not consciousness or knowledge of a committed sin. The reason seems to be this: one who strictly doubts about a committed sin is only doubtfully liable to the ordinary means for obtaining remission of sin, in the case, to Penance; indeed he is only doubtfully capable of that means in relation to that sin. But such a one, sufficiently probably, is not bound to apply that means, but enjoys liberty of using either the ordinary means or the extraordinary or supplying means, that is, perfect contrition or charity. In the case, if the sin truly took place, it is not remitted independently of the sacrament of Penance.
2. If he strictly doubts about the gravity of the committed sin, these things hold:

a) One who doubts about the gravity of the matter is bound to expose his doubt to the confessor, unless he himself is versed in moral matters.

b) One who doubts about full consent in a grave sin must confess it if he has been accustomed to consent fully, because he is presumed to have consented fully. Otherwise it must be said of the fearful and scrupulous. The former are only to be exhorted to expose doubts of this kind; the latter are to be prohibited from doing so (St. Alphonsus, VI, 473-476; *Istruzione e Pratica*, chapter 16, n. 30).

Disputation 2. Whether grave sins committed after Baptism doubtfully validly conferred must be confessed.

Response. It seems that this must be affirmed. For first the Holy Office, to the question whether Carolus Wippermann, doubtfully validly baptized, "is to be rebaptized; and insofar as affirmatively, whether confession is to be placed before or after Baptism to be conferred under condition," to that question, I say, responded:[2] "The Most Holy One, after the votes of the Most Eminent Fathers had been heard, said: Carolus Ferdinandus is to be rebaptized under condition, and, after Baptism has been conferred, let him confess the sins of his past life, and let him be absolved from them under condition." Besides, the same Congregation, to the request of the bishops of England, "whether sacramental confession must be required from neo-converts in England, and whether it must be integral," responded:[3] "Affirmatively, and let the decree of June 14, 1715 be given." Moreover, the Holy Office seems to signify that obligation to be universal not only by responding the same thing, but also by referring to the first response. This is confirmed by the fact that the Prefect of the Sacred Congregation of Propaganda Fide, in a response to the Archbishop of Quebec,[4] declared that the decree of the year 1868 contains a universal law, and therefore obliges not only in England but also in other regions. Nor is it an obstacle that that response lacked explicit promulgation; for according to jurisprudence, especially that in force before the Code, it sufficed that such decisions were known.[5] Besides, the Holy Office, in assigning the norm for reconciling heretics, seems to suppose the affirmative opinion.[6] Next, one who certainly sinned gravely - which we now suppose to have been done by one doubtfully validly baptized after doubtful Baptism - is bound, if he can, to use at least with moral certainty some ordinary means for obtaining remission of that sin. But by receiving Baptism conditionally he uses only probably the ordinary means for obtaining remission of that sin, because that sin was probably committed after valid Baptism, and therefore probably must be remitted by Penance. Therefore it remains that he receive not only Baptism conditionally, but also conditionally Penance in relation to that sin.

Corollary I. The law explained is divine, as is clear from the intrinsic reason alleged; besides, *a priori* it is hard to admit that the Church has made a law of confessing sins to the confession of which Christ does not oblige.

Corollary II. What has been said about those doubtfully validly baptized must also be applied to those doubtfully baptized, since the same formal reason subsists.

Corollary III. Sins committed before the first doubtfully valid Baptism are not to be confessed; for if Baptism truly was valid, the aforesaid sins were remitted by the first Baptism; but if it was invalid, they are remitted by the second Baptism. Nor must sins committed and sacramentally declared after the first doubtfully valid Baptism be confessed again; for if the first Baptism was valid, the aforesaid sins were remitted through absolution; but if it was invalid, they will be remitted through the second Baptism.

[1] Session 14, on Penance, chapter 5.

[2] June 14, 1715 (*Collectanea*, n. 286).

[3] December 17, 1868 (*Collectanea*, n. 1338).

[4] July 12, 1869 (*Collectanea*, n. 1338, in note).

[5] The Cardinal Secretary of the Holy Office indeed in 1898, in the customary conference of cases of conscience at St. Apollinaris, declared that the response of December 17, 1868 was not general. But the authority of the said Secretary - since he was another than the one who was secretary in 1868, and since he put forth his opinion 30 years after the decree had been issued - is not greater than another private authority. The same must be said of D'Annibale, who was Assessor of the Holy Office after the decree had been issued, and who holds the more benign opinion as probable.

[6] July 20, 1859 (*Collectanea*, n. 1178); December 2, 1874 (*Collectanea*, n. 1426).

320 **II. Sins to be confessed must be declared according to:** 1. the lowest moral species, at least known confusedly; 2. number; 3. certain circumstances; 4. the external act; 5. the effect, as will be explained.

1. **The lowest moral species, at least known confusedly.** This follows from the Council of Trent,[1] which declares that sins must be declared "in species," which words in their obvious sense signify the lowest moral species. The reason is clear from what has been said about the necessity of integrity (n. 317). It is said:

a) **Moral species;** since it is not necessary to declare the physical species, so that one who has stolen, for example, 100 florins and a cow satisfies by confessing that he committed two grave thefts.

b) **Lowest species,** so that it does not suffice to confess, for example, the proximate genus of the sin, for instance by declaring: "I committed a sin of lust" or "of lust against nature."

c) **At least known confusedly;** for a species wholly unknown is not contracted.

Question. What must one confess who knows that he has sinned gravely but does not remember the lowest species?

Response. He is bound to confess the sin according to its generic aspect; for one who cannot integrally satisfy the precept is bound to satisfy it insofar as he can do that, unless the reason of the precept is not found in the defective fulfillment (St. Alphonsus, VI, 480).

2. **Number.** For the Council of Trent[2] declares that sins must be confessed "individually." For the rest, this is elicited also from the fact that all mortal sins must be confessed (n. 319; canon 901), which does not take place if the number is not assigned. Moreover:

a) If the true number is established, this must be declared.

b) If the true number is not established, but some number is established, for example, if someone certainly sinned eight times but doubts whether he sinned more often, say twelve times, let him either confess only the certain number or declare a truly approximate number, adding "about" or "more or less," saying, for example, in the case alleged, "about ten times I committed this or that sin." Now by an approximate number a moderate excess is comprehended, but not a notable one. And the greater the number expressed, the greater the excess comprehended. Thus, for example, by saying "three times more or less," up to 4 can be understood; by saying "ten times more or less," up to 12; by saying "thirty times more or less," up to 33; by saying "a hundred times more or less," up to 105 (St. Alphonsus, VI, 466).

c) If not even an approximate number can be assigned, let the habit of sinning be declared, the time through which it persevered, and, as far as possible, the frequency of falls in a day, week, or month (St. Alphonsus, VI, 466). But if not even that can be done at all, or not without great danger of erring, it suffices, after the time of the habit has been declared, to add that he sinned "as often as the occasion was given" or "as often as that desire occurred" (St. Alphonsus, VI, 466). Hence a prostitute commonly satisfies by declaring that she was given over to prostitution for such a time, and that as often as there was occasion she afforded the use of her body both to married and unmarried men. Nevertheless, she should determine more exactly the number of less usual species, if they occurred, for instance sins committed with clerics. Indeed, if she can, she must manifest the number more accurately. One who is accustomed to desire any women he meets satisfies by declaring that habit and the time through which he persists in it; let him add whether often married women, whether sometimes relatives, or sacred persons. One who is accustomed on any occasion to speak about shameful matters likewise satisfies by manifesting the time of a habit of this kind.

Corollary. One who has confessed an approximate number, adding "more or less" or "about," is not bound to supplement if afterward he certainly learns of a moderate excess above the number expressed. The reason is that the sacrament of Penance was instituted after the manner of a judgment to be exercised in a human way. But, considering the human manner of proceeding, in the case posited the case to be judged seems to have been so declared and judged that, if the penitent proceeded in good faith, the obligation of supplementing seems to be denied (St. Alphonsus, VI, 466). For the same reason the same seems to be said of one who, having confessed more generally and confusedly, afterward remembers the number more distinctly, unless afterward so great a multitude of sins comes to mind that they were not comprehended in the general and confused confession. Finally, it is clear that one who in good faith manifested too great a number is not bound to confess again, since the true number was included in the greater.

Question. Whether one who by one physical act committed several sins numerically, for instance by killing three men by one act, can confess thus: "I killed three men."

Response. It seems this must be affirmed, because he truly confesses the number of sins.

Objection. In the case posited the confessor is led into error as regards the number of acts; which is opposed to integrity.

Response. The confessor is led into error as regards the number of physical acts, let that pass; as regards the number of sins or malices, I deny it; namely, that act, physically one, is morally threefold. But an error induced as regards the number of physical acts is not opposed to integrity.

3. **Circumstances of sin.** The following must be declared:

a) A circumstance changing the theological species, as it is called, that is, one which makes a venial sin mortal or conversely; at least insofar as this is required lest the confessor take as light what was grave, or as grave what was light. Hence, for example, the circumstance of grave matter in theft must be declared, and the circumstance of half-full consent in an act gravely evil, if the penitent - to which in the case he is not bound - wishes to confess the consent.

b) A circumstance adding a new species of grave sin, or, to use the terminology of the Council of Trent[3] and of the Code (canon 901), changing the species of sin, as if someone were to kill a sacred person.

Thus the Council of Trent at the cited place and the cited canon of the Code; and it follows from what has been said about the obligation of confessing sins according to the lowest species.

Question. Whether one who by one physical act committed several sins in species, for instance if one bound by a vow of chastity pollutes himself, can confess thus: "I gravely transgressed a vow and perpetrated pollution."

Response. It seems this must be affirmed, provided he truly declares the lowest species, as in the example alleged; for nothing seems lacking to integrity. But if it is objected that the circumstance of the sin must be declared which changes its species or which adds a new species to it, whereas in the case the sin against the vow is not declared as a circumstance of the sin of lust, I respond that by objecting in this way one insists too much, as it seems, on the letter of the law.

c) Circumstances about which the confessor asks, so that he may judge better concerning the disposition and obligations of the penitent, and which especially regard habit, relapse, and proximate occasions. Hence Innocent XI condemned proposition 58: "We are not bound, when the confessor asks, to confess the habit of some sin."[4]

d) Accidentally, the circumstances must be declared on which a censure or reservation of sin depends.

Question. Whether a circumstance which notably aggravates a grave sin in the same species must be declared. I said notably, because no one teaches that a lightly aggravating circumstance must be manifested.

Response. Some affirm simply; others affirm as regards the circumstance "what," or of the object, or which regards the quantity of the thing, as in excessive theft, in incest in a very near degree. Others deny absolutely; with St. Alphonsus (VI, 468) we hold this opinion as sufficiently probable. For: 1. the Council of Trent,[5] as also canon 901, speaks only of circumstances changing the species, so that a further obligation seems at least practically to be excluded; 2. a further obligation would impose a nearly intolerable burden and would be a source of scruples and difficulties. St. Antoninus,[6] St. Bonaventure,[7] St. Thomas, as it seems (4, distinction 16, question 3, article 2, solution 5; opusculum 12 to the reader of Besancon), and all more recent authors also adhere to the more benign opinion.

Corollary. Let the confessor generally not inquire into aggravating circumstances, but let him permit the faithful, for the tranquility of conscience, to manifest them. I said generally; for: 1. as regards sins against chastity, not only should he not inquire into circumstances not to be exposed, but generally he should also advise penitents not to expose anything besides that which must be exposed; 2. as regards sins of injustice, he should for the most part inquire into the gravity of the thing taken or of the damage inflicted, both because the faithful often do not know what matter is grave, and so that he can judge about the obligation of restoring and can teach the faithful about it.

4. **External act,** whether committed, as fornication, or omitted, as omission of Mass. Moreover, an external act which completes the internal act in the character of sin must be declared; for it comes under the name of sin and in reality is contrary to the law. But of itself an external act which is merely the manifestation of a sin that is properly internal, for example of heresy, need not be declared. Except if it introduces a new species, for example of scandal, or if a censure or reservation of sin depends on it (St. Alphonsus, V, 42).

5. **Effect.** The discussion concerns grave effects which were foreseen in the cause and either intended or permitted without sufficient reason. Effects of this kind can be, for example, blasphemies uttered

in drunkenness, pollution, the death of an enemy following from the giving of poison, etc. Now:

a) The effect must be declared: 1. if the confessor asks about it so that he may judge better concerning the obligation of the penitent; 2. accidentally, if a censure or reservation of sin depends on it. Otherwise:

b) The effect need not be declared if the evil will was sincerely retracted before the event; for when that has been retracted, there is no source from which true morality can accrue to the effect, so that it cannot come under the name of sin (tom. I, n. 10). If the evil will has not been retracted, it is disputed. Moreover, it seems it must be said thus: the effect must be declared which is the complement or consummation of the internal sin, or the external execution, as foreseen blasphemies uttered in drunkenness. The reason is that an effect of this kind, as an act infected by the malice of the will (t. I, n. 60), comes under the name of sin (St. Alphonsus, IV, 149; V, 10). Otherwise it must be said of an effect which cannot be called the consummation or external execution of the internal sin, as the death of an enemy following from the giving of poison.

Question 1. Whether one satisfies integrity who declares a sin not yet confessed as confessed.

Response. It seems this must be wholly denied, because by declaring necessary matter as free, he does not subject it to the judgment of the confessor, but only to repeated absolution, or at least deceives the confessor as regards the obligation of judging the sin; and that deception is grave. Namely, necessary matter must be subjected to the judgment of the confessor and judged by him, because judgment concerning it has not yet taken place; free matter is only subjected again to absolution, although it is licit to subject it to judgment again.

Question 2. Whether one satisfies integrity who, with the confessor aware, for example in a general confession, omits to distinguish between sins confessed and not confessed.

Response. Affirmatively, because it is licit to subject sins already confessed together with those not yet confessed again to the judgment of the confessor, and not only to absolution, as happens if the whole confession is made concerning free matter. In the case, however, the confessor must judge concerning each sin, and therefore also investigate the species and number of old sins, namely lest some sin which has not yet been judged be left unjudged.

Question 3. Whether one satisfies integrity who declares a confessed sin as not yet confessed.

Response. Affirmatively, because it is licit to submit free matter again to the judgment of the confessor. Nevertheless he would commit a lie and a light sacrilege, and so would sin venially (n. 324).

Question 4. Whether one satisfies integrity who falsely declares the time of the committed sin, for instance by declaring a sin recently committed as committed long ago.

Response. Some deny this, because an act recently posited is not an act posited long ago, so that in the case the act posited is not declared. But it seems this must be affirmed, provided he does not proceed for this reason, that he confesses a not-yet-confessed sin as confessed. The reason is that the act is declared primarily as posited, so that it is undeservedly said that the act posited is not declared. I said "provided he does not proceed for this reason, that he confesses a not-yet-confessed sin as confessed"; this he would do if he accused himself of a sin not yet confessed in this way: "Besides, I accuse myself of this or that sin of my past life." Besides, a penitent rightly questioned about the time is bound to open the truth.

Corollary. The penitent has satisfied the precept of integrity only when he has exposed his sins in such a way that he can prudently judge that the confessor sufficiently perceived the things to be exposed. Hence: 1. one who notices that certain grave matters were either not heard by the confessor or were wrongly understood is bound to supplement; 2. *a fortiori* he is bound to this, indeed he confesses sacrilegiously, who deliberately chooses a somewhat deaf confessor lest the things to be exposed be duly perceived. On the other hand, however, the penitent can presume that the confessor sufficiently perceived the things exposed, until the contrary is established.

[1] Session 14, on Penance, chapter 5.

[2] Session 14, chapter 5.

[3] Session 14, chapter 5.

[4] Denzinger-Bannwart, n. 1208.

[5] Session 14, on Penance, chapter 5.

[6] *Summa Theologica*, part 3, title 14, chapter 19, § 7.

[7] 4, distinction 17, part 3, article, question 3.

321 **III. One who culpably did not satisfy integrity** is bound as is explained in n. 332 sq. One who inculpably did not satisfy is bound to supplement, and indeed in the first following confession, because every confession of itself must be materially integral. Nevertheless, it is not required that confession therefore be anticipated, nor that meanwhile he abstain from the Holy Eucharist (n. 179).

Question 1. Whether one who confessed a sin as doubtful, and afterward recognizes it as certain, is bound to repeat it as certain.

Response. Most more recent authors deny this; but with the older authors and St. Alphonsus (VI, 478), it seems this must be affirmed. The reason is that the declaration of the case which is to be judged as doubtfully existing, and likewise the judgment resting on a declaration of this kind, were notably defective; this seems clear of itself, and is confirmed by the fact that that declaration and judgment did not suffice for imposing a fitting penance, that is, a grave one; for in doubt whether someone sinned gravely, a grave penance is not to be imposed.

Objection 1. One who confessed, for example, "I did that about ten times," and afterward certainly knew that he had sinned eleven times, is not bound to confess that eleventh sin again. But there is complete parity with the case just discussed.

Response. I distinguish the minor: the prior case, namely of a moderate doubtful excess, is equal to the case just discussed if the doubtful excess is considered in itself, I concede; if it is considered as part of the whole case to be judged, I deny. For the human manner in which one must proceed also in sacramental judgment brings with it that one who in good faith declared, for example, that he consented to an evil desire about ten times, is immune from the obligation of supplementing, even if afterward he knows that he consented eleven times; but the same cannot with equal right be said of one who consented once and declared it as doubtful. In conformity with this doctrine, the former according to common estimation is said to have confessed morally integrally; not so the latter (St. Alphonsus, at the cited place).

Objection 2. There is no obligation of confessing what has already been directly remitted. But the sin of which we speak has already been directly remitted.

Response. There is no obligation of confessing what has already been directly remitted if it has also been rightly declared, I concede; otherwise I deny. But the sin of which we speak was not rightly declared. Nor, in order to reject the distinction, should you appeal to canon 901, since it is not judged to settle a controversy among theologians about divine law.[1]

Objection 3. It suffices to have declared the sin as it was in conscience; which took place in the case posited.

Response. It suffices to have declared the sin as it was in a right conscience, I concede; as it was in a very defective conscience, so that a sufficiently right judgment about the existence of the case could not be formed, I deny. But the latter took place in the case posited.

Objection 4. It suffices to have declared sins according to species, number, and circumstances as explained above; this is posited as having been done.

Response. It suffices to have declared sins according to species, etc., provided the very commission of the sin has been duly declared. But that did not take place.

Question 2. Whether one who omitted a circumstance to be declared is afterward bound to repeat the whole sin.

Response. It suffices to expose the omitted circumstance, if the sin arising from the circumstance can be explained in its lowest species without the whole sin being exposed. Hence one bound by a vow of chastity who confessed fornication but omitted the circumstance of the vow satisfies afterward by confessing that he injured the vow; otherwise the whole sin must be repeated. Thus, for example, a married person who confessed mere fornication does not satisfy afterward by adding that he inflicted a grave injury on his spouse, because by this explanation the malice of the injury contained in adultery is not sufficiently exposed.

Note. One who, after receiving absolution, confesses an omitted grave sin is to be absolved again in this very confession. As regards the penance to be imposed, what was said on p. 229 can be observed.

[1] Code of Canon Law, Preface.

322 **IV. One who doubts whether he has confessed a grave sin,** in other words, whether he has fulfilled the precept of integrity, is bound in this way:

1. If he opines that he declared the sin, he is not bound to confess it again (t. I, n. 229). Moreover, one who has diligently received the sacrament can, in doubt, commonly presume or opine that he confessed integrally.
2. If, all things considered, he strictly doubts, he is bound to declare the sin again (St. Alphonsus, VI, 477). This follows from what has been said about doubtful fulfillment of a law (t. I, n. 229). Except, however, the scrupulous, of whom in n. 327.

Scholion. On Injury to Truth in Confessing

323 **I. Truth,** as it is taken here, consists in this: that the penitent declares those things which regard sacramental judgment as they are in conscience. To truth is opposed a lie, by which the penitent, in matter pertaining to sacramental judgment, denies those things which he holds as true or affirms those things which he holds as false.

1. He does not sin against truth, as it is understood here: 1. who lies about those things which do not pertain to sacramental judgment, for example, if someone falsely says that he is from this or that parish; if he falsely responds about those things concerning which the confessor lacks the right of questioning; 2. who confesses light sins to his usual confessor, but as often as he has committed a grave sin goes to another confessor. If he does this lest he expose himself to danger of keeping back the sin, he acts rightly; but badly, if it happens for this end, that he may sin more freely.

2. He sins against truth: 1. who confesses sins which he did not commit, or denies those which he perpetrated; 2. who responds falsely about those things concerning which he is rightly questioned by the confessor.

324 **II. As regards the malice of a lie in confession,** take these things: a lie in a matter pertaining to sacramental judgment involves a twofold malice, one of lying, the other of sacrilege; of sacrilege indeed, because it inflicts injury on the sacrament. The malice of lying is light. But the malice of sacrilege is grave or light according as the penitent deceives the confessor in a grave or light matter. Hence it is grave, for example, if he confesses a mortal sin not committed as committed, or a certainly committed sin as doubtfully committed, or a doubtfully committed sin as certain, although the latter is rather done from simplicity for greater tranquility and therefore subjectively is excused from grave sin; likewise if he declares a sin not confessed as confessed; likewise if, rightly questioned about a grave matter, he says what is false; if he falsely asserts that he grieves over the sins which he has confessed, even if he has declared only one venial sin, because it concerns a matter, that is, contrition, pertaining to validity, and therefore grave. It is light if the penitent, for example, declares a confessed mortal sin as not yet confessed (St. Alphonsus, VI, 495-497, who nevertheless does not agree as regards the malice of lying).

Question. Whether it is ever licit to use in confession a restriction that is not purely mental.

Response. Negatively, if it concerns a matter about which the confessor rightly questions. Otherwise it must be affirmed: and so if the confessor undeservedly asks, for example, whether the penitent has confessed elsewhere, the penitent can respond "Negatively," understanding underneath, for example, "so that I am bound to tell you that."

Point III. On the Causes Excusing from Material Integrity

An intrinsic inconvenience does not excuse, as, for example, shame (t. I, n. 169). Concerning extraordinary shame, confer n. 327. The following excuse:

325 **I. Ignorance of the law and forgetfulness of sin,** provided it is here and now inculpable or at most lightly culpable, for instance when someone after an examination made without grave negligence does not remember some sin. I said "without grave negligence," because light negligence can be combined with ordinary diligence.

326 **II. Physical inability.** 1. The dying and the sick who, even if helped by the confessor, cannot confess integrally at all or can do so only with great difficulty, are excused.

2. The mute and the deaf, who are bound to confess integrally insofar as they can morally do that by words or signs. It is disputed whether the mute are bound to use writing if otherwise they cannot satisfy the precept. Moreover, most more recent authors deny this. But with St. Thomas (In 4, distinction 17, question 3, article 4, solution 3, ad 2) and St. Alphonsus (VI, 479), it seems this

must be affirmed. For only a grave inconvenience, or one extraordinary or unusual with respect to the penitent, excuses from a grave divine precept. But the use of writing neither involves grave inconvenience nor is judged an extraordinary or unusual means of communicating with others with respect to the mute.

Objection. No one is bound to use a means which introduces danger of revelation. But writing is of this kind, since by some accident it can come into the hands of others.

Response. No one is bound to use a means which brings with it danger of revelation worthy of note, I concede; otherwise I deny. But in the case, the danger of revelation attached to writing is not worthy of note, so that not even the burden of undergoing it deserves to be noted. Therefore it does not excuse from fulfilling a grave precept.

A somewhat deaf person should be led into a remote place, unless it is to be feared that bystanders would suspect that he sinned gravely. But this does not take place if deafness is noticed at the beginning of confession; otherwise, for the most part, if it is noticed in the course of confession (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 35).

3. Those ignorant of the language of the confessor are excused if another confessor cannot be had shortly and conveniently. If the confessor does not know only the dialect of the penitent, so that, at least after asking for explanation, he understands several or even many things, it is licit for a lesser cause to hear the confession of the penitent. For the rest, the penitent is not bound to use an interpreter (canon 903), and this holds even if he can easily declare one or another sin through an interpreter, for instance a sin which is already known to the interpreter from elsewhere (St. Alphonsus, VI, 479).

4. Those lacking opportunity of time, for instance when battle or shipwreck is imminent. The same can happen in a hospital, if all, because of the multitude of the dying, cannot confess integrally in time. Likewise the penitent is excused if it is to be feared that the confessor may die or that something grave may happen to him before confession has been integrally completed, and another cannot be approached conveniently and shortly.

A great concourse of penitents does not excuse, as follows from proposition 59 condemned by Innocent XI:[1] "It is licit sacramentally to absolve those who have confessed only by half, by reason of a great concourse of penitents, such as, for example, can happen on the day of some great feast or indulgence."

[1] Denzinger-Bannwart, n. 1209.

327 **III. Moral inability,** which is had when the penitent cannot confess integrally without probable damage, whether spiritual or temporal, extrinsic to confession and proportionate to the gravity of the precept. It is said without probable damage; certain damage is not required, because it is already a grave inconvenience to expose oneself to grave danger. Here are referred:

1. Danger of infamy, for instance if a sick person, for example in a hospital, cannot confess sins without others hearing them; or if someone cannot omit or defer Holy Communion or Mass without notice or scandal, and has committed so many sins that he cannot confess integrally without others suspecting his evil state. Outside this case a lengthy confession rarely brings with it danger of infamy, because all know that confession is often prolonged not at all because of many grave sins to be confessed, but in order to seek counsels, etc.

2. Danger that the confessor will violate the seal; likewise if the penitent by confessing integrally would violate the seal. These will scarcely take place.

3. Danger of a fall arising from diligent examination and recollection of sins.

4. Danger of damage to be feared for a scrupulous person from integral confession (St. Alphonsus, VI, 484-488).

Question. Whether extraordinary shame excuses.

Response. All concede: 1. that those who are more ashamed than others are not excused; 2. that shame which arises from a circumstance commonly occurring does not excuse. But some judge that shame arising from an extraordinary circumstance excuses, for instance if someone had to confess a very disgraceful sin to his nephew. But this opinion seems wholly to be rejected, according to what was said on p. 135.

328 **IV. Damage of the confessor or of a third party to be prevented,** for instance if the penitent is infected with plague, and integral confession would expose the confessor to danger of contagion; or if the penitent fears that by confessing integrally he would create danger of a fall for a confessor inclined to lust (St. Alphonsus, VI, 479; 484-488).

Question. Whether there is an obligation of confessing a sin which cannot be manifested without infamy of the accomplice or of any third party.

Response 1. It must be affirmed if the penitent, independently of the precept of integrity, enjoys the right of bringing infamy on the accomplice or third party, for instance if the accomplice, as regards the crime of which there is question, has been condemned by a judge. The reason is that in the case the natural law of preserving reputation is not opposed to the precept of integrity.

Response 2. Outside the hypothesis posited, it is disputed. Some deny. Others not only deny, but also teach that under light obligation[1] it is illicit to confess a sin of this kind, because the natural law of preserving the reputation of one's neighbor prevails over the law of integrity. Others, whose opinion we embrace, affirm, and judge that the law of integrity, according to the mind of Christ, prevails. For: 1. if the opinion of the adversaries is admitted, provision often would not be made for the prudent ministration of the sacrament. For prudent ministration commonly, as is clear from Trent,[2] requires the manifestation of all sins according to species, number, and circumstances changing the species. 2. If that opinion is admitted, the law of integrity would not rarely become illusory, since especially in smaller places the confessor can easily suspect who the accomplice is, and another confessor cannot conveniently be approached. Add that in antiquity there was the custom, and of itself the obligation, of confessing to the parish priest, who was accustomed to know his subjects and their circumstances. 3. Authors both more numerous and more outstanding in authority adhere to the stricter opinion, for example St. Thomas (in 4, distinction 16, question 3, article 2), St. Alphonsus (VI, 489), St. Bernard,[3] St. Antoninus,[4] St. Bonaventure,[5] Cajetan,[6] Suarez,[7] Lugo.[8]

Nevertheless, the penitent is bound under light obligation,[9] if it can be done conveniently, to approach a confessor to whom the accomplice is unknown. But a just cause excuses from this obligation, as if otherwise the penitent would remain for some time in the state of mortal sin, or would have to abstain from Communion or celebration which he was accustomed to institute daily; if this confessor would be especially useful to the penitent, for instance by affording him greater quiet or consolation; if the penitent would confess with more difficulty to another than to his usual confessor, etc. (St. Alphonsus,

VI, 490). Besides, in practice the confessor can commonly permit penitents to expose sins, and ask them about occasions and circumstances to be confessed, even if from that accidentally he comes to knowledge of the accomplice. Nevertheless, let him generally take care that penitents expose their own sins rather than the sins of others, for example of husband or wife.

Corollary I. In order that it be licit, because of the excusing causes explained above, not to confess integrally, it is required:

1. That there be some necessity or at least a moderate cause of confessing, for instance the precept of annual Communion or confession, or if someone could not omit Communion without notice; likewise the inconvenience of remaining, for instance for a day, in sin, or of omitting Communion which he was accustomed to receive daily (St. Alphonsus, VI, 487).
2. That another confessor cannot be had without grave inconvenience, to whom integral confession can be made without the inconvenience which the penitent intends to avoid.

Corollary II. It is clear: 1. that only that sin can be kept back to the declaring of which the excusing inconvenience is attached;[10] 2. that sins kept back are afterward to be declared if the excusing inconvenience has ceased.

[1] Under light obligation only, because the manifestation of a sin to one man who will keep the secret is light, unless it concerns an enormous crime; or unless the sin is manifested to one from whom it is especially in the sinner's interest that it be hidden, for example to his superior.

[2] Session 14, chapter 5.

[3] *Varia et brevia documenta*, n. 1.

[4] Part 3, title 14, chapter 19, § 11.

[5] In 4, distinction 21, part 2, article 1, question 3.

[6] *Summa*, word *Confessio*, condition 3.

[7] Disputation 34, section 2, assertion 2.

[8] Disputation 16, section 7, n. 394.

[9] Under light obligation, because infamy before one trustworthy man is of itself venially evil.

[10] But it is disputed whether the whole sin or only the circumstance can be kept back if the inconvenience is attached only to the circumstance to be declared. Some teach that only the circumstance can be kept back; others judge that in the case the whole sin can be kept back when afterward the circumstance to be kept back cannot be supplied without the whole sin being exposed. Otherwise, they say, there would be an obligation of confessing the same thing twice. But the controversy is of little practical importance.

Point IV. On the Means of Procuring Integrity, or on the Examination of Conscience

329 **I. The obligation of examining conscience** exists insofar as it is required for confessing integrally. This is clear both from the Council of Trent[1] and canon 901, and from the fact that one who is bound to the end is also bound to the means.

[1] Session 14, chapter 5 and canon 7.

330 **II. Required diligence.** Ordinary or moderate diligence suffices, that is, such as a prudent man is accustomed to employ in a serious matter. It suffices even if someone judges that by examining conscience longer and more diligently he would remember more sins. Nevertheless, diligence depends

on the capacity of the penitent, on the moral state of the soul, on the time concerning which the examination must be instituted, etc. (St. Alphonsus, VI, 471).

Question. Whether the penitent is bound to write down sins if otherwise he is exposed to grave danger of not confessing integrally.

Response. Negatively, because ordinary or moderate diligence suffices for knowing and retaining sins in memory. But writing exceeds the limits of ordinary diligence. Besides, very many men who confess rarely are in the said danger, and therefore, if the stricter opinion is admitted, they would be bound to writing. Now, from frequent use of that means so many inconveniences would follow - especially the manifestation of written confessions, which from carelessness, etc., would fall into others' hands - that that use cannot be held as prescribed.

331 **III. Causes excusing from diligent, or at least from more accurate, examination of conscience** are sufficiently clear from what has been said about the causes excusing from integrity. Thus, for example, the same examination is not required for the sick as for the healthy (St. Alphonsus, VI, 471). Add that one who arranges with the confessor about questioning can lessen diligence in examining, because examination is required only as a means.

Corollary I. Writing is generally also to be discouraged, except sometimes once or twice in life, when someone is about to institute a general confession.

Corollary II. One who is morally certain that he does not have necessary matter is not bound to examination; nevertheless it is advised, namely so that he may better know and uproot venial defects. Besides, let penitents not examine themselves longer either about doubtful sins or about temptations against chastity; it is better, with further examination omitted, to confess doubtful sins as doubtful.

Corollary III. One who is bound under grave obligation to diligent examination, and, after neglecting it, confesses, receives the sacrament invalidly and sacrilegiously if he sufficiently adverts to the grave defect; this rarely happens, so that confessions are rarely to be repeated precisely for that reason.

Corollary IV. Uneducated penitents who in confession are found to have examined their conscience negligently should commonly not be sent away so that they may examine themselves more diligently; rather the confessor himself should examine them (St. Alphonsus, VI, 471). The same holds concerning penitents who are found by the confessor to have kept back sins and not to have examined themselves regarding past sins.

Scholion I. On Repeating Confessions in General

332 **Preliminary I.** The obligation of repeating confessions in which necessary matter is involved can arise from a defect either of validity or of integrity, for instance if someone previously confessed sins without species and number, or if the confessor, because of deafness or sleep, did not hear or understand the things confessed.[1] But an invalid confession can be either simply invalid, or invalid and sacrilegious. It is also sacrilegious at the same time when the penitent sinned gravely in the very reception of the sacrament.

Preliminary II. Defect of validity can come:

1. From the confessor, for example if he lacked jurisdiction, if he omitted the form or changed it substantially.

2. From the penitent, for example if he was ignorant of things to be known and believed by necessity of means, if he lacked contrition or purpose, if in bad faith he kept back a grave sin.

[1] In the case, for the most part at least generic confession is had, so that one cannot seriously doubt about validity.

333 **I. The obligation of repeating confessions is had:**

1. If someone confessed very incompletely, that is, without species and number. Nevertheless, this is not presumed, since the confessor must be presumed to have helped the penitent sufficiently.

2. If it is morally certain that someone confessed invalidly, as if someone continually and in the same way relapsed into a habit.

3. **Disputation 1.** Whether one who doubts whether he confessed invalidly is bound to repeat confessions. Moreover, it seems it must be said thus:

a) If the doubt about validity comes from doubt about the way in which someone confessed, for example whether with true contrition, the penitent is not bound to repeat the confessions, because he can presume that he confessed rightly according to that principle: in doubt, what has been done is presumed to have been rightly done (St. Alphonsus, VI, 505).

b) If the doubt does not come from doubt about the way in which someone confessed, but from the fact that it is doubted whether confession instituted in that way is valid,[1] the penitent seems to be bound to repeat the confession. For then there is no reason for presuming that the confession was valid, so that it is truly doubtfully valid and remains so. But one who, all things considered, seriously doubts whether he confessed validly seems to be bound to repetition. For one who certainly sinned gravely must take care that he enjoys, at least with moral certainty, the means prescribed of itself for obtaining pardon, that is, direct absolution from sin, or such an absolution as the sacrament of Penance confers by reason of itself, not merely insofar as remission of one mortal sin necessarily brings with it the expulsion of the others. But in the hypothesis posited direct absolution from sins is uncertain and remains uncertain until the sins are again subjected to the keys (St. Alphonsus, II, 2; VI, 450).[2] Whether in a following confession the sins must again be declared distinctly, or whether it suffices to confess them generally, draw from what is to be said in n. 334.

4. **Disputation 2.** How far there is an obligation of repeating confession if the confessor, because of deafness or sleep, understood the things confessed only in part. Now:

a) if the penitent knows which sins were not understood, he is bound to repeat these (n. 397).

b) if the penitent does not know that, he is bound to repeat the confession if it was brief, because as regards the individual sins he doubts whether they were understood; nor is there an inconvenience which excuses. But if the confession was long, the inconvenience of repeating it and consequently many sins already confessed and understood seems to excuse from integrity, or from renewing a distinct confession; and it suffices that the penitent declare in general that there are certain sins which the confessor did not perceive (St. Alphonsus, VI, 499).

[1] For instance, if someone, having confessed two sins, was contrite solely from a particular motive of one sin; or if he confessed while ignorant of the mysteries which probably must be known by necessity of means.

[2] What St. Alphonsus teaches here coheres very well with what is said in book VI, n. 595, where he teaches that the faithful are not to be compelled to repeat confessions unless it is morally established that they were invalid. The latter is generally true, and therefore can be stated in that way; but in the exceptional case discussed by the Holy Doctor in book II, n. 2, the principle cannot be applied, as otherwise it commonly can: in doubt one must stand for the validity of the act.

"If," Gaude adds, "there were a contradiction between the two places, those things which are handed down in the present place would certainly seem to be preferred, and it is clear that the Holy Doctor changed his opinion on this matter. For what is here asserted about necessarily repeating confession is absent in the first five editions of the *Theologia Moralis*, and is first found in the sixth edition printed in 1767; whereas, on the contrary, the doctrine taken from the tract on Penance had already obtained a place in the earlier editions of the *Theologia Moralis*" (note in this place). But, as I noted, there is no contradiction.

334 **II. The manner of repeating confessions.** 1. If the repetition is made before the same confessor before whom the invalid confessions were made, then:

a) If the confessor has retained at least confused knowledge of the state of the penitent, it suffices, as regards the sins confessed, that these be subjected to the keys by a general accusation. For in the case there are had, or rather previously were had, confession and distinct judicial knowledge; besides, here and now there are had confession at least generic and confused judicial knowledge. That more is required is commonly and quite soundly denied. Note also that confused knowledge can sometimes be gathered from the penance itself imposed and retained in memory (St. Alphonsus, VI, 502).

b) If the confessor has not retained even confused knowledge, nor can gather it from the penance imposed and known, it suffices, but more probably is also required, that he resume confused knowledge; or that the penitent again expose in a confused way the sins previously confessed, for example by saying that he sinned against chastity, temperance, justice, religion. That this suffices is clear from what was said under a). That this is required, with St. Alphonsus (VI, 502) against several more recent authors,[1] we hold as more probable, and indeed: 1. because sentence does not seem to be pronounced unless the judge has at least confused knowledge of the state of the penitent, that is, has retained it or now resumes it; 2. because otherwise a sufficiently fitting penance cannot be imposed.

2. If the repetition is made before a different confessor, the confessions must be repeated integrally. The reason is that the confessor who pronounces sentence must have or have had distinct judicial knowledge of the sins. Nevertheless, sometimes it will suffice to question the penitent, for example, about the last year; namely if, because of a uniform manner of life, a sufficient judgment can at the same time be formed about the preceding years - that is, one equal to what would be obtained by a repetition of the confessions. The same is to be applied if the confessor, after hearing the confession of the last year, detects a defect of past confessions; in which case it suffices that the confessor has retained knowledge of the sins heard, and from that knowledge forms a sufficient judgment about the past years. In either case, however, let the penitent accuse himself in a general way concerning the preceding years (St. Alphonsus, VI, 504).

Corollary I. Whether the repetition is made before the same confessor or before a different confessor, those things which perhaps were lacking to integrity in the prior confessions must always be added by the penitent. Besides, if the prior confessions were sacrilegious, let the penitent declare how often he received the sacrament of Penance and Holy Communion, likewise whether he received other sacraments, namely Confirmation, Matrimony, Extreme Unction; finally whether and how often he injured the precepts of annual Confession and Communion, whether by neglecting them or by receiving the sacraments sacrilegiously.[2]

Corollary II. It sometimes happens that prior confessions were invalid, but not later ones; for instance if the penitent at first confessed without contrition but in good faith, and afterward with due disposition; likewise if at first sacrilegiously, but afterward, having forgotten the sacrilege, he validly

received the sacrament. Now it is clear that these things are to be attended to in the repetition of confessions.

[1] They say that it suffices that the confessor remember that this penitent had confessed and been judged.

[2] Many, however, are ignorant that by sacrilegiously receiving the sacraments they injure that twofold precept.

Scholion II. On General Confession

335 **I. Notion.** General confession is that by which several confessions previously instituted are repeated. It can comprehend either one's whole life or a notable part of it.

336 **II. How far is it to be instituted?** 1. It is necessary for those who have confessed either invalidly, whether simply invalidly or at the same time sacrilegiously, or very incompletely (n. 332); likewise in the doubt about the validity of confession discussed in n. 333.

2. It must be prohibited to the scrupulous, and to those for whom the recollection of sins would become a danger of relapse or of grave temptations. If, however, the necessity of general confession were established, let it be prudently instituted. Cf. nevertheless, as regards the scrupulous, what was said in n. 327.

3. It is useful: 1. in doubt about the nullity of confessions; 2. on the occasion a) of solemn First Communion; b) of the choice of a state of life, whether conjugal, religious, or clerical through Major Orders; c) of spiritual exercises or a Mission,[1] at least from the last general confession; 3. in dangerous illness. But the choice of a new confessor commonly is not a reason for instituting a general confession. Besides, it can easily be permitted that sins of past life be repeated summarily.

[1] Postulants, before they begin the novitiate, "according to the prudent judgment of the confessor, should premise a general confession of their past life" (canon 541).

337 **III. The manner of receiving it.** 1. **Things to be premised.** First let the confessor inquire whether or not general confession is necessary,[1] and therefore in a friendly way ask the penitent for what reason he desires to institute a general confession. Next, let him inquire into the age and state of the penitent, especially whether he is married, whether he is being courted or seeking marriage; likewise sometimes about satisfactions fulfilled. Finally, let him ask whether the penitent would prefer to make the confession himself or to be questioned.

2. **Things to be observed in confession.** First let inquiry be made into sins committed after the last confession. When this has been done:

a) According to some, it is better to divide life into diverse epochs, for instance from infancy up to the choice of a state of life, etc., and to question separately about the individual epochs. According to others, it is more expedient, or equally expedient, to question about sins in one continuous course, meanwhile taking account of the diverse epochs. According to others, the questioning should be made about the sixth precept according to the diverse epochs, and about other sins in one continuous course.

b) In questioning, let a definite order be observed, for instance by successively inquiring into sins against: 1. the precepts of the Decalogue; 2. the precepts of the Church; 3. the duties of one's state. Others refer all sins to the Decalogue. If, however, it is clear that the penitent has kept back some sin, let him first be questioned about this. Besides, it is generally better at the beginning of confession to

inquire into sins against the sixth precept, especially if the confessor suspects that the penitent has not led a chaste life.

For the rest, let each confessor set before himself a definite order which he will observe. The questions to be proposed can be compared in Aertnys.[2]

3. **Things to be added.** At the end let him ask the penitent whether any anxiety of conscience remains, and let him render him entirely at peace.

[1] If general confession is not necessary, the confessor can moderate the questions; but let him proceed in such a way that the penitent does not notice this; hence let him not strive to finish everything very quickly, lest he leave the penitent anxious and not content.

[2] *Theologia pastoralis*, nn. 247-256.

Scholion III. On Venial Sins to Be Confessed and on Doubtful Matter Alone Confessed

338 **I.** Since venial sins indeed can be declared (n. 294), but do not necessarily have to be declared, there is no obligation of declaring them according to species and number. Nevertheless, that they be manifested at least according to species is greatly to be advised because of the reasons alleged in n. 310. Indeed, it can happen that the confessor must ask about species and number, namely so that he may judge concerning the disposition of the penitent, or so that he may know whether, because of coalescing matter, a grave sin has been committed or a grave obligation of restoring has arisen. But the penitent, rightly questioned, is bound to respond.

339 **II.** A penitent who confesses only doubtful matter or doubtful mortal sins, after certain and more or less determined matter has been sought, is absolved absolutely. If matter more or less determined cannot be obtained, let the penitent, after a generic confession of all sins has been sought, be given absolution (n. 310).

Chapter III. On the Form, or on Absolution

340 The form of the sacrament of Penance is: I absolve thee from thy sins in the name of the Father, and of the Son, and of the Holy Spirit. Amen. This, however, together with the things to be added, is related thus by the Roman Ritual:[1]

"May almighty God have mercy on thee, and having forgiven thy sins, bring thee to eternal life. Amen.

Then, with the right hand raised toward the penitent, he says: May the almighty and merciful Lord grant thee indulgence, absolution, and remission of thy sins. Amen. May our Lord Jesus Christ absolve thee, and I by his authority absolve thee from every bond of excommunication, suspension, and interdict, insofar as I can and thou needest.

Then I absolve thee from thy sins, in the name of the Father, and of the Son, and of the Holy Spirit. Amen.

If the penitent is a layman, the word suspension is omitted. But a bishop in absolving the faithful makes the sign of the cross three times.

May the Passion of our Lord Jesus Christ, the merits of the Blessed Virgin Mary and of all the Saints, whatever good thou hast done and whatever evil thou hast sustained, be unto thee for remission of sins, increase of grace, and reward of eternal life. Amen.

For a just cause the *Misereatur*, etc., can be omitted, and it is enough to say: May our Lord Jesus Christ, etc., as above, up to that part: May the Passion of our Lord, etc.

But when some grave necessity presses in danger of death, the priest will be able to say briefly: I absolve thee from all censures and sins, in the name of the Father, and of the Son, and of the Holy Spirit. Amen."

As regards the prayers attached to the formula of absolution, canon 885 says this: "Although the prayers attached by the Church to the formula of absolution are not necessary for obtaining absolution itself, nevertheless, unless for a just cause, let them not be omitted."

[1] Title III, chapter 2.

341 **I. The essentials of the form.** 1. Certainly these suffice for validity: I absolve thee from sins. It is disputed whether these suffice: I absolve thee; and: I absolve from thy sins. The words *I, in the name of the Father and of the Son and of the Holy Spirit*, and *Amen* oblige, but only under venial sin.

2. The formula by which the form is uttered must be formally, or as regards sense, indicative, and not only formally deprecative; in other words, the priest must manifest that by ministerial power he imparts remission to the penitent, and not only signify that he prays for remission from God for the penitent. The reason is that absolution is a judicial act; a mere prayer is not of this kind.

Question. Whether a formula grammatically, that is, considering the words alone, deprecative can be valid.

Response. Affirmatively; for: 1. A formula of this kind can, from the circumstances - others say, from use approved by the Church - have an indicative sense, or exhibit a judicial sentence; for instance, if there is a use of uttering the said formula with the intention of remitting sins. But from no head is it clear that more is required; in other words, that a formula is required which is also grammatically indicative. 2. A formula grammatically deprecative was used quite commonly in the Eastern Church, and is even now used; and the same use flourished for centuries in the Latin Church.

In the Latin Church the indicative formula has been prescribed; hence a formula grammatically deprecative is illicit. Whether it is also invalid is not clear from what has been said above.

3. The sense of the form or of absolution is presented in different ways by different authors. Some state the sense thus: I remit sins to thee. But the sense must, if the sacrament is received validly, always be verified. But the aforesaid sense is not verified: 1. if the sacrament remains *informe*; 2. if absolution regards sins already remitted. For it is repugnant that sins already remitted or deleted be remitted or deleted again. This cannot happen except in appearance. Indeed, it is objected that a father can say to his son: "Again I remit everything to thee." But the said words effect nothing, and are merely a new sign of a remission already carried out; and if the matter concerns the form of a sacrament, this does not suffice. Others present the sense of absolution with these words: I confer upon thee grace of itself remissive of sin. But this sense also is not verified in an *informe* sacrament. Others speak thus: I bestow upon thee the sacramental title of absolution. But this opinion rests on the doctrine of intentional causality, which is less pleasing according to what was said in the treatise on the sacraments in general. Therefore the sense seems to be: I confer upon thee, as much as is on the part of the sacrament, absolution from sin; or: I confer upon thee a sacrament of itself absolving from sin; or, as St. Thomas speaks: I "bestow upon thee the sacrament, understand: of itself, of absolution" (3 p., question 84, article 3, ad 5). This sense is verified even in an *informe*

sacrament; likewise if the matter concerns sin already remitted. For the sacrament can be of itself absolving from sin, even if sin is not actually remitted, as in an *informe* sacrament, or when it has already been remitted.

342 **II. The accidentals of the form.** 1. The words *Misereatur*, etc., *Indulgentiam*, etc., and *Passio Domini*, etc., according to the Roman Ritual cited above and canon 885, can be omitted for a just cause, for instance, as earlier editions of the Ritual have it, if confessions are more frequent and briefer; indeed, from the fact that Trent[1] says that prayers are laudably added, they can quite probably always be omitted without sin (St. Alphonsus, VI, 430, doubt 3). The same can be said of the raising of the hand, to be continued from the word *Indulgentiam* up to *Passio Domini*, and of the sign of the cross. Nevertheless, commonly one should not depart from the rubric.

2. Absolution from censures must be premised to absolution from sins; and indeed under grave obligation if the confessor holds at least as probable that the penitent is bound by a censure which prohibits reception of the sacrament. One who by a single formula absolved from censures and from sins would sin only lightly, provided he intended to absolve first, in order, from censures; indeed, quite probably he would not sin if no probable suspicion is present that the penitent has incurred some censure (St. Alphonsus, VI, 430, doubt 4).

3. The word *suspension* should be omitted if the penitent is a layman. The word *then*, previously printed in authentic editions sometimes in red, sometimes in black type, in later editions is printed in black type, so that now it cannot be held as a mere rubric, but must be expressed. To omit it is venial, just as to omit the words *in the name of the Father, and of the Son, and of the Holy Spirit. Amen.* The words *whatever good thou hast done*, etc., *may it be unto thee for remission of sins*, according to St. Thomas (Quodlibet 3, article 28) and others, while others contradict, elevate all the good works of the penitent to sacramental satisfaction, provided the confessor intends this, at least implicitly, by intending to benefit the penitent as much as he can.

4. Where there is a custom that the penitent before confession asks for a blessing, let the confessor impart it, saying: May the Lord be in thy heart and on thy lips, that thou mayest rightly confess thy sins.

[1] Session 14, on Penance, chapter 3.

343 **III. The manner of uttering the form.** It is required:

1. For validity, that the form be uttered: 1. by voice; 2. upon one physically or corporally present.

a) **By voice.** "The form of this sacrament," says the Synod of Florence, "is the words of absolution which the priest utters when he says..." Universal Tradition is added. Therefore absolution given by letters or by a nod is not valid.

b) **Upon one physically present.** For from the decrees of Clement VIII and Paul V, of which we spoke in n. 312, it is licit in no case to give absolution to one absent; the sole reason of which absolute prohibition can be that absolution of this kind is invalid. It is added that sacramental judgment is judged to have been instituted as human judgments were and are accustomed to be exercised, and as it is fitting that they be exercised. But human judgments were and are accustomed to be exercised among those physically present, and it is fitting that they be exercised thus.

Moreover, the physical presence which is required must be taken morally, so that that presence suffices within which men can speak with one another in a common voice, even if a louder one. A distance of about twenty paces, considering distance alone, according to St. Alphonsus, is not opposed to validity. For the rest, note: 1. It very probably does not suffice that the penitent be seen by the confessor, because from that he is not constituted present; 2. if the penitent and confessor are in different rooms, absolution will more easily be invalid; 3. in order that absolution not be certainly invalid, such presence suffices that, if there were no impediment, the penitent could be perceived by some sense; 4. if the required presence is present, it is not required that the confessor actually see the penitent or perceive him by some sense (St. Alphonsus, VI, 428, 429); 5. if the discussion concerns absolution of a continuous multitude, presence can be taken in a broader sense; indeed, in the case nothing seems to prevent many from being far off, provided the multitude as such is near.

Corollary I. If a penitent not yet absolved has departed from the confessional, let him be absolved if he is seen nearby or is known not to be far away. Nevertheless, it is better that he be recalled, if it can conveniently be done. If the confessor because of danger of infection or another cause cannot enter the room of the sick person, let him absolve him from the doorway. If someone seems to be falling from a roof or into a river, let him be absolved under condition (St. Alphonsus, VI, 429).

Corollary II. Absolution given by telephone is very probably invalid. For truly and according to common estimation there is speech between those physically absent. This is confirmed by the fact that not even that is present which according to some constitutes sufficient presence; in other words, not even the voice itself, but, as in the phonograph, only a reproduction of the voice is heard. Nevertheless, until the authority of the Church has settled the question,[1] I would not condemn one who in a case of necessity absolves under condition by means of the telephone.

Corollary III. Absolution given through an ear-tube is commonly doubtfully valid. In the case the human voice indeed is heard; but it is doubtful whether conjunction through an ear-tube and the human voice renders persons staying in different rooms or places of the house sufficiently present. Hence in a case of necessity absolution should be granted under condition.

[1] The Sacred Penitentiary, to the question "whether in a case of extreme necessity absolution can be given by telephone," on July 1, 1884, responded: "nothing is to be answered."

344 **2. For liceity,** it is required that absolution be conferred: 1. only upon those who enjoy the right of receiving it, as will be explained afterward; 2. absolutely or under condition, as follows:

a) Absolution, if it is conferred, must be conferred absolutely when it is at least morally certain that the requisites for the validity of the sacrament are present. Broader moral certainty suffices (n. 398).

b) Absolution can and must be conferred under condition if it is seriously doubted whether it can be conferred validly, but grave damage threatens the penitent if it is denied; if lesser damage threatens, absolution can be given but need not be given (St. Alphonsus, VI, 431).

c) The sacrament should be conferred under the condition *if thou art capable* rather than under the condition *if thou art disposed*.[1] The reason alleged is that in this way better provision is made for the validity and reviviscence of the sacrament. For according to many, less is required for capacity of receiving the sacrament than for the required disposition by which it is fruitfully received (n. 299). And so it can happen that the sacrament conferred under the condition *if thou art capable* is validly ministered, and afterward, when the required disposition arrives, revives; the sacrament, I say, which,

conferred under the condition *if thou art disposed*, would be conferred invalidly and therefore could not revive. Moreover, these things are true if by the condition *if thou art disposed* is understood: if thou art disposed to receive the sacrament fruitfully. For the rest, it also suffices to confer the sacrament "according to the mind of Christ or of the Church"; nor is it required that the condition be stated in words, but it suffices to have conceived it mentally.

Corollary I. Absolution under condition can and must be conferred:

1. If the confessor doubts whether he absolved a penitent who confessed a grave or doubtfully grave sin. If the penitent confessed only venial sins, the confessor can, but need not, absolve him under condition; in other words, he can prefer either the convenience of the penitent or the reverence of itself belonging to the sacrament. For the rest, in doubt about absolution having been given, it can commonly be presumed that it was granted.
2. In doubt whether the penitent still lives; whether the dying person, deprived of the senses, is Catholic, or at least enrolled in a sect which admits the sacrament of Penance.
3. In doubt about sufficient use of reason in children and in the half-witted, if they have probably sinned gravely. If this is not probable, absolution should at least sometimes be conferred.
4. In doubt about necessary remote matter, for example if the penitent has confessed only a doubtfully grave sin and certain matter cannot easily be obtained. If there is doubt about free remote matter, in other words, if the penitent has confessed only a doubtfully sinful act and certain matter can be had with difficulty, absolution should be granted at least sometimes. But these things are almost merely theoretical, since, at least by means of generic confession, matter sufficiently certain can commonly be obtained.
5. In doubt whether the penitent who confessed mortal sins is disposed, let him be absolved, as will be explained afterward.
6. In doubt about the required presence (St. Alphonsus, VI, 432; *Homo Apostolicus*, tract XVI, n. 9).
7. In doubt whether the confessor enjoys jurisdiction over the penitent, according to what is to be said afterward.

Question 1. Whether a penitent absolved under condition must be warned about repeating confession.

Response. Affirmatively, if it can be done prudently. But commonly an admonition of this kind will give occasion to anxieties of the penitent and perplexities of the confessor. But sins perhaps not remitted will be remitted in the following valid confession. Sometimes, however, it can be done prudently if the penitent is absolved under condition because of doubtful jurisdiction of the confessor.

Question 2. Whether a penitent absolved under condition can be admitted to Holy Communion.

Response. Strictly speaking, he cannot be admitted to Holy Communion, because he probably remains in a mortal state. Nevertheless, prudence will commonly advise that the confessor be silent (St. Alphonsus, I, 51).

[1] Formerly some taught that absolution conferred under the condition *if thou art disposed* is always invalid. But this opinion is now commonly rejected (St. Alphonsus, VI, 432).

Chapter IV. On the Integral Part, or on Satisfaction

We shall speak first of the notion and efficacy of satisfaction, then of the power and obligation of imposing satisfaction, and then of the obligation of accepting and fulfilling satisfaction.

Article I. On the Notion and Efficacy of Satisfaction

The discussion concerns actual satisfaction, not satisfaction insofar as it is only in purpose.

345 **I. Notion.** What satisfaction generically taken is has been said in t. I, n. 979. But sacramental satisfaction is compensation for temporal punishment owed because of sins, through an afflictive work. Therefore sacramental satisfaction is not a prayer which someone says in place of a penance he has forgotten. Nor does it suffice that the confessor afterward ratify that prayer, because satisfaction must be imposed before it is performed.

346 **II. Efficacy.** Sacramental satisfaction compensates for, and thus removes, temporal punishment not only *ex opere operantis* but also *ex opere operato*. The reason is that the said satisfaction is not only a salutary and meritorious act, satisfying *de condigno* for some remaining punishment, but also an integral part of the sacrament; in other words, satisfaction effects that the sacrament be an efficacious sign of integral, or more perfect, remission, or remission extending itself to the debt of remaining punishment. But through sacramental satisfaction so much punishment is removed as corresponds to the satisfaction performed, so that by a heavier penance more, and by a lighter penance less, of the punishment owed is remitted.

It is disputed whether actual satisfaction also increases sanctifying grace *ex opere operato* (cf. St. Thomas, 3 p., question 90, article 2, ad 2).

Article II. On the Power and Obligation of Imposing Satisfaction

347 **I. Power and obligation of imposing satisfaction.** The ministers of the sacrament of Penance can and of themselves must impose satisfaction. This is clear: 1. from the Council of Trent[1] and from canon 887; 2. from the universal and constant practice of the Church, which is shown in penitential books, rituals, and testimonies of Councils[2] and of the Holy Fathers;[3] 3. from theological reasons. For the confessor must, as judge, punish the accused, and, as physician, provide medicine to him; these things are done through the imposition of vindicative and medicinal satisfaction[4] (St. Alphonsus, VI, 506).

I said that the confessor of himself must impose satisfaction, because accidentally he is not bound when the penitent cannot perform any satisfaction; this, however, scarcely happens except in one dying, deprived of the senses, or lacking mental power. Those gravely sick commonly can fulfill at least a very slight satisfaction, so that very rarely is there a cause excusing from all satisfaction (St. Alphonsus, VI, 507).

[1] Session 14, canon 15 and chapter 8.

[2] Cf. Council of Laodicea (372), canon 2 (Harduin, t. 1, col. 1531); Third Council of Carthage (397), canon 31 (Harduin, t. 2, col. 1404).

[3] Cf. dogmatic theologians.

[4] Council of Trent, at the cited place.

348 **II. How much satisfaction is to be imposed?** This can be deduced from these words of the Council of Trent: "Therefore the priests of the Lord, so far as spirit and prudence shall suggest, ought, according to the quality of the crimes and the capacity of the penitents, to enjoin salutary and fitting satisfactions, lest, if perhaps they connive at sins and deal too indulgently with penitents by enjoining certain very light works for very grave offenses, they become participants in others' sins."[1] These words of canon 887 correspond to them: "According to the quality and number of sins and the condition of the penitent, let the confessor enjoin salutary and fitting satisfactions." Therefore satisfaction must be in some way proportioned to sins. Hence:

1. Let a light satisfaction be imposed for free matter, that is, for venial sins and for mortal sins already declared;[2] a grave satisfaction for necessary matter, that is, for a mortal sin not yet declared. Thus at least generally: since, if a penitent who confessed a mortal sin omitted a grave sin because of forgetfulness, it seems that a light satisfaction can be imposed afterward on one confessing the omitted sin. Besides, for a greater number and gravity of sins let the satisfaction be increased, but not arithmetically.

A work is judged grave which, if it were commanded by the Church, would oblige under grave obligation, for example hearing Mass, a rosary of five decades, the Litany of All Saints, abstinence or fasting of one day. Some judge that grave satisfaction is already contained in a prayer which is equivalent to a Little Hour of the divine office, because sacramental satisfaction has greater dignity and force by reason of the sacrament of which it is an integral part. But that greater force and dignity does not seem to be considered, because satisfaction must primarily compensate for the injury inflicted on God, or primarily be vindicative or punitive, so that the punitive force must primarily be regarded, not the force that deletes punishment. It is added that almost all authors require heavier matter for grave satisfaction.

2. As regards the gravity of the obligation of imposing proportionate satisfaction, take these things:

a) By the consent of all, one who imposed no satisfaction, or a very slight satisfaction, for very grave sins would sin gravely. The reason is that proportion is notably lacking.

b) According to most authors, one who enjoined no satisfaction for a mortal sin would sin gravely. The reason is that also in this case proportion is notably lacking. It is added that the sacrament is deprived of an integral part, and a grave one.

c) It is more disputed whether one who enjoined a light satisfaction for a grave sin would sin gravely. Moreover, it seems this must be affirmed, because also in this case proportion is notably lacking; indeed, morally speaking, it is equally or almost equally absent as in the case in which no satisfaction is imposed for a grave sin.

Objection. The more benign opinion is more conformable to the words of Trent cited above, which indicate that one sins gravely only when a very slight satisfaction is imposed for very grave sins.

Response. The words of Trent can well be taken by way of example.

d) Besides, it is asked whether a confessor who imposes no satisfaction for light matter sins gravely. Some affirm, because he deprives the sacrament of an integral part, which seems grave. Others sufficiently probably deny this, because it does not seem grave to deprive the sacrament of a complement or light integral part.

e) Finally, of itself, one who imposes a simply grave satisfaction for very grave sins sins lightly.

[1] Session 14, chapter 8.

[2] It is disputed whether the confessor can sometimes impose grave satisfaction for light sins which strongly dispose to mortal sin; likewise for mortal sins already remitted, for which worthy penance has not been performed (cf. St. Alphonsus, VI, 517). Whatever the case may be, certainly from elsewhere there is an obligation of employing the means necessary for avoiding mortal sin.

349 **III. What kind of satisfaction is to be imposed?** The Council of Trent[1] teaches thus: "Let them have before their eyes that the satisfaction which they impose be not only for the protection of new life and as a remedy of infirmity, but also for the vengeance and chastisement of past sins." Add canon 887 cited in n. 348. Therefore satisfaction vindicative, medicinal, and fitting for the penitent must be imposed; in other words, such as is punitive as regards committed sins, preservative as regards future ones, and congruous to the state and circumstances of the penitent. For the rest:

1. All good works can be imposed, even:

a) Internal works, since by the imposition of the confessor and the acceptance of the penitent they are sufficiently sensible so that they can be an integral part of the sacrament (St. Alphonsus, VI, 514, doubt 1). Nevertheless, meditation should not be imposed on those little accustomed to it, because it is too difficult and would give occasion to scruples.

b) Works to be applied for the dead or for others; in which case the satisfactory force which belongs to the said works *ex opere operantis* is granted to the dead or to others; that which belongs to them *ex opere operato* comes to the penitent (St. Alphonsus, VI, 514, doubt 2).

c) Works owed from elsewhere; for nothing prevents them from being elevated by absolution to sacramental satisfaction. Nevertheless, it is not expedient to impose works of this kind except because of the fragility of the penitent. Besides, an intention of imposing a voluntary work is presumed in the confessor, unless the contrary is understood from the circumstances (St. Alphonsus, VI, 513, doubt 1).

d) Abstinence from some good work, because abstinence can become an act of obedience or of another virtue (St. Alphonsus, VI, 514, doubt 3). Nevertheless, abstinence from Communion should not be imposed, both lest someone be impeded from frequent Communion, and because the fruit of the sacrament is to be preferred to the said acts of virtues.

e) Whether a work to be fulfilled if the penitent relapses can be imposed as the only satisfaction is disputed. With St. Alphonsus (VI, 524) and others, it seems this must be denied, because satisfaction must be performed certainly or absolutely. The adversaries indeed say that in the case the greater effort itself to guard against relapse is for satisfaction. But it is supposed that a work to be fulfilled if the penitent relapses is imposed; not, however, that greater effort, so that this cannot be for satisfaction. Nevertheless, St. Alphonsus grants with others that to proportionate satisfaction there can be added the precept of fulfilling some work if the penitent relapses.

f) Whether a work to be fulfilled only by counsel can be validly[2] imposed is likewise disputed. But with St. Alphonsus (VI, 518) we have denied it, because the act of imposing satisfaction is primarily a punitive or vindicative act. But the nature of a punitive act implies that punishment is truly imposed, not merely counseled. The adversaries object that the act of designating a punishment and elevating it to sacramental dignity is an act of jurisdiction. Let that pass; but, as follows from what has been said, it is not an act of jurisdiction such as the imposition of satisfaction requires, that is, a punitive act.

2. Certain works cannot be imposed, or at least should not be imposed, as follows:

a) A public work which suggests suspicion of a grave sin committed cannot be imposed for hidden sins; both because the Roman Ritual prohibits it,[3] and because it harms the reputation of the penitent. But a public work can be imposed for public sins, as Trent[4] and chapter 1, *De poenitentiis et remissionibus*, teach. Nor should it be objected that a public work could suggest suspicion of a confessed sin and therefore violation of the seal. For observance of the seal forbids only an act of the confessor which suggests suspicion of a confessed sin, not cooperation in an act of the penitent which brings with it the said suspicion and, as posited by the penitent himself, cannot be opposed to the seal (St. Thomas, in 4, distinction 14, question 1, article 5, solution 1; St. Alphonsus, VI, 511, 521). "For the rest, if public penance is not so necessary, they rightly say... that the confessor should not impose it on one resisting, since otherwise the salvation of the penitent and the repair of scandal can be obtained, namely through public frequenting of the sacraments, visitation of churches, hearing of Masses, entrance into some Congregation where works of piety are exercised, and similar things" (St. Alphonsus, VI, 512).

b) The religious state and matrimony cannot be imposed, because they require complete freedom. Besides, to impose the religious state can be dangerous for the penitent. Nevertheless, matrimony is very much to be counseled to many (St. Alphonsus, VI, 511).

c) Works to which the penitent is opposed, or which there is danger of omitting; hence, for example, it should commonly not be imposed on children that they ask pardon from their parents (St. Alphonsus, *Homo Apostolicus*, tract 16, 52-54).

d) Longer works, for example for two months, or complicated works, or uncertain and not sufficiently defined works, such as to tolerate adversities patiently (St. Alphonsus, at the cited place).

3. The following can opportunely be imposed, for example: 1. "Hearing Mass, the Rosary, the Way of the Cross, though the latter two should not be enjoined on those to whom they are unfamiliar, almsgiving, Penitential Psalms, Litanies, meditations, pious readings, etc. 2. On individual days through one or another week, or through a month, to pay certain prayers, for example, the Angelic Salutation three times morning and evening. St. Alphonsus was accustomed generally to enjoin, or at least to counsel, this penance with the invocation: 'Through thy Immaculate Conception, O Mary, make my body pure and my soul holy,' to those who were not accustomed to frequent those prayers. Besides, 3. for a fixed time every evening to elicit an act of sorrow and every morning to renew the purpose of abstaining from such a sin. 4. Besides the satisfaction imposed absolutely, to fulfill some penance as often as the penitent has relapsed into some sin, for example, the Litany of the Blessed Virgin Mary, five Our Fathers and Hail Marys, some alms; for it helps much toward restraining an evil habit. Nevertheless, this penance is to be enjoined only for a brief time, because of danger of neglect, for instance for a month, until the next confession. 5. Within a determined time to confess again, and, if it is expedient, to communicate; unless, however, danger of omission stands in the way, as will not rarely happen; then it is better to exhort urgently to frequenting the sacraments. Wherefore it must be kept before the eyes that, although of itself it would be greatly advantageous to enjoin frequenting of the sacraments and alms, experience nevertheless teaches that this becomes harmful to those who rarely exercise these good works."[5]

[1] Session 14, chapter 8.

[2] That this is done illicitly follows from the fact that confessors according to Trent (session 14, chapter 8) and canon 887 must enjoin - not merely counsel - satisfaction.

[3] Title III, chapter 1, n. 22.

[4] Session 24, chapter 8, on reform.

[5] Aertnys-Damen, II, n. 322.

350 **IV. Causes excusing from imposing satisfaction owed of itself.** Moreover:

1. The causes because of which it is licit to impose satisfaction less proportionate to the gravity or frequency of offenses, though not light satisfaction, are:

a) Vehement contrition, even if not most vehement.

b) The occasion of a jubilee or plenary indulgence which the penitent intends to gain (St. Alphonsus, VI, 510; *Homo Apostolicus*, tract 16, n. 49).

c) Fear lest the penitent, because of the proportionate penance to be fulfilled, will seek laxer confessors or will omit the sufficiently proportionate satisfaction itself; nevertheless, these dangers can commonly be forestalled by adding a work or works already owed from elsewhere (St. Alphonsus, VI, 509, 513; *Homo Apostolicus*, tract 16, n. 50; cf. St. Thomas, Supplement, question 18, article 4).

d) Hope of enticing the penitent to more frequent confession by a lesser satisfaction (St. Alphonsus, VI, 510).

e) The will of the confessor to take upon himself part of the satisfaction. For it is established from the doctrine on the communion of Saints that one can satisfy for another. I said part, because if he were to take upon himself the whole satisfaction, the sacramental action to be performed by the penitent himself would be lacking. Besides, note that proposition 15, "that a penitent can by his own authority substitute another for himself, who will fulfill the penance in his place," was condemned by Alexander VII.[1] Nevertheless, the confessor can grant to the penitent that another pay the enjoined satisfaction for him, in which case the satisfaction is not the work performed by another, but the procuring of this work (St. Alphonsus, VI, 526).

f) Whether the words *whatever good thou hast done*, etc., are a cause because of which satisfaction can be lessened is disputed. A few affirm, because, they say, by those words the confessor probably elevates all the good works of the penitent to sacramental satisfaction, at least if he explicitly or implicitly intends to do that (n. 342). But even if that opinion is admitted, it nevertheless does not seem to be a reason for lessening satisfaction; since Trent, although it knew that the aforesaid formula was used by confessors, nevertheless seriously admonishes them to impose satisfaction fitting for sins.[2]

2. The causes because of which it is licit to impose light satisfaction for grave faults are:

a) Most vehement contrition.

b) Great satisfaction already performed.

c) Fear lest the penitent, because of the grave penance to be fulfilled, will seek laxer confessors, or will omit the grave penance itself; nevertheless, these dangers again can commonly be avoided by imposing a work already owed from elsewhere (cf. St. Alphonsus, VI, 509, 513; *Homo Apostolicus*, tract 16, n. 50; cf. St. Thomas, Supplement, question 18, article 4).

3. A cause because of which it is licit to absolve without satisfaction imposed scarcely occurs except in one lacking mental power or in one dying, deprived of the senses. That this is licit because of a plenary indulgence Benedict XIV reprobates in the Constitution *Inter praeteritos*.[3] Note, however:

a) A very slight satisfaction, for example a very brief act of charity, invocation at least mentally of the names of Jesus and Mary, should be imposed in urgent danger of death (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 49).

b) As regards the sick, the Roman Ritual[4] admonishes that "a grave or laborious penance is not to be enjoined on them; but only that is to be indicated which, if they recover, they may perform at a suitable time. Meanwhile, according to the gravity of the illness, with some prayer or light satisfaction imposed and accepted, let them be absolved, as there will be need."

Finally, if the penitent after absolution confesses a sin omitted because of forgetfulness, the confessor indeed must impose a new satisfaction; but commonly he can satisfy this obligation by lessening the satisfaction imposed insofar as it regards the former confession, and leaving it unchanged insofar as it pertains to the later one. Some indeed judge that in the case a new satisfaction need not be imposed; but just as for a new absolution, at least practically, a new act of sorrow and a new confession are required, so also a new satisfaction must be imposed (St. Alphonsus, VI, 513). This opinion must be followed in practice, because otherwise the new absolution would be exposed to the danger of being deprived of an integral part.

Note. If satisfaction is diminished, it is sometimes useful to admonish the penitent about the smallness of the satisfaction imposed and to stir him up to supply voluntarily.

[1] Denzinger-Bannwart, n. 1115.

[2] Session 14, chapter 8.

[3] December 3, 1749.

[4] Title 3, chapter 1, n. 25.

351 **V. Time of imposing satisfaction.** Satisfaction can be imposed validly both before and after absolution; if it is imposed after absolution, let it not be enjoined too long after it, so that the moral unity of the judgment be preserved (p. 271). But it is expedient that it be imposed before absolution, both because this is conformable to the Roman Ritual,[1] and because the order of judgment counsels that satisfaction be enjoined and accepted before the penitent is absolved (St. Alphonsus, VI, 514).

[1] Title III, chapter 2, n. 1.

Scholion. On Commutation of Satisfaction

352 **I. Nature of sacramental commutation.** Commutation of satisfaction is a certain retraction or correction of the judgment, insofar as it imposed punishment; and just as in other judgments, so also in sacramental judgment it can be made by a competent judge.

353 **II. The persons who can commute** are confessors: both the one who imposed the satisfaction and another of the same jurisdiction. Those who are not confessors cannot commute, because commutation is a judicial act to be posited by virtue of the keys. I said "another of the same jurisdiction," for it is disputed whether a simple confessor can commute satisfaction imposed for a reserved sin. With St. Alphonsus (VI, 529, doubt 2), it seems this must be denied, because the confessor lacks power over a judgment instituted concerning a case whose treatment had been withdrawn from him. The adversaries object that reservation was removed by absolution, so that the simple confessor now has power over the aforesaid case or over those sins. I respond by conceding the assertion, but he lacks power over the judgment instituted concerning that case, so that he cannot

moderate it; in other words, he cannot commute the enjoined satisfaction. Note, however, that the confessor has power over reserved matters, and therefore can commute satisfaction, in the case in which the Superior cannot conveniently be approached.

354 **III. The manner of commuting.** 1. For validity it is required that commutation be made in the sacramental tribunal, or in such a way that with the absolution given or to be given by the one commuting, it constitutes at least morally one thing. The reason is that satisfaction must become sacramental by force of absolution; this cannot take place unless it is united with it. Moreover, as regards the union with absolution required, take these things:

a) The commutation is certainly valid which is made either during the course of confession, or immediately after absolution, or at least while the penitent is still in the confessional. The reason is that the judgment still morally endures, so that the act of commuting morally constitutes one thing with the absolution.

b) It is disputed whether a greater space of time, and how much, can intervene between confession and the act of commuting. Now some extend the faculty of commuting to one or another day after the confession has been completed. Others judge that no space of time stands in the way of the required conjunction. Others, with St. Alphonsus (VI, 529), judge that commutation must be made immediately after absolution, or at least while the penitent is still in the confessional. As soon as, after receiving absolution, he has departed, the judicial process is finished, so that the judicial act, in the case the act of commuting, which afterward is instituted cannot constitute one thing with it, but must be directed to a new judicial process. I said that the process is finished as soon as the penitent, after receiving absolution, has departed. This indeed is pleasing in itself, and is confirmed by the fact that in the case the confessor could no longer speak with the penitent about the confession made without violating the sacramental seal.

Objection. Just as satisfaction fulfilled after a long time, so also the commutation of the same satisfaction not yet performed will always make one moral thing with the preceding confession.

Response. I deny the parity; namely, satisfaction is not a judicial action, as commutation is. But a judicial action, in order to constitute at least morally one thing with the judicial process, must be posited before the process is finished. It is added that, if the objection is admitted, commutation can be separated from absolution by as long a time as satisfaction; which few admit. For the rest, in doubt the opinion of St. Alphonsus is to be followed, lest the validity of the commutation be exposed to danger.

2. As regards liceity, a just cause is certainly required. It is not necessary for the penitent to repeat the sins, whether he confesses to the same or to another confessor. The reason is that the one commuting must not judge about sins already judged, but only about the reason for commuting. Nevertheless, a certain confused knowledge of the state of the penitent is required, because also the penance to be imposed by the confessor commuting must be, at least of itself, in some degree proportioned to the sins; likewise medicinal. But for the said ends the knowledge suffices which the confessor can gather from the very penance to be commuted; according to it and the disposition of the penitent let him direct himself in commuting (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 61; *Theologia moralis*, VI, 529, doubt 1).

Corollary I. The confessor, even when not asked, can commute satisfaction (St. Alphonsus, VI, 529, doubt 1).

Corollary II. Let commutation be made into a work more or less equally grave, unless according to what was explained above (n. 350) there is a cause for lessening satisfaction.

Corollary III. It is disputed whether the penitent after a commutation has been made can return to the former satisfaction, or whether this must be held as retracted. More commonly it is affirmed that the faculty of choosing either satisfaction remains to the penitent. Nevertheless, the matter is doubtful, because it is not clear that the confessor can proceed in such a way that it depends on the choice of the penitent which act will constitute the integral part of the sacrament.

Article III. On the Obligation of Accepting and Fulfilling Satisfaction

355 **I. Obligation of accepting satisfaction.** The penitent is bound, considering present discipline, to accept an equitable satisfaction (canon 887). This follows from the right and obligation of the confessor to impose it. Moreover:

1. The obligation of accepting satisfaction seems grave if the satisfaction imposed is grave. Nor should it be objected that the penitent can depart without grave fault, because he is not bound under grave obligation to complete the sacrament, or because it is not grave to posit only part of the rite. For even if that is conceded, nevertheless a grave obligation of accepting seems to follow from the right and grave obligation of the confessor to impose grave satisfaction.
2. The obligation of accepting satisfaction seems only light if the satisfaction imposed is light. The reason is that in the case a grave obligation of not departing is not clear.
3. Likewise the penitent is bound under grave obligation to have the will of fulfilling the satisfaction imposed, if the matter concerns grave satisfaction. If the satisfaction is light, some require under grave obligation the will of fulfilling it, because according to them the will of fulfilling pertains to the essence of the sacrament (n. 291). Others demand the said will only under light obligation, because of the contrary reason. Because the former opinion is probable, in practice it must be said that the will of fulfilling a light satisfaction is required under grave obligation, namely lest the sacrament be exposed to danger of nullity.
4. Of itself the penitent does not sin by accepting satisfaction with the intention of asking commutation from another, because a petition for commutation of itself involves nothing evil.

Corollary I. If satisfaction manifestly greater than just is imposed, the penitent can ask for diminution and, if this is denied, depart (St. Alphonsus, VI, 516). If he does not depart and receives absolution, which is also licit for him, according to some he is bound to fulfill the satisfaction, lest the sacrament be deprived of an integral part; according to others, he is not bound to fulfill the satisfaction, and it must be imputed to the confessor that the sacrament lacks an integral part. But he seems to be bound, if the matter of penance is well divisible, to fulfill the part equal to the sins.

Corollary II. Let the confessor easily acquiesce to one asking a lesser or another satisfaction and prepared to fulfill a grave one (St. Alphonsus, VI, 516).

356 **II. Obligation of fulfilling satisfaction.** 1. **Person obligated.** The penitent, as canon 887 declares, "must fulfill satisfaction himself personally." This, however, as we noted, does not prevent the confessor from granting the penitent the faculty of substituting another for himself, who will fulfill the satisfaction (n. 350).

2. **Gravity of the obligation.** The obligation of fulfilling satisfaction is grave if: 1. it was imposed for necessary matter; 2. it is grave; and 3. it was enjoined under grave obligation. When these conditions have been fulfilled, it is also grave to omit a grave part; nevertheless, this for the most part does not take place if the satisfaction has a successive extension, in which case, therefore, commonly it is not grave to omit once or twice what, for example, was enjoined for the individual days of some week. If one of the enumerated conditions is lacking, the obligation of fulfilling the satisfaction is light; and in the case in which the confession was invalid, the satisfaction does not oblige. I said:

a) If it was imposed for necessary matter, because for free matter grave satisfaction cannot, at least of itself, be imposed (n. 348; St. Alphonsus, VI, 517).

b) If it is grave, because light satisfaction cannot be enjoined under grave obligation.

c) If it was enjoined under grave obligation, which it is altogether expedient to do, and is presumed to have been done. Indeed there are those who judge that grave satisfaction cannot be enjoined under light obligation, because although a legislator can oblige only lightly in grave matter, nevertheless in this sacrament the confessor is not regarded as a legislator, but as a simple minister, since there he acts in the name of God. Hence he cannot impose matter of itself grave under light obligation. Others, however, admit the contrary, relying on this reason: "The confessor in this sacrament not only performs the office of Christ, but also has been constituted by Christ as true judge and legislator, who from the power handed over to him looses by remitting sins, and binds by imposing precepts concerning the obligation of fulfilling satisfaction" (St. Alphonsus, VI, 118).

A circumstance of satisfaction, for example the Way of the Cross to be performed by the penitent on bent knee, obliges under grave obligation if either in itself or with respect to the penance it is grave and - which, once the first condition has been fulfilled, is presumed - it was imposed under grave obligation (St. Alphonsus, VI, 517).

3. **Time of fulfilling satisfaction.** First note that imposed satisfaction can be fulfilled both before and after absolution. That it can be fulfilled after absolution is clear both from the practice now commonly in force and in force through so many centuries, and from the contrary doctrine condemned.[1] Nevertheless, it can also be fulfilled before absolution. A reason for doubting could arise from the fact that the penitent before absolution is easily in the state of mortal sin, and therefore satisfaction, that is, the integral part of the sacrament, cannot yet obtain its effect, that is, remission of punishment, so that, until the state of grace is recovered, it would remain *informe*. But satisfaction becomes an integral part only when it is conjoined with absolution, and at that very moment obtains its effect, so that satisfaction as an integral part was not *informe*. For the rest, observe:

a) If a time has been set by the confessor, this must be observed. Once the time has passed, the obligation does not cease; both because the confessor principally intends the work and accessorily the time, and because it is not licit for the sacrament to be deprived of an integral part (St. Alphonsus, VI, 525). If a time has not been set, satisfaction should not be delayed longer, and, in conformity with the mind of the confessor, should be fulfilled as soon as it can conveniently be fulfilled (St. Alphonsus, VI, 521).

b) Delay of grave satisfaction is a grave sin: 1. if it brings with it grave danger of forgetfulness or of inability that will follow; 2. if it frustrates or notably lessens the end of the satisfaction, for example if a confession to be instituted after a month is delayed beyond a week. It is disputed whether delay of itself is ever a grave sin. Moreover, with St. Alphonsus (VI, 521), it seems this must be affirmed, because a lengthy delay, for instance of six months, of a grave obligation to be fulfilled of itself at the first moral opportunity seems to involve grave disorder.

4. **Manner of fulfilling satisfaction.** a) The intention of satisfying seems to be required, or of performing the imposed work for satisfaction. For just as the intention of receiving the sacrament is required as regards the essentials, so also it is required as regards the integral parts, so that the sacrament may be received integrally. But it suffices that the penitent had and did not retract the intention of receiving the sacrament, since this intention regards the whole sacrament. The said intention indeed probably comprehends a work enjoined by the confessor which someone, forgetful of the satisfaction owed, has posited (cf. St. Alphonsus, III, 700, question 2); but since the matter concerns the validity of an integral part, the work seems to have to be performed again (cf. St. Alphonsus, II, 2).

Objection. The intention of satisfying is not required, since it suffices to have posited the act imposed by the confessor.

Response. From what has been said it follows that this does not suffice for the act posited to be an integral part of the sacrament.

b) Satisfaction seems to have to be fulfilled in the state of grace if it is fulfilled after absolution; for it is illicit to place an obstacle to the effect, even secondary, of a sacrament (St. Alphonsus, VI, 523).

Objection 1. The end of the precept, in the case remission of remaining punishment, does not fall under the precept.

Response. Let that pass; but the end of the sacrament falls under the precept.

Objection 2. Satisfaction will afterward revive once the obstacle has been removed.

Response. Besides the fact that this opinion is doubtful, and therefore does not hold for practice because the danger remains lest the sacrament be deprived of its secondary effect, it is illicit to fulfill satisfaction *informiter*, just as it is illicit to receive the sacrament as regards the essentials *informiter*.

If satisfaction is fulfilled before absolution, it is not required that it be done in the state of grace; for then, as we have already noted, it does not become an integral part before absolution is conferred and therefore, as is supposed, before the state of grace is recovered by the penitent. This posited, the integral part does not remain *informe*, but immediately obtains its effect.

c) Satisfaction can be fulfilled with another if prayers were imposed which are customarily recited with others.

5. **Cessation of the obligation** can come either from supervening inability or from forgetfulness.

One who has forgotten the satisfaction imposed and cannot gather it from the confessor's custom of imposing this or that penance is bound to approach the confessor, if it can conveniently be done and the confessor is presumed to have retained it in memory. Otherwise the obligation ceases. Nor should you say: he is bound to return so that the confessor, if he has forgotten the penance imposed, may

impose a new one. For, since the completed judicial process has been finished, the confessor cannot impose a new penance unless the penitent institutes a new confession; he is not bound to this burden (St. Alphonsus, VI, 520).

What if the confessor omitted to impose satisfaction?

Response. In the case the penitent is bound to return, if he conveniently can, lest the sacrament be deprived of an integral part; for since the judicial process remained incomplete, it seems morally to persevere, even if the penitent has left the confessional.

[1] Denzinger-Bannwart, nn. 728, 1306, 1437, 1535.

Section III. On the Effects of the Sacrament of Penance

357 The effects of the sacrament of Penance are:

1. Sanctifying grace, whether first grace, or, if the penitent is already in the state of grace, second grace.
2. Sacramental grace. This consists in the fact that the sanctifying grace which the sacrament of Penance confers gives a right to actual graces by which past sins are entirely taken away and future sins are guarded against.
3. Remission of eternal punishment and the reviviscence of merits.
4. Remission of temporal punishment, proportioned to the disposition of the penitent;[1] likewise by the power of sacramental satisfaction.
5. Peace and serenity of conscience, according to these words of the Council of Trent: "Indeed the reality and effect of this sacrament, so far as its force and efficacy are concerned, is reconciliation with God, which sometimes, in devout men who receive this sacrament with devotion, is wont to be followed by peace and serenity of conscience with vehement consolation of spirit."[2]

[1] Cf. Council of Trent, Session 14, chapter 2.

[2] Session 14, chapter 3.

Section IV. On the Necessity of the Sacrament of Penance

The necessity both of means and of precept must be examined; nevertheless only that of the divine precept, because the ecclesiastical precept has been discussed in volume I, n. 1104.

358 **I. Necessity of means.** The sacrament of Penance is necessary for salvation by necessity of means for those who have sinned gravely after Baptism. This is clear: 1. from these words of the Council of Trent: "This sacrament of Penance is necessary for salvation for those fallen after Baptism, just as Baptism itself is for those not yet regenerated";[1] 2. from Sacred Scripture. For Christ declared that sins are retained for those for whom they are retained by the judges constituted by him.[2] But sins would not truly be retained if another means of obtaining pardon were available to the sinner apart from those judges. There are added: 3. the testimonies of the Holy Fathers; and 4. the argument of prescription. These, together with other arguments, you may compare in the Dogmatic theologians.

Corollary. From what has been said it follows that perfect contrition and the act of charity do not justify the sinner except insofar as they are at the same time a recourse to the sacrament of Penance in desire, or insofar as they at the same time include the purpose of submitting oneself to the judges

constituted by Christ. Hence, for one thus justified there remains the obligation afterward of having recourse to the judge.

[1] Session 14, chapter 2.

[2] John 20:23.

359 **II. Necessity by force of divine precept.** 1. The existence of the precept follows from the necessity of means.

2. **The time for fulfilling the precept.** The precept obliges:

a) **Of itself:** 1. in the article of death; for one who then does not fulfill the divine law rashly exposes himself to the danger of never fulfilling it; 2. it is disputed whether it obliges at some times in life, but the affirmative seems to have to be held, because it is difficult to admit that Christ instituted a tribunal by which the sinner is reconciled with God, and at the same time granted the sinner the faculty of avoiding that tribunal until the end of life (St. Alphonsus, VI, 662, 663, 665). For the rest, it is certain: 1. that the divine precept does not oblige immediately after a sin has been committed; 2. that satisfaction is made to the said precept by fulfilling the ecclesiastical precept (St. Alphonsus, VI, 663).

b) **Accidentally:** 1. if confession is held to be a morally necessary means of avoiding sin (St. Thomas, Supplement, q. 6, art. 5); 2. according to many, before the reception of the Eucharist, if one has sinned gravely (n. 179), in which case there is certainly an obligation, whether from divine law or from ecclesiastical law.

Part II. On the Ministration of the Sacrament of Penance

360 The minister of the sacrament of Penance is the priest alone; this is clear both from the Council of Trent and from canon 871. The Council of Trent declared: "If anyone shall say ... that priests alone are not the ministers of absolution ... let him be anathema."[1]

Having set these things down, we shall treat first of the ministration of the sacrament of Penance generally, then of its ministration to some persons specifically.

[1] Session 14, canon 10.

Section I. On the Ministration of the Sacrament of Penance Generally

We shall speak first of the power required for ministering the sacrament of Penance, then of the right use of that power.

Chapter I. On the Required Power

In the minister of Penance a twofold power is required, namely the power of order and the power of jurisdiction (can. 872). That the power of order is required follows from the fact that, as was proved above, the priest alone is the minister of this sacrament. The power of jurisdiction, that is, sacramental jurisdiction, must be treated more fully: first, sacramental jurisdiction generally; then jurisdiction over some classes of persons specifically; finally, the limitation of jurisdiction with respect to sins, or the reservation of sins.

Article I. On Sacramental Jurisdiction Generally

361 **I. Notion.** Sacramental jurisdiction is the power of hearing judicially the confessions of the faithful, and of absolving or binding them. In the new Code, the conferral of sacramental jurisdiction is called approval (cf. canons 872, 881, 882), so that that word no longer signifies an authentic testimony concerning someone's fitness to hear confessions.

362 **II. Necessity** is taught by Trent[1] and by the Code of Canon Law (can. 872), and follows from the fact that absolution is not only a sacramental action, but also a judicial one, and therefore must be exercised upon a subject.[2] But someone is constituted a subject through jurisdiction over him.[3] Hence the opinion of some who taught that jurisdiction is not required for absolving from venial sins and from mortal sins already directly remitted must be rejected, and it is commonly rejected.

[1] Session 14, chapter 7.

[2] To the question how a confessor can have jurisdiction over his superior, this answer must be given: the superior, through the jurisdiction of the external forum which he has received from Christ as Pope, or from another, confers jurisdiction of the internal forum on the confessor, who then, by this jurisdiction, by which he acts in the name of Christ, absolves the superior as a private man.

[3] The local Ordinary, although he enjoys ordinary jurisdiction over exempt religious and over travelers staying in the diocese, since the faculty of absolving them is attached to his office by the law itself, nevertheless cannot absolve the aforesaid outside the diocese, because they are not his subjects simply speaking. I said "simply speaking," because as long as they are staying in the diocese, they are subject to him in the order of absolution. Others call the jurisdiction of the local Ordinary over exempt religious and travelers staying in the diocese delegated by law, precisely because it does not extend to the same persons when they are staying outside the diocese. He can absolve everywhere non-exempt religious who dwell in the diocese, because they are his subjects.

363 **III. Division.** Sacramental jurisdiction is divided into ordinary and delegated, according as it is attached to an office by the law itself or committed to a person (can. 197, § 1; vol. I, n. 97).

364 **IV. Ordinary jurisdiction.** 1. It belongs, for the universal Church, to the Supreme Pontiff and to the Cardinals of the Holy Roman Church; for his own territory, to the local Ordinary, to the parish priest, and to others who take the place of the parish priest;[1] likewise to the penitentiary canon of a cathedral or collegiate church, for all diocesan persons, even outside the diocese, and for outsiders who are staying in the diocese. All these he can absolve even from sins and censures reserved to the Bishop. Finally it belongs to exempt religious superiors for their subjects, according to the norm of the constitutions (can. 873, §§ 1 and 2).

2. It can be exercised over subjects wherever they are, so that, for example, a parish priest can absolve his parishioners even outside the parish or diocese (can. 873, § 2). In addition, parish priests commonly receive delegated jurisdiction for the whole diocese.

3. It ceases by loss of office and, after a condemnatory or declaratory sentence, by excommunication, suspension from office, and interdict (can. 873, § 3).

[1] Who are meant by the name of local Ordinary and parish priest is set forth at length in the treatise on Matrimony. Those who are in the place of the parish priest are parochial vicars who are endowed with full parochial power; who these are, see the cited place.

365 **V. Delegated jurisdiction.** 1. The persons who delegate are:

a) The local Ordinary in whose place confessions are heard confers jurisdiction on priests, both secular and religious, even exempt, for hearing the confessions both of secular persons[1] and of religious, even exempt; religious priests, however, are not to use that same jurisdiction without at least the presumed permission of their superior (can. 874, § 1).

b) In an exempt clerical religion,[2] delegated jurisdiction for receiving the confessions of the professed, novices, and others of the household[3] is also conferred by their Superior, according to the norm of the constitutions; he is permitted to grant it even to priests from the secular clergy or from another religion (can. 875, § 1). In an exempt lay religion,[4] the Superior proposes the confessor, who nevertheless must obtain jurisdiction from the local Ordinary in whose place the religious house is found (can. 875, § 2).

c) For receiving validly and licitly the confessions of any religious women and novices, a special jurisdiction is required, any contrary particular law or privilege being revoked. This jurisdiction is conferred by the local Ordinary where the house of the religious women is situated (can. 876). More will be said about that special jurisdiction in n. 373.[5]

Corollary I. A Cardinal, a penitentiary canon, and a parish priest cannot delegate the ordinary sacramental jurisdiction which belongs to them by common law. For they are not enumerated in canons 874-876, in which the legislator manifestly intends to list all those who can delegate sacramental jurisdiction. Moreover, as regards the penitentiary canon this is established from canon 401, § 1, and as regards the parish priest from a response of the Pontifical Commission.[6]

Corollary II. One who has delegated sacramental jurisdiction from the Apostolic See can subdelegate it, unless the personal industry of the person was chosen or subdelegation was prohibited (can. 199, § 2). But one who has delegated sacramental jurisdiction from another than the Apostolic See cannot subdelegate it, unless by express concession (can. 199, § 4).

[1] Many thought that Regulars received from the Supreme Pontiff, through their Superiors, jurisdiction over secular persons. If that privilege ever existed, it can no longer be maintained.

[2] A clerical religion is one whose members for the most part are promoted to the priesthood (can. 488, 4).

[3] That is, of those staying day and night in the religious house by reason of service, education, hospitality, or infirm health (can. 514, § 1).

[4] A lay religion is one whose members for the most part are not promoted to the priesthood (can. 488, 4).

[5] Canon 525 states: "If the house of religious women is immediately subject to the Apostolic See or to the local Ordinary, he chooses both ordinary and extraordinary priests for confessions; if it is subject to a regular Superior, he presents confessors to the Ordinary, whose duty it is to approve them for hearing the confessions of those nuns and, if need be, to supply for the Superior's negligence."

[6] October 16, 1919, to 3 (A.A.S. 1919, p. 476).

366 **2. The manner of delegating.** For hearing confessions validly, jurisdiction expressly granted in writing or by words is necessary (can. 879, § 1). Therefore, for validity it is required that the jurisdiction be: 1. truly granted. Hence it is not enough that it has been requested, nor that the one delegating is presumed to be about to grant it; 2. expressly granted in writing or by words. This, however, has place sufficiently when the one delegating uses a telephone or telegraph. It is not required that the concession of jurisdiction be notified, because the conferral of jurisdiction is a favor made, or a favor which is granted without an intervening executor. Concessions of this kind have effect from the moment at which the letters are issued (can. 38). Hence a priest absolves validly after the Ordinary has signed the letters or has signified the concession by a mandatary; he absolves validly and licitly after he has in some true way been made certain of the concession, although outside a case of necessity it is expedient to await authentic notification.

We said that jurisdiction must be expressly granted in writing or by words. Yet this probably does not prevent a custom known to the Ordinary and tacitly approved by him from sufficing. For tacitly granted jurisdiction, which is disapproved by law, is one thing; a tacitly approved custom is another, so that in the case jurisdiction is at least probable and is supplied by the Church.

For the rest, the one delegating should observe these things:

a) Local Ordinaries should not habitually grant jurisdiction for hearing confessions to religious who are not presented by their own Superior; but they should not deny it without grave cause to those who are presented by their own Superior, with the prescription of canon 874, § 2 remaining firm. That canon is now set forth.

b) Neither local Ordinaries in granting jurisdiction nor religious Superiors in granting jurisdiction or permission for hearing confessions should grant it except to those who have been found fit by examination, unless the case concerns a priest whose theological doctrine they have ascertained from another source. If, after jurisdiction or permission has been granted, they prudently doubt whether a priest previously approved by them still continues to be fit, they should compel him to a new test of doctrine, even if the case concerns a parish priest or a penitentiary canon (can. 877). Hence, for someone licitly to be compelled to a new examination before his jurisdiction has elapsed, a founded doubt about his fitness is required.

c) Delegated jurisdiction or permission to hear confessions can be granted as circumscribed by certain limits (can. 878, § 1), for example for a definite time, or for men only. Nevertheless, local Ordinaries and religious Superiors should take care not to restrict jurisdiction or permission without reasonable

cause too narrowly (can. 878, § 2). It would be unreasonable to except some time, for example the Easter season;[1] likewise the sick.[2]

d) The local Ordinary or religious Superior should not revoke or suspend jurisdiction or permission to hear confessions except for a grave cause. But for grave causes the Ordinary can forbid even a parish priest or penitentiary confessor to exercise his function, with recourse in devolutive effect to the Apostolic See preserved. Nevertheless it is not lawful for a Bishop, without consulting the Apostolic See, if the case concerns a formed house, to take away jurisdiction all at once from all the confessors of some religious house (can. 880). It is otherwise if it is taken away from individuals successively.

e) An Ordinary who revokes jurisdiction without just cause indeed acts illicitly, but he does not seem to act invalidly; for against a revocation notified to a parish priest or penitentiary, who have ordinary jurisdiction, only recourse in devolutive effect is granted (can. 880); a fortiori for those who possess only delegated jurisdiction.

Corollary I. Some formerly taught that jurisdiction over venial sins and over mortal sins already directly remitted is conferred by Christ in ordination itself. But this opinion, which rests on no solid foundation, has long since been commonly rejected. Nor can the opinion formerly admitted by some any longer be maintained, according to which the aforesaid jurisdiction would be granted by the Church in ordination itself.[3] The Code is silent about such a disposition, nor is the custom still in force to which some appealed (St. Alphonsus, VI, 543, 582).

Corollary II. Religious who have received jurisdiction from the local Ordinary should not use it without at least the presumed permission of the Superior (can. 519).

[1] Cf. decree of the Sacred Congregation of the Council, September 22, 1668; Sacred Congregation of Bishops, April 3, 1584.

[2] Cf. Constitution *Superna* of Clement X, September 13, 1641; Sacred Congregation of Bishops and Regulars, September 22, 1645; Sacred Congregation of the Council, December 14, 1658.

[3] Innocent XI, by decree of February 12, 1679, prescribed: "Let them not permit [the bishops] that confession of venial sins be made to a simple priest not approved by the Bishop or Ordinary." And the Council of Trent absolutely, without excepting confession of venial sins, established that no one can hear confessions unless he has obtained a parochial benefice or approval (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 77).

367 **3. Cessation of delegation.** Delegated sacramental jurisdiction ceases in the ways set forth in volume I, n. 101, where jurisdiction generally was discussed. Note also that of itself it does not cease by a mere change of domicile. If, however, jurisdiction was conferred because of an office, for example that of chaplain, which the confessor performed as a subject in some diocese, it is not judged to continue after he has resigned the office, unless the Ordinary's contrary intention is established. In addition, provincial and diocesan statutes should be attended to. Finally, observe that by force of canon 207, § 2, absolutions granted through inadvertence after the time has elapsed or after the number of cases has been exhausted are valid.

Note. Superiors should take care that religious subjects designated by them, especially in the diocese in which they dwell, when their ministry is required by local Ordinaries or parish priests for providing for the necessity of the people, both within and outside their own churches or public oratories, offer that ministry willingly, while religious discipline is preserved. Conversely, local Ordinaries and parish priests should willingly use the work of religious, especially those dwelling in the diocese, in the sacred ministry and especially in administering the sacrament of Penance (can. 608).

Article II. On Sacramental Jurisdiction Over Some Classes of Persons Specifically

368 **I. Jurisdiction over soldiers.** 1. It is clear that soldiers can confess to a priest who has jurisdiction from the local Ordinary in whose place the confessions are instituted. What military chaplains can do independently of the local Ordinary depends on the special prescriptions of the Holy See (cf. can. 451, § 3). Namely, if a military bishop has been constituted, or at least if a chief chaplain has been placed over the whole army, the faculty of conferring jurisdiction over soldiers on other priests is easily granted to these.[1]

2. Soldiers called to war, or mobilized as it is said, are equated with those constituted in danger of death; hence for them there hold the things which we shall say about jurisdiction over the dying (n. 370).[2]

[1] Cf. A.A.S. 1915, p. 217.

[2] Sacred Penitentiary, March 18, 1912; May 29, 1915 (A.A.S. 1915, p. 282); cf. Sacred Penitentiary, December 18, 1914 (A.A.S. 1914, p. 712); December 4, 1915 (A.A.S. 1915, p. 526).

369 **II. Jurisdiction over those sailing.** All priests undertaking a sea voyage, provided they have duly received the faculty of hearing confessions either from their own Ordinary, or from the Ordinary of the port in which they board the ship, or even from the Ordinary of any intermediate port through which they pass on the journey, can throughout the whole journey receive on board the ship the confessions of any of the faithful sailing with them, even though the ship on the journey passes through, or even remains for some time in, various places subject to the jurisdiction of different Ordinaries. Whenever the ship stops on the journey, they can receive the confessions both of the faithful who for any reason come to the ship and of those who, while the priests are briefly calling at land, ask to confess, and can validly and licitly absolve them even from cases reserved to the local Ordinary (can. 883). Therefore observe:

1. The proper Ordinary of a secular priest and of a non-exempt religious is the local Ordinary in whose place the aforesaid have domicile or quasi-domicile up to the undertaking of the journey. It is disputed whether jurisdiction can also be conferred on an exempt religious by his own major Superior. Some affirm this, because the Code speaks of the Ordinary, not of the local Ordinary. But under the name Ordinary there also comes a major Superior. Nevertheless, it seems this must be denied, considering the character of both the ancient[1] and the new legislation, which continually assigns the conferral of jurisdiction over secular persons and non-exempt religious to the local Ordinary. There is added the fact that in doubt one must not depart from the old law (can. 6, 4).

2. Jurisdiction is had throughout the whole journey. The journey, however, is judged to begin when the ship first leaves the port. The journey and the jurisdiction continue until the priest, having left the ship, has definitively landed.

3. The word *briefly* comprehends three whole days, not more. This also holds in the case in which, to continue the same journey, the confessor must leave one ship in order to board another, if he must wait so long for this ship in port.[2]

[1] Holy Office, August 23, 1905 (*Collectanea*, n. 2244).

[2] Pontifical Commission, May 20, 1923 (A.A.S. 1923, p. 112).

370 **III. Jurisdiction over the dying.** In danger of death all priests, even those not approved for confessions, validly and licitly absolve any penitents from any sins or censures whatsoever, however

reserved and notorious, even if an approved priest is present, with the prescription of canons 884 and 2252 preserved (can. 882). It is said:

1. **In danger of death.** The article of death is not required, but grave danger of death suffices, and indeed whether truly existing or prudently, though falsely, thought to exist, whether already arisen or soon to arise. Therefore the case is present: 1. in a dangerous illness; 2. in a very difficult childbirth, or a little before it; 3. before a dangerous surgical operation; 4. before a voyage full of danger; 5. in time of plague; 6. in battle or a little before it (St. Alphonsus, VI, 561). With those constituted in danger of death are equated: 1. soldiers called to war or mobilized;[1] 2. all men and women, not excluding religious sisters, who in some way belong to mobilized armies and are staying in camps.[2] These, however, regard only kingdoms which are waging war or are in imminent danger of war, as seems to be deduced from the words "called to war" and "staying in camps."[3]
2. **All priests, even those not approved for confessions;** even public heretics or schismatics; likewise excommunicates, both tolerated and to be avoided (cf. can. 2261, § 3).
3. **Even if an approved priest is present;** hence as regards validity no priest is now excluded. Nevertheless, of itself it is illicit to receive absolution from a heretic or schismatic if another is present.
4. **With the prescription of canon 884 preserved;** considering that canon, absolution of an accomplice in danger of death is indeed valid, but outside a case of necessity is illicit.
5. **With the prescription of canon 2252 preserved;** that canon treats of the recourse sometimes to be made after recovery; this will be discussed later. In addition, note:

a) Absolution in danger of death, as regards censure, is limited to the internal forum;[4] hence for all penal effects, for example for ecclesiastical burial, recourse must be had to the ecclesiastical judge.

b) Absolution, although valid, can nevertheless be illicit because the priest acts imprudently, for example because he is not sufficiently versed in Moral Theology and another more learned one is present. In the case, an excusing cause is required, for example if the dying person desires to be absolved by such a determinate confessor.

[1] Sacred Penitentiary, March 18, 1912.

[2] Sacred Penitentiary, December 21, 1914; May 29, 1915.

[3] Sacred Penitentiary, March 11, 1915; May 25, 1915.

[4] Pontifical Commission, December 28, 1927, to II (A.A.S. 1928, p. 61).

371 **IV. Jurisdiction over travelers and those without a domicile.** All priests of either clergy approved for hearing confessions in some place, whether instructed with ordinary or delegated jurisdiction, can also validly and licitly absolve persons without a domicile and travelers from another diocese or parish who come to them, and likewise Catholics of any Oriental rite (can. 881, § 1). From these things it is deduced, as is also clear from canon 874, § 1 and from a response of the Pontifical Commission,[1] that jurisdiction over travelers is obtained from the local Ordinary. To what extent travelers can be absolved from reserved cases will be discussed later.

[1] November 24, 1920 (A.A.S. 1920, p. 575).

372 **V. Jurisdiction over exempt religious.** We speak only of exempt religious, because non-exempt religious, as regards jurisdiction over them, are equated with the other faithful. Over exempt religious, however, jurisdiction is possessed by:

1. **Over religious of an exempt clerical religion:**

a) The proper Superior of the religious, who indeed enjoys ordinary jurisdiction over them (can. 875, § 1).

b) The local Ordinary in whose place they are staying (can. 519). His jurisdiction over them seems to be delegated by law rather than ordinary, because it extends only to those who are staying in his territory (n. 362). Nevertheless, he can absolve them even from sins and censures reserved in the religion (can. 519).

c) Those to whom the Superior or local Ordinary has delegated jurisdiction (can. 519 and 875, § 1). Jurisdiction delegated by the Superior is personal, so that it can be exercised everywhere; but jurisdiction granted by the local Ordinary does not extend to religious staying outside the Ordinary's territory. With respect to those who are staying in the Ordinary's territory, however, the granted jurisdiction also includes sins and censures reserved in the religion (can. 519).

What has been said about exempt religious also holds for their novices, students, boarders, and others of whom n. 164 speaks (can. 874, § 1; 875, § 1). It can nevertheless be disputed whether the religious Superior and those delegated by him retain jurisdiction over students during holidays while they are staying outside the religious house. This seems to have to be denied, because at that time the students are not subject to the Superior's power. Otherwise one should speak if during school time they go out, for example for the purpose of making a pilgrimage.

Exempt religious staying outside their own house can confess as follows:

a) Those actually traveling can confess, just as those dwelling at home can, to one approved either by the local Ordinary in whose place the confession is made, or by their own Superior; but not to a companion or another who has been approved by neither. That jurisdiction must be received from one or the other follows from canons 519, 874, § 1, and 875, § 1, so that the contrary doctrine, formerly admitted by many, must be rejected.

b) Travelers who are staying in some convent of their own order can confess: 1. to those approved by the local Ordinary; 2. to those approved by their own Superior; 3. to the Prelate of that convent and to those approved by him, namely by custom.

2. **Over members of an exempt lay religion,** jurisdiction is possessed by the local Ordinary in whose place they are staying and by those to whom the local Ordinary has granted it (can. 519 and 875, § 2).

3. If a religious, even an exempt one, for the quiet of his conscience approaches a confessor approved by the local Ordinary, even though not listed among those designated, the confession, any contrary privilege being revoked, is valid and licit; and the confessor can absolve the religious even from sins and censures reserved in the religion (can. 519). Moreover:

a) A confession is made for quiet of conscience whenever from a confession made in this way greater quiet of conscience is hoped for, whether because of a more candid accusation, or because of a nearer occasion of confessing, for example if the ordinary confessor is absent. The causes assigned are of

themselves accidental, and in such a case the religious would not have to approach the ordinary confessor again on that occasion, which is nowhere imposed. Besides, if a permanent cause were present, a permanent exception would also be permitted. Nevertheless, then it would be better to seek from the Superior, with permission, that different confessor who would become habitual.

b) The condition set forth under a) is not judged to pertain to validity, both because a condition so intimate is not presumed by the legislator to be intended for validity, and because that would provide occasion for doubts and anxieties. Nevertheless, to approach a non-designated confessor merely at one's own pleasure is illicit.

c) It is not lawful for a religious, if the constitutions forbid it, to leave the house without the Superior's permission for the purpose of confessing.

373 **VI. Jurisdiction over religious women.** Priests, both secular and religious, of whatever rank or office, need special jurisdiction for validly and licitly receiving the confessions of any religious women and novices, with the privilege of Cardinals preserved,[1] and with the cases assigned by law excepted (can. 876, § 1). This jurisdiction is conferred by the local Ordinary where the house of the religious women is situated (can. 876, § 2). Moreover:

1. The special jurisdiction of which the canon speaks is required even for validity, as authors now commonly admit and as they deduce from the very word jurisdiction, which imports power, and from the Code itself, where it is distinguished from permission (cf. for example can. 877). Special jurisdiction is required for women religious and their novices, but not for their postulants, since these are not named. It can be disputed whether it is required for women living in common without vows. The reason for doubting is drawn from the fact that canon 675, to which some appeal, indeed refers to canons 499-530, but not to canon 876, which establishes the necessity of special jurisdiction.

2. **The cases in which common law confers jurisdiction over religious women are:**

a) If some religious woman, for the tranquility of her conscience, approaches a confessor approved by the local Ordinary for women, the confession, made in any church or even semi-public oratory, is valid and licit, any contrary privilege being revoked; nor can the Superior forbid it or inquire about the matter, not even indirectly; and the religious women are bound to report nothing to the Superior (can. 522). It is said:

1. **For the tranquility of her conscience;** this is not required for validity, as has already been explained in n. 372.

2. **Approaches,** that is, has recourse to him. This can be done both inside and outside the house; hence it is not required that the religious woman be staying outside her own house, but she can also call the confessor.[2]

3. **A confessor approved for women,** that is, approved for women, whether secular or religious.[3]

4. **In any church or even semi-public oratory;** to these the Pontifical Commission added: or in a place lawfully designated for hearing the confessions of women[4] or of religious women.[5] Moreover, the circumstance of place is required not only for liceity but also for validity.[6]

It is disputed whether among places lawfully designated there also belongs a place in which, according to canon 910, § 1,[7] the confessions of women are sometimes licitly heard, namely by reason of sickness

or another true necessity. Now although the obvious sense of the law, "in a place lawfully designated for hearing confessions of women or of religious women," seems to favor the negative opinion, nevertheless it is difficult to admit that a means of absolution of this kind is excluded for religious women, for example religious women who have difficulty approaching the place habitually designated for hearing the confessions of women or religious women. Hence jurisdiction is probably had, and certainly had when the Church supplies.

5. **Nor can the Superior forbid it,** that is, she cannot forbid precisely that the religious woman confess to such a confessor, although it is not lawful to leave the house without permission.

Question. Can a confessor lacking special jurisdiction, by force of canon 522, validly absolve an entire community, for example in the absence of the ordinary confessor?

Response. It must be denied, because canon 522 supposes that the case is particular, since it grants jurisdiction for the case in which some religious woman approaches or calls such a confessor.

b) All religious women, when they are gravely ill, even though danger of death is absent, can call any priest approved for receiving the confessions of women, even if he is not designated for religious women, and can confess to him as often as they wish while the grave infirmity continues; nor can the Superior prohibit them either directly or indirectly (can. 523). A grave illness is one which notably weakens health; such an illness easily becomes dangerous. Since the canon declares "any priest approved for receiving the confessions of women," according to some it is not required that he be approved by the local Ordinary in whose place the confession is made, but it suffices that he has received jurisdiction over women from some local Ordinary and still enjoys it now. This opinion, however, although the letter favors it, does not seem admissible, namely considering the character of the whole legislation, which continually requires jurisdiction conferred by the local Ordinary in whose place the confession is instituted.

c) In danger of death, for religious women as for the other faithful, canon 882 holds, as explained in n. 370.

[1] Cardinals enjoy the faculty of hearing confessions everywhere on earth, even of religious of either sex (can. 239, § 1, 1).

[2] Pontifical Commission, December 28, 1927 (A.A.S. 1928, p. 61).

[3] Pontifical Commission, December 28, 1927 (A.A.S. 1928, p. 61).

[4] November 24, 1920 (A.A.S. 1920, p. 573).

[5] December 28, 1927 (A.A.S. 1928, p. 61).

[6] Pontifical Commission, December 28, 1927 (A.A.S. 1928, p. 61).

[7] Canon 910, § 1 states: the confessions of women are not to be heard outside the confessional seat except by reason of sickness or another true necessity and with the precautions which the local Ordinary has judged opportune.

Scholion. On Confessors to Be Deputed for Religious

I. Clerical Religion of Men

374 **I.** In individual houses of a clerical religion, several confessors legitimately approved should be deputed in proportion to the number of members, with the power, if the case concerns an exempt religion, of absolving even in cases reserved in the religion (can. 518, § 1).

Note 1. Religious Superiors having the power of hearing confessions can, with the things to be observed by law observed, hear the confessions of subjects who spontaneously and of their own motion ask this from them, but they should not do this habitually without grave cause (can. 518, § 2). Grave causes are, for example, a shortage of confessors, an anxious state of conscience in a subject, and the like. But a petition made spontaneously and of one's own motion suffices for the Superior to hear confessions by way of an act.

Note 2. Superiors should take care not to induce any subject, either personally or through another, by force, fear, importunate persuasions, or in any other way, to confess sins to them (can. 518, § 3). Simple counsel or persuasion in a particular case is not excluded.

II. With the constitutions remaining firm which command or counsel confession to be made at stated times with determinate confessors, if a religious, even an exempt one, for the quiet of his conscience, approaches a confessor approved by the local Ordinary, even though not listed among those designated, the confession, any contrary privilege being revoked, is valid and licit; and the confessor can absolve the religious even from sins and censures reserved in the religion (can. 519). These things were explained in n. 372.

III. As regards novices, these things hold:

1. In proportion to the number of novices, one or more ordinary confessors should be had (can. 566, § 2, 1); these should stay in the novitiate house itself (can. 566, § 2, 2).
2. Besides ordinary confessors, some confessors should be designated whom the novices can freely approach in particular cases, and the Master should not show that he takes this ill (can. 566, § 2, 3).
3. At least four times a year an extraordinary confessor should be given to the novices, to whom all should approach at least to receive a blessing (can. 566, § 2, 4).
4. Also for novices the things said in n. 374, II hold.

Note 1. The master of novices and his associate, and the Superior of a Seminary or college, should not hear the sacramental confessions of their students staying with them in the same house, unless the students ask this spontaneously from a grave and urgent cause in particular cases (can. 891). Therefore novices cannot habitually confess to the master of novices even for a grave and urgent cause. It is not clear that the prohibition of confessing to the master of novices should also be extended to postulants, since the Master is not of himself set over postulants.

Note 2. Novices can confess to the Superior of the house for a just cause in particular cases; for a grave cause, habitually (cf. can. 518, § 2).

IV. As regards postulants, nothing special is established by the Code, so that they are subject only to the common governance of religious.

II. Lay Religion of Men

375 **I.** Also in lay religions of men an ordinary and extraordinary confessor should be deputed; and if a religious asks for some special confessor, the Superior should grant him, in no way inquiring into the reason for the petition nor showing that he takes it ill (can. 528).

Note. In an exempt lay religion, the Superior proposes the confessor, who nevertheless must obtain jurisdiction from the local Ordinary in whose place the religious house is found (can. 875, § 2).

II. Also for lay male religious the things said in n. 374, II hold.

III. As regards novices, the things said in n. 374, III hold. Their ordinary confessors, however, should either stay in the novitiate house itself or at least frequently come to the novitiate house to hear the confessions of the novices. Postulants are subject only to the common governance of religious.

III. Religion of Women

376 **I. Different confessors.** They are distinguished as ordinary, special, extraordinary, and particular.

1. **Ordinary confessor.** a) For each house of religious women only one ordinary confessor should be given, who receives the sacramental confessions of the whole community, unless because of their great number or another just cause there is need of another or of several (can. 520, § 1).[1]

The words "who receives the sacramental confessions of the whole community" indicate the office of the confessor rather than an obligation of the religious women to approach him in the case in which, within the time established by the rule, they have confessed to another. Nevertheless, of itself it should be counseled that all be content with the ordinary confessor and ordinarily confess to him at the stated times.

A just cause for naming several ordinary confessors could be, for example, a plurality of national languages.

b) For the office of ordinary confessor of religious women there should be deputed priests, whether from the secular clergy or religious with the permission of their Superiors, outstanding in integrity of morals and prudence. They should moreover be forty years of age, unless a just cause, in the judgment of the Ordinary, requires otherwise, and they should have no power in the external forum over those same religious women (can. 524, § 1).

If the house of religious women is immediately subject to the Apostolic See or to the local Ordinary, he chooses priests for confessions, both ordinary and extraordinary; if it is subject to a regular Superior, he presents confessors to the Ordinary, whose duty it is to approve the same for hearing the confessions of those nuns and, if need be, to supply for the Superior's negligence (can. 525).

The ordinary confessor of religious women should not exercise his office beyond three years. Nevertheless, the Ordinary can confirm him for a second, indeed even for a third, three-year period, if either because of a shortage of priests fit for this office he cannot provide otherwise, or if the greater part of the religious women, including those who in other matters do not have the right of casting a vote, has agreed by secret votes to the confirmation of the same confessor. Nevertheless, for those dissenting, if they wish, provision must be made otherwise (can. 526).[2] Outside the cases set forth, the ordinary confessor cannot again be deputed as ordinary in the same community except after a year from the completion of his office; but an extraordinary confessor can immediately be named as ordinary (can. 524, § 2).

2. **Special confessor.** If some religious woman, for the quiet of her soul and for greater progress in the way of God, asks for some special confessor or spiritual moderator, the Ordinary should readily grant him. Nevertheless, he should watch lest abuses creep in from this concession; but if they do creep in, he should eliminate them cautiously and prudently, with liberty of conscience preserved

(can. 520, § 2). Therefore a special spiritual director could also be granted without the office of confessor.

a) A special confessor or spiritual moderator is to be granted not for a prefixed time, but as long as the just cause of necessity or spiritual utility of the religious woman who requested him endures.[3]

b) The ordinary confessor of the community can also be deputed as moderator of conscience for some religious woman.[4]

3. **Extraordinary confessor.** To each community of religious women there should be given an extraordinary confessor who at least four times a year comes to the religious house, and to whom all religious women must present themselves, at least to receive a blessing (can. 521, § 1). In an extraordinary confessor the same things are required as in an ordinary one (can. 524, § 1). The same things also hold as regards his selection (can. 525), but he can be named for an indefinite time. Finally, the mind of the legislator is judged to be that, as such, he should not come to the religious house more than four times a year without the authority of the Ordinary.

4. **Particular confessor.** The local Ordinaries in whose places communities of religious women exist should designate some priests for individual houses, to whom the religious women can easily have recourse for the sacrament of Penance in particular cases, without its being necessary to approach the Ordinary himself as often as the case arises (can. 521, § 2). It is said, 1. for the sacrament of Penance; therefore not only for seeking direction or counsel. It is said, 2. in particular cases; therefore not habitually after the manner of the special confessor of whom under 2.

Note. If some religious woman asks for one of those confessors, no Superior is permitted, either personally or through others, directly or indirectly, to inquire into the reason for the petition, to oppose the petition by words or deeds, or in any way to show that she takes it ill (can. 521, § 3). This paragraph seems to regard both the extraordinary confessor of paragraph 1 and the particular confessor of paragraph 2. For first, canon 521 treats of both kinds of confessors, § 1 of the extraordinary confessor, § 2 of particular confessors; then § 3 says: "If some religious woman asks for one of those confessors," not "of these confessors." Then the distinct paragraph confirms this; for if this admonition regarded only particular confessors, it should have been stated in the same paragraph, not in a distinct paragraph of the same canon, which also treats of the extraordinary confessor.[5]

[1] The Sacred Congregation for Religious, July 3, 1916, declared that there was no obligation of naming an ordinary confessor for a community which did not contain at least six sisters. But the same Congregation several times, for example January 10, 1920 and January 18, 1921, ordered canon 520 to be observed even for small houses. But that canon supposes confessors who receive confessions in the house of the sisters itself. Therefore, if they are allowed to approach a church so that there they may confess in the manner of secular women, a confessor does not seem to have to be named (Vermeersch, *Epitome*, 4, n. 590).

[2] Sacred Congregation for Religious, April 20, 1913.

[3] Sacred Congregation for Religious, April 20, 1913.

[4] Sacred Congregation for Religious, April 20, 1913.

[5] Vermeersch, *Periodica*, IX, p. (3).

377 **II.** As regards naming confessors of women novices, the things said about the religious women themselves hold (can. 566, § 1). Postulants, as regards this matter, are numbered among religious

women, although it can be disputed whether special jurisdiction is required for hearing them validly (n. 373).

378 **III. Things to be observed by confessors and by religious women.** 1. The confessors of religious women, both ordinary and extraordinary, should in no way involve themselves in the internal or external governance of the community (can. 524, § 3). Special confessors called to the monastery or religious house, if they understand that the religious women approach them with no just cause either of necessity or of spiritual utility, should prudently dismiss them.[1]

2. All religious women should in no way speak among themselves about the confessions of their companions, nor should they dare to criticize those sisters who make their confession to another than the deputed confessor.[2]

3. A Superior who acts against the prescriptions of canons 521, § 3,[3] 522,[4] and 523[5] should be warned by the local Ordinary. If she offends again, she should be punished by him with deprivation of office, the Sacred Congregation of Religious being immediately informed (can. 2414).

[1] Decree *Cum de sacramentalibus*. The things said in the text, even if perhaps they can no longer be urged by force of the cited Decree, are nevertheless worthy of mention.

[2] Cf. p. 290.

[3] Cf. p. 290.

[4] Cf. p. 286.

[5] Cf. p. 286.

IV. A Society, Whether of Men or Women, Living in Community without Vows

The things said about male religious also hold for societies of men living in community without vows; likewise the things said about women religious hold for societies of women living in common without vows (can. 675).

Article III. On the Limitation of Jurisdiction with Respect to Sins, or on the Reservation of Sins

379 **I. Notion of reservation.** Reservation is an act by which a Superior who by ordinary right can grant the power of hearing confessions or impose censures calls a case, that is, a sin or censure, to his own judgment, and thereby limits the power of the inferior judge (can. 893).

380 **II. The end of reservation** is the protection of ecclesiastical discipline,[1] both by calling some transgressions to a judge who can better guard against them, and, as others add, by making remission more difficult. The former is intended primarily (cf. can. 893, § 1 and can. 897); the latter, or the character of punishment, at most secondarily (St. Alphonsus, VI, 581, doubt 1).

[1] Session 14, chapter 7.

381 **III. Division of reservation.** Reservation of sins can be distinguished in three ways, according as it directly regards either the censure alone annexed to the sin, or the sin alone, or the sin and the censure. If it directly regards the censure alone, the sin is said to be reserved by reason of the censure, and once this is taken away, the reservation of the sin ceases. If it directly regards either the sin alone or the sin and the censure, the sin is said to be reserved by reason of itself (St. Alphonsus, VI, 580).

We are treating of sins reserved by reason of themselves; concerning censures we shall speak in the treatise on ecclesiastical penalties.

382 **IV. The power of reserving.** 1. This is to be acknowledged in the Church, as is deduced from the Council of Trent,[1] from the Constitution *Auctorem fidei* of Pius VI,[2] from the usage prevailing from the earlier centuries, and from the fact that the Church, to whom the conferral of jurisdiction has been entrusted, can, just as secular power can, confer it with limitation.

2. It belongs to those who by ordinary right can confer sacramental jurisdiction or establish censures, except the Capitular Vicar and the Vicar General without a special mandate (can. 893, § 1). Among Superiors of an exempt clerical religion, only the Superior general and, in monasteries sui iuris, the Abbot, each with his proper Council, can reserve sins of subjects, as above (can. 896). Understand this of personal Superiors, lest the General Chapter, enjoying supreme authority, be excluded; by force of canon 893, § 1, it also can reserve sins.

3. It regards only subjects, that is, those over whom someone can confer on others the power of absolving or of striking with censure.

Corollary I. Those without a domicile are bound by the reservation of the local Ordinary in whose place they are staying, since they are subjects of that Ordinary (can. 94, § 2).

Corollary II. Travelers are not bound by the reservation of their own territory as long as they are absent from it; and this holds even if they have departed only to obtain absolution (can. 900, § 3). They are, however, bound by the reservation of the place in which they are dwelling. The reason for the former is that jurisdiction over travelers is not received from their own Ordinary (n. 371). The latter was declared by the Pontifical Commission[3] and is deduced from the fact that travelers are absolved by force of jurisdiction obtained from the local Ordinary in whose place they confess. But the local Ordinary, with respect to travelers just as with respect to diocesan persons, restricts jurisdiction. If a traveler confesses to his own parish priest, the latter can absolve him both from the reserved cases of his own territory, since he is not bound by that reservation outside his own territory, and from those of the place in which he is staying, because the parish priest does not receive jurisdiction over his own parishioner from the local Ordinary in whose place the traveler is staying.

Corollary III. Exempt religious are bound by the reservation of the local Ordinary when they confess to one approved by him. For he confers jurisdiction over them, and consequently can confer it as limited (can. 874, § 1). Hence one who absolves them by force of jurisdiction received from the local Ordinary should take account of the aforesaid reservation; but he can absolve them from sins and censures reserved in the Religion (can. 519). If they are absolved by force of jurisdiction granted by the regular Superior, no account must be taken of episcopal reservation.

[1] Session 14, chapter 7 and canon 11.

[2] August 28, 1794.

[3] November 24, 1920 (A.A.S. 1920, p. 573).

383 **V. Use of the power of reserving.** 1. Local Ordinaries should not reserve sins unless, after the matter has been discussed in diocesan Synod, or outside Synod after the cathedral Chapter and some of the more prudent and more approved curators of souls of their diocese have been heard, the true necessity or utility of the reservation has been established (can. 895).

2. The cases to be reserved should be altogether few, namely three or at most four, only from the graver and more atrocious external crimes specifically determined. The reservation itself should not remain in force longer than is necessary for uprooting some public, deeply rooted vice and perhaps restoring collapsed Christian discipline (can. 897). All should entirely abstain from reserving to themselves those sins which are already reserved to the Apostolic See, even by reason of censure, and regularly from those also to which a censure, even one reserved to no one, has been imposed by law (can. 898).
3. Once reservations have been established which they have judged truly necessary or useful, local Ordinaries should take care that these be brought to the knowledge of subjects in the way that seems better to them, and they should not impart to just anyone and indiscriminately the faculty of absolving from reserved cases (can. 899, § 1).
4. The Supreme Pontiff reserved to himself only one sin, though with a censure (can. 2303), by reason of itself:[1] namely false denunciation by which an innocent priest is accused of the crime of solicitation before ecclesiastical judges (can. 894). This will be discussed later.

[1] A sin is said to be reserved by reason of itself when the reservation immediately affects the sin; by reason of censure, when the reservation immediately affects only the censure, so that the sin can indeed be remitted directly by a simple confessor, but the censure cannot be removed. While the censure remains, however, absolution from the sin is commonly gravely illicit. Finally, there is a sin reserved with censure when the sin is reserved by reason of itself and has an attached censure; in this case the reservation of the sin can be present even if the censure is not contracted or ceases.

384 **VI. Conditions of reservation.** It is required that the sin be:

1. **Mortal,** and indeed objectively, subjectively, and insofar as it is reserved. Objectively, and therefore not only by reason of an erroneous conscience; subjectively, so that, for example, an act posited with half-full advertence is not enough;[1] insofar as it is reserved, for example, if incest is reserved, it is not enough that someone has intercourse with a blood-relative, but it is also required that he know that that person is a blood-relative.
2. **External** and indeed externally mortal, because the Church has not been accustomed to reserve merely internal sins.[2] Nevertheless, it is sufficiently externally mortal if it manifests grave internal malice (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 132).
3. **Complete according to the words of the law,** in other words, that it be that work which is circumscribed by the words of the law. Hence if the law, for example, declares that homicide is reserved, it is required that death has followed. It is otherwise if it is established that an attempt, machination, and so forth is reserved; in that case it suffices that those actions themselves have been posited (St. Alphonsus, VI, 582).
4. **Certain.** Hence reservation is judged to be absent: 1. in doubt about the act committed, likewise about the required conditions; 2. in doubt about grave subjective fault; 3. in a doubt of law concerning the law of reservation.

Question 1. Does ignorance excuse from the reservation of sin?

Response. Some affirm this, because they regard reservation as penal. But it seems this must be denied, because the character of punishment is intended at most secondarily. This also holds as regards the one sin reserved to the Holy See by reason of itself, whose reservation most authors judged to be penal, relying on these words of Benedict XIV in the Constitution *Sacramentum Poenitentiae*: "so that so

detestable a crime may be restrained by fear of the greatness of the penalty," and so forth. But, considering the canons cited above, no reservation now seems to be penal, at least primarily (St. Alphonsus, VI, 581, doubt 1).

Question 2. Does grave fear excuse from the reservation of sin?

Response. Some affirm this, because a reserved sin is understood to have been committed as it is commonly accustomed to be committed, and therefore not from grave fear. But it must be denied, because the words of the law, as is supposed, are absolute and therefore also include a sin committed from fear, provided that fear does not take away full deliberation.

[1] Jurisdiction could nevertheless be limited by the Church also with respect to venial and merely internal sins, as is commonly taught against Vasquez (St. Alphonsus, VI, 582, doubts 1 and 2).

[2] See the preceding note.

385 **VII. Cessation of the reservation of sin.** Any reservation by which a sin is reserved by reason of itself ceases:

1. When confession is made either by the sick who cannot leave the house, or by betrothed persons for the purpose of entering marriage (can. 900, 1). Under the name of the sick, considering the mind of the legislator, there also seem to come all who because of a notable bodily injury cannot leave the house, such as the paralyzed, those detained in prison, and the aged. The disposition holds even if the sick person is staying in the same house as the confessor. For betrothed persons the exception holds even if they confess several times in order to their approaching nuptials, for example by making a general confession some time before marriage, afterward making an ordinary confession; or by now confessing in the customary way in order to marriage, afterward confessing again in order to marriage, for example because something was omitted through forgetfulness or a new reserved sin was committed. Moreover, sacramental confession sometimes takes away reservation even if the confession was invalid, so that betrothed persons can be absolved from the reserved sin even after marriage; these things are more fully explained in n. 386.
2. As often as either the legitimate Superior has denied the faculty of absolving requested for some determinate case, or, in the prudent judgment of the confessor, the faculty of absolving cannot be requested from the legitimate Superior without grave inconvenience to the penitent or without danger of violating the sacramental seal (can. 900, 2). It is said:

a) **As often as the Superior has denied the faculty of absolving requested for some determinate case.** Reservation ceases even if the Superior has denied the faculty for a just cause, provided that the case is determinate; for the law does not distinguish.

b) **Or the faculty cannot be requested without grave inconvenience to the penitent,** for example if Communion or the celebration of Mass cannot be deferred without danger of scandal or infamy until the faculty has been obtained;[1] if the penitent can return only with difficulty to the confessor who will seek the permission; if it is hard for the penitent to remain in the state of grave sin during the time required for obtaining and using the faculty. For this reason St. Alphonsus observes: "It seems hard to me for one who is in mortal sin to remain without absolution even for a day" (IV, 490). It is sufficiently probable that founded fear lest the penitent, if absolution is delayed, be driven away from the sacraments, suffices.

c) **Or the faculty cannot be requested without danger of violating the sacramental seal,** that is, without danger that the Superior would recognize or suspect for what person the faculty of absolving is requested.

3. Outside the territory of the one reserving, even if the penitent has departed from it only to obtain absolution (can. 900, 3; n. 382).

Corollary I. Since canon 900 declares that any reservation ceases in the cases set forth, this must also be applied to the one sin reserved to the Holy See by reason of itself, of which canon 894 speaks, that is, false denunciation of a priest concerning the delict of solicitation. This is confirmed by a response of the Pontifical Commission.[2]

Corollary II. A penitent who has committed a reserved sin and is in circumstances in which reservation ceases is bound, if he wishes to communicate, to confess, and indeed integrally, that is, even sins reserved of themselves, even if only a simple confessor is present, because the latter can absolve him directly. For the same reason, he is not bound to confess to a privileged confessor who is present, but can also make confession to a simple confessor.

Corollary III. A penitent who has committed a reserved sin and is not in circumstances in which reservation ceases seems to be bound, if a privileged confessor is lacking, to defer confession and Communion for a little while. He is bound to defer confession, because he can be absolved from the reserved sin only indirectly, which without a grave cause is gravely illicit. But a grave cause is lacking; for if it were present, reservation would cease and the penitent could be absolved even directly from the reserved sin. He is bound to defer Communion; for one who has sinned gravely cannot communicate without confession, unless a grave cause urges.

But if Corollary III is not admitted, there arises:

Question. Is one who has committed a reserved sin and is not in circumstances in which reservation ceases, if he wishes to communicate, bound, when a privileged confessor is lacking, to confess to a simple confessor?

Response 1. No, if he has only reserved sins, because with respect to this confessor these are not matter for absolution; hence there cannot be an obligation of confessing them. Accidentally he is bound to confess some venial sin or mortal sin already confessed, if he fears that he is not contrite.

Response 2. It is disputed if he also has non-reserved mortal sins. A few deny it, because there is no obligation of instituting a confession which, because of the confessor's lack of jurisdiction over the reserved sins, will necessarily lack integrity. Much more commonly it is affirmed, because the precept of putting confession before Communion prevails over the precept of material integrity. If he confesses, he is not bound to declare the reserved sins, unless he is a relapser into them or is in their proximate occasion, and is questioned about them by the confessor. The reason is that the confessor has the right and obligation of providing for the prudent ministration of the sacrament, and consequently of questioning about the aforesaid things; to this right there corresponds in the penitent an obligation of responding (St. Alphonsus, VI, 265, questions 1 and 2; 585, doubt 2 and 3).

Corollary IV. If the penitent confesses a reserved sin to a simple confessor and is not in circumstances in which reservation ceases, the confessor should either send the penitent to a privileged confessor or seek the faculty of absolving.

[1] It is not necessary, indeed it is not expedient, to seek the faculty by means of telegraph or telephone. "Considering," so the Letter of the Secretary of State, December 10, 1891, "the inconveniences that have actually arisen and easily will arise from the fact that written petitions are received by telegraphic route, the Holy Father prescribed that as an ordinary rule neither the Sacred Congregations nor other Roman Ecclesiastical Offices should henceforth receive petitions of this kind by the aforesaid route. Moreover, because the same reasons hold also for Episcopal Curias themselves, His Holiness willed that the Pastors of Dioceses also conform themselves to this prescription." And the Pontifical Commission answered on November 12, 1922, that the Ordinary must be judged unable to be approached if recourse to him can be had only by telegraph or telephone (A.A.S. 1922, p. 661).

[2] November 10, 1925 (A.A.S. 1925, p. 582).

386 **VIII. Removal of the reservation of sin.** Sometimes, as is commonly admitted, only the reservation of the sin is removed, whether by an inferior privileged confessor, or, as others who judge that this power is lacking to an inferior wish, by the Superior (St. Alphonsus, VI, 598, question 3). Once the reservation has been removed, however, a simple confessor can now absolve from the sin. Moreover, removal of the reservation alone has place in confession made to one having the faculty of absolving from reserved sins, in the following cases:

1. In an invalid confession, whether culpably or inculpably, in which the reserved sin was declared. The reason is that, once the end of reservation has been obtained, the reservation is judged to be removed. But in the case posited, the end of reservation has been obtained; for this is obtained by the fact that the penitent submits the reserved sin to the judgment of a competent confessor, who assigns remedies and imposes penance (St. Alphonsus, VI, 598). Except the time of Jubilee, if the penitent confesses either invalidly, whether culpably or inculpably, or without the intention of fulfilling the works required for the Jubilee, and makes confession to a confessor who has the faculty of absolving from the reserved sin only on the occasion of the Jubilee. This is deduced from these words of the Constitution *Inter praeteritos* of Benedict XIV:[1] "Since all the faculties which are granted are directed to the obtaining of the Jubilee and are, as it were, preparation for it, it clearly follows from this that there is no place for the use of those faculties except with one who is both prepared to obtain the Jubilee and has a certain purpose of fulfilling the enjoined works"; add § 86 (St. Alphonsus, VI, 598).

2. In a valid confession in which the reserved sin was omitted inculpably; because "it can probably be presumed that the Superior consents that the reservation be removed whenever the penitent validly confesses to one having the faculty" (St. Alphonsus, VI, 597). Yet it stands in the way that the end of reservation has not been obtained. St. Alphonsus does not reprobate this opinion because of authority (2nd catalogue of reformed questions, question 18).

3. According to some, in an inculpably invalid confession in which the reserved sin was omitted; because the Superior probably consents to the removal of reservation whenever the penitent confesses to one having the faculty, provided the confession is not culpably invalid. Indeed, according to some, in a culpably invalid or sacrilegious confession, provided the defect of validity does not proceed precisely from the fact that the reserved sin was culpably omitted. But these opinions do not seem safe enough to most authors (St. Alphonsus, VI, 598).

[1] November 28, 1749, § 62.

387 **IX. Absolution from a reserved sin.** The general rule is this: the following can absolve: 1. the one reserving and his successor; 2. the Superior in the sacramental forum of the one reserving or of his

successor; 3. those deputed or delegated either by law or by the aforesaid persons (St. Alphonsus, VI, 599). Specifically, note:

1. From the one sin and censure reserved by reason of itself to the Holy See, that is, from false denunciation of a priest concerning the delict of solicitation, the following can absolve: 1. Cardinals from the time of their promotion (can. 239, § 1, 1); 2. the priest whom a Cardinal or Bishop, whether residential or titular, has chosen for confessions for himself and his household, namely if the chosen priest receives the confessions of the aforesaid persons (can. 239, § 1, 2; 349, § 1, 1).

2. From sins and censures which local Ordinaries have in any way reserved to themselves, the following can absolve:

a) Cardinals, as above; likewise the priest chosen by a Bishop for confessions, as above.

b) The penitentiary canon (can. 899, § 2; 401, § 1).[1]

c) Parish priests, or others who in law are judged under the name of parish priests, during the whole time useful for fulfilling the Easter precept; then individual missionaries during the time when missions to the people happen to be held (can. 899, § 3). Moreover:

a) The time useful for the Easter precept is that which has been established either by common law, or by particular law, or by a prorogation granted to someone. The faculty can also be used in a confession which is indeed instituted during the Easter season, but not in order to fulfill the Easter precept.

Under the name of missions, spiritual exercises instituted for the whole parish can also be taken, with sufficient probability.

Note. Local Ordinaries should not impart to just anyone and indiscriminately the faculty of absolving from reserved cases (can. 899, § 1), but it should be imparted habitually at least to vicars forane, with the faculty added, especially in places of the diocese more remote from the episcopal see, of subdelegating as often as confessors of their district have recourse to them for some more urgent determinate case (can. 899, § 2).

3. From sins and censures reserved by a regular Prelate, the following can absolve:

a) Cardinals, as above; likewise the priest whom a Bishop has chosen for confessions for himself and his household, namely if the chosen priest receives the confessions of the aforesaid persons, among whom perhaps a religious is found (can. 239, § 1, 1; 349, § 1, 1).

b) Those approved by the local Ordinary (can. 519).

Note. In individual houses of a clerical religion, several must be deputed with the power, if the case concerns an exempt religion, of absolving even from cases reserved in the religion (can. 518, § 1).

[1] This canon enjoys ordinary power, which, however, he cannot delegate (can. 401, § 1).

Scholion. On Supplied Sacramental Jurisdiction

388 Let the things said about supplied jurisdiction generally be compared (vol. I, n. 102 sq.).

Chapter II. On the Right Use of the Power

389 Before we speak of the use itself of the power, certain things must be noted about those things which are prerequisite to right use; these indeed are "goodness, knowledge, and prudence."[1] A few

things concerning knowledge alone.

I. The necessity of knowledge needs no proof. It suffices to have noted with St. Alphonsus that "that confessor is in the state of damnation who exposes himself to receiving confessions without sufficient knowledge" (*Praxis Confessarii*, n. 18). That is, he is guilty of all the defects that follow from ignorance and that were foreseen at least confusedly.

II. Mediocre knowledge is required and suffices, greater or lesser, however, according to the diversity of places and penitents. In a word: it is required and suffices that the confessor know how to solve the cases commonly occurring in the place, and know how to doubt prudently about more difficult ones (St. Alphonsus, at the cited place and VI, 627). Nevertheless, greater knowledge is desired according to these words of the Roman Ritual: "That he may be able to judge rightly, distinguishing between leprosy and leprosy, and as a skilled physician prudently cure the diseases of souls, and know how to apply suitable remedies to each one, he should strive to acquire for himself as much knowledge and prudence as he can for this purpose."[2]

III. As regards the means of acquiring and preserving due knowledge, I note with St. Alphonsus:

"Those who desire this office of receiving confessions should not easily persuade themselves that they can render themselves sufficiently fit for so great an office without long study of moral science. For this, certainly, it is not enough to run through some little summary of those which are circulated; nor is it enough to know the general principles of this faculty, as some, who, despising casuists, arrogate to themselves the name of learned men, suppose. For moral science is not only very necessary to the Christian commonwealth, since the good governance of souls depends on it, but is also supremely difficult. First, because it requires a general knowledge of all the other sciences, offices, and arts; second, because it embraces so many diverse matters distant from one another; third, because in great part it consists of so many positive laws, which are found brought together only among the casuists, and especially among the more recent ones, since laws of this kind come forth day by day. Finally, it becomes most difficult because of the innumerable circumstances of cases, on which the variation of resolutions depends; for from the diversity of circumstances different principles must be applied, and in this consists the difficulty, since it cannot be done without great discussion or the careful reading of several books which examine and elucidate the matters" (VI, 628).

And in the *Praxis Confessarii* the Holy Doctor says thus: "No confessor should interrupt the study of moral theology; because from so many things so diverse and disparate among themselves which pertain to this science, many, although read, because they happen more rarely, fall from the mind with the progress of time. For this reason it is necessary always to recall them to memory by frequent study" (n. 18). In addition, all should prepare themselves well for the moral conferences, as they are called. Finally, especially new confessors, after a more difficult confession has been heard, should weigh whether they have acted rightly. If doubts occur, they should consult books or more learned persons, account nevertheless being taken of the sacramental seal.

Corollary I. One who doubts whether he enjoys due knowledge should acquiesce in the judgment of the Bishop or Superior (St. Alphonsus, *Praxis Confessarii*, n. 18).

Corollary II. One destitute of due knowledge, and a Bishop or Superior using him, are excused on account of grave cause. A grave cause is present in the article of death and generally if otherwise

penitents would for a long time lack the faculty of confessing, as can happen, for example, among captives and in Missions because of a shortage of priests (St. Alphonsus, VI, 628).

Having noted these things, we shall speak first of the things to be observed in confession, then of the things to be avoided in it, finally of the things to be observed after confession.

[1] Roman Ritual, title III, chapter 1, n. 1.

[2] At the cited place, n. 3.

Article I. On the Things to Be Observed in Confession

The confessor has the office of questioning, instructing, judging sins, judging and promoting disposition, consulting for amendment of life, and rendering sentence. Each must be treated.

§ I. On the Office of Questioning

390 **I. Existence of the obligation.** The confessor is bound to question the penitent: 1. if he prudently fears that formal integrity is lacking, in other words, that the penitent has kept back things which he knew had to be confessed by him; 2. if he prudently fears that material integrity is lacking, in other words, that the penitent in good faith is silent about things which of themselves are to be confessed.

The first is clear from the fact that the confessor cannot expose the sacrament to danger of nullity. Add the arguments to be brought for the second part.

The second is proved: 1. by the authority of Councils, Pontiffs, and the Roman Ritual.

The Fourth Lateran Council: "Let the priest be discreet and cautious ... diligently inquiring both into the circumstances of the sinner and of the sin."[1] Leo XII in the encyclical *Caritate Christi*[2] teaches that necessary diligence must be applied by the confessor in questioning penitents. Benedict XIV in the Constitution *Apostolica*:[3] "In the first place we admonish them to remember that they do not fulfill the parts of the office they have undertaken, indeed rather all those are guilty of a graver crime who, when they sit in the sacred tribunal of Penance, listen to penitents touched by no solicitude, do not admonish, do not question, but when the enumeration of crimes has been completed, immediately pronounce the form of absolution." The Roman Ritual: "If the penitent has not expressed the number, species, and circumstances of sins necessary to be explained, let the priest prudently question him."[4]

2. The Doctors agree. St. Thomas: "It must be said that the priest ought to search out the conscience of the sinner as a physician searches a wound and a judge a cause; because frequently those things which the one confessing would keep silent through shame, when questioned he reveals" (*In IV Sentences*, distinction 19). St. Antoninus,[5] St. Bonaventure,[6] St. Bernardine of Siena,[7] St. Charles Borromeo,[8] and St. Alphonsus teach the same (VI, 607, 629).

3. There are added arguments from reason; namely, the obligation is deduced: a) from the fact that the confessor as minister of the sacrament must take care that all sins not yet directly remitted be directly remitted, in other words, that confession also be materially integral; b) from the fact that the character of judgment requires that the judge know the whole cause before he pronounces sentence. There is added c) that the confessor as physician must strive to detect all diseases and provide medicine for them (St. Alphonsus, VI, 629).

Question 1. Must the confessor question if he notices that the penitent, after sufficient diligence has been applied, omits some sin?

Response. Some formerly denied this, because formal integrity suffices, and in the case it is posited to be present. But with St. Alphonsus it is rightly affirmed, because the confessor, although formal integrity suffices for the penitent himself, is bound both as minister of the sacrament, and as judge, and as physician to consult, with ordinary diligence, for the integrity of the sacrament required of itself, that is, material integrity. There is added the fact that "otherwise, as Suarez says, confessors would almost never be bound to question rude and unlearned men, who, however much diligence they put forward, can never of themselves confess integrally by explaining the circumstances, species, and number of sins.... The consequence is against the practice of the Church and against the intention of the chapter *Omnis utriusque sexus*" (St. Alphonsus, VI, 629). Nor should you object that the confessor is not bound to greater diligence than the penitent himself, who is supposed already to have applied the required diligence. For I answer that the obligation of the confessor is one thing and the obligation of the penitent another: the latter is bound to examine himself properly, while the former must, if he prudently fears that something is lacking to integrity, supply for it; but in supplying he is not bound to greater diligence than the penitent is in examining. I said: if he prudently fears that something is lacking to integrity. This commonly does not have place if the case concerns penitents who are both sufficiently instructed and diligent in examining and confessing sins; hence priests, religious, and pious persons commonly are not to be questioned (St. Alphonsus, VI, 607).

Question 2. To what extent is there an obligation of questioning if the confessor does not understand the penitent, because the latter, for example because of an organic defect or another reason, cannot express his thoughts in an intelligible way?

Response. In the proposed case it is for the most part expedient and sufficient, once the accusation is finished, to ask whether grave sins have been committed.

[1] Chapter 21, in chapter 12, *De poenitentia*.

[2] December 25, 1725.

[3] June 26, 1749.

[4] Title III, chapter 1, n. 16.

[5] *Summa Theologica*, t. III, title 17, chapter 17, § 2.

[6] *In IV Sentences*, distinction 19, doubt 5.

[7] Tome II, sermon 27, article 2, chapter 3, p. 167.

[8] *Instructiones Poenit.*, in *Acta Ecclesiae Mediolanensis*, 1683, part IV, p. 431.

391 **II. Object of the obligation.** The obligation of questioning, as follows from what has been said above, commonly regards only those things which pertain to integrity, or which must be declared. Therefore commonly there is no obligation of questioning about species entirely unknown or not sufficiently attended to, and therefore not contracted, venial sins, mortal sins doubtfully committed, sins doubtfully mortal, and circumstances aggravating grave malice in the same species. Sometimes, however, there is an obligation so that a right judgment may be made about the required disposition or about the obligation of making restitution.[1]

[1] Hence, for example, one should commonly inquire how great a sum a thief stole.

392 **III. Required diligence.** Mediocre diligence is required and suffices, as was said about the obligation of the penitent to examine conscience. For greater diligence cannot be demanded in the confessor, who is bound only secondarily, than in the penitent, who is bound primarily to procure integrity. For the rest, diligence should be proportioned both to the capacity of the penitent and to the character of the confession to be instituted. It is said:

1. **To the capacity of the penitent:** "Therefore the confessor," says Lugo, "ought to accommodate himself to the penitent and seek knowledge of sins from individual persons according to the capacity of each: subtler knowledge from the subtler, cruder from the cruder";[1] from which St. Alphonsus concludes: "When the penitent, although rude, seems sufficiently instructed and diligent in confessing sins with their circumstances according to his state and capacity, for a learned person is bound to examine himself in one way and a rude person in another, then the confessor is bound to ask nothing else" (*Homo Apostolicus*, tract 16, n. 103).
2. **To the character of the confession to be instituted;** thus, for example, a general confession requires relatively less diligence than a confession of one month.

[1] *De Poenitentia*, disputation 16, n. 594.

393 **IV. Gravity of the obligation.** The obligation of which we have spoken is grave, although the obligation of the penitent to consult for integrity is graver than the obligation of the confessor. The reason is that the matter is grave.

Question. Does a confessor sin gravely who advertently omits one or another necessary question about species, number, and so forth? It is said advertently, that is, from grave carelessness or negligence; for it is clear that smallness of matter can be had in the negligence itself, but the question is whether smallness of matter can be admitted in the matter itself, that is, in mortal sins to be investigated.

Response. Many judge that the aforesaid confessor does not sin gravely, at least if he acted thus in a long series of confessions. But the contrary seems to have to be admitted, because the confessor advertently fails in a grave matter. Nor should you object that by this opinion too grave a burden is imposed on the confessor, since the burden imposed by this opinion scarcely differs from the burden imposed by the adversaries. For they say that then only is sin not grave when, in a long series of confessions, one or another necessary question is omitted. But this kind of diminution of the burden scarcely deserves notice (St. Alphonsus, VI, 629).

Objection. The obligation of the penitent is greater than that of the confessor.

Response. Let that pass; but the argument proves that the obligation of the confessor also is grave.

394 **V. Manner of fulfilling the obligation.** The questions should be:

1. **Timely,** or made at an opportune time. Of itself, it is better to permit the penitent to explain himself, and not to interrupt him. Practically, one should proceed for the most part in this way. If the confession is foreseen to be brief, the confessor does not interrupt the penitent by questioning him, but waits for the end of the confession. If it concerns a long confession, the confessor will easily forget something necessary unless he mixes questions into the confession (St. Alphonsus, VI, 629).

2. **Apt,** that is, suited to the capacity, condition, and psychological state of the penitent. Generally questions should be brief, clear, and determinate, not negative ("Surely you did not consent?") nor disjunctive ("Did you sin by yourself or with others?"). A number greater rather than lesser should be proposed.

3. **Kind.** Therefore he should avoid harsh words ("Have you committed the most shameful sin of lust?"), likewise words which signify impatience ("What more? Have you finished? Hurry up and get yourself done"). If the confessor notices that the penitent has a sin which he declares with difficulty, let him say: Do not fear; I will gladly question you.

4. **Prudent,** or such that the penitent does not learn to sin from them (cf. can. 888, § 2).[1] But if this is feared, "the question ought to be made from afar, so that if the penitent committed it he may say so, and if he did not commit it he may not learn it" (St. Thomas, *In IV Sentences*, distinction 19, at the end).

5. **Chaste.** Generally the confessor should be mindful of this: in the matter of lust it is better to be deficient in many things than to abound in one; likewise of the admonition of St. Alphonsus: "Questions in the matter of chastity ought to be few and cautious" (St. Alphonsus, VI, 632). Specifically:

a) The confessor should not descend to particular modes or circumstances of the sin, nor to species which commonly do not occur. This is so that: 1. he may not be a cause of shameful temptation to the penitent or to himself; 2. he may not provide scandal to the penitent, as one who might suspect that the confessor is taking pleasure in the investigation of those things; 3. he may not bring confession into disrepute, namely, because there is danger lest some penitents narrate to others that matters of this kind were handled in this way (St. Alphonsus, at the cited place; cf. can. 888, § 2).

b) Let him use chaste terms, and such as do not teach sin to those who perhaps are ignorant of it. Hence, for example, he should not ask boys whether there was emission of seed, and so forth (St. Alphonsus, at the cited place). If a modest mode of questioning does not occur to his mind, let him rather abstain from the question.

[1] Cf. Roman Ritual, title III, chapter 1, n. 17.

395 **VI. Excusing causes.** The confessor is excused from questioning integrally:

1. As often as the penitent is excused from integrity, for example because of infirm health, scruples, and so forth.

2. When and insofar as the questions would be harmful, for example if they could not be made without danger being created for the penitent (St. Alphonsus, VI, 632).

3. When and insofar as the questions would be useless. Hence, for example, he should not commonly ask penitents whether they regarded this or that as a grave sin; nor should inquiry be made too much into the number, as was said in n. 320 (St. Alphonsus, *Praxis Confessarii*, n. 20).

Corollary. Just as a great number of penitents does not excuse the penitent from integrity, so neither does it excuse the confessor from the obligation of supplying the defect (n. 326).

§ II. On the Office of Instructing

396 **I.** If ignorance concerns either those things which certainly or probably must be known by necessity of means, or those things which are required for receiving the sacrament of Penance fruitfully, the confessor, before absolving the penitent, should instruct him or should take care that he first learn them (St. Alphonsus, VI, 608, 610). Commonly it will be better at once to instruct such a penitent summarily,[1] to stir him to an act of faith in the things to be known,[2] and to absolve him, with the obligation imposed of afterward learning more diligently the rudiments of the Christian faith.[3]

II. If ignorance concerns things to be known by necessity of precept, commonly he should absolve the penitent at once; nevertheless, he should be warned of the obligation of afterward obtaining fuller instruction.

III. If ignorance concerns an obligation of doing or omitting something, admonition of itself must always be made, because both ignorance of this kind and the material sins arising from it involve some evil and can become harmful. Practically, however, these rules are established:

1. Admonition must always be made if the common good or positive law requires it. I said "always," even if the penitent is foreseen as not going to obey the admonition. "Universally," so Benedict XIV in the Constitution *Apostolica*,[4] "the penitent must be admonished when ... he is in those circumstances of fact which, if the confessor dissimulates, strengthen the sinner in a wicked work, not without the scandal of others, when someone observes that those things which are practiced with impunity by those who frequent the Sacraments of the Church are judged by him to be lawful for himself." The reason for this doctrine is handed down by St. Alphonsus in these words: "Although the confessor by reason of his office is principally bound to attend to the good of the penitent, nevertheless, since he is a part of the commonwealth and has been constituted minister for the good of the Christian commonwealth, he is bound to prefer the public good to the private good of the penitent. So commonly" (VI, 615; *Homo Apostolicus*, tract 16, n. 116). Hence generally the following must be admonished: 1. those who hold public offices, whether ecclesiastical or civil, and err concerning the duties of the office (St. Alphonsus, at the cited place); 2. those who have given their name to a harmful sect, for example socialism, liberalism, or the sect of Freemasons; 3. those who have been deputed by the party of liberals or socialists either to Legislative Assemblies or to Provincial or Municipal Administration; 4. those who are bound to denounce a confessor by reason of solicitation, as will be explained later.
2. Outside the case of the common good or of positive law, or considering only the good of the penitent, admonition is to be made as follows:

a) It must be made if it is judged that it will be useful or at least not harmful to the penitent. Hence it must be made: 1. if the penitent through ignorance regards as a sin what is not a sin, or as a grave sin what is light; 2. if the penitent actually doubts about liceity. Nevertheless, if the penitent asks the confessor, often "he ought not answer more than he is asked. For example, if someone bound by a vow of chastity asks whether the marriage was valid because of the vow, and whether he is bound to render the debt to his wife, the confessor should affirm both, saying nothing about the obligation of not asking, even if he knows that the marriage is null because of some diriment impediment" (St. Alphonsus, VI, 616); 3. if the ignorance is foreseen as soon going to cease, as if it concerns the first conclusions of the natural law, for example concerning the malice of pollution, the penitent should commonly be warned at once, and all the more because customs of this kind are rooted out with

greater difficulty the longer they have been protracted (St. Alphonsus, III, 226); 4. if it concerns removing a proximate and voluntary occasion of sinning. Yet I would not deny that the penitent can be left in good faith in this case if it is truly feared that, after the admonition has been made and neglected, he will become wholly alienated from the sacraments; 5. if it concerns Prelates, Superiors, parish priests, or parents, both because ignorance is commonly not perfect and because the common good is involved (St. Alphonsus, VI, 615). Finally, if the penitent is judged not indeed immediately, but soon, to be going to obey the admonition, it should be deferred somewhat (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 115).

b) It must be omitted if it is judged that it will be harmful to the penitent.

c) If it is doubtful whether the admonition will help or harm, "the confessor ought to weigh the harm and the useful result, likewise the degree of fear of harm and of hope of utility, and choose that which he judges to preponderate.... For the rest, in doubt it regularly seems to me that formal evils are to be avoided rather than material ones" (St. Alphonsus, VI, 616).

[1] Let him not always require that the proposed articles be held in memory.

[2] For example by asking: Do you believe that there is one God? and so forth.

[3] Roman Ritual, title VII, chapter 1, n. 14.

[4] June 26, 1749.

§ III. On the Office of Judging Sins

397 **I.** For the confessor to absolve validly, it suffices that he has apprehended the act of the penitent under the aspect of sin, even if he forms no judgment either about the gravity or about the species of the sin (St. Alphonsus, VI, 627).

II. For the confessor to absolve in such a way that there does not remain for the penitent the burden of afterwards confessing the sin again, it suffices that the penitent has declared the sin, as it was committed, to an attentive confessor, even if the confessor errs both as regards gravity and as regards species (St. Alphonsus, VI, 478).

III. For the confessor to absolve licitly, he generally ought to have judged whether the sins accused were grave or light, and of what species they were (St. Alphonsus, VI, 627). To explain these things more, observe that it suffices that the confessor: 1. habitually know the gravity and species of the more obvious sins;[1] 2. equipped with that knowledge, hear the sins, even if he does not form an entirely explicit judgment about gravity and species; 3. have judged about the sins in the way set forth at the moment when the penitent declares them, and pronounce sentence from the judgment previously had, even if, while he grants absolution, he does not remember the sins declared.

Corollary I. While the confessor imposes satisfaction, he ought to retain or reassume sufficient knowledge, which is easily present, for imposing a fitting satisfaction.

Corollary II. If absolution is deferred, for example for one or two weeks, it is required that in the following confession the confessor have retained, or now reassume, at least confused knowledge of the state of the penitent (n. 334).

[1] "Let him hear the rest and absolve" (St. Alphonsus, VI, 627).

§ IV. On the Office of Judging and Promoting Disposition

398 **I.** For the confessor to absolve licitly, of itself at least broad moral certitude about the due disposition of the penitent is required, but that also suffices. It is said:

1. **Of itself,** because sometimes absolution can be granted conditionally even if the confessor lacks broad moral certitude (n. 404).
2. **Broad moral certitude,** that is, one which excludes strict doubt or imports the state of one opining.
3. **That also suffices,** for the matter concerns an internal thing, especially the sorrow of the penitent, about which greater certitude is had with difficulty, so that, if greater were required, "the administration of the sacrament would become subject to excessive scruples and difficulties" (St. Alphonsus, VI, 57). Hence apply these words of St. Thomas: "Certitude is not to be sought in the same way in all things, but in each matter according to its proper mode" (II-II, q. 47, a. 9, ad 2).

Having noted these things, the necessity of broad moral certitude is proved by these arguments:

First, the Sacred Congregation of Propaganda Fide[1] has these words: "Confessors should deny absolution to those who provide either no signs or only signs of feigned penance; but they should defer absolution for those whose penance is uncertain and suspect."

Next, after the first proposition condemned by Innocent XI,[2] almost all, both older and more recent authors, admit and defend the doctrine stated, as Aertnys,[3] Berardi,[4] and especially Ter Haar[5] prove by the testimonies they cite.

Finally, the reverence due to the sacrament forbids its being ministered with so great a danger of nullity as the defect of broad moral certitude imports. In the case the sacrament will indeed probably be valid and probably will grant pardon to the sinner; but it cannot be admitted that for that reason alone the reverence due of itself to the sacrament may be neglected, or that the sacrament may thus be subordinated to the good of the subject, especially because a sinner who is doubtfully disposed wholly lacks an unimpeded right to absolution, since he ought to take care that he is certainly or at least sufficiently certainly disposed (St. Alphonsus, VI, 461; *Homo Apostolicus*, tract 16, n. 117).

Objection 1. The Roman Catechism teaches: "For if the priest, after hearing the confession, has judged that diligence was not wholly lacking to the penitent in enumerating sins, nor sorrow in detesting them, he can be absolved."[6] Therefore he to whom contrition seems not wholly lacking can be absolved; this is far different from saying that only one about whose contrition the confessor is morally certain can be absolved.

Response. The only sense corresponding to the words, or the natural sense, is this: the penitent can be absolved if the confessor has judged that some true sorrow is not lacking. But one who truly doubts whether sorrow is present does not judge that it is present (vol. I, n. 215). Therefore the Roman Catechism favors rather than opposes the opinion defended by us.

Objection 2. It suffices that the confessor administer the sacrament prudently and without rashness. But this has place when he imparts absolution to those who are probably contrite.

Response. I concede the major; I deny the minor. For he administers the sacrament imprudently and rashly when he exposes it to grave danger of nullity. But ministration made to those who are only probably attrite exposes the sacrament to grave danger of nullity.

Objection 3. In those who most need the sacrament of Penance, broad moral certitude about due disposition is scarcely had, so that, if the stricter opinion is admitted, absolution would of itself almost always have to be deferred for them.

Response. I deny the assertion, and that it must be denied will be clearer from what is to be said under II.

[1] August 1827.

[2] The said proposition is this: it is not illicit in conferring sacraments to follow a probable opinion about the validity of the sacrament, leaving aside the safer one, unless law or agreement or danger of incurring grave harm forbids it (Denzinger-Bannwart, n. 1151).

[3] In *Nouvelle Revue Theologique*, 1900, pp. 283-536.

[4] *De Recidivis*, n. 19 sq.

[5] Cited work, n. 408 sq.

[6] *De Poenitentia*, n. 60.

399 **II.** The very confession or assertion of the penitent provides sufficient certitude about due disposition, unless from some other source a positive prejudice against due disposition arises (St. Alphonsus, VI, 459). When such a prejudice has arisen, some other special sign of disposition should be added to the confession or assertion, by which the prejudice is removed or sufficiently weakened. It is said:

1. The confession itself provides sufficient certitude about due disposition. For no one is presumed evil or a hypocrite.
2. Unless from another source a prejudice against due disposition arises, for example from the fact that the penitent is a habituated relapser; likewise from the fact that the penitent, who several times promised that he would avoid an interrupted voluntary occasion, nevertheless has not ceased to approach it and to sin in it, even if he is not a habituated relapser. Each of these things will be developed more later.

400 **III.** Once a prejudice has arisen, another sign of disposition should be added by which the prejudice is removed or sufficiently weakened. Signs of this kind[1] are, for example: 1. confession following from an extraordinary motive, as from a sudden death or from a sermon; indeed a confession which is instituted neither from the precept of the Church, nor from the authority of others, nor from custom alone, can suffice, for example a confession instituted immediately or soon after a fall; 2. unusual good works, for example prayers, fasting, almsgiving, pilgrimage, performed before confession; 3. manifestation of a sin previously hidden; 4. sorrow expressed by sighs and tears, although these must not always be trusted; 5. words which signify a firmer purpose, although even these cannot always be trusted; 6. spontaneous request for means of amending oneself, and so forth (St. Alphonsus, VI, 460, 505).

[1] They are called extraordinary signs by many; but one must not insist on the character of the extraordinary.

401 **IV.** When a prejudice against the penitent's disposition has arisen, the confessor should try to dispose him and to elicit a sign by which the prejudice is removed. He is bound to these things under grave obligation, both because then the precept of fraternal correction is especially urgent, and because another practice is very harmful. "For if absolution is immediately denied or deferred for penitents of

this kind, they will easily fall into despair or religious indifference."[1] Hence the Roman Ritual rightly says: "After hearing the confession ... he will apply opportune corrections and admonitions, as he judges there to be need, with fatherly charity, and he will try to lead the penitent to sorrow and contrition by efficacious words."[2]

Benedict XIV in the Constitution *Apostolica*[3] has these words: "They should not cease to exhort especially those who are accustomed to approach the sacrament of Penance either rarely or not without many crimes; they should open to them the most wretched life which they have led under the yoke of sin; they should explain the baseness of their crimes, so that, namely, they may grieve from the heart and seriously propose that they will withdraw from sins in the future. For it is settled that solid and grave exhortations of confessors, given in the forum of Penance, are far more efficacious than the sacred sermons of preachers, so that the penitent may turn his soul away from vices.... Nor should confessors reply that this cannot be done if a more frequent number of penitents suggests brevity; for that golden saying of St. Francis Xavier, in Fursellini's *Life* of him (book 6, chapter 17), has already solved the difficulty, conceived in these words: As for those confessing, he judged that care should be bestowed not hurriedly but diligently, admonishing that they should prefer to hear few confessions rightly made rather than many rashly hurried" (n. 22). Leo XII inculcates the same in the Constitution *Charitate Christi*.[4]

[1] Ter Haar, cited work, n. 351.

[2] Title III, chapter 1, n. 18.

[3] June 26, 1749.

[4] December 25, 1825.

§ V. On the Office of Consulting for Amendment of Life

402 After hearing confession, the confessor "will lead the penitent to amending and better ordering his life, and will hand down remedies for sins."[1] Hence he should inquire into the causes of sins, especially whether there was some occasion, and assign remedies. The general means are: 1. flight from occasions; 2. prayer, especially devotion toward the Blessed Virgin Mary; 3. frequency of the sacraments; 4. spiritual exercises instituted in some house of exercises. As regards particular means, compare what is to be said about the ministration of the sacrament to some persons specifically.

[1] Roman Ritual, title III, chapter 1, n. 18.

§ VI. On the Office of Rendering Sentence

One must distinguish between those certainly indisposed, those doubtfully disposed, and those sufficiently certainly disposed.

403 **I.** For those certainly indisposed, that is, after paternal admonition, absolution must be denied. Those certainly indisposed are those who manifestly lack contrition or purpose, or do not wish to fulfill a grave obligation. "Let him not absolve those," says the Roman Ritual, "who are incapable of such a benefit: such are those who give no signs of sorrow; who do not wish to put aside hatred and enmities, or to restore another's property if they can, or to leave a proximate occasion of sinning, or in another way to abandon sins and amend life for the better; or who have given public scandal, unless they publicly make satisfaction and remove the scandal."[1]

[1] Title III, chapter 1, n. 23.

404 **II.** For those doubtfully disposed, absolution of itself must be deferred (n. 398); but for a grave reason it can or even must be granted, but only under condition.

1. Those are understood as doubtfully disposed who, after paternal admonition, are not indeed held as certainly indisposed, but nevertheless do not bring those signs of penance which found broad moral certitude about due disposition.

2. A grave reason is had: 1. if someone is in danger of death; 2. if the penitent judges that he is disposed and it is prudently feared that, if absolution is delayed, he will become alienated from the sacraments and waste away in sins, or, for example by communicating or entering marriage, will commit another sacrilege (St. Alphonsus, VI, 432, 4).

405 **III.** To those sufficiently certainly disposed, absolution must be granted from justice, and regularly indeed immediately. In some cases, however, it can or even must be deferred, unless a special reason is present for imparting absolution immediately even then. It is said:

1. **Absolution must be granted from justice and regularly immediately.** For a penitent rightly confessed and disposed has by tacit contract a right to be absolved at once. Hence canon 886: if the confessor cannot doubt about the dispositions of the penitent and the latter asks for absolution, absolution is neither to be denied nor deferred.

406 **2. In some cases, however, it can or even must be deferred,**[1] namely if the confessor judges delay to be necessary or more useful for the amendment of the penitent. This doctrine rests first on the almost common authority of theologians. Thus teach, for example, St. Antoninus, St. Francis Xavier, St. Charles Borromeo, St. Leonard of Port Maurice, St. Alphonsus, Venerable Segneri, Fessius, Suarez, Lugo, and others, whose testimonies you will find cited in Ter Haar.[2] There is added the theological reason: namely, the confessor must perform not only the office of judge, but also that of physician (can. 888, § 1), to each of which offices, as is clear, the penitent must submit himself. But it belongs to a physician to apply means which are judged necessary or more useful. Moreover, delay of absolution is sometimes necessary or at least more useful for the amendment of the penitent (St. Alphonsus, VI, 462-464). It is judged necessary if otherwise there is grave danger that the penitent will break his purpose; more useful, if delay of absolution will more efficaciously guard against relapse. "This is not to be understood as though delay of itself would effect this, that the strength of the penitent against future temptations and relapses would be increased, for that would be plainly absurd, but in the sense that the penitent, often struck with salutary fear on the occasion of the delay, is stirred up so that, aided by the actual grace of God, he may better apply other remedies, for example flight from occasions, prayer, and due vigilance, and thus also in the future avoid sins more efficaciously."[3]

Corollary. Attending to what has been set forth above, absolution of itself is usefully or necessarily deferred according to the circumstances:

1. For one who is held by a very difficult obligation, such as the obligation of restoring a thing of great value which he can restore; of denouncing a confessor who is guilty of solicitation; of reconciling himself with an enemy; of physically leaving a proximate, continuous, and voluntary occasion to which someone is greatly attached; of applying the prescribed means lest he relapse in a necessary proximate occasion. In these cases absolution is deferred until the obligation has been fulfilled or the prescribed means have been applied. The reason is that otherwise there is danger lest the

penitent, after receiving absolution, break a purpose very difficult to fulfill (St. Alphonsus, III, 682; VI, 454, 456).

2. For a habituated relapser from occasion, that is, for one who has contracted a habit of some sin and, after being admonished by the confessor, continued the custom of sinning for the same reason, because of the occasion, but not for a relapser from internal frailty. The reason is that the will of the relapser, unless something stands in the way, must be strengthened by a stronger means, namely by delay of absolution. I said unless something stands in the way, for in a relapser from internal frailty courage must be given and the grace of the sacrament must be conferred (St. Alphonsus, VI, 456, 459, 463, 464).

Objection. Canon 886 declares: "If the confessor cannot doubt about the dispositions of the penitent and the latter asks for absolution, absolution is neither to be denied nor deferred." Therefore absolution, if it is asked by the penitent, can never be deferred for those sufficiently certainly disposed.

Response. The cited canon is not to be interpreted thus. For: 1. a priori it seems very improbable that the canon is opposed to the doctrine commonly admitted, even by the more benign authors. Now such is the doctrine according to which absolution sometimes can, or even must, be deferred for one disposed.

2. The canon can well be understood of the general norm, or the norm to be followed of itself; this does not prevent one from departing from it accidentally or because of special circumstances. And if that is less pleasing, observe: the canon speaks of dispositions, not of the disposition of the penitent, and for that reason perhaps signifies that absolution is then not to be deferred for a penitent asking it when the confessor does not doubt about the dispositions which seem to have to be required here and now by him not only as judge but also as physician, so that absolution can be granted without grave danger of breaking the purpose. Therefore it remains that we say that nothing new is contained in the cited canon. That the canon can be well harmonized with the common doctrine seems to be admitted sufficiently commonly.[4] We said, however, that in the cases set forth absolution is to be deferred:

[1] As regards the origin of this practice, Ter Haar writes: "In antiquity, especially up to the thirteenth century, confessors generally followed the penitential books as the norm of acting.... But the more moral and pastoral Theology advanced, theologians, especially after the Council of Trent, established several rules of prudence and discretion concerning absolution to be conferred or deferred ... so that the twofold end of this sacrament, which is to remit past sins and to prevent future ones, would be obtained more efficaciously. Hence then they spoke more and more often expressly about the delay of absolution. There is added this reason indicated by Francolini (*De Poenitentiae disciplina*, book 3, chapter 10, nn. 5, 6), namely that in the Middle Ages sinners were accustomed to confess rarely and scarcely once a year; for these, therefore, if they were truly contrite, it was dangerous to defer absolution. Hence also the theologians of that time scarcely spoke about delay of absolution. But since from the sixteenth century the use of the sacraments had grown greatly, theologians repeatedly treated of this delay, so that the sacraments would be received with greater fruit and would serve more for the amendment of penitents. Finally, it must be noted that canonical and sacramental penances in antiquity were for the most part very grave; and therefore, if they were accepted, they were highly medicinal and very efficacious against relapse into sin. But with the progress of time, when, faith growing cold, medicinal penances were always imposed more mildly, theologians began to commend more expressly delay of absolution, even for those who were judged truly contrite, so that by this remedy, especially relapsers and occasionaries, would be incited to shake off spiritual sloth and to impose on themselves greater force, by which they would avoid occasions and apply other means" (*De conferenda absolutione sacramentali iuxta canonem 886*, n. 12).

[2] *De conferenda absolutione sacramentali iuxta can. 886*, n. 13 sq.

[3] Ter Haar, *De occasionariis et recidivis*, n. 437.

[4] Cf. Ter Haar, cited work, p. 63 sq.

407 **3. Unless a special reason is present for imparting it immediately even then.** Special reason is involved by: 1. danger of death, as is clear; 2. an extraordinary disposition of such a kind that it sufficiently guarantees future amendment. Such an extraordinary disposition, however, should not easily be presumed; 3. danger of alienation from the sacraments; 4. danger of infamy; 5. grave difficulty of returning to the same confessor, provided it is grave for the penitent to repeat the confession before another. The reason for 4 and 5 is that the very necessity of receiving absolution, which is present in the said cases, founds the hope of acquiring more efficacious graces (St. Alphonsus, VI, 454, 456). There is added the fact that in the case delay of absolution will easily be borne with difficulty, and for that reason can carry with it alienation from the sacraments (St. Alphonsus, VI, 454, 456).

Corollary I. For those who are weak in faith or negligent in religious practice, if they are sufficiently certainly disposed, absolution should commonly not be deferred.

Corollary II. On the occasion of a mission or spiritual exercises, some one of the enumerated causes is commonly present, so that then, at least for the most part, absolution can be granted at once to those sufficiently certainly disposed, and almost must be.

Corollary III. If delay of absolution is applied: 1. it should not be made for a long time, more advisedly for only one week or at most another; 2. it should be signified in the most humane words, and in such a way that it is clear that absolution is deferred not from anger or hatred, but only for the good of the penitent (St. Alphonsus, VI, 463); 3. the confessor should take pains that the penitent grasp the usefulness of the delay and consent to it willingly; 4. it should be made together with the indication of means of amendment and with an exhortation that he return without fear.

Question. What sentence should be rendered by a confessor who prudently fears that the penitent is sacrilegiously keeping silent about, or denying, a committed sin? Moreover, in order that he sacrilegiously keep silent about or deny it, it is required that the penitent: 1. have sinned subjectively gravely; 2. not yet have confessed the sin; 3. now remember the sin; 4. judge that there is no cause excusing from integrity. With these things noted:

Response 1. If the confessor doubts, absolution should commonly be granted, and indeed absolutely, according to this principle: the penitent is to be believed whether he speaks for himself or against himself. If, however, all things considered, the doubt persists, one must distinguish. If it persists independently of the confession of another, for example from the report of others, let the penitent be absolved conditionally. If it persists dependently on the confession of another,[1] according to some the penitent is to be absolved, and indeed absolutely, because, they say, it is not licit to use that sacramental knowledge. According to others, he is to be absolved conditionally.

Response 2. If the confessor is certain, which, considering the state of the question, will scarcely have place, one must distinguish. If he is certain independently of the confession of another, absolution should be denied. If he is certain from the confession of another,[1] according to some the penitent must be absolved, and indeed absolutely, because, they say, it is illicit to use that sacramental knowledge. According to others, absolution must be denied; nevertheless, to conceal the denial, some prayer should be recited (St. Alphonsus, VI, 631).

[1] In this case he cannot question the penitent more or otherwise than he would do if he had not known it, unless he has received express permission. Sometimes it is expedient to ask permission to use sacramental knowledge for helping another penitent, for example an accomplice.

Article II. On Things to Be Avoided in Confession

Here especially these things must be treated: 1. inquiry into the name of an accomplice; 2. absolution of an accomplice; 3. solicitation to shameful acts.

§ I. On Inquiry into the Name of an Accomplice

408 Canon 888, § 2 establishes: "Let the confessor take care altogether not to inquire into the name of an accomplice." This canon takes the place of the ecclesiastical documents[1] which before the Code governed this matter. Therefore, of itself it is forbidden to induce the penitent to reveal the name of an accomplice, and indeed under grave sin or, as commonly happens, under light sin, according as, considering the rules on defamation of neighbor (vol. I, n. 1069), it is grave or light to reveal the sin of a third person to one upright man. Scandal can be added, and the danger that the penitent may be somewhat alienated from the sacrament. Moreover, of itself it is always a grave sin to inquire into the name of an accomplice under denial of absolution.

And so the matter stands of itself, since, when a proportionate cause is added, inquiry into the name becomes licit.

Corollary I. It is lawful for the confessor to inquire into the name of an accomplice if the penitent is bound from another source to denounce the accomplice, and either the confessor is the superior to whom the accomplice must be denounced, or the denunciation cannot conveniently be made except through the mediation of the confessor, who has been made certain of the accomplice's name. But commonly, even in these cases, it is better that the name be revealed outside confession. If it is done through the mediation of the confessor, it can commonly be done without the name of the accomplice being manifested to the confessor, namely by handing to him a closed note on which the name of the accomplice is written, or even by handing to the confessor a closed note which contains both the facts to be manifested and the name of the accomplice, and which is handed over by the confessor to the one to whom it belongs by law.

Corollary II. The confessor can and must question the penitent insofar as the integrity of confession and the prudent ministration of the sacrament require it, even if from this he comes to knowledge of the accomplice, as was explained in n. 328 (St. Alphonsus, VI, 491, 492).

[1] The documents were: the Constitutions *Suprema* of Benedict XIV, July 7, 1745; *Ubi primum*, June 2, 1746; *Ad eradicandum*, September 28, 1746; and the Constitution *Apostolicae Sedis* of Pius IX, October 12, 1869. The law, however, not only prohibited inquiry into the name of an accomplice, but also, when the conditions were posited, established penalties; these have now been removed.

§ II. On Absolution of an Accomplice

The principal documents pertaining here are: canon 884, which refers to the Apostolic Constitutions; the Constitution *Sacramentum Poenitentiae* of Benedict XIV;[1] the Brief *Apostoli muneris* of Benedict XIV;[2] the Constitution *Apostolicae Sedis* of Pius IX;[3] canon 2367.

Moreover, considering the documents cited, two things must be distinguished here, namely a certain subtraction of jurisdiction and an excommunication reserved to the Apostolic See in the most special

manner. The former is established against the confessor accomplice who absolves the other accomplice party.

[1] June 1, 1741.

[2] February 8, 1745.

[3] October 12, 1869.

409 **1. Subtraction of jurisdiction.** Canon 884 establishes: "Absolution of an accomplice in a shameful sin is invalid except in danger of death; and even in danger of death, outside the case of necessity, it is illicit on the part of the confessor according to the norm of the Apostolic Constitutions and especially the Constitution *Sacramentum Poenitentiae* of Benedict XIV, June 1, 1741." We shall speak first of the requisites for subtraction of jurisdiction to have place; then of the way in which subtraction of jurisdiction must be understood; finally we shall assign exceptions to the general rule.

1. **Requisites for subtraction of jurisdiction to have place.** A sin is required:

a) **Against chastity.** It does not matter whether it is a sin of deed, of sight, or of speech[2] (St. Alphonsus, VI, 554).

b) **Committed with another,** whether with a male or with a female, whether with one mature or one immature, and, as the Sacred Penitentiary[3] responded, whether before or after the priesthood was received. Nor does it stand in the way that in the latter case the danger of relapse has almost vanished; for a law which is founded on the presumption of common danger persists, even if in a particular case the danger has ceased. There is added the fact that, besides the danger of relapse to be avoided, other ends of the law are also assigned, such as the indecency of a confession of this kind.

c) **Grave,** and indeed subjectively and externally. It is nevertheless sufficiently externally grave if it shows grave internal malice (St. Alphonsus, VI, 554).

d) **As grave and known to the other party,** and indeed at the time when the sin is committed. Otherwise there is not complicity, or participation in the same grave external sin. Moreover, this condition is presumed to be present if the case concerns a mutual act of itself gravely influencing venereal commotion. But if the discussion is of an act not gravely influencing of itself, but posited with lustful intention or with venereal commotion, that intention or commotion must become known from the circumstances; otherwise the act is indeed common, but it is not common insofar as it involves grave sin.

e) **Such in both parties as has been described.** Hence the case is not present if the other party did not consent, or was ignorant of the malice, even if he or she was led into that error by the accomplice; nor is it present if the sin was committed with one sleeping, with one drunk, or with one not yet possessing the use of reason (St. Alphonsus, VI, 554).

f) **That the confessor and the penitent know themselves as accomplices,** whether previously, for example at the time of the sin, or now. This is required with sufficient probability, because otherwise it can happen that the confessor would have to defame himself before the penitent. Suppose some person presents herself to the confessor, ignorant that she has sinned with that priest, while the confessor notices that the person is present with whom he perpetrated lust. Otherwise one must speak if the confessor and penitent previously knew themselves as accomplices, and only the penitent did not notice that he or she was confessing to the confessor with whom he or she had sinned.

g) **That the aforesaid things are at least morally certain.** Doubt sometimes concerns the gravity of a touch, and so forth.

Corollary. When the conditions have been fulfilled, subtraction of jurisdiction has place:

a) Even if the confessor is ignorant of the law which establishes the subtraction of jurisdiction; for "ignorance of invalidating or inhabilitating laws does not excuse from them unless something else is expressly said" (can. 16, § 1), or unless the incapacity is established only by way of penalty, which does not have place in the case, since the law was principally issued so that relapses might be guarded against.

b) Even if the confessor does not recognize the penitent; for if ignorance of an inhabilitating law does not excuse from it, still less does ignorance of the fact on which the application of the law depends. Nor should you object that Benedict XIV takes jurisdiction away from the confessor who "dares to receive the sacramental confession of the accomplice person," but that in our hypothesis rash daring is lacking. For the Supreme Pontiff subtracts jurisdiction from the confessor "lest he dare to receive the confession."

c) Even if the penitent does not notice that he or she is confessing to the confessor with whom he or she sinned, provided nevertheless that the confessor and penitent previously knew themselves as accomplices. For when this latter hypothesis has been fulfilled, the confessor admonishing the penitent does not defame himself.

[1] Cf. De Smet, *De absolutione complicis et sollicitatione*, 2nd ed.

[2] Holy Office, May 28, 1873.

[3] January 22, 1879.

410 **2. The way in which subtraction of jurisdiction must be understood.** a) The confessor certainly cannot directly absolve the accomplice from the sin of complicity as long as another confessor has not yet directly absolved him or her from it. After the sin has been directly remitted, even the confessor accomplice validly absolves directly from it (St. Alphonsus, VI, 555). I said validly, because commonly he acts illicitly; for the Holy See is accustomed to enjoin on one who, when the sin of complicity has not yet been directly remitted, absolves or feigns to absolve an accomplice, that he abstain in the future from hearing the confessions of the accomplice.

b) It is disputed whether jurisdiction has also been taken away with respect to other sins, or whether it persists with respect to them, so that the confessor can absolve directly from the others, and thus indirectly from the sin of complicity. Some affirm simply. Others affirm if the penitent declares the sin of complicity, otherwise they deny. Others simply deny, or judge that jurisdiction persists with respect to other sins. This opinion is sufficiently probable, both because the Constitution *Sacramentum Poenitentiae* declares that jurisdiction has been taken away "for absolving any person whatever from a fault of this kind; so indeed that absolution, if he shall have imparted any, is altogether null and void," namely absolution from that sin, since as not direct it is null as such, so that the sin must be confessed anew and remitted directly; and because the Sacred Penitentiary responded[1] that "privation of jurisdiction ... is in order to the shameful sin itself in which the same confessor was an accomplice." This opinion is at least probable, so that the Church supplies for caution.

[1] May 16, 1877.

411 **3. Exceptions.** a) The confessor validly absolves even from the sin of complicity in danger of death; likewise in the same danger he licitly absolves if necessity urges (the cited documents). It is said:

1. **In danger of death;** who are said to be in danger of death, see n. 370.

2. **In danger of death he also absolves licitly if necessity urges,** that is: 1. if another, even one not approved, cannot be used without danger of infamy or scandal (can. 2367, § 1).[1] Nevertheless, fear of infamy to be incurred before that one confessor, in the confession itself, does not excuse. Moreover, the priest accomplice is bound under grave obligation, if it can be done, to remove or anticipate the danger of infamy or scandal, for example by pretending illness or by going away for some time. Nevertheless, danger of infamy or scandal will easily be present if only one not approved can be called; still more, if only one suspended or excommunicated, known as such, remains. There are even those who judge that the obligation of calling the latter persons is simply absent. Necessity urges: 2. if another refuses to receive the confession; 3. if the penitent refuses to confess to another, for example to a blood-relative, or manifests grave repugnance to doing so, in which case there is danger of sacrilege (can. 2367, § 1). The reason for 2 and 3 is that then another priest is morally absent.

Corollary. One who has begun a confession licitly continues and directly absolves the accomplice from the sin of complicity, even if now another priest can receive the confession: 1. if he began licitly, that is, when another could not conveniently be present, even perhaps because of preceding culpable negligence by the one beginning; 2. with sufficient probability, if he began illicitly, that is, when another could be present. As regards excommunication, however, in the case one must speak thus: if he began licitly, he does not incur excommunication, and this is probable even if he culpably neglected to anticipate the danger which, when he began the confession, could no longer be anticipated. If he began illicitly, that is, when another could conveniently be present, he escapes or does not escape excommunication according as before absolution he repents or does not repent of the sin committed.

b) It is disputed whether the confessor ever validly absolves from the sin of complicity even outside danger of death, for example if the accomplice would for a long time, or at least for a very long time, lack the occasion of confessing to another. Now it seems this must be denied. For the law expressly and repeatedly declares that only danger of death is excepted. So also canon 884. Likewise the Holy Office declared[2] that jurisdiction is taken away "unless the most extreme necessity entirely urges, namely if in the very article of death another priest is lacking." Finally, the end of the law, which is that priests be turned away from sin and relapse, advises that the law be urged, even if the penitent sometimes suffers some harm from it. For the rest, that harm scarcely deserves notice, since the penitent in the cases here supposed can be absolved directly from other sins, and thus indirectly from the sin of complicity, as we shall now note.

c) As we said, the confessor enjoys jurisdiction over the other sins of the accomplice (n. 410). Moreover, if a truly grave reason is present and another cannot be approached without grave inconvenience, it is lawful to absolve the accomplice directly from other sins, indirectly from the sin of complicity. A truly grave reason, considering the most severe law which forbids absolution of an accomplice, is, for example, an annual confession to be made, Easter Communion, or another Communion which cannot be omitted without danger of infamy or scandal. Nevertheless, in the case the penitent can also be content with perfect contrition; indeed, this of itself is to be preferred. A grave

cause on the part of the confessor is had if the penitent knows the confessor accomplice only by face, not by name, and denial of absolution perhaps brings danger that the name of the confessor will afterward be inquired into.

[1] Constitution *Apostolici muneris*, § 3.

[2] February 20, 1867.

412 **II. Excommunication.** Canon 2367 establishes: one absolving or feigning to absolve an accomplice in a shameful sin incurs by the very fact an excommunication reserved in a most special manner to the Apostolic See. And this also in the article of death, if another priest, even one not approved for confessions, can receive the confession of the dying person without some grave infamy and scandal going to arise, except the case in which the dying person refuses to confess to another (§ 1). The one absolving or feigning to absolve an accomplice who indeed does not confess the sin of complicity, from which he or she has not yet been absolved, does not escape the same excommunication if he or she conducts himself or herself in this way because he or she was induced to this either directly or indirectly by the accomplice confessor (§ 2). We shall speak of the requisites for excommunication to be incurred, and of absolution from it, with some things to be noted added.

413 **1. Requisites for excommunication to be incurred.** It is required:

a) That, as regards the sin, the things set forth above in n. 409, under I, 1 be present.

b) That the sin of complicity has not yet been directly remitted by another confessor (cf. can. 2367, § 2).

c) That the confessor either has directly absolved or feigned to absolve the accomplice from the sin of complicity, or has absolved or feigned to absolve the accomplice who keeps back the sin of complicity, but does so because he or she has been induced to this by the confessor, either directly or indirectly. It is said:

a) **Either has absolved or feigned to absolve;** hence it does not suffice that he only received the confession. The fiction, moreover, is required with respect to the penitent, in other words, it is required that with respect to the penitent he acted in such a way that the latter ought to judge that he or she was being absolved. It is not required, nor does it suffice, that only others ought to think that the penitent was being absolved. But it does not matter whether the confessor simulates absolution, that is, pronounces the form without the intention of absolving, or dissembles the denial of absolution by reciting some prayer, or by pronouncing other words, or even by keeping silence, yet in such a way that because of signs or gestures of the hands he seems truly to loose the penitent from sins.

b) **Or has directly absolved or feigned to absolve the accomplice from the sin of complicity.** Hence he does not incur excommunication who, after the sin of complicity has been declared by the penitent, signifies to the penitent that he can absolve only from other sins, but not from that sin. Nor does one incur excommunication who absolves or feigns to absolve an accomplice who keeps back the sin of complicity, except in the case now to be assigned.

c) **Or has absolved or feigned to absolve an accomplice who keeps back the sin of complicity, but does so because he or she has been induced to this by the confessor, either directly or indirectly;**[1] although in the case the confessor neither directly absolves nor feigns to absolve directly from the sin of complicity, nevertheless excommunication is contracted.

d) That the confessor, if he absolved the accomplice, has acted objectively illicitly. Moreover, it was set forth above when the confessor licitly absolves the accomplice.

e) That the confessor has both sinned subjectively gravely and known the censure and adverted to it. Defect of grave subjective fault can arise, for example, from ignorance of the law forbidding absolution, from the fact that he is ignorant that an unconsummated sin suffices, or does not know that the person confessing is an accomplice. Ignorance of the censure excuses, even if it is vincible, provided it is not affected, crass, or supine (can. 2229).

[1] "The confessor directly induces the penitent when he positively and explicitly forewarns him or her about keeping silent concerning the sin of complicity, because, for example, he already knows it and its declaration would be useless. But he induces indirectly when the confessor tries to persuade the penitent either that the shameful action committed with him is not a sin, or at least is not so grave that he or she ought to be disturbed about it; whence the penitent concludes that it is lawful for him or her not to declare such a sin, and really abstains from declaring it" (Sacred Penitentiary, February 19, 1896).

414 **2. Absolution from the excommunication** can be granted as follows:

a) In more urgent cases any confessor can absolve from this excommunication in the sacramental forum, with the burden enjoined of having recourse, under penalty of reincidence, within a month, at least by letter and through the confessor, if this can be done without grave inconvenience, the name being kept back, to the Sacred Penitentiary and of standing by its mandates (can. 2254, §§ 1 and 3). It is said:

a) **Confessor,** that is, every priest approved for hearing confessions.

b) **In more urgent cases;** a more urgent case is had if the censure cannot be observed externally without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of grave sin for the time necessary for the competent Superior to provide (can. 2254, § 1).

c) The confessor must, under penalty of reincidence, impose the burden of having recourse to the Sacred Penitentiary within a month from the absolution received. Recourse is always necessary, so that the disposition of canon 2254, § 3, by force of which sometimes the penitent can be absolved without the burden of having recourse, cannot, as the cited canon adds, be applied to this excommunication. Therefore the obligation of having recourse urges until it has been fulfilled. The recourse is made with the name kept back, and can be made either through the confessor or by the penitent himself. If the penitent can conveniently approach the same confessor, it is better that the recourse be made through the confessor; otherwise let the penitent have recourse, unless he wishes to approach another confessor who is willing to have recourse. If the confessor refuses, the penitent is bound, unless however he is impeded by sickness or by inability to write; in that case he is excused until the impediment has ceased.

b) In danger of death any priest, even one not approved, can absolve from this excommunication, while there remains, however, for the sick person, under penalty of reincidence, the obligation of having recourse, after he has recovered, unless he has been absolved by one endowed with a special faculty, to the Sacred Penitentiary and of obeying its mandates (can. 882 compared with can. 2252). The obligation of having recourse urges from the time health has been recovered, so that recourse must be instituted as soon as possible. If it is delayed longer, the penitent falls back into the censure. For the rest, as regards recourse, the things said above under a) hold.

415 **3. Things to be noted** regard both the petition to be directed to the Sacred Penitentiary, and the execution of the rescript to be received, and the clauses contained in the rescript. To these we shall add a formula for having recourse to the Sacred Penitentiary.

a) In the petition, with the assumed name of the penitent used, let there be set forth: 1. that the penitent has fallen into excommunication; 2. how many accomplice persons and how many times he absolved them; 3. whether and how many times he has been absolved from the same delict and excommunication; 4. whether he has contracted one or more irregularities from violation of the censure. This, however, can be omitted if he has already been dispensed from the irregularity by the confessor; 5. that the penitent has been absolved in danger of death, or in an urgent case, but now has recourse to the Sacred Penitentiary; 6. according to the circumstances it is laudably added that the sin of complicity was less grave, that the occasion of relapse has been removed, that a long time intervened between the grace obtained and the relapse, and that through the interval he conducted himself well.

b) If the rescript is granted in gracious form, it suffices that the penitent read it and fulfill the obligations imposed. If the confessor wrote, it is enough that the received rescript be communicated to the penitent, whether in confession or outside it. If the rescript is granted in commissory form, the execution is committed to the confessor chosen or to be chosen by the penitent, so that it can be carried out by any confessor whom the penitent has chosen. The execution must be done in sacramental confession, and indeed so that first absolution from the censure is given, then absolution from sins, finally dispensation is granted in the irregularity.

If the penitent can return to the confessor only with difficulty, it is better that the rescript be sought in gracious form.

c) Several clauses are commonly inserted into the rescript of the Sacred Penitentiary, for example:

1. The guilty person, if the penitent again approaches him, should admonish the penitent concerning the nullity of the past confessions.
2. Let him abstain, insofar as this can be done without grave scandal, from hearing the confessions of the accomplice person. This clause obliges under grave obligation.
3. Let the guilty person be warned that, if he commits another crime of absolution and obtains a similar favor from the Sacred Penitentiary, this favor will in no way profit him unless he has made mention of the present favor.
4. As regards the clause of giving up the office of confessor, if it is added, note these things:

This clause is imposed either absolutely, or with mitigation, namely insofar as, before the term fixed for giving up the office, a new recourse to the Sacred Penitentiary is permitted, if it is judged that grave causes stand in the way of resigning the office.

If it is imposed with mitigation, recourse can be had to the Sacred Penitentiary for the purpose of obtaining relaxation of the clause, after the reasons have been set forth and, according to the circumstances, also the good disposition of the penitent and the amendment of his morals have been invoked.

If it is imposed absolutely, nothing prevents the confessor from having recourse again and obtaining either relaxation of the clause or at least prorogation of the term.[1]

d) **Formula for having recourse to the Sacred Penitentiary.**

Most Eminent Prince,

Titius, a priest, has incurred the excommunication reserved to the Supreme Pontiff in the most special manner, because once, or twice, or three times, he absolved an accomplice, or feigned to absolve an accomplice. Since he could not be dismissed without absolution, he received it. Now, however, through me he has recourse to the Holy See, prepared to execute the mandates which it may please Your Eminence to impose, in gracious form. Titius continued to celebrate before absolution. The office which he holds cannot be given up without grave inconvenience.

May Your Eminence deign to direct the response to me, the undersigned.

Reverently kissing the sacred purple, I subscribe with the greatest reverence which is fitting.

Your Eminence's most humble servant.

Notes. The name and domicile of the confessor should be clearly noted. The letter, however, should be addressed thus: *A sua Eminenza Reverendissima - Il Cardinale Penitenziere-Maggiore - Palazzo del S. Uffizio, Roma.*

[1] De Smet, *De absolutione complicis et sollicitatione,* 2nd edition, n. 40.

§ III. On Solicitation to Shameful Things

416 The principal ecclesiastical documents which pertain here are:

I. The Constitution *Cum sicut nuper* of Pius IV;[1] the Constitution *Universi gregis* of Gregory XV,[2] to which the Holy Office added sixteen responses on February 11, 1661; the Constitution *Sacramentum Poenitentiae* of Benedict XIV,[3] and *Etsi Pastoralis*, § 9, n. 5;[4] the Instructions of the Holy Office.[5]

II. Canon 904 establishes as follows: "According to the norm of the apostolic constitutions, and especially of the Constitution *Sacramentum Poenitentiae* of Benedict XIV, June 1, 1741, a penitent must, within a month, denounce to the local Ordinary, or to the Sacred Congregation of the Holy Office, the priest guilty of the delict of solicitation in confession; and the confessor must, with the penitent's conscience gravely burdened, admonish the penitent concerning this obligation."

III. Canon 2368 declares that these penalties are to be decreed against those soliciting: "Whoever has committed the crime of solicitation of which canon 904 treats is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even, according to the gravity of the delict, is to be declared incapable of receiving them; he is to be deprived of all benefices, dignities, active and passive voice, and is to be declared incapable of all these things; and in graver cases he is also to be subjected to degradation."

The law also affects the Eastern Church,[6] not indeed by force of the Code (cf. can. 1), but by force of the earlier legislation, which the Code left in its vigor with respect to the Eastern Churches.

With these things premised, we shall speak first of those who must be denounced, then of those who must denounce, then of the manner of denouncing, finally of the obligation of the confessor with respect to the penitent who is bound to denounce; a scholion being added on the manner of receiving a denunciation.

[1] April 16 (17), 1561.

[2] August 30, 1622.

[3] June 1, 1741.

[4] May 26, 1742.

[5] February 20, 1867, and July 20, 1890.

[6] Holy Office, June 13, 1740; April 25, 1838 (*Collectanea*, n. 1282); Constitution *Etsi pastoralis* of Benedict XIV; Instruction of the Sacred Congregation of Propaganda Fide, August 26, 1775 (*Collectanea*, n. 1732).

Point I. On Those who Must Be Denounced

417 All and only priests must be denounced who themselves have provoked someone to shameful things, or who have had with someone illicit and dishonest conversations or dealings with rash daring in one of the circumstances soon to be set forth. It is said:

I. **All priests,** both seculars and regulars, both approved and not approved. It is disputed, however, whether even Bishops must be denounced. It seems that an affirmative answer must be given, because the Constitution *Sacramentum Poenitentiae* of Benedict XIV declares that "all priests ... of whatever dignity and preeminence" must be denounced (St. Alphonsus, VI, 685).

Objection. The denunciation must be made to the local Ordinary or to the Sacred Congregation of the Holy Office (can. 904). But criminal causes of Bishops, according to canon 1557, § 1, 3, and canon 2227, § 1, must be judged by the Supreme Pontiff.

Response. By establishing that all priests of whatever dignity must be denounced, the legislator seems to signify sufficiently that Bishops, as regards this cause, must be denounced to the Holy Office.

II. **And only priests,** so that laymen and lower clerics who solicit in confession while pretending to be confessors are excluded. Nevertheless, by receiving sacramental confession, according to canon 2322, 1, they contract an excommunication reserved in a special manner to the Apostolic See; moreover, the cleric is to be deposed, the layman is to be deprived of pension or ecclesiastical office, and punished with other penalties according to the gravity of the fault.

III. **Who themselves,** etc. Therefore neither those commanding or advising solicitation, nor interpreters, are to be denounced, since they act in the name of another.[2]

IV. **Someone;** it is the same whether the matter concerns a male or a female, and of whatever age the person may be.[3]

V. **They have provoked to shameful things;** wherefore observe:

1. A provocation to venereal matters is required, and therefore to grave sin, "since in venereal matters there is no smallness of matter."[4] Moreover the provocation, as the Constitution *Sacramentum Poenitentiae* has it, can be made "whether by words, or by signs, or by nods, or by touch, or by writing." Nor does it stand in the way that the provocation is made by way of advice given.

The Sacred Penitentiary[5] declared that the crime of solicitation is present in the following case. Tibullus, hearing the confessions of women whose husbands are often accustomed to be absent and who do not easily contain themselves, teaches and persuades these same women that they do not sin in the following cases: 1. if, by desiring their own absent husband, they suffer sensual commotion or pollution; 2. if they desire to experience this same pollution in themselves from burning love of the absent husband; 3. if they excite pollution in themselves by touches performed with themselves,

provided that they refer these acts to the absent husband. The Sacred Penitentiary adds that "this Holy Tribunal has already twice responded on this matter, and that acts of this kind are gravely illicit and that a confessor approving them must be denounced."

It is required, however, that the confessor have sinned gravely not only objectively but also subjectively. Still, subjective fault is commonly presumed to correspond to objective malice (St. Alphonsus, VI, 683).

2. It is the same whether the penitent is provoked to sin with the confessor, or with himself or herself, or with a third party. Likewise a confessor must be denounced who solicits the penitent to excite another to a sin of lust, whether to be perpetrated solitarily or with another (St. Alphonsus, VI, 691).

VI. **Or they have had illicit and dishonest conversations or dealings with rash daring.** Dealings, conversations, or words gravely dishonest are understood; and this even if explicit provocation to venereal matters is lacking, for conversations of this kind of themselves move toward shameful things (St. Alphonsus, VI, 680). Hence authors teach that a confessor must be denounced who would ask a married person, or one accusing himself or herself of a guilty carnal act, whether it would please him or her to be engaged in those things, what conversations the sinning person would have, what acts or motions the person would perform, and the like. If rash daring is lacking, there is no place for denunciation, when the confessor necessarily, usefully, or at least without grave fault asks about a shameful sin. Nevertheless, let him beware lest he inquire into circumstances of carnal sin which there is no obligation of declaring. For the rest, as regards V and VI, observe:

1. It is not required that the sinful act or conversation be consummated, but it suffices that it be begun, provided, however, that the confessor, when beginning these things, has the intention afterward of gravely delinquent conduct even externally and objectively. Thus, if a confessor asks the penitent where he or she lives with the intention of afterwards approaching and soliciting that person; if he hands to the penitent a paper to be read later, in which he solicits the person,[6] or treats dishonest things (St. Alphonsus, VI, 676).
2. It is not required that the penitent consent to the provocation or shameful conversation; indeed, it is not even required that the penitent perceive the provocation or the shameful meaning of the conversation. Hence the Holy Office[7] declared that "a girl situated in simplicity and without knowledge of the dishonesty is bound to denounce the soliciting confessor after she has become in possession of herself and has acquired knowledge of the past solicitation."
3. Finally, it is not required that the provocation or shameful conversation have been begun by the confessor; it suffices that they were begun by the penitent and that the confessor consented, provided however that he did or said something shameful, even if he immediately desists from it.[8] Nor does it stand in the way that the confessor consented after being induced by fear.[9]

[1] Cf. De Smet, *De absolutione complicis et sollicitatione*, 2nd ed., n. 40.

[2] Holy Office, February 11, 1661, responses 6 and 7.

[3] Constitution *Cum sicut nuper*, § 4; Constitution *Sacramentum Poenitentiae*, § 1; Instruction of the Holy Office, February 20, 1867, response 1.

[4] Holy Office, February 11, 1661, response 3.

[5] September 2, 1904.

[6] Constitution *Sacramentum Poenitentiae*, § 1; Holy Office, February 11, 1661, response 1; Proposition 6 condemned by Alexander VII (Denzinger-Bannwart, n. 1106).

[7] May 11, 1707.

[8] Holy Office, February 11, 1661, response 2; February 20, 1867, response 2 (*Collectanea*, n. 1282).

[9] Holy Office, February 11, 1661, response 9.

418 VII. **In one of the circumstances soon to be set forth.** Namely, it is required that the solicitation or dishonest conversation have a connection with the sacrament of Penance, and indeed that they have place "either in the act of sacramental confession, or before or immediately after confession, or on the occasion or pretext of confession" ("even if confession itself has not followed," adds the Constitution *Cum sicut nuper*),[1] "or even outside the occasion of confession in the confessional, whether in another place destined or chosen for hearing confessions, with simulation of hearing confession there."[2] It is said:

1. **In the act of sacramental confession,** that is, once the accusation of the penitent has been begun, even if after the solicitation or shameful conversation the confession is not completed (St. Alphonsus, VI, 676).
2. **Before or immediately after confession.** The word "immediately" regards both before and after, so that the sense is "either immediately before or immediately after confession." This is clear both from the grammatical construction in the Constitution of Gregory XV, and from the fact that otherwise the time preceding confession would not be determined. Moreover the aforesaid word must be understood in a rather strict sense, so that no other serious action or grave business intervenes between confession and solicitation (St. Alphonsus, VI, 677).
3. **On the occasion of confession;** this has place: 1. if the confessor and the penitent are already actually prepared for confession, for example if the confessor is already seated and the penitent is already kneeling or about to kneel; 2. according to St. Alphonsus and others, with others contradicting, if the confessor invites someone to make confession immediately; if the penitent asks the confessor to hear his or her confession immediately; if the confessor, from the confession heard, for instance from the revealed frailty of the penitent, takes occasion afterward to solicit the penitent. The reason for all these is that in the cases enumerated the solicitation is rightly said to be made on the occasion of confession, since in the first two cases confession is proposed as immediately to be made, but in the later case[3] confession furnished occasion or impulse for the solicitation (St. Alphonsus, VI, 678). Practically, however, a confessor who from a confession heard took occasion afterward to solicit the penitent will scarcely ever have to be denounced; both because it will not easily be clear that he was led to a gravely dishonest act from the knowledge received, for it could have happened that he sinned, or at least sinned gravely, from a conversation begun or from prolonged association; and because denunciation in the case can scarcely be made without defamation of the penitent himself or herself.

The case, at least practically, should not be judged to be present if the confessor invites, or the penitent asks, that confession be made not immediately but afterward.[4]

4. **On the pretext of confession;** this case is held, with sufficient probability, only when the confessor himself, with respect to the very person to be solicited, proposes confession with the intention of soliciting. The case is not held: 1. if the confessor, under pretext of hearing confession,

obtains from the Superior permission to visit a person whom he then solicits to shameful things, because the pretext was not with respect to the solicited person; 2. if the confessor, lest household members accompany him, puts forward as a pretext that he is going to hear the confession of a sick woman, whom he afterward solicits. The reason again is that the pretext was only with respect to the household members; 3. if a woman under pretext of confession summons the confessor and afterward perpetrates sin with him, because the pretext did not arise from the confessor. But the case seems to be present "if the confessor were to solicit outside confession, and the woman refused, fearing defamation; and therefore the confessor persuaded her that, feigning herself sick, she should summon him for sinning. For then the confessor is rightly said to have solicited the woman under the pretext of confession to furnish consent" (St. Alphonsus, VI, 679).

5. **Outside the occasion of confession in the confessional, or in another place destined or chosen for hearing confessions, with simulation of hearing confession there.** In order that someone be denounced by force of this clause, it is required: 1. that he solicited or had a shameful conversation in the confessional, or in another place destined or chosen for hearing confessions; and 2. that he did these things while simulating confession. Moreover:

a) A place destined for hearing confessions is a place which, although it lacks the customary form of a confessional, is nevertheless stably destined for hearing confessions, as for example a cell in which there is a seat for the confessor and a kneeler for the penitent; or also, for instance in the sacristy or in the parlor, the very chair for the confessor together with a kneeler for the penitent.

A place chosen for hearing confessions is any other place, for instance the room of a sick person, provided however that at least by one or the other party it has truly been chosen for instituting confession.

b) Besides this, simulation of confession is required. A simulated confession is had if those who are present must judge from the circumstances, or those who would be present would have to judge from the circumstances, that true confession is being instituted. Now some hold that simulation of confession is not required if the solicitation takes place in the confessional. But this is deservedly rejected, since: 1. the rule of law is, "A clause placed in the last place is referred to all the connected preceding things"; 2. the Holy Office agrees.[5] Here, however, note that simulation of confession is present of itself (that is, unless positive indications to the contrary are had), if the confessor and penitent are either in the confessional or in a place destined for hearing confessions; and is absent of itself (that is, unless positive indications to the contrary are at hand), if they are in a place only chosen for hearing confessions.

[1] Constitution *Cum sicut nuper*.

[2] Constitution *Sacramentum Poenitentiae*, § 1.

[3] Santi-Leitner (*Praelectiones Iuris Canonici*, p. 230) appeal to a rescript of the Sacred Penitentiary inspected by them, in which this case is considered as comprehended by the law. Cf. De Smet, cited work, p. 46.

[4] Holy Office, February 11, 1661, response 4.

[5] February 11, 1661, response 15.

419 **Question 1.** Whether one who is certainly amended must be denounced.

Response. The affirmative answer must be given, both because the law does not distinguish, nor do authentic declarations found this exception; because the law intends to instill fear into all, and this end

is obtained more securely if even one amended must be denounced; and because the more benign opinion gives an occasion for weakening the law. Nevertheless, in the denunciation mention should be made of the amendment (St. Alphonsus, VI, 686). Therefore only a deceased priest is excepted.[1] Some extend this to a priest who, worn out by old age and impeded by chronic illnesses, is now never going to hear confessions. But that seems altogether to be rejected for the reasons just given.

Question 2. Whether someone must be denounced in doubt whether the required solicitation took place.

Response. The answer is negative, because a law does not oblige in doubt about the fact founding the law (vol. I, n. 228). There is added that no one is to be deprived of reputation in doubt. Therefore denunciation can be omitted: 1. in doubt whether the crime here required was present; 2. in doubt whether the crime was committed in the circumstances required by law; 3. in doubt who was the soliciting confessor, unless the judge can become certain about the person soliciting from the indicated circumstances. Sometimes, however, circumstances can be such that the common good demands some denunciation (St. Alphonsus, VI, 702).

Note. The crime of solicitation is not reserved by common law.[2]

[1] Holy Office, March 6, 1839; Sacred Penitentiary, April 24, 1884.

[2] Holy Office, September 15, 1859.

Point II. On Those who Must Denounce

420 I. The persons who are bound to denounce are:

1. The solicited persons themselves (can. 904 and 2368, § 2), even immature persons. One who because of simplicity did not understand the solicitation is bound "after he or she has become in possession of himself or herself and has acquired knowledge of the past solicitation."[1] Moreover the solicited persons themselves, and they alone, are bound under penalty of excommunication according to canon 2368, § 2, as follows: "But the faithful person who knowingly has omitted, within a month, to denounce the one by whom he or she was solicited, contrary to the prescription of canon 904, incurs an excommunication *latae sententiae* reserved to no one, and is not to be absolved unless after he or she has satisfied the obligation or has seriously promised that he or she will satisfy it." Immature persons, however, are not liable to excommunication (can. 2230). It is said "within a month," that is, within a month from the obligation having become known. Moreover the solicited person is bound, even if he or she cannot prove the crime (St. Alphonsus, VI, 695).
2. It is disputed whether others who know the crime with sufficient certainty are bound to denunciation. Moreover the guilty person certainly is not bound to denounce himself.[2] Likewise, as regards others, who certainly are not bound under censure, once the law set forth is considered, the negative answer is given with sufficient probability, because canon 904 speaks only of the solicited penitent. The Code indeed refers to the apostolic constitutions; but, apart from the fact that the apostolic constitutions do not speak of others,[3] the Code declares only that the penitent is bound according to the norm of the said constitutions. It is clear, however, that others can be obligated by reason of the common good to be protected, and this also by force of canon 1935, § 2.

[1] Holy Office, May 11, 1707.

[2] Holy Office, November 17, 1626.

[3] Others, however, before the Code were bound to denounce (Holy Office, February 11, 1661, response 14; March 10, 1677).

421 II. **Causes excusing from the obligation.** From the obligation there excuse, or at least suspend it:

1. Grave extrinsic damage or inconvenience prudently feared. The case could be present if the priest to be denounced were one who supported the solicited person; likewise if a sick person would be so disturbed by this burden that the illness would be aggravated. When the inconvenience ceases, the obligation urges.
2. An entrusted secret, but not a natural or promised secret. "No one," says St. Alphonsus, "is bound to a secret, even promised by oath, when the secret tends toward common damage. But otherwise ... if the solicitation was manifested for the purpose of asking counsel; for disclosure of the secret would then be contrary to human intercourse, and also contrary to the public good, which certainly intervenes in counsels being sought" (VI, 698).
3. In remote regions, impossibility of approaching the competent Authority without grave inconvenience excuses.[1]

Intrinsic inconvenience does not excuse, such as the shame of the solicited person, or fear of arousing hatred of the one denounced.[2] A truly founded fear of one's own infamy, however, would excuse (St. Alphonsus, VI, 681). Nevertheless, here observe that the circumstance that the denouncing person first solicited, or consented to the solicitation, would not excuse. Still, the person cannot be questioned about consent, nor is he or she bound to manifest it; and if it is manifested, it cannot be noted in the acts.[3] Moreover, "if a person known to the Ordinary himself fears some infamation from the denunciation to be made before him, the Sacred Penitentiary, having been consulted, will delegate a confessor to receive the denunciation in the name of the Holy See and to transmit it to that Apostolic See."[4]

[1] Holy Office, January 22, 1727 (*Collectanea*, n. 308); May 20, 1842 (*Collectanea*, n. 949).

[2] Note that the name of the denouncer is never to be manifested to the priest.

[3] Holy Office, July 25, 1624; February 20, 1867.

[4] Planchard, *De Const. Bened. XIV quae incipit "Sacra Poen."*, p. 48, note.

Point III. On the Manner of Denouncing

422 I. The denunciation must be made to the local Ordinary or to the Sacred Congregation of the Holy Office (can. 904). Moreover, the denunciation can be made to the Ordinary of the place, whether of the denouncing person, or of the one denounced, or of the place in which the delict was committed. I said "can," because it is better that the denunciation be made to the Ordinary of the denouncing person, that is, of the solicited penitent. If it is made to an Ordinary who is not the Ordinary of the one denounced, it belongs to that Ordinary to transmit the act to the proper Ordinary of the one denounced, who can instruct the process, or to the Sacred Congregation of the Holy Office. If the Ordinary refuses to accept the denunciation, the penitent is freed from further obligation.

II. Considering the norms prescribed of themselves, the person denouncing should appear personally either "before the Bishop or his delegate with the intervention of an ecclesiastical man who holds the part of notary, and with oath and with expression and subscription of his or her name";[1] or before a

confessor or another ecclesiastical man deputed by the Bishop without the intervention of a notary.[2] The deputed person can summon the denouncing person to himself, or he himself can approach that person.

III. Practically, let the procedure be as follows:

1. The person about to denounce, if it can conveniently be done, should approach the Ordinary, set forth the cause to him, and carry out his mandates.
2. If the person cannot conveniently approach the Ordinary, let him or her write letters to him in which the fact of solicitation, the place of the delict, the name and office of the delinquent confessor, and his or her own address are set forth. If the solicited person cannot afterward present himself or herself to the Ordinary, let this be added in the letter so that the Bishop can depute another who may receive the denunciation. If a grave reason stands in the way of someone other than the confessor being deputed, let this also be added so that the Bishop, if it pleases him, may depute the confessor, who, according as the Ordinary prefers, may receive the denunciation outside or in the confessional, but outside the act of confession.
3. If the person about to denounce can neither approach the Ordinary nor write to him, let him or her do this through another person well-disposed toward him or her. The confessor of himself is not bound to this. But if nevertheless he does it, with the names both of the one to be denounced and of the one about to denounce kept back, let him inform the Ordinary of the fact of solicitation and of the inability of the solicited person to appear and to write. Let him add whether the solicited person can conveniently and is willing to present himself or herself to a delegate from the Bishop, at least if a confessor is delegated. I said that the confessor of himself is not bound to this; nevertheless, we do not deny "that in some case, for instance if public damage were threatening somewhere and no other way were open for avoiding it, the confessor could be bound by the law of charity to undertake a burden of this kind; but this will rarely happen" (St. Alphonsus, VI, 699). Indeed St. Alphonsus at the cited place, with others, observes that "in practice it is not expedient that the confessor take upon himself this burden of carrying the denunciation in place of the penitent or of receiving it."
4. If the penitent can neither approach the Ordinary, nor write to him, nor find someone who would do either, he or she will be able to await an occasion.
5. Religious Superiors are strictly prohibited from involving themselves in these causes (can. 501, § 2).

[1] Instruction of the Holy Office, February 20, 1867, n. 6.

[2] Cited Instruction, n. 8.

Point IV. On the Obligation of the Confessor with Respect to a Penitent who Is Bound to Denounce

423 I. The confessor must, with the penitent's conscience gravely burdened, admonish a penitent solicited by another concerning the obligation of denouncing; nor does the penitent's good faith excuse the confessor from admonishing him or her, although even here there is sometimes place for epikeia. This is clear from the ecclesiastical documents cited or to be cited. It is said:

1. **The confessor** (can. 904); and indeed every confessor, not only one who habitually enjoys jurisdiction, but also one who possesses it only transiently, for instance by hearing the confession of a dying person.
2. **The penitent ... solicited.** Others who are not solicited but perhaps are bound by the law of charity to denounce (n. 420) must be admonished according to the common rules of admonishing.
3. **The penitent solicited by another.** For a confessor is not bound to admonish a penitent solicited by himself (n. 420). Nevertheless, for this reason the penitent is not freed from the burden of denouncing, and once the burden is known, he or she must fulfill it.[1]
4. **Concerning the obligation of denouncing.** Concerning the excommunication which the penitent incurs unless within a month, from the obligation having become known, he or she has satisfied the obligation (n. 424), the penitent must be admonished according to the common rules.
5. **Nor does the penitent's good faith excuse the confessor from admonishing him or her.**[2] Therefore admonition concerning the obligation of denouncing must be made even if the penitent is foreseen not to be going to obey. Thus, namely, the Church established on account of the common good; for a disposition of this kind more greatly deters confessors, and more greatly consults for denunciation (St. Alphonsus, VI, 694).
6. **Even here there is sometimes place for epikeia.** Moreover, the admonition can be omitted if the penitent is in danger of death and is foreseen to be going to refuse denunciation; likewise if danger of disclosure and scandal is feared, for instance if the matter concerns a very frivolous and talkative person; likewise if the penitent did not understand the solicitation and the admonition cannot be made without scandal. If, however, he or she later understands it, the person must be admonished. Other excusing causes which are alleged by some, though few, cannot be reconciled with the severity of the law and give occasion for weakening discipline. Observe, however, that the admonition can be deferred if there is hope that the penitent on another occasion will do what would now be demanded in vain.

[1] Proposition 7 condemned by Alexander VII (Denzinger-Bannwart, n. 1107).

[2] Instruction of the Holy Office, February 20, 1867, response 3.

424 II. Penitents who have been admonished and entirely refuse cannot be absolved;[1] but those who can defer denunciation for a just cause, and who pledge and seriously promise that they will make it as soon as they can, can be absolved. For the rest, observe:

1. A penitent who without just cause has omitted to denounce the one soliciting within a month from knowledge of the obligation of denouncing incurs an excommunication *latae sententiae*, reserved to no one; nor is the penitent to be absolved from it unless after he or she has satisfied the obligation or has seriously promised to satisfy it (can. 2368, § 2).
2. But if the penitent, "detained by no impediment, absolutely refuses denunciation, in this case ... the confessor is to be praised who has not denied his service to the penitent and has consulted either the Ordinary or the Holy See for opportune provisions, with the name of the penitent, however, suppressed";[2] namely, afterwards dispensation from the burden of denouncing was granted by the Holy See.

[1] Cited Instruction, response 5.

[2] Cited Instruction, response 7.

425 III. If the case occurs, let the confessor:

1. Weigh: 1. whether all the requisites, both on the part of the act and on the part of the circumstances, are present; 2. whether the penitent is worthy of faith.

a) As regards the first: if the external act is not ambiguous, the intention of the priest is judged to be consonant with the act; if the act is ambiguous, commonly the gravely depraved intention of the priest will also be doubtful.

b) As regards the other: a reason for doubting the sincerity of the penitent exists if he or she readily acquiesces in denunciation; likewise if, once the obligation has been proposed, the person begins to speak doubtfully. If doubt about sincerity remains, it is better to say only: If the things you say are true, you must admonish the Bishop; and the confessor should not provide his services to that person.

2. In doubt he cannot impose the obligation, according to the norm of the things we noted in n. 419.

3. Generally, unless the matter is manifest, before he imposes the obligation he should prudently consult someone more learned, and enjoin on the penitent that on another occasion he or she speak about the same matter.

Scholion I. On the Manner of Receiving a Denunciation, And, Once It Has Been Received, of Proceeding Further Against Those Denounced

426 I. The denunciation must be made before the Bishop or his delegate, with the intervention of an ecclesiastical man who holds the part of notary. Other witnesses cannot be present, and the Bishop can dispense from the intervention of the notary for a reasonable cause.[1] For the rest, the deputation of the delegate and of the notary, if the latter is used, must be made in writing.

II. If a confessor or another person is delegated to receive the denunciation without the intervention of a notary, a formula to be followed is handed to him by the Ordinary, or by the Holy Office.

III. Let the one who receives the denunciation see that the crime of false denunciation is reserved to the Supreme Pontiff, and let him signify to the denouncing person that no inquiry concerning consent furnished is to be instituted. For the rest, this order is regularly prescribed: first, the oath concerning speaking the truth, to be given by touching the Holy Gospels, is to be asked from the denouncing person; then he or she is questioned according to the formula handed down by the Ordinary or by the Holy Office, with the responses immediately put into writing not only as regards substance but also as regards words; then the entire instrument is to be read aloud to the denouncing person, with the faculty being given of adding, suppressing, correcting, and changing; finally the signature of the denouncing person is to be required, or, if he or she cannot write, the sign of the cross; and while the denouncing person is still present, there is to be added the signature of the one receiving it and, if one was used, of the notary. Lastly, an oath of preserving secrecy is to be demanded from the denouncing person, with excommunication reserved to the local Ordinary or to the Holy See being threatened if necessary.[2]

Note. "Sometimes for a grave reason it can be permitted that one or another of the prescribed forms, with the substance being preserved, be omitted, for example the touching of the Gospels. In more difficult cases it is also permitted that the denunciation, with the prior permission of the denouncing person, lest the sacramental seal seem to be violated, be received by the confessor in the confessional

seat. Indeed, when a wholly grave and altogether extraordinary cause is urgent, the denunciation will also be able to be made through a report written by the denouncing person, provided however that it is afterward confirmed by oath and signed before the local Ordinary or his delegate and notary, if one is present."[3]

IV. Once the denunciation has been juridically received, whether by himself or through a delegate, the Ordinary under grave obligation must signify it to the promoter of justice, who is to declare whether the crime of solicitation is present or not. Once this has been done:

1. If the Ordinary dissents from the promoter of justice, the latter must refer the matter to the Holy Office within ten days.
2. If the Ordinary agrees with the promoter of justice, or if the promoter in any way does not have recourse to the Holy Office, let the procedure be as follows:

a) If the Ordinary judges that the crime of solicitation is lacking, let him place the acts in the secret archive or, considering the gravity of the matters denounced, use his own right, for instance by admonishing or punishing the denounced person, although he is not guilty of the crime of solicitation.

b) If the Ordinary judges that the crime is present, let him proceed to an inquiry (cf. can. 1939, § 1).

IV. Let the inquiry be made in the manner set forth in the Instructions of the Holy Office of February 20, 1867, n. 9, and July 20, 1890.

V. Once the inquiry has been completed:

1. If it is established that the denunciation lacks all foundation, let this be reported in the acts, and let the documents of accusation be destroyed.
2. If vague or uncertain indications are at hand, let the acts be placed in the secret archive until something else arises.
3. If sufficiently grave indications are at hand, but not indications sufficient for an accusatory action, let the guilty person be admonished in a different manner according to the diversity of the case.
4. If certain or at least probable indications are had for an accusatory action, the guilty person must be cited (cf. can. 1946); however, an oath concerning speaking the truth cannot be administered to him (cf. can. 1744).

VI. Once the guilty person has been cited and appears, the procedure must be as follows:

1. If the guilty person confesses the crime, and his confession agrees at least substantially with the accusation, a definitive sentence can be pronounced. Nevertheless, the guilty person can either accept it or demand the regular development of the process.
2. If he does not confess the crime, or if his confession does not agree even substantially with the accusation, let the acts of inquiry be handed over to the promoter of justice, who is to draw up the libellus of accusation (can. 1954 and 1955). In the meantime the guilty person can already be suspended from sacred ministry or from hearing confessions until the end of the trial. Then let him be questioned carefully, while avoiding manifestation of the denouncing persons or of the sacramental seal. After a suitable time has elapsed, in which the defender of the guilty person prepares and exhibits the defense, and the promoter of justice prepares and exhibits the libellus of accusation or his requisition of justice, let the judge pronounce the definitive sentence according to

the acts and the proofs, that is: if he is certain of the crime, let him condemn the guilty person; if he is certain of innocence, let him absolve him; if he is doubtful, let him dismiss him.

3. From the pronounced sentence both the guilty person and the promoter of justice can appeal to the Holy Office within ten days. The appeal is suspensive, while nevertheless the suspension of the guilty person perhaps issued before the definitive sentence remains firm. If appeal is made, let the acts, or an authentic copy of them, be transmitted to the Holy Office.[4]

VII. Certain things remain to be noted:

1. The Ordinary is bound to manifest at once to the Holy Office the denunciation juridically received. In addition, if the one denounced lives in another territory, let him send to the Ordinary of that place an authentic copy of the denunciation with the inquiries and declarations of the guilty person.
2. The Ordinary must signify the outcome of the juridically received cause to the Holy Office and, if the denounced person is a religious, to his Superior General.
3. If a priest who has been condemned, or only admonished, transfers his residence into another territory, the Ordinary *a quo* is bound as soon as possible to admonish the Ordinary *ad quem* concerning the antecedents and juridical status of the denounced person.
4. If the denounced person, suspended from hearing confessions but not from preaching, goes into another territory for preaching, the Superior of the denounced person, whether secular or religious, must admonish the Ordinary of the other territory that he cannot be used for hearing confessions.[5]
5. Those who are assumed for treating or defending these causes, namely the judge, the promoter of justice, the defender of the guilty person, the notary, and so forth, are bound to the secrecy of the Holy Office: the Ordinary by force of office; the ministers by oath; others absent by a precept to be imposed on them; and indeed under penalty of excommunication *latae sententiae*, reserved to the Supreme Pontiff alone, even the Sacred Penitentiary being excluded.[6]
6. If the things set forth are difficult to observe exactly, the Holy See sometimes permits that the matter be treated in an easier manner.[7]
7. If the treatment of the matter carries with it grave difficulties, the matter, with the acts transmitted, can be referred to the Holy Office, which can hand down particular instructions.[8]

[1] Instruction of the Holy Office, February 20, 1867.

[2] Aertnys-Damen, *Theologia Moralis*, II, n. 426.

[3] Aertnys-Damen, cited work, n. 427.

[4] Aertnys-Damen, cited work, n. 428.

[5] Aertnys-Damen, cited work, n. 429.

[6] Aertnys-Damen, cited place, n. 15.

[7] Cited Instruction, n. 16.

[8] Cited Instruction.

Scholion II. On False Denunciation

427 I premise the canons which regard false denunciation. Canon 894 establishes: "The sole sin reserved to the Holy See by reason of itself is false denunciation by which an innocent priest is accused

of the crime of solicitation before ecclesiastical judges." And canon 2363 decrees: "If anyone, by himself or through others, has falsely denounced a confessor for the crime of solicitation before Superiors, he incurs by the fact itself an excommunication reserved in a special manner to the Apostolic See, from which in no case can he be absolved unless he has formally retracted the false denunciation, and has repaired, according to his powers, the damages if any have followed from it, with a grave and lasting penance having also been imposed, the prescription of canon 894 remaining firm." Therefore two things must be distinguished: namely, the crime of false denunciation is: 1. a sin reserved by reason of itself, and indeed to the Holy See; 2. a sin reserved by reason of the censure, or one which has annexed to it an excommunication reserved in a special manner to the Apostolic See. These things having been noted, let these be the conclusions:

I. **Requisites in order that the crime be reserved by reason of itself to the Holy See.** There is required a false denunciation by which an innocent priest is accused of the crime of solicitation before ecclesiastical judges. It is said:

1. **A false denunciation,** made either by oneself or through another, namely "by wickedly procuring that it be done by others";[1] it can be procured by mandate, threats, or efficacious counsel. According to the more common and safe opinion, it is required that the denunciation be made juridically, that is, either personally and with the intervention of an ecclesiastical man who holds the part of notary, and with oath and subscription of one's name, or personally without the intervention of a notary.[2] Hence letters directed to the Ordinary do not suffice, even if they are subscribed; a fortiori anonymous letters are excluded, which have no force.[3]
2. **For the crime of solicitation,** that is, for a crime which, if it had taken place, would carry with it the obligation of denouncing.
3. **Before ecclesiastical judges,** that is, before the Sacred Congregation of the Holy Office, or the local Ordinary, or another delegated by them for this affair. It suffices that the denunciation has been made before them, whether they institute a further inquiry or do not institute it. Knowledge of the reservation does not seem to be required (n. 384).

II. **Requisites in order that the crime be reserved by reason of the censure, or that it have annexed to it an excommunication reserved in a special manner to the Apostolic See.** First the same things are required which were set forth under I,[4] then knowledge of the censure and puberty. It is said:

1. **Knowledge of the censure;** ignorance excuses from it unless it was affected (can. 2229, § 1), crass, or supine (can. 2229, § 3, 1). Ignorance only of the reservation does not excuse (cited canon).
2. **Puberty;** since "the immature are excused from penalties *latae sententiae*" (can. 2230).

III. **Absolution from false denunciation.**

1. Absolution from the censure, if it has been contracted, must be put before absolution from the sin; but insofar as one can be absolved from the censure, this is explained in the treatise on ecclesiastical penalties.
2. As regards absolution from the sin, which is also reserved by reason of itself, by whom it can be given, see n. 387; but note that the reservation of the sin ceases in the cases set forth in n. 385.

[1] Constitution *Sacramentum Poenitentiae*, § 3.

[2] Cf. Instruction of the Holy Office, February 20, 1867.

[3] Cited Instruction, n. 6.

[4] Canon 2363, which treats of the censure annexed to the crime, indeed speaks of denunciation before Superiors, while canon 894 speaks of denunciation before ecclesiastical judges. Hence some think that, for the censure, it suffices that the denunciation be made before ecclesiastical Superiors. But by "Superiors" there seem to be understood the Superiors competent here, that is, the ecclesiastical judges of whom canon 894 speaks. Major Superiors, even of exempt religious institutes, are prohibited from involving themselves in this affair (can. 501, § 2).

Article III. On Things to Be Observed After Confession

Two things come to be treated, namely the office of preserving the sacramental seal and the obligation of repairing defects admitted in confession.

§ I. On the Office of Preserving the Sacramental Seal

428 The law of the sacramental seal[1] can be taken in a broad and in a stricter sense. Taken in a broad sense, it is the law which forbids the use of sacramental knowledge which is of a nature to redound to the burden of the penitent, and therefore, if it were licit, would render confession more difficult. I said "which is of a nature," etc., because it does not matter whether the penitent notices the use or not; it suffices that in itself it involves a burden.

Taken in the stricter sense, it is the law which forbids the use of sacramental knowledge together with manifestation, or danger of manifesting the penitent.

The prohibited use of sacramental knowledge, or violation of the sacramental seal, is distinguished as twofold: direct and indirect (cf. can. 2369, § 2). Direct violation is the use of knowledge acquired from confession together with manifestation of the sinner. Wherefore observe that it is not required that the person of the penitent be known, but it suffices that the person be sufficiently determined; for instance, if I say concerning a person meeting me and unknown to you that he or she confessed this or that. Indirect violation is judged to be the use of knowledge acquired from confession which has annexed to it the danger that the sinner be betrayed, or which involves a burden of the penitent with or without danger of manifestation of the sinner.

These things having been noted, we shall speak first of the obligation, then of the object, then of the subject of the sacramental seal, and finally we shall deduce certain corollaries from the things set forth.

[1] So called because that law covers the things heard in confession as with a seal.

Point I. On the Obligation of the Sacramental Seal

429 I. **Existence of the obligation.** This is clear first from the fact that Christ, by instituting and imposing confession, must be judged to have imposed on the confessor an obligation without which the reception of confession would be morally impossible. But the obligation of preserving the seal is such an obligation. Add that between the penitent and the confessor there intervenes a tacit contract; to this there is added the obligation of the confessor to preserve the right of the penitent to reputation. Finally, the Church confirms the obligation of the seal and decrees that both direct and indirect violation are prohibited. Thus canon 889, § 1, says: the sacramental seal is inviolable; wherefore let the confessor diligently beware lest by word or sign, or in any other way and for any cause whatever, he

betray the sinner in any manner (direct violation).[1] And canon 890 says: the use by the confessor of knowledge acquired from confession, with burden to the penitent, is altogether prohibited, even any danger of revelation being excluded (§ 1).[2] Both Superiors existing for the time and confessors who afterward have been appointed Superiors can in no way use for external governance the knowledge which they have had concerning sins in confession (§ 2; St. Alphonsus, VI, 635).

Corollary I. The obligation of the seal is of natural law, insofar as it flows from the tacit contract and from the right of the penitent to reputation; of divine-natural law, as it is said,[3] insofar as it follows upon the sacrament; and of ecclesiastical law, insofar as it is confirmed by the Church (cf. St. Thomas, Supplement, q. 11, a. 1, ad 2).

Corollary II. The obligation of the seal exists even in doubt: 1. whether some object falls under the seal; 2. whether something is known by sacramental knowledge or otherwise; 3. whether something to be said or done is opposed to the seal. The reason is that otherwise provision would not be made sufficiently for the security of the faithful who confess (St. Alphonsus, VI, 633, 637).

[1] Thus also the ancient law. In the Decree of Gratian (c. 2, dist. 6, *De poenit.*) it is declared: "Let the priest before all things beware lest he recount to anyone the sins of those who confess to him. For if he has done this, let him be deposed and go about all the days of his life as an ignominious pilgrim." Lateran IV: "Let the priest beware altogether lest by word or sign or in any other way he betray the sinner in any manner. But if he needs more prudent counsel, let him cautiously seek it without any expression of the person, since we decree that one who has presumed to reveal a sin disclosed to him in the penitential judgment is not only to be deposed from priestly office, but also to be thrust into a strict monastery for doing perpetual penance."

[2] Likewise Clement VIII, May 26, 1593; and the proposition condemned by decree of the Holy Office, November 18, 1682 (Denzinger-Bannwart, n. 1220).

[3] There are those who think that such an obligation, which excludes exception, flows from the positive law of Christ.

430 II. **The proximate source of the obligation.** The obligation of the seal arises from every confession such that use of the knowledge received from it would turn the faithful away from confession. If the confession is sacramental, the benefit of the seal belongs to it principally; if it is not sacramental, it belongs to it participatively. Hence it arises:

1. From confession made in order to the power of the keys to a priest who can and wills to discharge the office of judge, or to use jurisdiction. Such a confession is certainly sacramental.
2. From confession made in order to the power of the keys: 1. to a priest who enjoys jurisdiction but does not will to use it; 2. to a priest who lacks jurisdiction; 3. to one who is not a priest but is regarded as a priest by the penitent; whether the aforesaid confessions are called sacramental or are not called such. The reason is that the use of knowledge received from a confession of this kind, if it were licit, would at least redound to the detriment of the sacrament, or would turn the faithful away from confession in some measure. But if it is asked whether the said confessions are sacramental, I respond that the first, which is made to a priest who does not will to use jurisdiction merely internally, seems sacramental; as regards the later ones, a reason for seriously doubting is taken from the fact that the objective relation of confession to the sentence to be rendered seems to be lacking.
3. It is disputed whether it arises from confession made to one who is neither a priest nor regarded as a priest by the penitent; for instance if someone thought that a layman could absolve in a case of

necessity. Moreover, the negative answer seems to be given, because the use of knowledge drawn from such a confession does not turn one away from confession to be made before a priest.

For the rest, the obligation of the sacramental seal arises from a confession both perfect and only begun, both valid and invalid. It is also the same whether absolution is granted, denied, or deferred.

Corollary I. The obligation of the sacramental seal does not arise from a confession made without the will of receiving the sacrament, but only with the intention of speaking with the confessor, or of mocking or seducing him (St. Alphonsus, VI, 636); nor from a confession made to one who is known by the penitent to lack jurisdiction, because then there is also lacking an accusation made in order to the power of the keys.

Corollary II. The fact that someone manifests something outside confession "under the seal of confession," as they say, and another receives it in that way, cannot effect that something be covered by the seal of sacramental confession (St. Alphonsus, VI, 636). Nevertheless, "someone ought not readily receive something in this way" (St. Thomas, Supplement, q. 11, a. 2).

431 III. **Quality of the obligation.** The obligation of the seal is threefold, namely: 1. of religion, insofar as it arises from the signification of the sacrament, and the law has been issued from reverence for the sacrament; 2. of justice from the tacit contract between confessor and penitent; 3. of another species of justice, namely that which commands preserving the reputation of one's neighbor (St. Alphonsus, VI, 635).

432 IV. **Gravity of the obligation.**

1. The obligation of the law, insofar as from religion it prohibits direct violation of the seal, or revelation of the sin together with revelation of the sinner, is grave from its whole genus. The reason is that, if small matter were admitted, it would be gravely opposed to the end of the sacrament, since the faithful would be turned away from confession of venial sins, indeed even of mortal sins, fearing that the confessor might take as light what was mortal.
2. The obligation of the law, insofar as it prohibits indirect violation of the seal, is grave from its genus, but in such a way that sufficiently grave matter for constituting grave sin is easily present. Hence:

Under grave obligation there is prohibited: 1. manifestation of a thing closed by the seal together with grave or middling danger of betraying the sinner; 2. use of sacramental knowledge which involves a notable or middling burden of the penitent.

Under light obligation there is prohibited: 1. manifestation of a thing closed by the seal together with danger altogether light of betraying the sinner; 2. use of sacramental knowledge which involves a burden of the penitent altogether light.

There are not prohibited: 1. manifestation of a thing closed by the seal together with a danger of betraying the sinner which does not deserve to be noted; 2. use of sacramental knowledge which involves a burden which is not worthy of note.

433 V. **Cessation of the obligation.** The obligation of the sacramental seal, at least insofar as it forbids direct violation, never ceases without the license of the penitent. The penitent, however, can grant license. It is said:

1. **The obligation of the sacramental seal, at least insofar as it forbids direct violation, never ceases.** This is clear from tradition. The reason seems to be that, on account of the spiritual and common good of the faithful, sacramental knowledge, by the intention and institution of Christ, has been ordered to the sacramental forum alone, or to the good of the penitent, and as such has been altogether withdrawn from the common intercourse of men (St. Alphonsus, VI, 634). It is disputed, however, whether for protecting the seal it is licit to posit an act which, independently of the law of the seal, is intrinsically evil; for instance, whether it is licit for a married priest to use marriage which he certainly knows from sacramental confession to be invalid by natural law. The matter is doubtful to me; while the doubt stands, however, one may act according to one's pleasure.
2. **Without the license of the penitent;** and that license freely, expressly, and certainly granted, and not revoked. Presumed license is judged not to suffice, because confessors can be deceived in this matter, so that the sufficiency of presumed license would render confession odious. For the rest, license can be granted explicitly and implicitly, for instance by the very fact that the penitent begins to speak outside confession about a matter of itself closed by the seal. Nevertheless, let the confessor beware lest he extend the concession beyond the intention of the penitent. Besides this, the penitent can revoke the granted license according to his or her pleasure. Finally, note that license of this kind is not to be sought except for a grave cause, and only from those whose consent can certainly be expected to be altogether free (St. Alphonsus, cited place).
3. The penitent can grant license because the seal has been imposed in his or her favor, and the penitent can renounce that favor.

434 **Corollary I.** One who has known something by both sacramental and extra-sacramental knowledge licitly uses the extra-sacramental knowledge; nevertheless let him proceed prudently and avoid scandal (St. Thomas, Supplement, q. 11, a. 5; St. Alphonsus, VI, 638, 4).

Corollary II. One who is questioned about a matter closed by the seal should of himself repel the questioner. But if otherwise he cannot with sufficient certainty repel suspicion against the penitent, let him answer, even with an oath, that he knows nothing. "A man," says St. Thomas, "is not brought in as a witness except as man, and therefore without injury to conscience he can swear that he does not know what he knows only as God" (St. Thomas, Supplement, q. 11, a. 1, ad 3). And thus he can say or swear, even if "he has been asked to answer not as man but especially as a minister of God," indeed even if "he is additionally asked to answer without equivocation" (St. Alphonsus, VI, 646).

Point II. On the Object of the Sacramental Seal

435 The object or matter of the seal is all things known from confession which, according to what was set forth in n. 430, carry with them the obligation of the seal, and whose revelation or use would render confession more difficult. Therefore the object of the seal is:

I. Mortal sins, both in species and in genus, namely that such a penitent has sinned gravely.

II. Venial sins, both in species and in some other manner at least somewhat determinate, for instance by saying that such a penitent declared a venial sin in this confession (St. Alphonsus, VI, 640). It is otherwise if he said only that the person had at some time sinned venially.

Notorious sins also are matter of the seal: both because the confessor, insofar as he knows something as God, must always be silent; and because the liceity of manifesting a notorious confession would

render confession more difficult, since penitents would easily fear that the confessor might take as notorious what was not notorious. There is added the fact that the said sins, by the declaration of the confessor, would commonly be rendered more notorious and more certain.

III. The causes, object, and circumstances of sins; for example, the blasphemies of the father on account of which the penitent was angry, or the homicide concerning which he rejoiced. If, however, the matter concerns a public fact, the penitent commonly is not judged to close it by the seal (St. Alphonsus, VI, 641, doubt 2).

IV. An accomplice and his or her sin; for the liceity of revealing these things would render confession more difficult (St. Alphonsus, VI, 640). It is licit, however, with the license of the penitent, to admonish the accomplice (St. Alphonsus, 641, doubt 1).

V. The penance imposed, unless it is very slight (St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 153).

VI. Natural and moral defects are the object of the seal: 1. if they are manifested by the penitent for explaining sins; 2. probably, if they become known to the confessor from the penitent's manner of confessing or acting, and are odious or occult; but not if they are not odious and are public, such as stammering, deafness, blindness. For in this case, contrary to the former ones, no burden to confession would arise from manifestation (St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 154; VI, 642, 643).

VII. The condition and status of the penitent are to be judged in the same way as defects. Hence it is not matter of the seal that someone is unmarried, married, a magistrate, a workman. Nevertheless, let the confessor beware lest he speak of these things in such a way that he suggests that the penitent has sinned against the obligations of his or her state (St. Alphonsus, cited place).

VIII. Scruples are the object of the seal; for they are declared by the penitent as sins, at least doubtful ones. Likewise scrupulosity, insofar as it designates, as commonly happens, a confused and wavering conscience, is the object of the seal, and this holds even if the scrupulosity is publicly known; for it is an odious defect, or one which is a cause of shame (St. Alphonsus, VI, 644).

IX. Virtues and gifts are not the object of the sacramental seal, unless "they are spoken of in order to explain some defect or one's own ingratitude toward God" (St. Alphonsus, VI, 641). This, however, does not prevent them from being able to be the object of a non-sacramental secret.

Point III. On the Subject of the Sacramental Seal

436 Besides the confessor, who, as minister of the sacrament to which the seal is annexed, is obligated primarily and principally, secondarily and participatively "the interpreter also and all others to whom knowledge of confession has come in any way whatever are held by the obligation of preserving the sacramental seal" (can. 889, § 2). Except the case in which the penitent himself manifests the things confessed by himself. Under the name of confession comes every accusation to which, according to what was said in n. 430, the benefit of the sacramental seal belongs principally or participatively.

The reason for the rule stated is that "otherwise provision would not have been made sufficiently for the reverence of this sacrament, nor would hatred of confession have been sufficiently removed" (St. Alphonsus, VI, 648). The penitent, who is immune from the burden of the sacramental seal, transfers the knowledge of the confession made by himself even without that burden.

Therefore, besides the confessor, the following are bound:

I. The interpreter; for he, just as one hearing a confession, of whom we shall speak immediately, has received knowledge of the confession from the very confession of the penitent. The same must be said for the same reason about one who within confession writes the sins for the penitent (St. Alphonsus, VI, 647, 3 and 8).

II. One who has heard the confession of another, whether by chance or deliberately; one who deliberately hears, by that very act, violates the sacramental secret. Those are not held to the seal who have heard a confession which someone has freely made publicly; for such a manner of acting by its nature deprives confession of the benefit of the sacramental secret.

III. Those to whom a matter closed by the seal has been sacrilegiously or imprudently revealed; likewise one to whom the confessor, with the license of the penitent, for instance for the sake of seeking counsel, has revealed the matter, unless, what cannot be presumed, the license was granted indefinitely, so that the knowledge became extra-sacramental (St. Alphonsus, VI, 647, 5; 648).

IV. A Superior or another reading letters in which the faculty is sought of absolving someone from reserved sins, or something similar, is held by the sacramental seal as follows:

1. He is held if the letters were written by the confessor after confession had at least been begun, because the one reading received knowledge of the confession through the mediation of a confessor already bound to the sacramental seal.
2. Likewise he seems to be held if the letters were written by the confessor in order to a confession to be made, or by the penitent either before or after confession. The reason is that the liceity of using knowledge received in this way seems to redound to the detriment of confession, which cannot rightly be made without the faculty having been obtained.

V. One consulted about a confession to be made to him, that is, to the one consulted, probably is held by the sacramental seal, because the consultation of the one to whom, according to the intention of the one consulting, confession will be made is so closely united with the confession that will follow that the liceity of using knowledge received in this way seems to redound to the detriment of the sacrament. The opposite must be said if someone is consulted about confession to be made before another; authors more commonly adhere to this solution of the case (St. Alphonsus, VI, 649). The opposite also must be said if the penitent consults a priest, for instance about a special case, without thinking of confession to be made to him, and, after counsel has been received, makes confession. But let the confessor beware of scandal.

VI. One reading a paper on which the penitent wrote the confession:

1. Of himself he is not held by the sacramental seal, because a paper of this kind is neither a confession nor a necessary means of making confession, so that the liceity of using knowledge of confession received in this way does not redound to the detriment of confession; in other words, it renders not confession but only the writing odious (St. Alphonsus, VI, 650).
2. He is held by the sacramental seal: 1. who reads the paper while the confessor reads it, since in that case by the writing itself sins are manifested here and now to the confessor, and he is rightly said to have drawn knowledge of the confession from the confession of the penitent; 2. who reads the paper while the penitent reads the confession from it, because, at least morally speaking, he comes to knowledge of the confession by means of confession; 3. probably, who reads the paper left behind by the confessor after confession, because in the case it seems possible to say that, through

the mediation of the confessor, he received knowledge of the confession, and therefore he is held by the seal, as those assigned under III; 4. who reads the paper in the case in which it was the prescribed means of making confession, as can happen in a mute person (n. 326). The reason is that the liceity of using knowledge of confession drawn from a necessary means of confessing would redound to the detriment of confession (St. Alphonsus, cited place).

VII. One reading letters written by the confessor to the penitent, in which matters closed by the seal are treated, is held by the sacramental seal, because he receives knowledge of the confession from the confessor (cf. n. III). But one who reads letters sent by the penitent to the confessor, in which confessed matter is treated, is not held by the sacramental seal, whether this is done for the sake of completing confession or is not done for that end. The reason is that the said letters are in no way confession, nor does that so-called complement of confession have anything of confession properly so called. Moreover, the liceity of using knowledge drawn from those letters does not render confession odious, but only that so-called complement added outside a new confession.

Point IV. Corollaries from the Doctrine Handed Down

437 I. The sacramental seal is violated:

1. By one who either reproves the penitent in a loud voice or questions the penitent about sins.
2. By one who speaks about the sin of someone with another confessor, even if the penitent confessed that same sin to both.
3. By one who, for example, says about a notorious homicide that he confessed the homicide.
4. By one who, after hearing the confessions of a few, says that he heard such a sin.
5. By one who praises one penitent before the rest whom he heard by saying that the penitent confessed only venial sins (St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 156).
6. By one who says that he heard a grave sin in such a convent; for then individual members of that convent, and therefore also the penitent, suffer detriment. If someone said the same about such an Order, it depends on the circumstances whether a grave, light, or almost no burden is created, and therefore whether there is grave, light, or no violation of the seal. Namely, it must be considered: 1. whether the Order is numerous; 2. whether it is notoriously relaxed or not; 3. before whom that is said; 4. whether suspicion falls upon the inhabitants of a few houses (cf. St. Alphonsus, VI, 654, doubt 2).
7. By one who without the permission of the penitent speaks with the penitent outside confession about things heard in confession.
8. By one who after confession looks upon the penitent with stern eyes, does not speak to him as he had previously been accustomed, and so forth. Likewise by one who, on account of things heard in confession, would dismiss a servant, or take keys away from him, or remove money from a chest lest he steal it. Likewise by one who, on account of things known from confession, would deny a vote to someone (St. Alphonsus, VI, 657). Likewise by one who, on account of sins declared in an earlier confession or on account of a defect of disposition then revealed, would refuse to receive someone's confession (St. Alphonsus, VI, 659).

438 **Question 1.** Whether one violates the seal who from the confession of the penitent has known that snares are being laid for him, and without the license of the penitent uses the knowledge received for his own defense.

Response. Affirmatively, if, for example, accomplices could suspect that that sin had been accused by the penitent, or if some other burden would come to the penitent from it. For the liceity of directing oneself in this way, without the license of the penitent, from the knowledge of confession would turn the faithful away from confession (St. Alphonsus, VI, 659). If the penitent threatens to inflict death on the confessor at an opportune time unless he is absolved, the confessor can avert the danger of death, because by doing this he neither betrays the sin of the penitent in any way, as is supposed, nor does the liceity of acting in this way render confession itself odious.

Question 2. Whether one violates the sacramental seal who says that in some place such a vice is spreading.

Response 1. He does not violate the seal if the vice is notorious and the place is sufficiently large, for instance about 3,000 persons; or, if the matter concerns a very infamous vice, such as sodomy or bestiality, 6,000-7,000 Catholics. The reason is that the burden which from this comes to penitents does not deserve to be noted.

Response 2. He violates the seal if the vice is occult; likewise if the vice is notorious but the place is sufficiently narrow, for instance less than 3,000; or, if the matter concerns a very infamous vice, less than 6,000-7,000 Catholics (St. Alphonsus, VI, 654, doubt 1; *Homo Apostolicus*, tr. 16, n. 158).

If, however, the discussion concerns a notorious vice, it can easily happen that the burden is only altogether light, or even such that it does not deserve to be noted, so that there is only venial fault or even no fault.

Note. As has already been indicated above, one who does not expressly say that such a vice flourishes in some place, but on account of things heard in confession more vigorously attacks certain not unaccustomed vices, for instance drunkenness, lust, dishonest courtships, does not create a burden worthy of note, and therefore acts licitly.

Question 3. Whether one violates the sacramental seal who says that such a person confessed to him.

Response. Of itself, negatively. If, however, by a manifestation of this kind, for instance if the penitent came secretly, the confessor would introduce suspicion of grave sin, he would not only sin gravely, but also seems to violate the sacramental seal, insofar as only from the confession actually made did he know the fact of confession, and relying on that knowledge he signified the said fact to others, and by that very signification introduced suspicion of grave sin (St. Alphonsus, VI, 638). If in the case posited the confessor merely said that such a person had asked that he might make confession, he would violate a natural secret, but not the sacramental seal.

Question 4. Whether one violates the seal who says that such a person was absolved by him.

Response. Negatively, but let the confessor abstain from this, lest a burden be created for the penitent concerning whom he cannot testify to that fact.

In certificates of confession, only mention of confession should be made. But let him refer to the penitent a sacristan asking whether someone wishes to receive Communion (St. Alphonsus, VI, 639).

Question 5. Whether one violates the seal who denies a certificate of confession to an indisposed penitent.

Response 1. The affirmative answer must be given: 1. if it is denied to one asking for it outside confession; 2. if it is denied within confession in those circumstances in which it is customary to give it, or it is demanded by Superiors or by the pastor. The reason is that the denial, although it has place in confession, nevertheless produces an effect after confession, or creates a burden for the penitent (St. Alphonsus, VI, 639).

Response 2. The negative answer must be given if the certificate is sought outside the aforesaid cases; likewise, as is clear, if the confession was fictitiously made.

Objection 1, against response I. By denying the certificate the confessor says nothing, but only does not approve that confession by positive testimony, to which he is not bound.[1]

Response. It is the same whether the burden follows for the penitent from a positive act or from the omission of an act. If from omission, the confessor is bound to a positive act; just as, for example, he is bound to continue conversations with the penitent with whom he had previously been accustomed to converse, and cannot in the future abstain from them on account of the confession heard.

Objection 2. Nor does it stand in the way that St. Alphonsus objects that he is held to avoiding indirect revelation, which cannot be avoided when the certificate is denied. For by the same right it would have to be said that the seal is violated by one who denies absolution; for often, when the penitent is seen to abstain from Holy Communion, for example in colleges, scarcely any other reason for his abstinence can occur to the mind of those looking on than absolution denied.[2]

Response. I deny the parity; since denial of absolution is not, as denial of a certificate is, the cause of the burden. The cause of the burden in the case of absolution denied is the defect of disposition in the penitent, which defect prevents him from receiving Holy Communion.

Question 6. Whether one violates the seal who from sins alone heard in confession takes occasion to ask who that penitent was.

Response 1. Affirmatively, as is clear, if from the question instituted suspicion is introduced against the penitent.

Response 2. With suspicion to be introduced excluded, it likewise seems that the affirmative answer must be given, because inquiry of this kind, relying on sacramental knowledge, seems to render confession odious.

[1] Thus some adversaries.

[2] Thus some adversaries.

439 II. The sacramental seal is not violated:

1. By one who remembers the sins accused; nor by one who prays for the penitent or acts more kindly toward him (St. Alphonsus, VI, 657).
2. By one who consults books and more learned persons, provided the danger that the penitent be recognized is absent.
3. By one who better fulfills the offices of his duty, for instance by questioning and instructing penitents more prudently, by watching over subjects more diligently; nevertheless let him proceed

cautiously, lest the penitent be burdened or implicitly reproved (St. Thomas, in IV, dist. 21, q. 3, art. 1, sol. 1, ad 1; St. Alphonsus, cited place).

4. By one who in a sermon treats not unaccustomed matter, or more strongly turns hearers away from some not unaccustomed occasion (St. Alphonsus, VI, 654, doubt 1).

5. By one who praises the conscience of the penitent, provided an evil suspicion against others is not introduced (St. Alphonsus, VI, 638, 1).

6. By one who after absolution in the confessional speaks with the penitent about things heard in confession; nor by one who in confession speaks about those things which were declared in a previous confession (St. Alphonsus, VI, 652, 653).

7. By one who before others relates sins and so forth accused by the penitent, without naming the person and with danger of recognizing that person excluded (St. Alphonsus, VI, 638, 3). Here, however, carefully observe that a manner of acting of this kind, if it is done rashly, although the sacramental seal is not violated, is altogether to be disapproved, as follows from the Instruction of the Holy Office to the Ordinaries of places and Moderators of Religious institutes;[1] concerning this Instruction certain things must be noted. Moreover:

a) The praised Instruction, "so that even the appearance and suspicion of injury inflicted on the sacrament may be avoided, so that the pious ears of hearers may not be offended and mistrust against the sacrament may not be stirred up," 1. disapproves the manner of acting of those "who, although all things which can in any way betray the person of the penitent have been kept back, do not fear rashly to speak, whether in private conversations or in public sermons to the people, as they say, for the edification of hearers, about things submitted in sacramental confession to the power of the keys"; 2. commands the Ordinaries of places and Superiors of Religious institutes, with their conscience gravely burdened, "that if they detect any abuses of this kind anywhere, they strive to restrain them promptly and efficaciously; and that in the future, both in theological schools and in conferences on cases of morals, as they call them, and in public and private addresses and exhortations to the clergy, they take care that the priests subject to them be diligently instructed never to dare, especially on the occasion of sacred Missions and Spiritual Exercises, to touch upon anything pertaining to the matter of sacramental confession, under whatever form and under whatever pretext, not even in passing, and neither directly nor indirectly, except in the case of necessary consultation to be proposed according to the rules handed down by approved authors, in their public or private discourses; and that in the examinations for their habilitation to receive confessions they be examined particularly on this matter"; 3. "trusts that none of the Confessors will contravene prescriptions of this kind; but if the contrary happens, let the aforesaid Ordinaries and Superiors gravely admonish transgressors, strike recidivists with fitting penalties, and in graver cases refer the matter as soon as possible to this Supreme Sacred Tribunal."

b) The Instruction certainly commands the Ordinaries of places and Superiors to remove abuses, if they exist. But it is disputed: 1. whether it imposes a true precept on confessors, or merely provides and inculcates a directive norm; 2. whether or not it had the force of law; 3. whether, if it had that force, it retained it. Namely, the aforesaid Instruction was never promulgated in the *Acta Apostolicae Sedis*; it lacks the approval of the Supreme Pontiff in specific form, indeed even in common form, which nevertheless according to the Constitution *Sapienti Consilio*[2] is required in order that Congregations may issue law. There is added that the Code did not retain the dispositions of the Instruction, nor does

it refer to it in the sources, and that ecclesiastical Authority afterward was in no way accustomed to urge the said dispositions. These difficulties, although they can be weakened and partly solved, nevertheless bring it about that the Instruction can practically, at least as regards confessors, be held as a merely directive norm.

Note. As incapable of bearing testimony there are excluded "priests, as regards all those things which became known to them from sacramental confession, even if they have been released from the bond of the seal; indeed things heard by anyone and in any way on the occasion of confession cannot even be received as an indication of truth" (can. 1757, § 3, 2).

[1] June 19, 1915 (*Monitor Ecclesiasticus* 1917, p. 199).

[2] June 29, 1908.

Scholion. On the Penalties Established Against Transgressors

440 I. The confessor who has presumed to violate the sacramental seal directly (n. 428) is subject to excommunication reserved in the most special manner to the Apostolic See (can. 2369, § 1).

II. A confessor who has violated the sacramental seal "only indirectly" (n. 428) is liable to the penalties of which canon 2368, § 1, treats (cited canon), that is, he is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even, according to the gravity of the delict, is to be declared incapable of receiving them; he is to be deprived of all benefices, dignities, active and passive voice, and is to be declared incapable of all these things; and in graver cases he is also to be subjected to degradation.

III. Others who have rashly violated the sacramental seal are to be punished according to the gravity of guilt with a salutary penalty, which can even be excommunication (can. 2369, § 2).

§ II. On the Obligation of Repairing Defects Admitted in Confession

A defect committed in confession can regard either the validity, or the integrity of the confession, or another obligation.

441 I. A defect concerning validity is committed if the confessor does not absolve the penitent who is to be absolved, or does not absolve validly. Now a defect of this kind must of itself be repaired, and indeed from justice, because a tacit contract has intervened between confessor and penitent (St. Alphonsus, VI, 619). I said "of itself," for, considering the inconvenience often annexed to reparation, the obligation of repairing the defect is often lacking. For the rest, the obligation is more determined by these points:

1. If grave damage threatens the penitent, for instance if there is danger that he or she will die in the state of sin or remain in it for a long time, the confessor must repair the defect, and indeed with grave inconvenience: 1. if he committed it with grave fault; 2. if, although grave fault is absent, the confessor is a pastor, or the penitent is in grave danger of eternal damnation (St. Alphonsus, cited place).
2. If grave damage does not threaten the penitent, for instance if he or she has confessed again to another confessor, or is judged shortly to be going to confess; if, being at least attrite, which disposition can be presumed, he or she received the Holy Eucharist, the obligation of repairing the defect committed, and of admonishing the penitent about the invalidity of the prior confession, is

had almost only insofar as there is an obligation of consulting for the integrity of the confession that will follow; in other words, the obligation of procuring that the penitent in the following confession subject again to the keys the sins of the prior confession. Of this obligation there will be discussion under II.

Corollary. If a penitent, not absolved or not validly absolved, returns to the same confessor, the latter is not bound to admonish him or her about the invalidity of the prior confession, provided that he consults for the integrity of the confession; to obtain this end it suffices to induce the penitent to accuse himself or herself collectively of the sins already confessed in the prior confession.

442 II. A defect concerning integrity must be repaired or supplied in this way:

1. If the confessor acted negatively, by not questioning when there was an obligation of questioning, he is not bound to supply the defect unless the penitent returns; in that case he is bound, because otherwise this new confession would not be integral (St. Alphonsus, VI, 620).
2. If the confessor positively induced the penitent to a defect of integrity, he is bound from justice to reparation, and indeed with grave inconvenience if he sinned gravely, with lesser inconvenience if he sinned lightly. If he did not sin, he is not bound, because admonition outside confession cannot be made without inconvenience (St. Alphonsus, cited place). I said above: he is bound from justice, because by a lie he took from the penitent the liberty of confessing in such a way as to be immune from the burden of integrity.

443 III. A defect concerning an obligation distinct from the obligation of integrity is to be repaired or supplied in this way:

1. If the confessor acted negatively, one must distinguish:

a) If from the uncorrected defect no grave damage threatens either the penitent or a third party, he is not bound to supply the defect unless the penitent returns.

b) If from the uncorrected defect grave damage threatens either the penitent or a third party, for instance if he did not admonish the penitent concerning the obligation of avoiding an occasion or of making restitution, the confessor is bound from charity to correct the defect, if it can conveniently be done. A graver or lighter inconvenience excuses according as the defect was committed with grave or light fault or without fault (St. Alphonsus, VI, 621).

2. If the confessor positively induced an error, one must likewise distinguish:

a) If from the uncorrected defect no grave damage threatens either the penitent or a third party, for instance if the confessor undeservedly exempted the penitent from the obligation of fasting, he is indeed bound of himself to correct the defect, because he is bound to prevent the cause of violating the law from remaining. But in practice there will easily be an excusing reason, especially if the confessor was not gravely culpable (St. Alphonsus, cited place).

b) If from the defect grave damage threatens either the penitent or a third party, for instance if he undeservedly exempted the penitent from the obligation of avoiding an occasion or of making restitution, he is bound from justice to repair the defect, and indeed with grave inconvenience if he committed the defect with grave fault; otherwise with lesser inconvenience (St. Alphonsus, cited place).

Insofar as the confessor himself can be bound to restitution because of a defect committed, see vol. I, n. 1005.

Corollary. If the penitent has departed but is foreseen to be going to return in time, it suffices to wait and to repair the defect in confession. Outside this case the defect cannot be repaired without the penitent being admonished about it outside confession. Now admonition of this kind, as being of a nature to introduce shame, cannot be made without the license of the penitent, except in the case in which the confessor omitted absolution through forgetfulness; for manifestation of this omission brings in no burden (St. Alphonsus, VI, 622).

Section II. On the Ministration of the Sacrament of Penance to Certain Persons in Particular

(St. Alphonsus, *Praxis Confessarii*.)

Chapter I. On the Confession of Children

446 I. "With children he ought to use every charity and gentler ways, as far as can be done" (*Praxis*, n. 90); nevertheless the confessor, especially as regards girls, should always be mindful of due gravity.

II. Sometimes it must be seen whether they enjoy sufficient use of reason, although those who present themselves to the confessor can commonly be presumed sufficiently instructed.

III. Let the confessor take care that from the beginning they learn to confess rightly according to species and number. In questioning let him be cautious, lest the child learn to sin; besides this, let him correct an erroneous conscience when they take for a sin, or for a grave sin, what is no sin or only a light sin. Let the confessor strive especially for this: that he excite the child to true contrition. If some child is found prone to a more harmful sin, for instance to a shameful sin, let him take pains that the vice be eradicated in time (St. Alphonsus, *Praxis Confessarii*, nn. 90 and 91). Let the admonition be brief.

IV. As regards the sentence to be rendered, let the confessor follow this norm:

1. Those sufficiently certainly disposed are to be absolved, even if they have confessed only venial sins; since disposed children have a right to absolution just as adults do. Besides this, let him not easily defer absolution for a relapsing child sufficiently certainly disposed, lest, namely, the child be turned away from the sacrament or keep back sins.
2. Those doubtfully disposed are to be absolved under condition: 1. if they have certainly sinned gravely, they are to be absolved in the cases enumerated in n. 404; 2. in doubt whether they are guilty of grave sin, they are always to be absolved, whether the doubt proceeds from the matter of the sin, or from doubt about the full use of reason, or from suspicion of an erroneous conscience by which what is not grave is taken as grave; 3. if either they have sinned only venially, or it is doubted whether any sin was present, sometimes they are to be absolved (St. Alphonsus, *Praxis Confessarii*, n. 91; VI, 432). If they are dismissed with only a blessing, this should be signified to them.

Corollary I. Even to children there must be left the faculty of confessing to whomever they prefer; hence one who would establish that children should confess only to him who taught them Christian doctrine, or that girls should confess to the pastor and boys to the vicar, is especially to be reprehended.

Corollary II. A recent question was moved whether boys and girls before the years of puberty can sin gravely. Moreover, the affirmative answer must altogether be given. For first, the decree *Quam singulari*, issued by Pius X through the Sacred Congregation of the Sacraments,[2] declares that children around the seventh year of age are bound by the precept of annual confession. But it would not declare these things unless it judged that children from that age are capable of mortal sin, because only those who have committed mortal sin are in fact bound to confession. There is added that the decree, with the Council of Trent, on one side teaches that children are held by the obligation of Communion "when by sinning they can lose grace"; in other words, when they can sin gravely; on the other side it declares that they are bound by the said obligation around the seventh year. Therefore, according to the mind of the one issuing the decree, grace can be lost at that age; in other words, grave sin can be committed. In addition, the decree disapproves delay of Communion for this reason, that it exposes children to the danger of losing their first innocence; this demonstrates that they are held as capable of grave sin. Finally, the whole manner of acting of children before the years of puberty shows sufficiently that they are capable of fully deliberate acts and therefore also of gravely sinful acts.

[1] Cf. Reuter, *Neoconfessarius*; Berger, *Pastoraltheologie*; Gaume, *Manuel des confesseurs*; Aertnys, *Theologia Pastoralis*; Krieg, *Wissenschaft der Seelenleitung*; Schuch-Polz, *Pastoraltheologie*.

[2] August 8, 1910.

Chapter II. On the Confession of the Rude, the Slow, and the Semi-Feeble

447 I. **The confession of the rude and the slow.** Insofar as and in what manner they are to be instructed if perhaps they are ignorant of the things to be known by necessity of means and of precept, this has been said in n. 396. For the rest, in accusation and in eliciting contrition they must often be helped by the confessor. If they have omitted a diligent examination of conscience, they should not be dismissed so that they may search their conscience better.

Note. The things that have been said about the rude and the slow are also to be applied to deaf-mutes who are little instructed; for the rest, compare the things said in n. 396.

448 II. **The confession of the semi-feeble.**

1. If with sufficient certainty they are only semi-feeble, and therefore capable of moral acts, they can rather often be admitted to the sacraments, for instance every month, provided however that here and now they are judged to have posited the acts required for penance. If it is somewhat probable that they are capable of mortal sin and guilty of it, the necessity of absolving them is to be urged still more.
2. If it is doubted whether they are capable of moral acts, they are to be absolved under condition: 1. in danger of death; 2. at Easter; 3. several times in the year, especially if there is some fear that perhaps they have sinned gravely (St. Alphonsus, VI, 432).

Chapter III. On the Confession of Habituated Persons

449 I. **Notion of the habituated person.** A habituated or customary person is one who has contracted a habit of some sin. Moreover, a habit of sin is a quality stable of itself by which someone is disposed to sin (vol. I, n. 333). Furthermore:

1. A habit of sin is obtained by frequency of acts. Nevertheless, frequency by itself alone does not suffice; rather it is required that contrary acts not be opposed to the sinful acts leading to the habit, by which contrary acts the origin of the habit would be prevented (vol. I, n. 341). Hence those who commit sins which of themselves arise rather from frailty or from a passing passion do not contract a habit of sin so easily as those who perpetrate sins which of themselves proceed more from malice. The reason is that the former, after the sin has been committed, more easily come to their senses and exercise contrary acts. Sins of the former kind are, for example, pollution and blasphemies; of the latter kind are hatred, theft, conjugal onanism, transgressions of the precepts of the Church, and so forth.

2. The habituated person has the will in some way fixed in sin, and therefore sins from a bad will, that is, from a will constantly inclined to evil, and therefore promptly and even from slight concupiscence, and as though without an effort of resisting; whence he comes to his senses with difficulty. "When someone," says St. Thomas, "sins from habit, which is to sin from malice, then the will tends by itself into the act of sin, as though now totally inclined from habit by way of a natural inclination into the act of sin" (*De malo*, q. 3, a. 13; cf. I-II, q. 78, aa. 2, 3, and 4; II-II, q. 156, a. 3; St. Alphonsus, V, 4, 2, 3; VI, 459; *Praxis Confessarii*, nn. 70, 73).

3. It cannot be accurately defined what frequency of acts, and how much time, is required for someone to be able to be judged to have contracted a habit of sin.

a) As regards frequency of acts, a greater number of sins committed through a certain time is required if the discussion concerns internal sins, to which sins of the mouth are equated, than if the discussion concerns external sins; greater, if it concerns solitary external sins than if mutual ones are concerned. The reason for the distinction is that a habit is formed the more easily, the greater the deliberation that preceded, as is usually the case in external acts, especially in mutual ones; and the more intense the deliberate acts are, as likewise customarily happens in external acts, especially in mutual ones. Hence a lesser frequency is required in these.

b) As regards time, this likewise depends on the intensity of the acts; likewise on the manner of acting more or less uniformly. Hence, for example, you would more easily call habituated one who through a notable time pollutes himself every week than one who sins frequently in one or another week and in other weeks resists temptation.

Corollary. "One who, for example, fornicated once a month for a year can well be called habituated here" (St. Alphonsus, *Praxis Confessarii*, n. 70); likewise one who for a year once a month has given himself to drunkenness; likewise one who through a notable time either commits pollution once a week, or two or three times a week indulges in morose delectations (St. Alphonsus, cited place).

[1] Cf. Cardinal van Rossum, *Commentarius de iudicio sacramentali Ioan. B. Pighi ad trutinam vocatus*; Berardi, *De recidivis et occasionariis*; Ter Haar, *De occasionariis et recidivis*.

450 II. **Division of habituated persons.** For our purpose, habituated persons are divided into habituated persons who are not relapsers and habituated persons who are relapsers.

1. By us a habituated person who is not a relapser is understood as one who either has not yet confessed after the habit was contracted, or indeed has confessed but was not seriously admonished by the confessor (St. Alphonsus, VI, 459).

2. A habituated relapser is a habituated person who, having confessed and having been admonished by the confessor, has continued the custom of sin in the same manner. Thus theoretically (St. Alphonsus, VI, 459; *Praxis Confessarii*, n. 71; *Selva*, II, Instruction 4, n. 17). Practically, a habituated relapser is a habituated person who, notwithstanding confession and admonition by the confessor,[1] has relapsed: 1. quickly (St. Alphonsus, V, 505); 2. frequently (St. Alphonsus, VI, 459); 3. in almost the same circumstances as before, not on account of singular circumstances; 4. with no assigned remedy having been used and with no effort or quasi-effort or resistance (St. Alphonsus, VI, 459, 505).

[1] The assignment of means for amending oneself also pertains to admonition.

451 III. **Absolution of the habituated person.**

1. A habituated person who is not a relapser, even if he furnishes only ordinary signs of disposition, can be held as sufficiently disposed and absolved. The ordinary signs are the confession itself and the assertion of the penitent (n. 399). The proposition is clear from the fact that a multitude of sins of itself does not constitute a reason for seriously doubting the sincerity of the penitent who, whether explicitly or implicitly, namely by the very accusation of himself in order to obtain absolution, asserts his sorrow for sins (St. Alphonsus, VI, 459; *Praxis Confessarii*, n. 70).

Corollary. A habituated person who has confessed and relapsed after confession can not rarely be absolved, even if he furnishes only an ordinary sign of disposition, because, if some one of the conditions indicated in n. 459 is lacking, he is often not a relapser in the strict sense.

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2. A habituated relapser who brings only ordinary signs of disposition, and, although admonished by the confessor, continues to furnish only ordinary signs:

a) **Cannot be absolved as often as he comes.** For first, the Sacred Congregation of Propaganda Fide, in the Instruction of April 29, 1784, declares that before the confessor grants absolution, it must be seen whether penitents "have used the remedies previously proposed to them, by whose help they may avoid sin in necessary and involuntary occasions; whether they have cast off the custom of sinning; whether, if at other times they have obtained the benefit of absolution, they have again relapsed from their own malice into the same crimes and have wallowed in the same mire." But these things clearly signify that, according to the mind of the Congregation, a habituated relapser who brings only ordinary signs of disposition cannot be absolved as often as he comes.

Next, as we shall say immediately, a habituated relapser who brings only ordinary signs of disposition cannot of himself be absolved even the first time, namely on account of his doubtful disposition. How much more do these things hold concerning a habituated relapser who is a relapser again and again; indeed a relapser of this kind, if he brings nothing except an ordinary sign of disposition, seems to be judged not only doubtfully disposed, but much more probably indisposed (St. Alphonsus, VI, 459, 505).

There is added experience, which teaches that "many relapsers who furnish only ordinary signs are not disposed, or at least are very doubtfully disposed."

"And truly so; for whoever has some practice of the sacred tribunal will confess that very many come to the sacrament of Penance not sufficiently disposed and not truly contrite, especially among those who in the same way continually relapse into a habit of sinning. Some are not sufficiently instructed in

religious matters and are little taught concerning the necessity or conditions of true contrition which, according to Trent, are required for penance. They are so accustomed to external signs of religion that they even hold confession as a certain external ceremony, and are content provided that they obtain absolution. Others take some slight displeasure, or some feeble wish of amending themselves, as sufficient sorrow and purpose. Others approach the sacraments rather from a certain domestic usage or ancestral custom or from a certain human respect, although without an evil design, without seriously turning their mind to correcting morals. Others are so light in mind that they scarcely think of eliciting a true act of sorrow; or, with mind rather distracted, they recite from memory or read from a book a simple formula of contrition, without serious consideration and an internal act of detestation arising from a supernatural motive. Preachers and missionaries who give to the people a series of instructions on contrition and purpose can commonly testify to these defects of true disposition; and they find them not only among the illiterate, but also among more cultivated persons who not rarely are little instructed in the matter of religion. Indeed in our age these defects are often to be feared so much the more, inasmuch as the spirit of this world, which bears before itself indifference and levity in supernatural matters but the greatest industry in earthly goods, has also bespattered with its stains quite a number of Catholics who have not yet abandoned the use of the sacraments. Come now, these generally, when asked by the confessor whether they truly grieve for their sins, give an affirmative response, and this not with a feigned but, as they think, sincere mind, and therefore they furnish an ordinary sign of disposition; and nevertheless before God they are not truly contrite."[1]

Ter Haar confirms this sad experience by these testimonies.[2]

Leo XII: "Many present themselves to the ministers of the sacrament of Penance altogether unprepared."[3]

The Roman Catechism: "Charity has so grown cold that already very many of the faithful think that no intimate sorrow of soul and groaning of heart is necessary for obtaining pardon of sins, but judge that it is enough if they have only the appearance of one grieving."[4]

Segneri says: "How many there are who, through defect of purpose, make confessions invalid and often even sacrilegious! It is not one or another, but whole generations of men and women, nobles and commoners, who say: I have always confessed the evil that I did; for so many years indeed I have lived in this depraved practice, but I have always accused it. They believe themselves clean, but they are not, because they confessed without true purpose... It is indeed easy to throw oneself at the feet of the confessor, strike the breast, and say: I repent. But the chief point of the matter is to see whether you have the purpose of changing life."[5]

The Directory for the spiritual exercises of St. Ignatius, edited by the Superior General of the Society of Jesus, Claudio Aquaviva, declares concerning the usefulness of general confession: "If there were no other usefulness, this surely ought to be enough, that we experience that men commonly approach confession either without sufficient examination, or without due sorrow, with no purpose of a better life or with a very weak one."[6]

As regards the doctrine of theologians we note:[7] the ancient theologians almost commonly teach that a formal relapser who furnishes only an ordinary sign can in no way be absolved as often as he comes. Ter Haar proves this proposition by the very testimonies of the ancient theologians.[8] Thus, to name some, St. Thomas of Villanova, St. Charles Borromeo, St. Bellarmine, St. Francis de Sales, Venerable

Louis of Granada, St. Leonard of Port Maurice, Paul Segneri, Lessius, and De Lugo, whose testimonies you may see in Ter Haar.[9]

[1] Ter Haar, *De occasionariis et recidivis*, n. 264.

[2] Ter Haar, cited work, n. 265.

[3] Constitution *Charitate Dei*, December 25, 1825.

[4] *De Poenitentia*, n. 67.

[5] *Penitenza istruita*, chapter 8.

[6] Chapter 16.

[7] St. Thomas has these things: "Many things are expedient for the spiritual health of one relapsing ... namely, that greater caution be used concerning him" (IV Sent., dist. 32, a. 1, a. 4).

[8] Ter Haar, cited work, n. 295 sq.

[9] Ter Haar, cited place.

453 b) A habituated relapser who brings only ordinary signs of disposition, and, although admonished by the confessor, continues to furnish only ordinary signs, of himself cannot be absolved even the first time. This is first drawn from the Instruction of the Sacred Congregation of Propaganda Fide cited above, which sufficiently manifests that according to the mind of the Sacred Congregation, ordinary signs of disposition do not suffice even the first time if the matter concerns a habituated relapser.

Next, one who is doubtfully disposed cannot of himself be absolved (n. 398). But the penitent of whom we speak must be held as doubtfully disposed.

The minor is proved. Since the same signs of disposition are supposed to be at hand, no greater certitude can be had about the present disposition than is had about the disposition had in the past confession; indeed, on account of the continued and confirmed habit, rather less certitude must be had about the present disposition. But it is rightly doubted whether the penitent was well disposed in the past confession.

The subsumed minor is proved. If right disposition in the past confession were admitted, we would posit a penitent who had had contrition estimatively supreme and a universal, firm, and efficacious purpose, and besides this had been fortified by the grace of the sacrament; and notwithstanding all these things, he would have relapsed quickly, frequently, in the same morally considered circumstances, with no means assigned by the confessor having been used and with no effort or resistance, into the same sins. This indeed can happen, but nevertheless it is deservedly doubted whether it had place (St. Alphonsus, VI, 459, 505; *Praxis Confessarii*, n. 20). Indeed, as we have said, less certitude concerning the present than concerning the earlier disposition must be had, because the habit and culpability have increased since the prior confession, and so true aversion from sin has become more difficult.

As regards the doctrine of theologians, we note that very many support the doctrine of St. Alphonsus, as for example St. Thomas of Villanova, St. Francis de Sales, Segneri, Benedict XIII, Archbishop of Benevento, etc., whose testimonies Ter Haar brings forward.[1]

Objection 1. Theologians earlier than St. Alphonsus commonly teach the contrary.

Response. By referring to those things which we noted above concerning the doctrine of theologians.

Objection 2. The penitent is to be believed, whether speaking for himself or against himself.

Response. The principle stated certainly cannot be admitted without limitation, as is clear from proposition 60 condemned by Innocent XI: "To a penitent having a custom of sinning against the law of God, of nature, or of the Church, even if no hope of amendment appears, absolution is neither to be denied nor deferred, provided that with his mouth he says that he is sorry and proposes amendment." Besides this, the principle holds more for integrity than for the disposition of the penitent, since the penitent can err more easily as regards the latter. Finally, the principle can be urged less when, as in our hypothesis, there is deserved doubt about the truth of the past testimony. Nor nevertheless should the penitent for that reason be called guilty of lying; since commonly he deceived himself.

Objection 3. To return with the same sins is not of itself a sign either that true sorrow and purpose of amendment was lacking or that it is lacking; certainly not more than if he returned with other sins. Rather, it is only a sign of human frailty.

Response. The discussion concerns a habituated person, and such a one as not only returns with the same sins, but, after being admonished, has relapsed quickly, with no means assigned by the confessor having been used and with no effort or resistance having been furnished. In this case we do not contend that there is a certain sign that sorrow was lacking, but that there is a reason for seriously doubting whether right disposition was present, and still more whether it is present.

Instance. "That someone," says St. Thomas, "afterwards, that is, after penance, sins either in act or in purpose, does not exclude that the first penance was true, for the truth of a prior act is never excluded through a contrary subsequent act; for just as one truly ran who afterwards sits, so one truly repented who afterwards sins" (III, q. 84, a. 10, ad 4).

Response with Billuart:[2] "His words, that is, St. Thomas's, are not to the point. For there the Holy Doctor means that a following sin does not exclude preceding penance, supposing that it was true; because, he says, the truth of a prior act is not excluded through a contrary subsequent act. Hence, just as he truly ran who afterwards sits, so he truly repented, if he truly repented, who afterwards sins; for what has been done cannot become undone. All admit this. But the Holy Doctor does not deny that frequent following relapses are indications that the prior penance was not true," or at least that it is to be doubted.

I said that a habituated relapser who brings only ordinary signs of disposition cannot of himself be absolved; since, although he is doubtfully disposed, nevertheless he can be absolved under condition if some one of the causes assigned in n. 404 is present.

[1] Ter Haar, cited work, n. 295 sq.

[2] *Tractatus de Sacramento Poenitentiae*, dissertation 6, article 10.

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3. If a habituated relapser either of himself, or after being admonished by the confessor, furnishes an extraordinary sign of disposition, he can be held as sufficiently certainly disposed, and therefore can be absolved by the confessor as judge, though not always as physician (St. Alphonsus, VI, 459). It is said:

a) **Either of himself, or after being admonished by the confessor.** Namely, let the confessor admonish the doubtfully disposed penitent paternally and try to elicit an extraordinary sign of disposition by which the prejudice against his disposition is removed (n. 401).

b) **An extraordinary sign of disposition;** what the extraordinary signs of disposition are, see n. 400.

c) **He can be absolved by the confessor as judge, though not always as physician.** Namely, generally let him be absolved at once if he is a relapser from internal frailty; otherwise, if from an occasion, especially a continuous one (St. Alphonsus, VI, 456, 450, 463, 464; *Praxis Confessarii*, nn. 76, 77). I said:

a) **Generally let him be absolved at once if he is a relapser from internal frailty;** because sometimes delay is expedient or even necessary for strengthening the will, as if remedies have long been used in vain.

b) **Otherwise, if from an occasion, especially a continuous one;** in this case delay of absolution should be used, unless there is a special reason for granting absolution at once. What the special reasons are, see n. 407.

Note. If a habituated relapser in venial sins occurs, let the confessor take care either to elicit an extraordinary sign of contrition, or to "dispose the penitent to grieve especially over some light fault from which he has greater horror, or to suggest to him that he confess some graver sin of past life against some precept, for it suffices that he confess in general without number, so that he may have certain matter on which absolution can rest" (St. Alphonsus, *Praxis Confessarii*, n. 71).

Scholion. On the Confession of Those Given to Pollution or Onanism

Cf. our little work: *De virtute castitatis et vitiis oppositis*, nn. 138 sq., 114 sq.

Chapter IV. On the Confession of Those in Occasions of Sin

Article I. On Those in Occasions in General

455 I. **Notion of occasion.** An occasion is a person or external thing which creates for a person a danger of sinning.

456 II. **Division of occasion.**

1. Occasion is distinguished into remote and proximate. Remote is that which creates a light danger; proximate is that which creates a grave danger, that is, such a danger in which someone is certainly, more probably, or probably going to fall. Such are, for example, a tavern for a drunkard, a master for a maidservant seduced by him. For the rest, the presence of a proximate occasion can be gathered both *a priori* and *a posteriori*. It is gathered *a priori* when, considering the enticement of the object and the disposition of the subject, it is at least probable that someone is going to fall. It is gathered *a posteriori* through experience or frequency of falls, namely if someone in a certain occasion, considering the times in which he was exposed to the occasion, has fallen so frequently that it is probable that, with the occasion present, he is going to fall again (St. Alphonsus, VI, 452).

Many call a proximate occasion that in which someone is certainly, or almost certainly, or very probably going to fall. Hence, in order to gather from experience whether an occasion is proximate, they require that someone always, or almost always, or altogether more frequently, has sinned in it. But that the definition of St. Alphonsus handed down by us is right will be clear from what is to be said, since an occasion is already rightly called proximate when there is of itself an obligation of avoiding it

physically. But, as we shall prove, there is of itself an obligation of avoiding even that occasion in which someone is only probably going to fall.

2. Proximate occasion is subdivided into:

a) Absolute and relative, according as it creates a danger for people commonly or for a certain person.

b) Continuous and interrupted, according as it occurs habitually or at intervals.

c) Voluntary and necessary. Voluntary is that which can be avoided without grave inconvenience. Necessary is that which either physically cannot be avoided or cannot be avoided without grave inconvenience. But in order that an occasion can be called necessary, an inconvenience is required the graver in proportion as the danger of damnation, the danger of sinning, the sin to be feared, and the scandal to arise from the occasion are greater. Wherefore note two condemned propositions, namely proposition 62 proscribed by Innocent XI: "A proximate occasion of sinning is not to be fled when some useful or honest cause for not fleeing occurs";[2] and proposition 41 condemned by Alexander VII: "A concubinary is not to be obliged to cast out the concubine if she would be too useful for the pleasure of the concubinary, commonly *regalo*, since, with her lacking, he would live life too bitterly, and other banquets would affect the concubinary with great weariness, and another female servant would be too difficult to find."[3] Therefore an occasion should not easily be held as necessary. In addition note that the difficulty of renouncing the occasion is commonly exaggerated by penitents (St. Alphonsus, 452, 454).

[1] Cf. Ter Haar, *De occasionariis et recidivis*.

[2] Denzinger-Bannwart, n. 1212.

[3] Denzinger-Bannwart, n. 1141.

457 III. **Obligation of avoiding occasions.** First it must be noted that an occasion of sinning can be avoided physically or morally: physically, that is, by removing or abandoning it; morally, that is, by bringing it about in another way that the danger of sinning ceases to persist. Next it must be observed that we are speaking expressly of occasions of sinning gravely. Now:

1. There is no obligation of avoiding remote occasions of sinning gravely. The reason is that such an obligation would bring with it an intolerable burden to be borne through one's whole life and continual anxieties; for occasions of this kind continually occur to a person. But it cannot be admitted that a burden of this kind has been imposed on people. Some indeed think that of itself there is a venial obligation; but the argument seems also to exclude that obligation.

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2. As regards proximate occasions of sinning gravely, these things hold:

a) There is a grave obligation of physically avoiding a voluntary proximate occasion of sinning gravely. The proposition thus stated now seems commonly to be admitted, and it is deduced from proposition 61 condemned by Innocent XI: "One who is in a proximate occasion of sinning, which he can and does not will to omit, indeed directly and deliberately seeks or thrusts himself into it, can sometimes be absolved." Now the words of omitting, seeking, and thrusting oneself into it seem altogether to have to be understood of physical avoidance. Next, the proposition stated is proved by the same argument by which the proposition now to be stated is proved.

459 b) There is a grave obligation of physically avoiding a voluntary proximate occasion, as it has been defined by us; in other words, there is a grave obligation of physically avoiding also that voluntary occasion in which someone is only probably going to fall. For each person is held to avoid a danger, here and now grave, of sinning formally; or to proceed here and now in such a way that he is not probably going to sin gravely. But one who does not physically avoid a voluntary occasion in which he is probably going to fall does not avoid a danger, here and now grave, of sinning formally.

The major is clear from the fact that one who does not avoid a danger, here and now grave, of sinning formally does not truly and simply turn away from the formal offense of God, nor truly and simply turn away from his own supreme evil.

The minor is proved thus: one who does not physically avoid a voluntary occasion in which he is probably going to fall cannot avoid a danger, here and now grave, of sinning formally, except through the help of God, by which the danger here and now ceases to be grave. But one who does not physically avoid a voluntary occasion, that is, an occasion which he can easily avoid, cannot without rashness expect the help of God.

The subsumed minor is proved. The help of God, as gratuitous, cannot legitimately be expected except insofar as it is necessary. But it is in no way necessary where the occasion is voluntary, because this can easily be physically avoided; and once it has been avoided, help for resisting it is no longer required (St. Alphonsus, V, 63; VI, 452). These words of the Council of Trent are added: God does not command impossibilities, but by commanding admonishes both to do what you can and to ask for what you cannot, and he helps so that you can.[1] Likewise these words of St. Thomas: "Tempting God consists in this, when a man omits to do what he can for escaping dangers, looking only to divine help" (II-II, q. 97, a. 1).

Nor should you object that divine help can be expected, provided it is asked for. For the said help can be expected by one asking only when it is necessary. Indeed, a petition of this kind is not even honest, and therefore it can exercise no influence upon God: the petition of departing from the occasion is honest; the petition of conquering while you remain in the occasion is dishonest.

As regards the doctrine of theologians, I note that most earlier theologians of greater note adhere to the opinion defended, as Ter Haar proves by the testimonies brought forward.[2] St. Thomas has these things: "The weak in faith, whose subversion can probably be feared, are to be prohibited from association with unbelievers" (II-II, q. 10, a. 9). St. Alphonsus strenuously defends the same opinion in the places cited, and very many, even those who wrote after St. Alphonsus, defend it, as the praised Ter Haar again shows.[3]

Corollary. The genuine definition of proximate occasion is this: it is an occasion in which someone is at least probably going to fall. For a proximate occasion is that which there is of itself an obligation of avoiding physically. But from what has been said it follows that there is of itself an obligation of physically avoiding an occasion in which someone is at least probably going to fall.

Objection 1. It does not appear why he truly sins gravely who has an altogether notable probability that in this occasion which he approaches he is not going to sin gravely; for he does not choose a thing which by moral necessity brings sin with it.

Response. It suffices, as follows from the argument brought forward, that someone choose a thing such that, once it is posited, he will probably commit sin.

Objection 2. If from the nature of things or from experience it is clear that probably the sin will be avoided, this is a sign that the danger can be avoided with those ordinary helps of grace which can prudently be expected and asked by any person.

Response. I deny the consequent, since the divine help of which there is discussion cannot prudently be expected and asked in the hypothesis posited, because it is not necessary, as we have said.

Objection 3. Because by hypothesis it is also probable that sin will not follow, one who for a reasonable cause commits himself to such an occasion cannot be accused of rashness and said to will sin.

Response. I deny the consequent, since one who without grave cause exposes himself to a grave danger of a grave evil is deservedly accused of rashness. But since in the hypothesis posited it is also probable that sin will follow, the matter concerns a grave danger of a grave evil, that is, of sinning mortally.

Objection 4. In several texts of authors alleged by Berardi and Ter Haar in their favor, the question is only of probable danger, and it is not established that the authors did not understand a probability to which nothing is opposed, and which therefore would be equivalent to moral certitude.

Response. An interpretation of this kind does not agree with the customary meaning of the words.

Note. If someone without cause enters into a danger, but uses such means as remove the very impulse to sin, he is not to be said to expose himself rashly to danger; rather the danger is now not present. For example, if someone always steals when he is alone in some house, he can go there if people are present.

[1] Session 6, chapter 11.

[2] Ter Haar, cited work, nn. 53-55; nn. 63, 64.

[3] Ter Haar, cited work, n. 65.

460 c) There is no obligation of physically avoiding a necessary proximate occasion. For one who for a grave reason exposes himself to a grave danger cannot be accused of rashness, and therefore can rightly hope that, with means having been used, he will acquire divine help by which the proximate occasion ceases to be such. "And thus surgeons are excused if they expose themselves to danger in treating women, when sometimes in the past they have already fallen because of such an occasion. And thus pastors who have experienced the same misery in receiving confessions. Thus also others are excused who cannot abandon their own office, for instance that of clerk, soldier, tavern-keeper, or merchant, without grave detriment" (St. Alphonsus, V, 63; VI, 455). The same must be said of those for whom, on account of a vehement inclination to evil, innumerable things are proximate occasions. They are indeed held to use means of not sinning, but they are not held to avoid all those things; this would be a very grave burden, and by itself alone already excuses.

461 **Question 1.** Whether one is bound, even with very grave damage, to abandon the occasion if he continually neglects to use remedies, and therefore continually relapses.

Response. The affirmative answer seems altogether to be given; for each person is held to avoid a danger, here and now grave, of sinning formally, or is held here and now to proceed in such a way that he is not probably going to sin gravely (St. Alphonsus, VI, 457). But the person of whom we speak is

probably, not to say almost certainly, going to sin formally unless he abandons the occasion. Therefore he is bound to abandon it.

The minor is drawn from the fact that one who has continually neglected the remedies to be used will probably, not to say almost certainly, neglect them again, and therefore will probably sin again.

Objection. The penitent is bound only either to use the means or to avoid the occasion. Therefore the confessor cannot impose on him the obligation of avoiding the occasion.

Response. In the case the penitent is held to choose the means of avoiding the occasion, because he probably, indeed almost certainly, is not going to use the other means. Nor does the confessor impose that obligation on him, but the law of nature does. But let the confessor teach the penitent the obligation; nor of itself should he abstain from admonition for this reason, that the penitent who neglects the means will not use the more difficult means of abandoning the occasion. For, as Ter Haar observes, "often it is easier for a rightly disposed penitent to posit one very difficult and quasi-heroic act, namely to break off a morally necessary occasion, than afterward, when fervor has diminished and temptation has increased, through a long time, perhaps through months and years, daily to use those remedies of vigilance and prayer with constant struggle against his own passions and the snares of enticements."[1]

Question 2. Whether one is bound, even with very grave damage, to abandon the occasion if, although he uses remedies, he nevertheless always relapses in the same way.

Response. The case will not easily occur, because a penitent who diligently uses the means will commonly be amended little by little. But if it occurs, the affirmative answer must be given, because, as we have just said, each person is held to avoid a danger, here and now grave, of sinning formally. But the one of whom we speak is probably, not to say almost certainly, going to sin formally unless he abandons the occasion. There is added that, at least in the hypothesis posited, these words of Christ urge: "If your eye scandalizes you, pluck it out and cast it from you: it is good for you to enter into life with one eye, rather than having two eyes to be cast into the hell of fire."[2] (St. Alphonsus, VI, 457). Finally, in the work of Pellizzari *De Monialibus*, the Sacred Congregation of the Index willed the contrary opinion to be suppressed by decree of April 21, 1693.

[1] Ter Haar, *De occasionariis et recidivis*, n. 176.

[2] Matthew 18:9.

462 IV. **Absolution of those in occasions.** As regards the absolution of those in occasions, these things especially come to be noted:

1. One who is in a proximate, voluntary, and continuous occasion to which he is strongly attached should not be absolved before he has physically or quasi-physically[1] abandoned the occasion, unless there is a special reason for granting absolution at once. This is deduced first from the fact that "such a penitent is indisposed for absolution if he asks for it before he removes the occasion" (St. Alphonsus, *Praxis Confessarii*, n. 66). Moreover, he is indisposed because he exposes himself to a grave danger of breaking his purpose, that is, of not removing the proximate occasion. St. Alphonsus explains this in this way: "Removal of the occasion is a greatly arduous thing, and does not happen unless one inflicts great force on himself, so that he may be torn away from that occasion to which, because of the past adhesion of his mind, he remains strongly inclined. And therefore, if the occasion is not removed before absolution, the penitent will easily deceive himself

after absolution, falsely persuading himself that he will resist temptations; and thus, with the occasion not dismissed, he will certainly return to his vomit" (VI, 454; III, 436). But if the penitent does not notice the danger, of itself he must be admonished by the confessor; and once admonished he becomes indisposed if nevertheless he wills to receive absolution immediately. There is added that the confessor as physician is of himself held to use a means without which the penitent is exposed to grave danger of breaking his purpose (St. Alphonsus, cited place). Finally, theologians by far more commonly admit the proposition stated. Thus, for example, St. Charles Borromeo, St. Thomas of Villanova, St. Francis Xavier, St. Leonard of Port Maurice, Venerable Paul Segneri, Lehmkuhl, Bucceroni, Prummer, and others, whose testimonies Ter Haar brings forward.[2]

What the special reasons are for departing from the rule, or granting absolution at once, see n. 407.

Objection 1. The opinion of St. Alphonsus rests on a doubtful foundation, namely that he sins gravely who exposes himself only to probable sin.

Response. By referring to the proof of that doctrine and the refutation of those things which are opposed to it (n. 468).

Objection 2. The earlier theologians only counsel, and do not prescribe, the opinion which St. Alphonsus defends.

Response. An interpretation of this kind is opposed to the obvious and clear sense of the testimonies of which there was discussion above.

[1] For instance, if the matter concerns a maidservant, by renouncing service, even if she does not depart immediately.

[2] Ter Haar, cited work, n. 117 sq.

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2. One who is in a proximate, voluntary, and continuous occasion should not be absolved before he has used the assigned means, unless there is a special reason for granting absolution at once. The reason is that, considering the very great blandishments of the present occasion and the danger arising from it of neglecting the assigned means, the will of the penitent must be sustained by the remedy of delay. "For I judge," says St. Alphonsus, "that the confessor as physician is bound to apply to his penitent the more opportune remedies, so that he may work his salvation; and I think that no more apt antidote can be administered to one who is in a proximate occasion than delay of absolution. For experience teaches that penitents, after they depart absolved, for the most part neglect to use the prescribed means, and thus they relapse most easily. On the contrary, when absolution is denied to them, they strive more vigilantly to carry out the remedies and to resist temptations, moved indeed by fear lest, when they return to the confessor, they again be dismissed without absolution" (VI, 456). What the special reasons are for departing from the rule or granting absolution at once, see n. 407.

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3. One who approaches a proximate, voluntary, and interrupted occasion, and returns twice or three times after being absolved without any amendment:

a) If he shows only ordinary signs of disposition, of himself he cannot be absolved; for since he has already several times not avoided the occasion, although he could easily have avoided it, there is deserved doubt about the disposition. He can be absolved under condition if some one of the causes assigned in n. 404 is present.

b) If either of himself or after being admonished by the confessor he shows an extraordinary sign of disposition, he can be held as sufficiently disposed and absolved (St. Alphonsus, VI, 454; *Praxis Confessarii*, n. 66).

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4. One in an occasion who is a habituated relapser is to be treated according as was set forth in nn. 461-463, where we spoke about habituated relapsers (St. Alphonsus, VI, 455, 456).

Corollary. Let the confessor not omit to assign to the penitent who is in or approaches a necessary proximate occasion remedies for not sinning; these are:

1. To diminish the force of the occasion. Not rarely a few words said with strong spirit, a serious threat or reproach, an opening of the mouth to cry out, or reporting the matter to someone who can apply a remedy, suffice so that the perfidious insidiator is cast down in spirit and ceases from every annoyance. Then he ought to avoid being alone with a lone person, flee all familiarity, and as far as can be done even the sight of the accomplice, not speak about him or her, not think about him or her, and similar things. In addition, if the occasion is not presently existing, he ought, insofar as can be done, to shorten his stay in it and quickly finish the necessary business.
2. To diminish the force of passion by furnishing no encouragement to it through idleness, liberty of the senses, depraved thoughts, depraved reading, intemperance, and so forth; likewise by subjecting it through labor, fasts, and other mortifications, if possible.
3. To increase spiritual strength by prayer, frequenting of the sacraments, and meditation on eternal truths. Daily, especially in the morning, let him renew the purpose of sinning no more, more profitably before a Crucifix. If the occasion is not presently existing, let him always renew the same purpose before he approaches it.[1]

[1] Berardi, nn. 79-83; Aertnys-Damen, II, n. 478.

Article II. On Some Occasions in Species

§ I. On Concubinage

One must distinguish between concubinaries who are in ordinary circumstances and those who are in danger of death.

466 I. **Concubinaries living in ordinary circumstances.**

1. If the concubinage is public, it must be removed either by marriage or by separation; but commonly not through means by which the occasion would become remote, because in that way the danger and scandal can scarcely be removed. If that is permitted in a very rare case, let the scandal, insofar as can be done, be removed by making public the absolute necessity of the occasion and by instituting a truly Christian life.
2. If the concubinage is occult, it can and must be removed either by marriage or by separation or, if inescapable difficulties stand in the way both of marriage and of separation, through means by which the occasion would become remote. It is said:

a) **Either by marriage;** and indeed this of itself is especially to be urged. Nevertheless, commonly one should not have recourse to secret marriage or marriage of conscience, unless the concubinaries are

publicly judged to be joined in marriage (cf. treatise on marriage).

b) **Or by separation.** If marriage is morally impossible or at least is not chosen, and separation is morally possible, this must be imposed. If separation can be made shortly, the concubinaries should not be absolved before they are separated, unless there is a special reason for immediately imparting absolution (n. 471). If separation cannot be made shortly, let the concubinaries take pains that it be done as soon as possible; and then, unless a special reason is present, absolution should not be granted before they have used means of not relapsing (St. Alphonsus, III, 436). Of these means it will now be said:

c) **Or through means by which it would become remote.** The means, besides the general ones (n. 474)†, are:

a) If the concubinaries live in the same house: 1. let each openly declare to the accomplice that he or she no longer wills to lead such a life; 2. if the concubinary turns aside to her at night, let her close the door in such a way that it cannot be opened.

b) If the concubinaries live in different houses: 1. let the concubine not open the door to the concubinary when he comes; 2. let her take care to live with another woman or at least not be found alone; 3. sometimes let it be advised that she change domicile.

467 II. **Concubinaries living in danger of death.**

1. If the concubinage is public, one must speak as follows:

a) If the concubinary is now deprived of the senses, let him or her be absolved under condition, and also be given Extreme Unction (cf. nevertheless n. 485).

b) If indeed the person uses the senses, but nevertheless is in extremis, so that there is no time available either for contracting marriage or for effecting separation, the concubinary, having been reduced to penance, must be absolved and fortified with the remaining sacraments. Nevertheless, care must be taken, insofar as will be possible, that the accomplice not show himself or herself, and that the dying person repair the scandal, either by himself or herself or through the priest, by asking pardon before witnesses. If this manner of repairing scandal cannot prudently be used, the very carrying of Viaticum seems to involve sufficient reparation of scandal.

c) If the illness allows delay, the occasion and scandal are to be removed through marriage or separation. If neither marriage nor separation can have place, let the person declare before witnesses as soon as possible that this impossibility is to be made public, and at the same time promise that, if perhaps he or she recovers, he or she will effect separation and will have no further association with the accomplice. In addition, let the means assigned in n. 475 be used.

2. If the concubinage is occult, the procedure is as follows:

a) As was said above under a).

b) As above under b); but reparation of scandal, as is clear, is not required.

c) As above under c); but note that in the case one can sometimes have recourse to marriage of conscience (cf. treatise on marriage).

§ II. On Courtships

468 I. Courtships or visits of lovers with a view to marriage, considering present-day morals, can be held as necessary. Nevertheless, they are commonly not made without danger, although the danger arises more from solitary courtship than from courtship as such. Solitary courtship is understood as that which has place outside the sight of others.

II. Solitary courtship for many is already *a priori*, so to speak, a proximate occasion; for many it can become a proximate occasion; and as soon as the courting persons have sinned gravely, it has become a proximate occasion and must be treated as such by the confessor.

III. That the danger may be diminished the more, let the following precautions be used:

1. Courtship should be permitted only to those who can and will enter marriage within a reasonable time. If younger persons have begun courtship, let it be deferred; if the hope of entering marriage sufficiently soon is lacking for a reason other than age, and the courtship cannot conveniently be interrupted, let the visits be diminished.
2. Let the lovers not dwell under the same roof.
3. Let them obtain the consent of parents as soon as possible; this does not prevent certain beginnings of love from sometimes being tolerated even without the parents' knowledge, namely so that they may know whether some reciprocal affection is present.
4. Let one not be alone with a lone person, or let courtship not be made outside the sight of others. This happens if it is done in a closed room; in a house while no one is present or all have gone away to bed; when a girl follows a young man to the door of the house toward evening or at night; in a remote place; in darkness, even if in a public place. It happens less when they are in a room and the mother now and then leaves very briefly on account of domestic business; scarcely or not at all when by day a young man accompanies a girl along a public road. It is also more dangerous if the courting persons deliberately seek solitude.
5. Let the visits not be too frequent, nor too prolonged.
6. If it happens that they are alone, let them not approach each other; this in itself is dangerous and gives occasion to immodest touches.
7. Let them fortify themselves with spiritual helps, especially frequency of the sacraments.

Corollary. The breaking off of a courtship should not easily be imposed on account of sins alone, namely if otherwise nothing stands in the way of the courtship; rather, in every way, even by delaying absolution for those who relapse, let care be taken that one is not alone with a lone person. I would say this: 1. because solitary courtship, rather than courtship itself, is the occasion of sinning; 2. because a courtship to which otherwise nothing is opposed cannot be broken off without sufficiently grave inconvenience; and 3. because, even if it is broken off, afterward it is easily renewed. But if courting persons who have sinned can, on account of singular circumstances, converse only alone, the courtship is rightly called a necessary occasion, since to renounce a courtship to which otherwise nothing stands in the way is a grave inconvenience.

§ III. On Domestic Dangers

469 I. A maidservant who yesterday yielded to solicitation, or who because of frailty is exposed to grave danger of yielding to it, is bound to seek another service; and, if for this purpose it is necessary, to warn her parents that she is exposed to danger. "These things, however," adds St. Alphonsus, "are to be understood if a person of this kind is frail and little devout; for if she were given to piety and cautious, and used suitable remedies for repelling temptations and for meeting passion, then I would not bind her to remove the occasion" (VI, 452). Likewise a maidservant must seek another service if the son of the household or a fellow servant is for her a proximate occasion of sinning, unless by warning the master or the son's parents she can put an end to the occasion and prefers to do so (St. Alphonsus, VI, 439). The master himself is bound, if it can be done without grave inconvenience - of which kind would be his wife's suspicion - to dismiss the maidservant under one pretext or another.

II. A young man for whom a brother lying in the same bed is an occasion of sinning is bound, if there is hope, to seek a change of bed, and, if for this purpose it is necessary, to warn his parents about his brother's wickedness. If a change of bed cannot be hoped for, he is nevertheless bound to warn his parents, unless the brother wholly desists from shameful acts.

§ IV. On Dances

470 I. "Dances according to themselves are not evil, nor acts of lust, but of joy" (St. Alphonsus, III, 429). Nevertheless, they can be illicit by reason of the end, for example for the sake of seeking lust, which more easily happens in masked dances than in others; by reason of danger, especially because of the manner in which they are held; by reason of scandal; likewise by reason of danger arising from the fact that young men and girls, after dances have been held, go home without a companion. Besides this, even respectable dances should therefore also, as far as can be done, be kept away, because, especially if they become more frequent, they foster levity of mind both in young men and in girls, and diminish their devotion. Children's dances (*bals d'enfants*) likewise are greatly to be disapproved.

As regards the danger attached to dances, note: dances which are held publicly are commonly more dangerous than those which are led among a few families; likewise there is greater danger in dances which are conducted with masks; dances of the wealthy, by reason of dress, and popular dances, by reason of levity in acting and speaking, not at all rarely carry grave danger with them; and generally the matter depends much on social condition and education.

II. As regards the proximate occasion which dances are naturally suited to constitute, I would say as follows:

1. Very immodest dances, whether by reason of dress or nakedness, or by reason of the manner in which they are conducted, are commonly a proximate occasion of sinning.
2. Fairly immodest dances create a proximate occasion for many, especially young men. To these are numbered many dances used today, which require a close embrace of the dancers and also furnish occasion for contacts of bodies. The reason why the said dances, although fairly immodest, constitute a proximate occasion only for many - but not commonly, especially as regards girls - is this: because the mind during dancing is distracted to other things and especially occupied with rhythmic movements, which keeps many from intense impure thoughts.
3. Respectable dances by reason of themselves are a proximate occasion for some. They can, however, easily be - and this is also to be applied to other dances - a proximate occasion by reason of the lack

of a companion on the return.

Corollary. Very immodest dances are to be prohibited. As regards others which are a proximate occasion for the penitent, one must see whether they create danger by reason of themselves or by reason of the lack of a companion. If the first has place, the dances themselves are to be wholly prohibited to the penitent, unless a grave reason excuses, for example the absolute will of parents or of a husband; and this prohibition, if the matter concerns fairly immodest dances, is to be urged even more because of the scandal attached to them. If the second happens, the obligation of not going home without a companion is to be urged.

III. Those who introduce dances easily sin gravely, whether by promoting them, or by holding them, or by giving over a house for holding them. If, however, the custom flourishes in all neighboring parishes, it is almost equivalent to existence in one's own parish. Besides this, innkeepers are bound to take care that all things are done respectably.

IV. Where the custom of dances does not exist, the pastor and confessors should prudently keep them away, even respectable ones. Where it exists and cannot prudently be abolished, one must labor so that they are not prolonged too much, and so that young men and girls do not return home without a trustworthy companion. Besides this, pastors and confessors, insofar as it can prudently be done, should turn the faithful away from dances.

§ V. On Theatrical Spectacles

471 I. Theatrical spectacles can be dangerous both by reason of themselves and by reason of dances which are inserted; and rather often, because of the dancers' dress, manner of dancing, and lascivious gestures, they strongly excite to venereal things.

II. As regards the proximate occasion which they are naturally suited to constitute, hold these things:

1. Very immodest spectacles and dances are a proximate occasion for very many. Likewise spectacles notably contrary to religion create grave danger for many.
2. Fairly immodest spectacles and dances are a relative occasion; lighter ones are a grave danger for some (St. Alphonsus, III, 427).
3. If spectacles are attended especially for hearing music, the danger is more easily removed, provided the theaters are not too foul. And as regards dances, it must be noted that spectators can more easily leave on occasion of them.

III. In doubt whether a spectacle which will be exhibited is shameful or contrary to religion, to attend it is of itself illicit. Besides this, the confessor should prudently turn penitents away, especially from attending public theaters, also for this reason: because frequenting theaters, just as frequenting dances, promotes levity of mind and diminishes devotion.

§ VI. On Evil Writings

472 I. Books and newspapers professedly or notably contrary to religion or good morals are commonly a proximate occasion. Of this kind are, for example, socialist newspapers and many novels. Books and newspapers which do not oppose religion or good morals so notably are a relative occasion. To this are referred several liberal newspapers and many novels, as being erotic.

II. In doubt whether a book is dangerous, to read through it is illicit.

§ VII. On Evil Associations

473 I. As regards societies properly so called, compare what was said in volume I, n. 509.

II. As regards the danger which associates create in a workshop, in military houses, etc., these occasions are commonly necessary. Let the confessor be greatly intent on this: that those living in the occasion frequent the sacraments.

III. Frequenting unbelievers, if the matter concerns familiar and habitual conversation, easily carries grave danger with it. Otherwise one must speak about rare and interrupted conversation. Nevertheless, the so-called circles are more dangerous, especially those of younger people, which are set up, for example, for the sake of playing games or cultivating musical art, whether young men and girls come together at the same time, or both Catholics and non-Catholics are enrolled in them.

§ VIII. On Evil Schools

474 These matters were treated at length in volume I, n. 714 sq.

Appendix. On External Circumstances to Be Observed

444 I. **Place.**

1. The proper place of sacramental confession is a church or a public or semi-public oratory (can. 908); hence, of itself, it is better that even the confessions of men be received in some one of the places assigned. As regards women, there is an obligation insofar as the confessional seat in which they must be heard is generally to be placed in such a place. But "it is licit to receive the confessions of men even in private houses" (can. 910, § 2).
2. The confessions of women should not be heard outside the confessional seat except for a cause of illness or other true necessity, and with the precautions which the local Ordinary has judged opportune (can. 910, § 1). For the rest, observe:

a) The confessional seat for hearing the confessions of women is always to be placed in an open and conspicuous place, and generally in a church or public or semi-public oratory destined for women (can. 909, § 1). Since "generally" is said, for a just cause it is licit to erect the confessional seat in another open and conspicuous place, for instance in the sacristy or in a room annexed to the church or oratory.

b) The confessional seat should be furnished with a fixed grating, finely perforated, between penitent and confessor (can. 909, § 2).

c) Even the confessions of men must be received in such a seat if they are received in a church or public oratory.[1]

[1] Pontifical Commission, November 24, 1920 (*A.A.S.* 1920, p. 573).

445 II. **Vesture.** "Let him use a surplice and a violet stole, as time or the custom of places will allow."[1] Moreover, many regulars, either through direct concession or through communication of privileges, enjoy the faculty of using only the stole in church.

As regards the custom of using nothing except the stole alone or only the surplice, the response was: "Let the Roman Ritual be observed."[2] And finally it was declared: "It is fitting that in church a stole be used, according to the decrees of the Sacred Congregation of Rites."[3]

[1] Roman Ritual, title III, chapter I, n. 10.

[2] Sacred Congregation of Rites, March 23, 1882 (n. 3542, response 3); cf. Sacred Congregation of Rites, July 7, 1877 (n. 3426, response 4).

[3] Sacred Congregation of Rites, August 31, 1867 (n. 3158, response 2).

Part III. On the Reception of the Sacrament of Penance

479 Since the acts of the penitent, placed in order to the reception of the sacrament of Penance, constitute its proximate matter, those things which regard the reception of the sacrament are already comprehended in what has been set forth above. Hence it suffices, by way of very brief repetition, to note these things:

I. In order that someone be capable of receiving the sacrament of Penance, it is required that he be baptized and have sinned after baptism. If he has not sinned after baptism, the matter concerning which the sacrament is engaged is lacking.

II. In order that someone validly receive the sacrament of Penance, besides intention it is required that he be contrite and subject his sins to the keys. For contrition and confession constitute the proximate matter of the sacrament.

III. In order that someone receive the sacrament fruitfully, contrition is required which is estimatively supreme and universal; whether such contrition is required for validity is disputed (n. 299).

IV. In order that someone licitly receive the sacrament of Penance, it is required that, if he is excommunicated or personally interdicted, he first be absolved from the censure (cf. the treatise on ecclesiastical penalties). One who receives the sacrament illicitly, because of defect of contrition, also receives it invalidly, unless he proceeds in good faith.

Appendix. On Indulgences

480 (St. Thomas, *Supplement*, q. 25-27; St. Alphonsus, *Theologia Moralis*, book VI, n. 531-538; *Homo Apostolicus*, treatise 16, n. 62-72).

The sacrament of Penance was instituted by Christ the Lord for remitting both guilt and eternal and temporal punishment due for sins committed. It happens, however, that not every temporal punishment is remitted through the sacrament. Now the punishment surviving can be remitted both through other sacraments, and through good works - since in each there is a satisfactory value - and through indulgences. Hence the dissertation on indulgences is suitably attached to the treatise on the Sacrament of Penance, inasmuch as it is ordered to the integral remission of sins.

We shall speak first of indulgences generally, then of some indulgences in particular.

Part I. On Indulgences Generally

We shall discuss first the notion or essence, existence, and division of indulgences; then their concession; then their gaining; finally the transfer, suspension, and cessation of indulgences.

Section I. On the Notion, Existence, and Division of Indulgences

481 I. **Notion.** An indulgence is the remission before God of temporal punishment due for sins which, as far as guilt is concerned, have already been blotted out, which ecclesiastical authority grants from the treasury of the Church outside the sacrament, for the living by way of absolution, for the departed by way of suffrage (canon 911).

It is said:

1. **Remission of temporal punishment;** but not of guilt, whether mortal or venial; nor of eternal punishment, but only temporal punishment.
2. **Before God.** This is clear both from proposition 19 of Luther condemned by Leo X: "Indulgences are of no value for those who truly gain them for the remission, before divine justice, of punishment due for actual sins;"[2] and from the authentic declaration of Pius VI issued against propositions 40 and 41 of the Synod of Pistoia.[3]

Besides this, indulgences are worth as much before God as the Church expresses in her words; so that, for example, a plenary indulgence of itself remits all temporal punishment, and an indulgence, for example, of one year of itself is worth only as much as one year of penance would be worth, passed according to the penitential canons, independently of the devotion or fervor of the subject. The reason is that "the quantity of the effect follows the quantity of its cause. But the cause of the remission of punishment in indulgences is nothing except the abundance of the merits of the Church, which is sufficient for expiating the whole punishment; but the devotion, or labor, or gift of the one receiving the indulgence, or the cause for which the indulgence is given, is not the effective cause. Hence the quantity of the remission ought not to be proportioned to any of these things, but to the merits of the Church, which always superabound" (St. Thomas, *Supplement*, q. 25, a. 2). "Nor in this is too great a market made of the mercy of God, as some say; nor is derogation made from divine justice, because nothing of the punishment is remitted, but the punishment of one is reckoned to another" (St. Thomas, cited place).

3. **Due for sins which, as far as guilt is concerned, have already been blotted out.** For while the guilt remains, the punishment corresponding to it cannot be remitted. But once guilt has been remitted, not necessarily every temporal punishment is remitted.
4. **Ecclesiastical authority,** since to it alone belongs disposing of the common treasury. Who are the subjects of this power is explained in n. 494.
5. **From the treasury of the Church.** By the treasury of the Church is understood the accumulation of satisfactions of the Saints, both those reigning in heaven and those dwelling on earth, which they did not apply to others. Namely, to every good work proceeding from grace there belongs a threefold value: meritorious, insofar as, when the other conditions have been fulfilled, it confers a right to a just reward; impetratory, insofar as it has the force of obtaining goods from God by supplication; satisfactory, insofar as by reason of the difficulty of the work itself and at least by

reason of the reluctance of our nature, it can satisfy the injured justice of God. Now the satisfactions of Christ, certainly of infinite value, and likewise the satisfactions of the saints, insofar as they were neither necessary for blotting out their own punishment nor applied by them to other persons, constitute, as it is called, the treasury of the Church.

6. **Outside the sacrament;** by which indulgence is distinguished from the remission of punishment which is made by the power of the keys in the sacrament of Penance.

7. **Grants for the living by way of absolution, for the departed by way of suffrage.** Namely:

a) An indulgence granted to the living is a judicial act by which the Church definitively applies the satisfactions of Christ and the Saints to her subjects in substitution for the temporal punishment still due for guilt that has been remitted. Therefore it is made by way of absolution, or is a quasi-absolution; but it is not a pure and simple absolution, because it has payment attached, insofar as it applies to the faithful satisfactions rendered by others. Hence St. Thomas says: "One who receives indulgences is not, simply speaking, absolved from the punishment due, but it is given to him so that he may pay the debt" (*Supplement*, q. 25, a. 1, ad 2).

b) An indulgence for the departed - over whom the Church lacks jurisdiction - involves the Church, from her power of administering her treasury, offering - or granting the one gaining the indulgence the right of offering in her name - to God the satisfactions of Christ and the Saints, praying to Him that He will accept them in substitution for the punishment to be paid by the departed. Hence an indulgence of this kind is valid only by way of suffrage.

From what has been said it follows that an indulgence granted to the living, when the things to be observed have been observed, has an infallible effect. But as regards the effect with respect to the departed, it is disputed whether or not it is infallible. Some affirm, because God, by the very fact that He gave the Supreme Pontiff the power of granting indulgences for the departed, seems also to have bound Himself by a promise to apply indulgences to them. Others deny this, or at least think that the application of the whole value, and to the designated souls, is not infallible, because such a divine promise is not proved in any way. For the power of the Church to grant indulgences for the departed involves only the competence of offering to God for the departed the spiritual treasury entrusted to herself, that is, to the Church. But a competence of this kind does not prove a divine promise of accepting what is offered. The response of the Sacred Congregation of Indulgences, dated July 28, 1840, taken in its obvious sense, favors this opinion: "By an indulgence of a privileged altar, if the mind of the one granting and the use of the power of the keys are considered, there is to be understood a plenary indulgence which immediately frees the soul from all the punishments of purgatory. But if the effect of the application is considered, there is to be understood an indulgence whose measure corresponds to the good pleasure and acceptance of divine mercy" (St. Alphonsus, VI, 534, under 10).

[1] Cf. Beringer-Steinen, *Die Ablässe*; Fanfani, *De indulgentiis: manuale theoretico-practicum*; Stein, *De indulgentiis lucrandis*.

[2] Denzinger-Bannwart, n. 759.

[3] Denzinger-Bannwart, n. 1540 and 1541.

482 II. **Existence of indulgences.** The existence of indulgences must be admitted if it is proved: 1. that there exists in the Church a treasury of satisfactions which in itself suffices for blotting out before God the temporal punishment due for sins; 2. that these satisfactions are applicable to the faithful; 3. that the Church enjoys the power of applying them. Now:

1. There exists in the Church a treasury of satisfactions which in itself suffices for blotting out before God the temporal punishment due for sins. This follows from the propositions of Luther condemned by Leo X. For, as we noted above, in proposition 19 he condemned Luther's doctrine which teaches that indulgences are not of value for the remission, before divine justice, of punishment due for actual sins; and in proposition 17 the same Supreme Pontiff condemns this: "The treasures of the Church, from which the Pope gives indulgences, are not the merits of Christ and of the Saints."[1] Hence there exists in the Church a treasury of satisfactions which in itself suffices for blotting out before God the temporal punishment due for sins. Besides this, the existence of such a treasury is clear from the superabundant and infinite satisfaction which belongs to the works of Christ, as being a divine Person, and which He offered to God the Father for us.

2. The said satisfactions are applicable to the faithful. This is clear from the condemned propositions cited; as regards the satisfactions of Christ, it is furthermore clear from the work of redemption, by which the Savior satisfied God for us; as regards the superabundant satisfactions of the Saints, it follows from the dogma of the communion of Saints, by virtue of which a mutual participation of goods is had in the Church.

3. The Church enjoys the power of applying them; this is proved in Section II.

[1] Denzinger-Bannwart, n. 757.

483 III. **Division of indulgences.** Indulgences are chiefly divided:

1. Into plenary and partial, according as of themselves they wholly or partially remit the punishment due for sins. Now when an indulgence is granted, for example, of one year, the sense is that so much punishment is remitted to someone as would be remitted to him if for a year he performed the penance once customarily imposed for sins according to the canons (St. Alphonsus, VI, 535). By quarantines, however, which are sometimes attached to years - for example, an indulgence of seven years and seven quarantines - there is not understood some time beyond the years themselves, but that part of the year in which a harder penance was prescribed, namely the time of Lent.

2. Into personal, local, and real, according as they are granted only to certain persons, for example religious or members of a confraternity; or are affixed to certain places, for example to a church or altar, that is, to their pious visitation, etc.; or are attached to certain things, for example rosaries, medals, etc., that is, to the pious use of them.

3. Into temporary and perpetual, according as they are granted in perpetuity or only for a definite time.

4. Into indulgences for the living only, for the departed only, and for both the living and the departed.

Corollary I. From what has been said it follows how deservedly canon 911 states that indulgences are to be held in great esteem, and that their use - which is of faith[1] - is most salutary. For indulgences, besides remitting temporal punishment, stir the faithful to contrition and other salutary works, since they are not granted except to penitents and under definite conditions.

Corollary II. Those who make gain from indulgences are guilty of simony (vol. I, n. 621); indeed, by canon 2327 they are punished *ipso facto* with excommunication simply reserved to the Apostolic See.

[1] Council of Trent, session 25, Decree on Indulgences.

Section II. On the Concession of Indulgences

484 I. **Existence of the power in the Church of granting indulgences.** That the power of dispensing indulgences belongs to the Church is of faith from Trent;[1] and it follows from the power which Christ conferred on the Church of remitting sins and opening the kingdom of heaven to believers;[2] for to the perfect remission of sin and to the opening of the kingdom of heaven there also belongs the removal of temporal punishment still remaining after the guilt of sins has been remitted. That this power can be used outside the conferral of the sacrament is clear from the general sense of the words, which also contain the power of teaching and of making laws; and this certainly has place outside the sacrament. Besides this, the whole tradition from the first centuries has recognized this power in the Church.[3]

[1] Council of Trent, session 25, Decree on Indulgences.

[2] Matthew 16:18.

[3] Cf. Fanfani, cited work, p. 19-22.

485 II. **Subject of the power.** The Supreme Pontiff alone, by his own and full right, can grant indulgences (canon 912). The reason is that he, and he alone, can dispose of the common treasury of the Church to whom the government of the whole Church has been committed. Now the Supreme Pontiff commonly exercises the said power through the Sacred Penitentiary, whose office it is to judge all those things which regard the use and concession of indulgences, without prejudice to the right of the Holy Office to see to those things which regard dogmatic doctrine concerning the same indulgences or concerning new prayers and devotions (canon 258, § 2). Those inferior to the Supreme Pontiff can dispense indulgences by ordinary power only insofar as this has been expressly granted to them by law. Now the law states:

1. **As regards a plenary indulgence.**

a) Bishops, each in his own diocese, can impart the papal blessing with a plenary indulgence, according to the prescribed formula, twice a year, that is, on the solemn day of the Resurrection at Easter and on another solemn feast day designated by themselves, even if they have only assisted at the solemn Mass (canon 914). If some Bishop has several dioceses to be governed, he cannot, by his own right, transfer in one of them to another day the papal blessing attached to Easter of the Resurrection.[1]

b) Abbots or Prelates nullius, Apostolic Vicars and Prefects, even if they lack episcopal dignity, can do the same, namely impart the papal blessing with a plenary indulgence according to the prescribed formula, in their territories on only one of the more solemn days during the year (cited canon).

c) Regulars who have the privilege of imparting the papal blessing are not only bound by the obligation of observing the prescribed formula, but also cannot use this privilege except in their own churches and in the churches of nuns or tertiaries lawfully aggregated to their Order; but not on the same day and in the same place[2] where the Bishop imparts it (canon 915).[3]

d) A pastor or another priest who assists the sick has the faculty of granting to them the apostolic blessing with a plenary indulgence at the point of death, according to the form handed down by approved liturgical books, and he should not omit to impart this blessing (canon 468, § 2).

e) Bishops, Abbots or Prelates nullius, Apostolic Vicars and Prefects, and major Superiors of exempt clerical religious institutes can designate and declare one daily perpetual privileged altar, provided another is not already had, in their cathedral, abbatial, collegiate, conventual, parochial, and quasi-

parochial churches, but not in public or semi-public oratories, unless they are united to a parish church or are subsidiary to it (canon 916).

2. **As regards partial indulgences.**

a) Cardinals, from their promotion in Consistory, enjoy the faculty of granting indulgences of two hundred days, even to be gained as often as often, in places or institutes and for persons of their jurisdiction or protection; likewise in other places, but to be gained only by those present, on each occasion (canon 239, § 1, 24°).

b) Metropolitans or Archbishops can grant indulgences of one hundred days both in their own diocese and in suffragan dioceses (canon 274, 2°).

c) Residential Bishops, from taking possession of the diocese, enjoy the right of granting indulgences of fifty days in places of their jurisdiction (canon 349, § 2, 2°). But the words "in places of their jurisdiction" are not to be understood so that Bishops are prohibited from granting indulgences to exempt religious or in their churches.[4]

d) Apostolic Vicars and Prefects, even those who lack episcopal character, possess the same faculty as residential Bishops (canon 294, § 2).

e) The consecrating Bishop, when a church or altar is consecrated, even though he lacks jurisdiction in the territory, grants an indulgence of one year to those visiting the church or altar on the day of the consecration itself; but on the anniversary day, one of fifty days if he is a Bishop, one hundred if an Archbishop, and two hundred if a Cardinal of the Holy Roman Church (canon 1166, § 3). Capitular Vicars and Vicars General lack ordinary power of granting indulgences, since the Law does not enumerate them. They therefore, like the others not enumerated above, cannot grant indulgences except by commission or delegation of the Supreme Pontiff or of another to whom the faculty of delegating has been expressly granted.

f) What Nuncios can do is to be drawn from their letters.

Note 1. Those inferior to the Roman Pontiff cannot: 1. commit to others the faculty of granting indulgences, unless this has been expressly granted to them by the Apostolic See; 2. grant indulgences applicable to the departed; 3. add other indulgences to the same thing or act of piety or sodality to which indulgences have already been granted by the Apostolic See or by another, unless new conditions to be fulfilled are prescribed (canon 913).

Note 2. Generals of Orders and Prelates of Religious, having regard to common law, enjoy no power of issuing Indulgences; but some of them have the privilege of reserving to themselves and of granting to others the faculty of imparting certain blessings - for example, the blessing of a rosary of the Most Holy Rosary - to which Indulgences are attached.[5]

[1] *A.A.S.* XXII, p. 195.

[2] Cited place: in the city, town (Brief of Leo XIII, July 2, 1882).

[3] Here, however, the matter is not the papal blessing which religious missionaries are permitted to impart at the end of missions or in similar circumstances, but the privilege by which regulars, without another condition of function, are able to impart that blessing (Aertnys-Damen, *Theologia Moralis*, 5th ed., II, n. 1112).

[4] Pontifical Commission, December 6, 1930 (*A.A.S.* 1931, p. 25).

[5] Fanfani, cited work, p. 17.

486 III. **Interpretation of the power of granting indulgences.** Both ordinary and delegated power must be interpreted according to the proper meaning of the words and the common usage of speech; but in doubt it is to be taken broadly (canons 49, 50; St. Alphonsus, 534).

487 IV. **Use of the power of granting indulgences.**

1. In order that a concession be valid, a just cause is required. The reason is that the Supreme Pontiff is not the owner of the treasury of the Church, but has been constituted only its dispenser. But a dispenser is not judged to have been granted the faculty of disposing of goods at will, that is, without a just cause (St. Thomas, *Supplement*, q. 25, a. 2; St. Alphonsus, n. 532).
2. Furthermore, for liceity there is required a cause proportioned to the quantity of the indulgence, so that for a greater indulgence a greater cause is required. But the gravity of the cause is to be judged "not only from the difficulty of the work, but from the intended end and the usefulness of the work for that end" (St. Alphonsus, cited place).

It is disputed whether the proportion of the cause is required for validity. Now with St. Alphonsus (cited place) and the more common opinion, it seems one must affirm this, because a dispenser does not seem to have been granted the faculty of disposing prodigally of goods. Besides this, once an indulgence has been granted, a proportionate cause is always presumed to be present. Furthermore, even if a proportionate cause were lacking, nevertheless the privileges attached to the indulgence would certainly be valid, for example the faculty of absolving from reserved cases, since these are matters of ecclesiastical law.

Note. The Supreme Pontiff or a Bishop can sometimes grant an indulgence without the injunction of any work, because there can be a just and reasonable cause for granting an indulgence in this way, for example to a worthy man, or at the point of death.[1]

[1] Aertnys-Damen, *Theologia Moralis*, 11th ed., II, n. 1113.

488 V. **Publication of granted indulgences.**

1. Indulgences promulgated at Rome need no further publication. Indulgences are understood to have been promulgated at Rome whether they have been granted through Briefs or through decrees contained in the *Acta Apostolicae Sedis*.
2. New indulgences, even those granted to churches of regulars, which have not been promulgated at Rome, are not to be published abroad without consulting the Ordinary of the place. In publishing books, booklets, etc., in which concessions of indulgences for various prayers or pious works are listed, the prescription of canon 1388 is to be observed.[1]
3. Those who have obtained from the Supreme Pontiff concessions of indulgences for all the faithful are bound, under penalty of the nullity of the grace obtained, to bring authentic copies of those concessions to the Sacred Penitentiary (canon 920). It is said:

1. **Concessions for all the faithful.** Indulgences granted *for all the faithful* are understood as those which all the faithful can always and everywhere gain without the special use of a blessed thing, or participation in a pious confraternity, or visitation of a determinate church.[2]
2. **Authentic copies,** that is, a written document, either signed by the Supreme Pontiff's own hand or subscribed by a Cardinal of the Holy Roman Church, which testifies to an oral oracle.

[1] That canon states: all books of indulgences, summaries, booklets, sheets, etc., in which their concessions are contained, are not to be published without the license of the Ordinary of the place. But the express license of the Apostolic See is required in order that it be lawful to publish in print, in any language, both the authentic collection of prayers and pious works to which the Apostolic See has attached indulgences, and the list of apostolic indulgences, and a summary of indulgences either previously collected but never approved, or now for the first time to be gathered from diverse concessions.

[2] Beringer-Steinen, cited work, I, n. 199-200.

489 VI. **Interpretation of some indulgences granted or to be granted.**

1. A plenary indulgence granted for the feasts of Our Lord Jesus Christ or for the feasts of the Blessed Virgin Mary is understood to have been granted only for the feasts which are found in the universal calendar. A plenary or partial indulgence granted for the feasts of the Apostles is understood to have been granted only for their natal feast. A plenary indulgence granted as daily perpetual, or for a time, to those visiting some church or public oratory is to be understood in such a way that on any day, but only once in the year, it can be acquired by each member of the faithful, unless something else is expressly said in the decree (canon 921).
2. An indulgence affixed to some Feast is acquired by the faithful on the fixed day duly constituted in their Diocese; by Regular Orders, on the fixed day duly constituted in their Calendar; by those enrolled in a sodality of some Regular Order, on the fixed day duly constituted in the Calendar of the Diocese or in the Calendar of the Order, but not on both days. Thus the Sacred Congregation of Indulgences.[1]
3. When a plenary indulgence once in a month is granted to those who have performed a certain good work through an entire month, the month is not necessarily to be computed from the first day to the last, but is understood as a continuous space of a month, that is, of thirty days.[2]

[1] August 29, 1864; January 12, 1878.

[2] Aertnys-Damen, II, n. 1120.

Scholion. On the Faculty of Blessing Things with the Application of Indulgences

490 I. One who has received the faculty of blessing crosses, medals, scapulars, rosaries, etc., with the application of indulgences, is not bound to exhibit it to the Ordinary unless this is expressed in the concession.[1] One who has obtained the faculty of privately blessing pious things with the application of indulgences cannot use that faculty publicly, for example in a church or oratory before the faithful gathered there and holding in their hands the things to be blessed.[2]

II. As regards the form or rite to be observed in blessings, hold these things:

1. The ordinary or customary form - which is done by forming the cross over the thing to be blessed, without pronouncing any formula and without sprinkling holy water - suffices for crosses, medals, and rosaries, except, however, rosaries of the Most Holy Rosary and of the Seven Sorrows;[3] it also suffices for crucifixes with a plenary indulgence at the point of death; likewise for the crucifix of the Way of the Cross in favor of the faithful who are impeded; and it always seems to suffice when no proper form is prescribed. In that case, the sign of the cross with the words "In the name of the Father and of the Son and of the Holy Spirit," together with the sprinkling of holy water over the object to which indulgences are to be attached, certainly suffices.[4]

2. The proper form must be used for rosaries of the Most Holy Rosary and of the Seven Sorrows, for crosses of the stations of the Way of the Cross, for a plenary indulgence at the point of death or the Apostolic Blessing, as it is called, for enrollment in the Confraternity of the sacred Scapular, etc.[5]

Cardinals, by canon 239, § 1, 5° and 6°, from their promotion enjoy the faculty of blessing everywhere, by the sign of the cross alone, with all the indulgences customarily granted by the Holy See, rosaries and other prayer-beads, crosses, medals, statues, and scapulars approved by the Apostolic See, and of imposing them without the burden of registration; likewise, by a single blessing, of erecting in churches and oratories, even private ones, and other pious places, stations of the Way of the Cross with all the indulgences which have been imparted to those performing such a pious exercise; and also of blessing for the faithful who, because of illness or another legitimate impediment, cannot visit the sacred stations of the Way of the Cross, Crucifix images with the application of all indulgences attached by the Roman Pontiffs to the devout exercise of the same Way of the Cross.

[1] Sacred Congregation of Indulgences, February 5, 1841.

[2] Sacred Congregation of Indulgences, January 7, 1843.

[3] Cf. Sacred Congregation of Indulgences, April 14, 1840; January 7, 1843; February 29, 1864; Holy Office, May 18, 1914 (*A.A.S.*, p. 346).

[4] Cf. Beringer-Steinen, cited work, I, n. 836.

[5] Sacred Congregation of Indulgences, February 5, 1841; March 12, 1855; February 29, 1864; March 22, 1879.

Section III. On the Gaining of Indulgences

First one must speak of the subject capable of gaining indulgences; then of the requisites so that a capable subject may gain indulgences.

Chapter I. On the Subject Capable of Gaining Indulgences

491 In order that someone be capable of gaining indulgences for himself, he must be baptized, not excommunicated, in the state of grace at least at the end of the prescribed works, and a subject of the one granting (canon 925, § 1). It is said:

1. **For himself.** To what extent the enumerated things are required so that someone may apply an indulgence to the departed, we shall say later.
2. **Baptized;** because the Church lacks jurisdiction over the non-baptized, even over catechumens.
3. **Not excommunicated,** because the concession of indulgences belongs to the communion of Saints, of which the Church deprives the excommunicated.

It can be disputed whether material heretics and schismatics can acquire indulgences. It seems one must deny this; for such heretics and schismatics indeed belong by will to the body of the Church, but in the external forum they seem to be considered by the Church as formal heretics and schismatics; for she does not judge concerning internal matters. Now in this case the Church does not seem to extend her act of jurisdiction to those who are considered by her, in the external forum, as formal heretics.

4. **In the state of grace at least at the end of the works.** The reason is that "a dead member does not receive influence from the other living members; but one who is in mortal sin is, as it were, a dead member; therefore through indulgences he does not receive influence from the merits of the

living members" (St. Thomas, *Supplement*, q. 27, a. 1). Added to this is the response of the Sacred Congregation of Indulgences,[1] which declares that the sense of the clause "with heart at least contrite" is that contrition is required "insofar as someone placed in mortal sin and therefore incapable of gaining any indulgence is restored to the state of grace by perfect contrition with the purpose of confession, and becomes capable of obtaining indulgences." Finally, canon 925, § 1 absolutely requires the state of grace in order that someone acquire an indulgence for himself. Hence even if it were admitted that the Church can grant a partial indulgence to one constituted in mortal sin, namely the remission of punishment due because of sins already previously remitted, nevertheless that this actually occurs seems altogether to have to be denied (St. Alphonsus, n. 534, under 9).

To what extent the state of grace is required so that someone may apply an indulgence to the departed, we shall investigate immediately.

This, however, is the place for noting these words of St. Alphonsus: "No one gains a plenary indulgence of all sins unless he is free from every guilt, even venial, when he completes the last work... for it is certain that venial sin not remitted as to guilt cannot be remitted as to punishment... That venial sin, however, does not prevent the punishment due to other sins already remitted from being remitted" (n. 534, under 19). Hence nothing of itself prevents one who lacks the disposition required for gaining a plenary indulgence integrally from gaining it partially. And in fact canon 926 states: a plenary indulgence granted in such a way is understood so that, if someone cannot gain it plenarily, nevertheless he gains it partially according to the disposition which he has.

5. **A subject of the one granting,** because an act of jurisdiction, such as is the concession of an indulgence for the living, can be exercised only upon subjects. But since an indulgence is granted after the manner of a privilege, nothing prevents non-subjects also, after it has been granted, from being able to gain it according to the norm of canon 927: unless something else appears from the tenor of the concession, indulgences granted by a Bishop can be gained both by subjects outside the territory and by pilgrims, vagi, and all exempt persons dwelling in the territory.

[1] December 17, 1870.

Chapter II. On the Requisites So That a Capable Subject May Gain Indulgences

492 But in order, thus canon 925, § 2, that a capable subject actually gain them, he must have at least a general intention of acquiring them and fulfill the enjoined works at the appointed time and in the due manner according to the tenor of the concession.

Therefore, first, intention is required, because the Church does not bestow her benefits except on one willing. But a general intention suffices, by which someone wills to gain all the indulgences which he can gain through the works to be performed; and this can be habitual, that is, once elicited and not retracted (St. Alphonsus, VI, 534, 14°). Namely, the Church, on whose benign mind this whole matter depends, is not judged to require a virtual intention, much less an actual one; indeed canon 925, § 2, which speaks only of intention without addition, sufficiently signifies that every intention, even habitual, suffices. Nevertheless, it is advised that each morning one elicit the intention of gaining all indulgences perhaps attached to the works to be performed during the day.[1] Finally, an implicit intention seems to suffice, that is, one by which someone wills that his works profit as much as they will be able to profit.[2]

Besides intention, fulfillment of the enjoined works is required, concerning which one must treat more fully. We shall speak first of the works to be fulfilled generally, then of some works in particular, finally of the commutation of works.

[1] Cf. *Raccolta*, p. XI.

[2] *Raccolta*, VIII.

493 I. **Works to be fulfilled considered generally.** The fulfillment of works is a condition without which an indulgence cannot be acquired, so that neither ignorance, nor good faith, nor impotence excuses anyone. Nor does it help to substitute a work equivalent to, or even more excellent than, the prescribed work. But the works must be fulfilled integrally, personally, morally well, at the appointed time, and in the due manner. It is said:

1. **Personally;** except, however, almsgiving, according to what will be said in n. 566.
2. **Integrally.** "But if one of the enjoined works is omitted, either wholly or in a notable part, through ignorance, negligence, or impotence... except in the case of legitimate commutation, the indulgence is not acquired."[1] Nevertheless, omission of a slight part, both in itself and with respect to the prescribed work, does not stand in the way of gaining the indulgence, as if you eat a little in a fast, or in the recitation of the Rosary omit three Hail Marys. The reason is that the work is judged to have been placed morally. It is otherwise if, for example, from the five Our Fathers and Hail Marys prescribed, one is omitted (St. Alphonsus, n. 534, under 14 and 16). What must be kept before one's eyes if a particular prayer is assigned, see n. 507.
3. **Morally well,** according to what was said in volume I, n. 242; hence an act not even partly good, such as an act placed from vanity alone, is unsuited for gaining an indulgence.
4. **At the appointed time.** Now the determination of time is for beginning and for ending the privilege, so that fulfillment carried out before or after the assigned time is invalid.
5. **In the due manner,** for example if a prayer is established as to be recited kneeling. It does not matter in what order the works are fulfilled.[2]

Note 1. By a work which someone is bound by law or precept to perform, an indulgence cannot be gained, unless something else is expressly said in the concession of the same; nevertheless, one who performs a work enjoined on him as sacramental penance and perhaps enriched with indulgences can at the same time both satisfy the penance and gain the indulgences (canon 932). Hence someone cannot gain an indulgence by reciting the canonical hours owed. Sacramental penance is excepted, as the cited canon has it; likewise Easter communion, as the Sacred Congregation of Indulgences declared,[3] excepting, however, the case in which the indulgence is granted in the form of a jubilee. Those things imposed by a rule are also excepted, if the rule does not oblige under sin. Nor does anything prevent someone from gaining an indulgence by performing a work owed by vow or promise, because a vow and promise are neither law nor precept.

Note 2. By one and the same work, to which indulgences are attached by various titles, several indulgences cannot be acquired, unless the required work is confession or communion, or unless something else has been expressly provided (canon 933). Thus, for example, since it has been expressly provided, Apostolic indulgences and those of the Most Holy Rosary, perhaps attached to a rosary, can be acquired at the same time;[4] likewise indulgences of the Most Holy Rosary and of the Cross-bearers, attached to the same rosary.[5]

[1] Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214).

[2] Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214).

[3] December 13, 1841; May 10, 1844.

[4] Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143); June 14, 1922 (*A.A.S.* 1922, p. 394).

[5] Sacred Congregation of Indulgences, June 12, 1907.

494 II. **Works to be fulfilled considered in particular.** The works which are rather often prescribed for gaining at least a plenary indulgence are: Confession, Holy Communion, visitation of some church or public oratory, and prayer according to the mind of the Supreme Pontiff. That these are designated by the well-known clause "under the usual conditions" is clear from the new collection published by order of the Sacred Penitentiary and approved by the decree of February 22, 1929.[1]

[1] *A.A.S.* 1929, p. 200.

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1. **Confession.** Whenever an indulgence is granted with the clause "to the contrite and confessed" or a similar clause, sacramental confession is established as a condition, even for those who do not have mortal sin, although absolution is not required for these.[1] Nevertheless:

a) For gaining any indulgences whatever, the confession perhaps required can be made within the eight days which immediately precede the day to which the indulgence was affixed, and likewise within the whole subsequent octave (canon 931, § 1).

b) For gaining indulgences granted for pious exercises of three or more days, confession can also be made within the octave which immediately follows the completed exercise (canon 931, § 2).

c) Actual confession is necessary for gaining no indulgence for those who are accustomed, unless legitimately impeded, to approach the sacrament of penance at least twice in the month, or to receive Holy Communion daily in the state of grace and with a right and pious mind, although once or twice during the week they abstain from it (cf. canon 931, § 3). Except the indulgences of either an ordinary or extraordinary jubilee or in the likeness of a jubilee (cited canon).

[1] If the clause "with heart at least contrite" is added in the concession of an indulgence, it signifies this one thing: that the state of grace is required for the indulgence to be acquired; it does not require that one who is in the state of grace elicit an act of contrition (Sacred Congregation of Indulgences, December 17, 1870, *Decreta authentica*, n. 427). The same is signified if an indulgence is said to be granted "in the customary form of the Church."

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2. **Holy Communion.** This can be received in any church, etc., even if the visitation of a determinate church is prescribed. Besides this:

a) Communion can be received on the vigil of the day to which the indulgence is affixed and within the whole subsequent octave (canon 931, § 1).

b) For gaining indulgences granted for pious exercises of three or more days, communion can also be made within the octave which immediately follows the completed exercise (canon 931, § 2).

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3. **Visitation of a church;** concerning this, observe:

a) Visitation of a church requires entrance into it, and indeed with the intention of worshiping God.[1] If, however, because of the multitude of the faithful someone cannot enter it, it suffices to join himself to the multitude (St. Alphonsus, n. 538, q. 10). But if the visitation of the church is made processionally, it does not suffice, for carrying out the prescribed visitation, that the clergy and people pass by praying before the Church, nor that the clergy with some from the procession enter the church and recite the common prayer while the rest remain outside the church; rather, it is required that all who can be contained in it enter the church and recite the common prayer there.[2] Entrance into the church for the purpose of receiving Holy Communion can also be counted for the visitation.

b) If the visitation of a determinate church or public oratory is prescribed, these must be visited. If the visitation of a non-determinate church is prescribed, it suffices to visit any church or public oratory, but not a semi-public or private one. Nevertheless:

1. Whenever for gaining indulgences there is prescribed the visitation of some non-determinate church or of some indeterminate public oratory, the faithful of either sex who, for the sake of the pursuit of perfection, or of instruction or education, or even of health, live a common life in houses lacking a church or public chapel and established with the consent of the Ordinaries, and likewise all persons dwelling there to minister to them, can visit the chapel of their own house in which they can satisfy by law the obligation of hearing Mass, provided they have duly performed the other enjoined works (cf. canon 929).[3]
2. Cardinals from their promotion in Consistory, Archbishops, and Bishops enjoy the faculty of gaining in their own chapels indulgences for the acquiring of which the visitation of some temple or public shrine of the city or place in which the Cardinals actually reside has been prescribed, and their household members can also enjoy this privilege (canon 239, § 1, 11°; canon 349, § 1, 10°).

Finally, if the visitation of a determinate chapel or altar is prescribed, it does not suffice merely to enter the church; rather, it is necessary to betake oneself to the determinate chapel or altar, or at least to stand in a place from which the chapel or altar can be seen.[4]

c) For gaining an indulgence affixed to some day, if the visitation of a church or oratory is required, this can be done from noon of the preceding day up to the midnight which closes the appointed day (canon 923).

d) One who wishes to gain several indulgences, each of which requires visitation of a church, is bound to make as many visitations - namely, by going out after each visitation and entering again - as the indulgences he intends to gain. This also holds if some indulgence can be acquired as often as the church is visited.[5]

[1] Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214); August 20, 1822 (*Decreta authentica*, n. 253, to II); December 15, 1841 (*Decreta authentica*, n. 295).

[2] *Raccolta*, p. XVI.

[3] The concession cannot be applied to the Portiuncula indulgence, since for it the visitation of a determinate church is prescribed, unless nevertheless this has been specially granted to some persons (*A.A.S.* XVI, p. 346, to VI).

[4] Adrian VI, April 1, 1523; Clement VIII, April 4, 1524; Fanfani, cited work, p. 47.

[5] Sacred Congregation of Indulgences, February 29, 1864 (*Decreta authentica*, n. 399, to II and III).

4. **Recitation of prayers,** which, if visitation of a church is prescribed, is usually imposed as to be made in the visitation itself. Besides this, observe:

a) If, for gaining indulgences, prayer in general according to the mind of the Supreme Pontiff[1] is prescribed, mental prayer alone does not suffice; but vocal prayer can be chosen at the judgment of the faithful, unless some particular prayer is assigned (canon 934, § 1). Therefore, in the case posited, mental prayer alone does not suffice; yet it is enough to add some vocal prayer - not, however, a minimal one - to mental prayer (St. Alphonsus, n. 538, q. 10).[2]

According to the common opinion, five Our Fathers and Hail Marys suffice, or equivalents to be chosen at will, unless a particular prayer is prescribed. But for gaining the Portiuncula Indulgence, by decree of the Sacred Penitentiary dated July 10, 1924, the recitation of six Our Fathers, Hail Marys, and Glory Bes is required, and other equivalent prayers cannot be recited.[3]

b) If a particular prayer has been assigned, indulgences can be acquired in whatever language the prayer is recited, provided that the fidelity of the version is established from a declaration either of the Sacred Penitentiary or of one of the Ordinaries of the place where the language into which the prayer is translated is vernacular; but indulgences entirely cease because of any addition, subtraction, or interpolation (canon 934, § 2). Hence, for example, indulgences are not acquired if, in sung litanies of the Blessed Virgin Mary, the *Kyrie eleison* is sung only once, nor if after each title *Ora pro nobis* is not recited.[4] But the custom of announcing before each decade the mystery to be meditated upon does not seem to harm, since in the case there is no interpolation in the prayers themselves. As regards the practice of recalling the mystery in the middle of the Angelic Salutation, the Sacred Penitentiary, privately asked, declared[5] that it cannot be kept and propagated while the indulgences remain intact. Nevertheless, the same Congregation judges that by canon 934, § 3 there was in no way revoked the indult by which Pius IX in the year 1859, for places where the custom had already grown up, granted that the faithful reciting the Rosary in such a manner could gain its indulgences; and Benedict XV, at the petition of the Sacred Penitentiary, extended that indult to all who according to the aforesaid custom had been accustomed to recite the Holy Rosary in any places whatever.[6]

c) For the acquisition of indulgences, it is enough to recite the prayer alternately with a companion, or to follow it mentally while it is recited by another (canon 934, § 3).

d) Mutes can gain indulgences attached to public prayers if, together with the rest of the faithful praying in the same place, they lift up their mind and pious sentiments to God; and if the matter concerns private prayers, it is enough that they recall them mentally, or express them by signs, or merely run through them with the eyes (canon 936). Finally, by concession of Benedict XV, maimed persons can gain indulgences for the gaining of which the recitation of prayers together with some bodily act which they are unable to perform is enjoined, by pouring forth prayers alone.[7]

Finally, I note that by the faithful enrolled in some sodality, indulgences granted to the sodality can be acquired even if they do not observe the statutes of the society,[8] provided they fulfill the works imposed for the indulgences.

Question. Whether one who performs the enjoined works more perfectly, for example with greater fervor, becomes a participant in the indulgence in a greater measure than one who acts less perfectly.

Response 1. Of itself, no; because the Church is content with common fervor, and in applying the indulgence does not take account of that which is performed beyond what is due.

Response 2. Incidentally, it will easily happen that one who performs beyond what is due participates more in the indulgence, insofar namely as contrition, and therefore remission of guilt, is more universal.

[1] The Supreme Pontiff intends the prosperity and exaltation of the Church, the extirpation of heresies, the conversion of sinners, and finally the peace of the Christian people.

[2] Cf. Benedict XIV, Constitution *Inter praeteritos*, § 83.

[3] *A.A.S.* XVI, p. 343, to IX; Sacred Penitentiary, January 30, 1930 (*A.A.S.* 1930, p. 43).

[4] Sacred Penitentiary, July 21, 1919.

[5] July 27, 1920.

[6] Sacred Penitentiary, January 22, 1921 (*A.A.S.* 1921, p. 163).

[7] Sacred Penitentiary, October 22, 1917 (*A.A.S.* 1917, p. 539).

[8] Sacred Congregation of Indulgences, January 25, 1842 (*Decreta authentica*, n. 298, to II); cf. canon 692.

499 III. **Commutation of works.** Confessors can commute pious works enjoined for gaining indulgences into others for those who, detained by a legitimate impediment, cannot perform the same works (canon 935). To pious works here do not belong those which constitute the cause or occasion of the indulgence, as, for example, the use of a crucifix which ought to supply for the Way of the Cross. By confessor is understood one who enjoys sacramental jurisdiction over the faithful person to whom commutation seems to be granted, so that he can at least validly hear the confession. Commutation, however, can be made not only within confession, but also outside confession (St. Alphonsus, n. 534, 15°).

Members of some confraternity who, because of illness or imprisonment, are impeded from visiting the church, can gain the indulgences granted to the confraternity, even with the visitation perhaps prescribed being omitted.[1]

[1] Sacred Congregation of Indulgences, August 20, 1887 (*Collectanea*, n. 1680).

500 **Question.** To what extent several indulgences can be acquired on the same day.

Response 1. A plenary indulgence, unless something else has been expressly provided, can be acquired only once in the day, even if the same prescribed work is placed several times (canon 928, § 1).

Response 2. A partial indulgence, unless the contrary is expressly noted, can be gained several times during the day, the same work being repeated (canon 928, § 2).

Response 3. As is sufficiently clear of itself, diverse indulgences can be acquired on the same day, provided the works enjoined for each are fulfilled, or if the same works are prescribed, are repeated insofar as they must be repeated. Now one and the same confession and communion suffices for gaining several indulgences (n. 502).[1] The faculty of gaining diverse indulgences on the same day regards both indulgences concurring on one day because of a festivity, and those which someone out of his devotion has affixed to such a day in the week or month.[2]

[1] Sacred Congregation of Indulgences, February 29, 1864; January 12, 1878 (*Decreta authentica*, n. 434, to 3).

[2] Sacred Congregation of Indulgences, February 29, 1864.

Scholion. On the Application of Indulgences to the Souls in Purgatory

501 **Preliminary note.** Although the Supreme Pontiff can grant that we gain indulgences for other living persons, in fact, the Pontiff himself so disposing, no one acquiring indulgences can apply them to others living in this life (canon 930).[1] As regards the application of indulgences to the souls in purgatory, however, we note these things:

[1] The "privilege of the altar for the dying" does not conflict with the cited canon, because in that case the priest celebrating does not acquire the indulgence; rather, the indulgence attached to the Holy Mass is applied directly by the Church to the dying person by way of absolution. Hence the Holy Office, November 9, 1922, to 1, answered affirmatively to the question whether, after canon 930 of the new Code, the existence of an altar for the dying still persisted.

502 I. **The power of the Supreme Pontiff to grant indulgences for the departed.** That the Supreme Pontiff enjoys this faculty is proximate to faith, because of the condemnation, and that repeated several times, of the contrary opinion.[1] It is established from the practice of the Church, by which the Supreme Pontiffs have established various indulgences applicable to souls in purgatory; and it follows from the dogma of the communion of Saints, by virtue of which a mutual communication of goods has place in the Church.

The manner of granting indulgences for the departed was explained above, on p. 377.

[1] Thus, for example, proposition 42 condemned by Pius VI against the Synod of Pistoia (Denzinger-Bannwart, n. 1542).

503 II. **Requisites so that one acquiring indulgences may apply them to the departed.** It is required: 1. that the Supreme Pontiff has granted them as applicable to the departed; since, as canon 913, 2°, states, those inferior to the Roman Pontiff cannot grant indulgences applicable to the departed. Besides this, all indulgences granted by the Roman Pontiff, unless something else is established, are applicable to souls in purgatory (canon 930). 2. The intention of the one acquiring is required, by which he wills this and determines, in general or in particular, to whom the indulgence acquired by him is to be applied. The reason is that the Supreme Pontiff makes indulgences only applicable, as follows from canon 913, 2°, and 930. A virtual intention suffices, or even, because the matter concerns a quasi-donation, a habitual one.

It is disputed whether the state of grace is required in the one gaining. The Sacred Congregation of Indulgences, when asked several times concerning this matter, answered on August 20, 1822: *Deferred*; and on February 22, 1847: *Let approved authors be consulted.* Now from the approved authors, some[1] deny it, because the state of grace is required only as a disposition for obtaining the effect of the indulgence, that is, the remission of punishment. Therefore, if the effect is to be received by the departed person, it suffices that this person be in the state of grace, but the said state is not required in the living person who fulfills the conditions of the indulgence. Nevertheless, with St. Alphonsus (n. 534, under 10) and others,[2] it seems the contrary must be admitted. For by granting indulgences for the departed, the Supreme Pontiff constitutes them only as applicable, as follows both from concessions of the Supreme Pontiff and from canon 913, 2°, and canon 930; in other words, he grants to the faithful a certain right in the satisfactions of Christ and the Saints, or at least a right of offering those same satisfactions to God in the name of the Church. Now, if the matter concerns a sinner, the former cannot be admitted, since a sinner cannot merit any satisfaction for himself. As regards the latter, it likewise is admitted with difficulty that a right of this kind is granted to a subject who, even at the end of the works to be performed by him, persists in enmity with God; all the more because then the Church would grant to a sinner the faculty of doing for others what he cannot do for himself as regards previously remitted sins.

To what extent indulgences applied to the departed produce an infallible effect was explained above, on p. 377.

[1] St. Bellarmine, *De Indulgentiis*, book I, chapter 14; Billuart, *De Indulgentiis*, single dissertation, article 6.

[2] De Lugo, Disputation XXVII, n. 75; Tournely, *De Poenitentia*, last question, article 6; Wignandt, *Tribunal Confessariorum*, treatise 14, n. 96.

504 III. **The measure according to which an indulgence comes to the departed.**

1. If the indulgence is plenary and is applied to one person, it is understood, if we suppose that God assents to the Church making suffrage, to remit all the remaining punishments of the soul. If it is plenary and is applied to several or to all, which can be done,[1] the distribution is left to Divine Providence.
2. If the indulgence is partial, for example of one year, it is understood to remit so much punishment as would be remitted to someone if for a year he performed the penance once customarily imposed for sins according to the canons. If it is partial and is applied to several or to all, the distribution is left to the Providence of God.

[1] *Raccolta*, p. XI.

Section IV. On the Transfer, Suspension, and Cessation of Indulgences

505 I. **Transfer of indulgences** consists in this, that they are transferred from one place to another or from one time to another. Some things must be noted only about transfer with respect to time. Now, having regard to canon 922:

1. If the external solemnity of a feast is transferred, the indulgences attached to the feast are transferred to the day on which the external solemnity is held; otherwise, if only the Office and Mass are transferred and the external solemnity is held on the proper day.
2. If the matter concerns feasts which are celebrated without external solemnity, then the indulgences are transferred if the feast is only occasionally transferred.
3. Indulgences attached to sacred supplications or to novendial, septenary, or triduan prayers, which are performed before or after the feast or even while its octave lasts, are transferred or not transferred according as the indulgences attached to the feast day itself are transferred or not transferred.

Note. Nevertheless, observe that the same indulgence cannot be acquired twice, even at a different time. Thus one who, for example, in one diocese has gained the indulgence attached to the feast of the Immaculate Conception cannot gain the same indulgence again in another diocese if he is there on the day on which the external solemnity of the feast is celebrated in that place.[1] But for the Portiuncula Indulgence it was declared on January 13, 1930[2] that Christ's faithful can obtain it on the second day of the month in one church and on the Sunday next following in another church where that day has been substituted according to the norm of the Decree of the Sacred Penitentiary dated July 10, 1924, to VII.[3]

[1] Sacred Congregation of Indulgences, January 12, 1878 (*Decreta authentica*, n. 435, to III).

[2] *A.A.S.* 1930, p. 23.

[3] *A.A.S.* 1924, p. 346.

506 II. **Suspension of indulgences** consists in this, that indulgences cease for a time, but when the time has passed, they revive without a new act of the superior. Now:

1. Indulgences attached to some church are suspended if the church is overturned from its foundations; they revive, however, if within fifty years it is built in the same or almost the same place and under the same title (canon 924, § 1). It is said "almost the same place," that is, at a small distance, for example twenty or thirty paces. If a church is renewed even totally through successive repairs, the indulgences persist.

2. Likewise indulgences attached to an altar are suspended if the altar is destroyed; but they revive if it is rebuilt under the same title and in the same church, even in another place.[1] Indulgences attached to a mission cross are continued if a new cross is substituted for a fallen or destroyed cross, provided the new cross is erected in the same or almost the same place, with at least the tacit consent of the Bishop.[2]

[1] Sacred Congregation of Indulgences, September 16, 1623† (*Decreta authentica*, n. 317); July 18, 1902 (*A.S.S.* 1902, p. 62).

[2] Sacred Congregation of Indulgences, February 22, 1888 (cf. *Analecta ecclesiastica* 1902, p. 261); July 20, 1901.

507 III. **Cessation of indulgences** has place:

1. By the lapse of the time for which they were granted.

2. By revocation by the one granting or his Superior.

3. By the death of the one granting or by the resolution of his right, they cease only if they were given with the clause "at our good pleasure," or another equivalent clause; but not if they were given absolutely, without a clause, or with the clause "at the good pleasure of the Holy See" or a similar one (cf. canons 70 and 73).

4. By the death of the one to whom the indulgences were granted, if the matter concerns a purely personal privilege; likewise by the extinction of a Confraternity, if the extinction lawfully had place; otherwise, if unlawfully, in which case the indulgences revive when the Confraternity has been restored.[1]

5. By the destruction or sale of the thing enriched with indulgences; namely, canon 924, § 2 states: Indulgences attached to rosaries or other things cease only when the rosaries or other things entirely cease to be or are sold. The exchange of one thing for another, however, seems to be equivalent to sale.[2]

Therefore indulgences do not cease because a price is paid after the rosary or blessed thing has been blessed, provided the sale itself had place before the blessing; nor do they cease from the fact that rosaries, crosses, etc., enriched with indulgences are given or lent to another for gaining indulgences; and this holds even if the one giving or lending the said rosaries, crosses, etc., has already used them for acquiring indulgences.[3] Nor is it an obstacle that something is received or even asked, provided it is not done under the title of sale.

As regards rosaries, note that the indulgences are attached to the beads; hence the chain can be changed. If the beads are bound by a thread and this is broken so that the beads are gathered into one, the indulgences seem to be suspended and, when the rosary has been restored, to revive.

[1] Sacred Congregation of Indulgences, August 26, 1840 (*Decreta authentica*, n. 285).

[2] Cf. Sacred Congregation of Indulgences, June 4, 1721 (*Decreta authentica*, n. 78).

[3] Cf. Sacred Penitentiary, February 18, 1921 (*A.A.S.* 1921, p. 164).

Part II. On Some Indulgences in Species

Section I. On the Privileged Altar

508 I. **Notion.** The privilege of an altar is a privilege by virtue of which a plenary indulgence, under certain conditions, is attached to the celebration of Mass. This indulgence indeed has chiefly been granted for the departed, but sometimes also for the living.[1] Today, however, it is usually granted for the departed only. As regards it, the Sacred Congregation of Indulgences responded on July 28, 1840 - and these things otherwise agree with general principles - that "by an indulgence attached to a privileged altar, if the mind of the one granting and the use of the power of the keys are considered, there is to be understood a plenary indulgence which immediately frees the soul from all the punishments of Purgatory; but if the effect of the application is considered, there is to be understood an Indulgence whose measure corresponds to the good pleasure and acceptance of divine mercy."[2] Now this indulgence obtains its effect more certainly than others, insofar as on the part of the priest it requires nothing except the application of the Mass (n. 521).

As regards the sense of the privilege, observe furthermore: the indulgence is applied only to him for whom the Mass is said,[3] and indeed only to one person, even if the Mass is celebrated for several.[4]

[1] If this indulgence has been granted for the living and the departed, it "is to be interpreted in such a way that a Plenary Indulgence is understood to be granted both for the living, if the sacrifice of the Mass is applied on the altar in question, and for the departed, if the Holy Sacrifice is applied for them: for the living by way of jurisdiction, for the departed by way of suffrage" (Sacred Congregation of Indulgences, August 25, 1897).

[2] *Decreta authentica*, n. 283.

[3] Sacred Congregation of Indulgences, December 18, 1885; August 25, 1897.

[4] Sacred Congregation of Indulgences, February 29, 1864 (*Decreta authentica*, n. 402, to I); June 19, 1880 (*Decreta authentica*, n. 451, to II).

509 II. **Division.** The privilege is distinguished as local, which is attached to an altar, so that all celebrating on it enjoy the privilege; personal, which inheres in the priest, so that, on whatever altar he celebrates, he enjoys the privilege; and mixed, which affects both altar and priest, so that only determinate priests, for example members of some Confraternity celebrating on such an altar, possess the privilege.

510 III. **Local privilege.**

1. First note these things, although less properly they constitute a local privilege: on the day of the Commemoration of all the faithful departed, all Masses enjoy the privilege as if they were celebrated at a privileged altar (canon 917, § 1).
2. All altars of a church, during those days on which the supplication of the Forty Hours is held in it, are privileged (canon 917, § 2). Understand: provided that in that supplication those things are observed which Pius X established by decree of the Holy Office on June 22, 1914.[1]
3. Who besides the Roman Pontiff can designate some privileged altar, and to what extent, see n. 494.

Note 1. In order that the privilege be attached to some altar, the altar must be fixed. But it suffices that it be fixed in the broad sense, or such that its structure has some firmness, insofar namely as, even if it is not fixed to a wall, nevertheless ordinarily it is not moved, although it could be moved.[2] It is not an

obstacle that the consecrated stone can be removed or another substituted for it.[3] To what extent the privilege revives if a destroyed altar is rebuilt, see n. 515.

Note 2. In order to indicate that an altar is privileged, nothing else should be inscribed except: *privileged altar*, perpetual or for a time, daily or not, according to the words of the concession (canon 918, § 1).

[1] *A.A.S.* 1914, p. 74.

[2] Sacred Congregation of Indulgences, July 18, 1902.

[3] Sacred Congregation of Indulgences, September 27, 1843 (*Decreta authentica*, n. 324).

511 IV. **Personal privilege.** By force of common law, Cardinals (canon 239, § 1, n. 10), Bishops, whether residential or titular (canon 349, § 1, 1°), and Apostolic Vicars and Prefects (canon 294, § 1) enjoy this privilege.

Note 1. One who obtains a personal privilege from the Apostolic See is not bound to exhibit the said faculty to the Ordinary unless otherwise disposed in the concession obtained.[1]

Note 2. One who enjoys a personal privilege for three or four times in the week and is aggregated to some Congregation which also enjoys such a privilege can use both, provided that in the indult something else is not expressly disposed.[2]

[1] Sacred Congregation of Indulgences, February 5, 1841 (*Decreta authentica*, n. 286, to II).

[2] Sacred Congregation of Indulgences, May 27, 1839 (*Decreta authentica*, n. 272).

512 V. **Conditions to be fulfilled.**

1. For Masses to be celebrated on a privileged altar, a greater Mass alms cannot be demanded under pretext of the privilege (canon 918, § 2).
2. The Mass must be offered for the departed only, one or several; since the privilege has no place if the Mass is offered for the living or for the living and departed at the same time.[1]
3. The Mass should be offered for one soul only, or, if it is celebrated for several, also for the soul to whom the priest wills that the indulgence be applied. For the indulgence, as was said in n. 517, is not applied except to him for whom it is celebrated.

It is not required that either the one offering the alms or the priest intend to apply the privilege; for this, by the very fact that the celebration has place, is applied to the soul, or to one of the souls, for whom it is celebrated. This is deduced from responses of the Sacred Congregation of Indulgences: in the case, the Church herself seems to ask God that, if the Mass is celebrated for one, He apply the indulgence to this one; if for several, to him to whom He Himself shall prefer. Hence it seems one must say that in the privilege of the altar the faculty of applying the indulgence does not belong to the celebrant himself. Finally, for validity the quality of a Requiem Mass, or of a feria or vigil, is now not required, nor the addition of the Prayer for the departed.[2]

[1] Sacred Congregation of Indulgences, January 23, 1901.

[2] Sacred Congregation of Indulgences, March 12, 1855 (*Decreta authentica*, n. 366, to I); June 19, 1880 (*Decreta authentica*, n. 451, to III); Holy Office, March 20, 1913.

513 VI. **Gregorian altar;** concerning this, some things must be noted in particular. Now by Gregorian Altar is understood the altar of St. Gregory on Monte Coeli in Rome. Moreover, the Sacred

Congregation of Indulgences responded on March 15, 1884, that the trust by which the faithful hold the celebration of thirty Masses, which are commonly called Gregorian, as specially efficacious from the good pleasure and acceptance of divine mercy for the liberation of a soul from the punishments of purgatory, is pious and approved in the Church.[1] And the Holy Office, on December 2, 1912,[2] declared that the said Altar is truly and properly privileged, that is, such that a plenary indulgence is attached to it. There are also altars called Gregorian *ad instar*, namely which are privileged after the likeness of the Gregorian altar; these, however, after the decree of the Holy Office of December 11-12, 1912, to VII,[3] are no longer granted.

We spoke of the so-called Gregorian Masses in the treatise on the Most Holy Eucharist, n. 222.

[1] *A.S.S.* XVI, p. 500.

[2] *A.A.S.* V, p. 33, to VII.

[3] *A.S.S.* 1913, p. 33.

Section II. On the Way of the Cross and on the Crucifix of the Way of the Cross

514 The Way of the Cross is: "A pious exercise by which the whole series of the Lord's passion, expressed in painted tablets where this can conveniently be done and distributed into several stations, is proposed for contemplation in the manner in which pilgrims visiting the City of holy Jerusalem look upon the very places where Christ suffered, recalling and frequenting them."[1]

We shall speak first of the erection of the Way of the Cross, then of the indulgences attached to it and of acquiring them, and then of the Crucifix of the Way of the Cross.

[1] Constitution of Benedict XIII *Inter plurima,* March 9, 1726.

Chapter I. On the Erection of the Way of the Cross

515 I. **The power of erecting the Way of the Cross belongs:**

1. To Cardinals, who from their promotion in Consistory enjoy the faculty of erecting by a single blessing, in churches and oratories, even private ones, and in other pious places, stations of the Way of the Cross with all the indulgences which have been imparted to those performing a pious exercise of this kind (canon 239, § 1, 6°).
2. To Bishops, even titular ones, who from receiving authentic notice of canonical provision having been completed can do the same as Cardinals, but with the rites prescribed by the Church (canon 349, § 1, 1°).
3. To Apostolic Vicars and Prefects, in their territory (canon 294, § 1).
4. To Superiors of the Order of Friars Minor, even excluding the Capuchin and Conventual Minors.[1] Now:

a) The Minister General, by himself or through others, can erect Stations everywhere in the world; the Provincial Minister, within the Province; the Guardian or President, within his own guardianship or district - not to be taken too rigorously, since Benedict XIV left to the judgment of pastors the choice of the religious man whom they judged more suitable, so that with the license of his local superior he might proceed to make the erection.[2]

b) The Minister General can delegate the faculty of erecting within and outside the Order; he can also grant authority of subdelegating. The other Superiors are wholly without this right, and furthermore can delegate for the erection of the Way of the Cross only their own subjects who are approved preachers or confessors.[3]

Note. The competent authority in the Order of Friars Minor, from whom the faculty is requested, commonly restricts this to places where the said Order does not exist. By the name of places here are meant a city, town or village, with the respective suburbs or places adjacent to them, but not a parish, or a whole diocese, or any other section or part of a diocese.[4]

[1] Cited *Monita*, n. I.

[2] Stein, p. 32.

[3] Sacred Congregation of Indulgences, December 14, 1857 (*Decreta authentica*, n. 382, to I and II).

[4] Brief of Clement XII *Exponi nobis*, January 16, 1731, together with the Rescript of the Sacred Congregation of Indulgences, March 15, 1884; cited *Monita* of Clement XII, nn. III and IV. From practice it seems that what is read as prescribed in the cited Decree, n. III, is not to be taken so strictly: "But where the Way of the Cross should be erected outside a church... care must always be taken that it begin from a church or sacred place, or have its end as far as a church or sacred place" (Sleutjes, n. 19).

516 II. **Places suitable for erection** are: churches, public and semi-public oratories; likewise private or domestic oratories in which there is the privilege of celebrating Mass; likewise common and decent places of convents, seminaries, hospitals, and other pious places; finally public and decent places under the open sky, as in cemeteries, at the entrance of churches, in gardens, in groves. For private or domestic oratories in which Mass cannot be said, a special indult is required.[1]

Nothing also prevents several Ways of the Cross from being erected in the same place.[2]

[1] Cf. cited *Monita*, n. IV.

[2] Cited *Monita*, n. III; Sacred Congregation of Indulgences, June 20, 1838 (*Decreta authentica*, n. 261), January 30, 1839 (*Decreta authentica*, n. 270, to II), November 23, 1878 (*Decreta authentica*, n. 442, to I).

517 III. **Required documents.** Before the erection, under penalty of nullity, the following are required in writing: 1. the deputation of the priest erecting, unless he himself is the Superior;[2] 2. for individual cases, the license of the Ordinary of the place, the consent of the pastor, and the consent of the superiors of the church, monastery, hospital, or pious place where the Stations of the holy Way of the Cross are to be set up.[3] Nevertheless:

1. The license of the Bishop is not required if the matter concerns an exempt place, such as churches, oratories, and internal places of exempt religious;[4] but strictly domestic oratories and other decent places of private houses are not excepted.[5]
2. Nor is the consent of the pastor required if the matter concerns places which by law, or at least in fact, for example by force of diocesan statute, are exempt from the jurisdiction of the pastor;[6] but in the latter case, the consent of the rector to whom the place has been entrusted is required. Nor is the consent of the pastor demanded for strictly private oratories and other decent places of private houses.
3. It suffices that the deputation, license, and consent to be exhibited in writing be implicit. Hence if, for example, the Bishop has deputed someone in writing to erect the Way of the Cross in a determinate place, no other document expressing the license is required.

An instrument of the completed erection must be drawn up and signed by the erector's own hand.[7] Furthermore, the petition and concession of the erection are to be preserved in the episcopal archive; the other documents, such as the instrument of erection of which we have spoken, in the archive of the place.[8] These things, however, are not prescribed under penalty of nullity.[9]

[1] Cf. Sleutjes, *Instructio de Stationibus S. Viae Crucis*.

[2] Cf. Brief of Clement XII *Exponi Nobis* and Brief of Benedict XIV *Cum tanta*.

[3] Sacred Congregation of Indulgences, September 26, 1892, to IX.

[4] Sacred Congregation of Indulgences, September 26, 1892, to VI.

[5] Sacred Congregation of Indulgences, June 21, 1879 (*Decreta authentica*, n. 445, to I); September 26, 1892.

[6] Sacred Congregation of Indulgences, September 25, 1841 (*Decreta authentica*, n. 294).

[7] Sacred Congregation of Indulgences, August 3, 1748 (*Decreta authentica*, n. 175); September 25, 1841 (*Decreta authentica*, n. 294).

[8] Sacred Congregation of Indulgences, August 6, 1890, to IV.

[9] Sacred Congregation of Indulgences, August 6, 1890, to IV.

518 IV. **Matter of erection.** For validity there are required fourteen wooden crosses visible to those standing by.[1] Although no decree clearly prescribes that the crosses must be visible as wooden, nevertheless this is the mind of the legislator. To the crosses are joined, though not necessarily,[2] tablets, whether painted or sculpted, which represent the same mysteries of the passion as the Stations of the holy Way of the Cross at Jerusalem.

[1] Cited *Monita*, n. III; Sacred Congregation of Indulgences, June 20, 1838 (*Decreta authentica*, n. 261); January 30, 1839 (*Decreta authentica*, n. 270, to II); November 23, 1878 (*Decreta authentica*, n. 442, to I).

[2] Sacred Congregation of Indulgences, November 13, 1837 (*Decreta authentica*, n. 258); September 20, 1839 (*Decreta authentica*, n. 275, to I).

519 V. **Form of erection** is constituted by the blessing and affixing of the crosses, and of the tablets if they are used, with some distance preserved.

1. The blessing of the crosses is required for validity;[1] the tablets, if they are present, can be blessed,[2] but do not have to be blessed. The blessing of the crosses must be made by a legitimate minister, in the place where the Way of the Cross is to be erected.[3] If, however, the Way of the Cross is to be erected in a monastery of nuns, it is not required that the one erecting enter the cloister, but it suffices that he bless the crosses at the grates.[4] Besides this, the blessing can be made both before and after their affixing.[5]

2. The affixing of the crosses, for example to a wall or upon benches, provided these are immovable and sufficiently upright, likewise belongs to validity.[6] Nevertheless, it makes no difference whether it is done before or after the blessing, by the erector himself or by another; and if it is done by another, it is not required that the erector be present, so that after the blessing has been made he can depart.[7]

3. Some distance between the various stations is required, so that validity would be lacking if the whole way were completed in very few paces.[8] It does not matter, however, whether the way begins on the Gospel side or on the Epistle side.

[1] Sacred Congregation of Indulgences, January 30, 1839 (*Decreta authentica*, n. 270, to II).

[2] Sacred Congregation of Indulgences, September 28, 1838 (*Decreta authentica*, n. 246, to IV) indeed declares that images, or tablets, are never blessed; but since the formula for blessing them has been retained in the Roman Ritual, the said declaration should be understood so that it is not of necessity that the images be blessed.

[3] Cf. Sacred Congregation of Indulgences, September 26, 1872.

[4] Sacred Congregation of Indulgences, June 21, 1879 (*Decreta authentica*, n. 447).

[5] Cited *Monita*, n. VIII.

[6] Cf. Sacred Congregation of Indulgences, December 16, 1760 (*Decreta authentica*, n. 223, to II).

[7] Cf. Sacred Congregation of Indulgences, August 22, 1842 (*Decreta authentica*, n. 311, to I and II); June 21, 1879, n. 447; September 26, 1892, to II.

[8] Sacred Congregation of Indulgences, August 26, 1752 (*Decreta authentica*, n. 194, to I).

520 VI. **Invalidation of the erection** has place:

1. If all the crosses originally blessed, or at least seven, perish, whether simultaneously or successively.[1] In this case a new erection is required; but that new erection or renewal in the same place is made by the blessing alone of new crosses, without the license of the Bishop and consent of the pastor being required again, provided these can be presumed to persevere.[2] Delegation, however, must be made in writing.[3]

In the case in which the crosses perish in a smaller number, the erection is not invalidated, and it suffices to substitute other crosses for the lost ones without a blessing.[4]

2. If the crosses are definitively transferred to another place;[5] but not if they are removed for a time, or are arranged in the same place in another way.[6]

In the case in which the crosses are definitively transferred to another place in which the Way of the Cross had not yet been erected, all and each of the conditions must be fulfilled which were fulfilled in the former erection. But if in that other place the Way of the Cross had already been lawfully erected, the blessing of the transferred Way of the Cross suffices, after delegation granted in writing has been had, and without renewal of the other documents, provided the license of the Bishop and consent of the pastor are presumed to persevere.

The privilege of the Way of the Cross does not cease if, the old church having been destroyed, a new one is built in almost the same place and under the same title, and the same crosses which had been affixed in the old church are affixed there.[7]

[1] Sacred Congregation of Indulgences, January 30, 1839 (*Decreta authentica*, n. 270, to V).

[2] Sacred Congregation of Indulgences, January 11, 1896.

[3] Cf. Sacred Congregation of Indulgences, August 22, 1844 (*Decreta authentica*, n. 328).

[4] Sacred Congregation of Indulgences, January 30, 1839; September 20, 1839 (*Decreta authentica*, n. 270, to V; n. 275, to II).

[5] Sacred Congregation of Indulgences, January 30, 1839 (*Decreta authentica*, n. 270, to IV).

[6] Sacred Congregation of Indulgences, September 20, 1839 (*Decreta authentica*, n. 275, to III); August 22, 1842 (*Decreta authentica*, n. 311, to IV); August 20, 1844 (*Decreta authentica*, n. 328).

[7] Sacred Congregation of Indulgences, January 11, 1896.

521 VII. **Convalidation of the erection,** or sanation of its invalidity, belongs to the Sacred Penitentiary, which will not omit to designate the conditions to be fulfilled.

Chapter II. On the Indulgences Attached to the Way of the Cross and on Acquiring Them

522 I. **Attached indulgences.** By Decree of the Sacred Penitentiary,[1] all and each of the Indulgences previously granted in performing the Way of the Cross have been abrogated, and the following new indulgences have been established: all the faithful who, whether individually or in company, with heart at least contrite, perform the pious exercise of the lawfully erected Way of the Cross according to the prescriptions of the Holy See can gain:

1. A plenary indulgence as often as they complete the pious exercise itself.
2. Another plenary indulgence, if on the same day on which they have performed the mentioned pious exercise, or even within a month after it has been performed ten times, they approach the Sacred Synaxis.
3. A partial indulgence of ten years and as many quarantines for individual stations, if perhaps, for any reasonable cause, they have not brought the exercise begun to the end.

[1] October 20, 1931 (*A.A.S.* 1931, p. 522).

523 II. **Acquisition of the indulgences.** In order that the indulgences be acquired, there are required:

1. **Visitation of the Stations,** by going from one station to another.[1] Now:

a) In a private exercise, or one performed by individual persons, passage from one Station to another is always required "insofar as either the multitude of persons who visit them or the narrowness of the place where they are erected permits."[2]

b) In a public exercise, or one performed after the manner of a public sacred function, when disturbance can be excited, it suffices that, each one of the people keeping his own place, the priest with two clerics or cantors go around, and, stopping at each station, recite there the particular customary prayers, the rest responding alternately.[3] But in the case in which, because of the size of the church or other circumstances of the place, the priest reciting prayers at each station can scarcely, or not even scarcely, be understood, it suffices that the same prayers be recited by the priest from the pulpit, from which he is understood by all, provided that another priest with two clerics or cantors goes around and stops at each station.[4]

c) In a common exercise, namely one performed by several at the same time but not after the manner of a public function, passage of all is required unless the narrowness of the place stands in the way; if this stands in the way, in the case in which the matter concerns a religious community, it suffices that one, even a layperson or woman, go around and, stopping at each station, recite the prayers.[5]

2. **Meditation on the passion of Our Lord Jesus Christ;** nor is any vocal prayer prescribed.[6] Meditation on the passion in general suffices, and that however brief and according to each one's capacity.[7]
3. **The exercise performed morally in one stretch.**[8] A brief interruption for any cause, indeed a longer one from a religious cause, does not stand in the way.[9]

[1] Cited *Monita*, n. VII.

[2] Sacred Congregation of Indulgences, February 26, 1841 (*Decreta authentica*, n. 287).

[3] Sacred Congregation of Indulgences, July 23, 1757 (*Decreta authentica*, n. 210).

[4] Sacred Congregation of Propaganda Fide, March 1, 1884.

[5] Sacred Congregation of Indulgences, February 27, 1901; May 7, 1902.

[6] Cited *Monita*, n. 6.

[7] Cf. Sacred Congregation of Indulgences, June 2, 1838 (*Decreta authentica*, n. 259); *Raccolta*, n. 88.

[8] Cf. *Raccolta*, n. 88.

[9] Sacred Congregation of Indulgences, January 22, 1858 (*Decreta authentica*, n. 385, to I); Sacred Congregation of Indulgences, December 16, 1760 (*Decreta authentica*, n. 223, to IV).

Chapter III. On the Crucifix of the Way of the Cross

524 I. **Notion.** By Crucifixes of the Way of the Cross are understood crosses with an image of the Redeemer, to which the indulgences of the Way of the Cross are attached, as will be explained under III. Now the indulgences are affixed not to the cross, but to the image of Christ, so that this image can be transferred from one cross to another without danger to the indulgences.[1] Besides this:

1. The image of the Crucified must be prominent, so that a cross with an image of the Redeemer depicted or impressed does not suffice. This is deduced from the authentic document of concession which is preserved in the archive of the convent of St. Bonaventure in Rome.[2] But crucifixes cast in bronze in such a way that the image of the divine Redeemer is indeed slightly prominent, yet cannot be detached or separated from the cross, do suffice.[3]
2. The image must be of brass or of any other non-fragile material.[4] Under the name of fragile material here tin and lead also seem to be included, just as will be said of objects to which papal indulgences are attached (n. 536). The cross seems able to be made of any material.

[1] Sacred Congregation of Indulgences, May 24, 1883.

[2] Cited authentic document; Sacred Congregation of Indulgences, August 8, 1859 (*Decreta authentica*, n. 387, to II).

[3] Sacred Congregation of Indulgences, May 24, 1883.

[4] Cited authentic document; Sacred Congregation of Indulgences, August 8, 1859 (*Decreta authentica*, n. 387, to II).

525 II. **Attachment of indulgences.**

1. The power of attaching indulgences to Crucifixes of the Way of the Cross belongs:

a) To Cardinals and Bishops, according as was said in n. 524 about the Way of the Cross itself (canon 239, § 1, 6°; canon 349, § 1, 1°).

b) To Superiors of the Order of Friars Minor; of these, the Minister General alone can delegate the faculty either to subjects or to outsiders.[1]

2. For attaching indulgences, the sign of the cross made with the intention of applying the indulgences suffices.[2] Several crucifixes can also be blessed in a group by a single sign of the cross;[3] likewise crucifixes to which other indulgences have already been attached[4] (n. 546).

[1] Rescript of the Sacred Congregation of Indulgences, cited, March 15, 1884.

[2] Sacred Congregation of Indulgences, April 11, 1840 (*Decreta authentica*, n. 281, to V); January 7, 1843 (*Decreta authentica*, n. 313, to II and IV).

[3] Sacred Congregation of Indulgences, March 11, 1855 (*Decreta authentica*, n. 363).

[4] Sacred Congregation of Indulgences, January 29, 1820 (*Decreta authentica*, n. 249, to III).

526 III. **Attached indulgences and their acquisition.**

1. To the Crucifix of the Way of the Cross are attached the same indulgences as to the Way of the Cross, that is, both the plenary indulgence attached to the Way of the Cross itself, and the plenary indulgence attached to the Way of the Cross by reason of Communion (n. 531).[1]

2. For acquiring the indulgences set forth, these things are required:

a) **Of itself, there is required:**

a) That someone be impeded by illness or another cause from visiting the stations of the Way of the Cross.[2] A moderately grave cause seems to suffice.

b) That the Crucifix be held in the hand during the recitation of the prayers, of which immediately.[3] If the prayers are recited in common, it suffices that one person hold the Crucifix in the hand, and that the others, other concerns having been set aside, compose themselves for reciting the prescribed prayers together with the person who holds the Crucifix.[4] It is said "other concerns having been set aside," that is, at least those external occupations which impede internal attention.[5]

c) That meanwhile twenty Our Fathers, Hail Marys, and Glory Bes be recited, with heart at least contrite and devoutly: namely, one for each station, five in memory of the holy Wounds of Christ, and one according to the mind of the Supreme Pontiff.[6]

d) That in the use of the crucifix there be meditation on the Lord's Passion, or at least a pious recollection of the same.[7]

Note. If someone, once the recitation has been begun, has been unable for a reasonable cause to recite all the prescribed Our Fathers, Hail Marys, and Glory Bes, instead of the plenary indulgence he obtains a partial indulgence of ten years and as many quarantines for each Our Father with Hail Mary and Glory Be recited.[8]

b) **Incidentally, so to speak, these things hold:**

a) If some sick person, without grave inconvenience or difficulty, cannot recite twenty Our Fathers, Hail Marys, and Glory Be prayers, he can gain the indulgences either by kissing, or even only by looking, with affection and a contrite mind, upon some Crucifix blessed for this purpose, shown to him either by a priest or by some other person, and by reciting some brief prayer or ejaculatory prayer in memory of the Passion and Death of Jesus Christ our Lord.[9]

b) If someone, by force of illness, is able only to kiss or only to look at the Crucifix blessed for this purpose, but not to add an ejaculatory prayer, he is not prevented from obtaining the plenary indulgences.[10]

[1] Sacred Penitentiary, October 20, 1931 (*A.A.S.* 1931, p. 522).

[2] Cited authentic document.

[3] Cited authentic document.

[4] Sacred Congregation of Indulgences, January 19, 1884. The document is held in the archive of the General Curia of the Order of Friars Minor (Sleutjes, p. 67).

[5] Sacred Congregation of Indulgences, November 13, 1893.

[6] Sacred Congregation of Indulgences, August 8, 1859 (*Decreta authentica*, n. 387, to I).

[7] Sacred Penitentiary, December 14, 1917, to IV (*A.A.S.* 1917, p. 30).

[8] Sacred Penitentiary, October 20, 1931 (*A.A.S.* 1931, p. 522).

[9] Sacred Penitentiary, March 25, 1931 (*A.A.S.* 1931, p. 167).

[10] Sacred Penitentiary, October 20, 1931 (*A.A.S.* 1931, p. 522).

Section III. On the Papal or Apostolic Blessing

527 I. **Notion.** A papal blessing is a blessing granted by the Supreme Pontiff or in his name. It is a sacramental, to which a plenary indulgence is usually attached.

528 II. **Granting of the blessing.**

1. Who can grant it by common law, see n. 494.

2. In granting the blessing the prescribed formula is to be used (canon 914). Moreover: 1. Bishops and other secular Prelates are to use the rites and formula prescribed by Clement XIII, September 5, 1762, and inserted in the appendix of the Roman Pontifical. 2. Regular Prelates are to use the formula established by Benedict XIV through the Encyclical *Exemptis praedecessorum*, March 19, 1748, and reported in the Roman Ritual, title VIII, chapter 32. 3. Missionaries can grant it with the sign of the Cross alone and the formula: "May the blessing of Almighty God, Father, and Son, and Holy Spirit, descend upon you and remain always. R. Amen";[1] nevertheless it is permitted to use the formula of the Roman Ritual.

[1] Sacred Congregation of Rites, May 11, 1911, to III.

529 III. **Acquisition of the indulgence.** Unless something else is expressly established, for acquiring the indulgence it suffices that one be: 1. present to the one blessing; 2. contrite in heart, or in the state of grace.[1]

[1] Cf. Fanfani, p. 74.

Section IV. On the Papal or Apostolic Blessing at the Point of Death

530 I. **Notion.** The blessing of which we speak is understood as a blessing granted by the Supreme Pontiff, or in his name, to one dying. To this likewise a plenary indulgence is attached, which obtains its effect at the moment at which the soul is separated from the body; and it is applicable only to the living.[1]

[1] *Raccolta*, I, p. XXII, 4 and 11, *Avvertenze*, 1°; cf. *A.S.S.* 32, p. 238.

531 II. **Granting of the indulgence.**

1. Who can grant it, see n. 494.

2. It is to be granted "to those sick persons who either asked for it while they were of sound mind and with their senses intact, or would probably have asked for it, or have given signs of contrition; it is to be imparted to them also if afterward they have been deprived of the use of the tongue and of

the other senses, or have fallen into delirium or insanity. But it is altogether to be denied to the excommunicated, the impenitent, and those who die in manifest mortal sin."[1] Nor are children excluded, even if they have not yet received their first Communion, provided they are capable of sinning.[2] Likewise it can be granted to all those to whom death is imminent from an external cause, as to those condemned to death or to soldiers before battle.[3]

3. It can be granted as soon as one is in such danger that Viaticum can be administered to him; but the custom is, and it is founded in the Roman Ritual, of granting it after the Sacraments of Penance, Holy Eucharist, and Extreme Unction have been received.

4. It is to be granted with the formula prescribed by Benedict XIV through the Bull *Pia Mater*, April 5, 1747, and inserted in the Roman Ritual, title V, chapter 6, and indeed under pain of nullity both as regards the formula itself[4] and as regards the Latin language[5] to be used.

The practice of imparting the blessing to several sick persons at once can be tolerated, provided that the formula of blessing, "Our Lord Jesus Christ," down to the words "Holy Spirit, Amen," is pronounced individually over each one, even if all the rest has been recited in the plural.[6]

5. Since the indulgence is applied at the last moment of life, a blessing once granted in the same illness cannot be granted again;[7] and this holds even if it could be received under several titles,[8] or if someone received it in the state of grave sin or fell back into sin after receiving it.[9] Otherwise, if someone, having been delivered from grave danger, falls into it again.[10]

[1] Roman Ritual, title V, chapter 6, n. 1. Likewise the Sacred Congregation of Indulgences, September 23, 1775 (*Decreta authentica*, n. 237, to V), responded that the blessing at the point of death with application of the plenary indulgence can, if there is danger in delay, be granted both validly and licitly to those who, even culpably, have not been refreshed from the beginning of the illness by the Sacraments of Penance, or Eucharist, or Extreme Unction, or by any of these, and suddenly are turning toward death.

[2] Sacred Congregation of Rites, December 16, 1826 (*Decreta authentica*, n. 2650).

[3] Sacred Congregation of Indulgences, December 18, 1885.

[4] Sacred Congregation of Indulgences, February 5, 1841 (*Decreta authentica*, n. 286, to VIII); March 22, 1879; Decree of the Sacred Congregation of Rites, May 7, 1882; Brief of Leo XIII, July 7, 1882 (*Decreta authentica*, n. 444, to III, pp. 411 and 491).

[5] Cf. Sacred Congregation of Rites, June 3, 1904 (*A.S.S.* XXXVIII, p. 340, to I).

[6] Sacred Congregation of Indulgences, June 10, 1886.

[7] Sacred Congregation of Indulgences, September 23, 1775, to 6 (*Decreta authentica*, n. 237, to VI); June 20, 1836 (*Decreta authentica*, n. 237, to VII); September 24, 1838 (*Decreta authentica*, n. 263, to II).

[8] Sacred Congregation of Indulgences, March 12, 1885.

[9] Sacred Congregation of Indulgences, June 20, 1836 (*Decreta authentica*, n. 257, to VII).

[10] Sacred Congregation of Indulgences, June 10, 1886.

532 III. **Acquisition of the indulgence.** In order that the indulgence be acquired, the following are required for validity:

1. That the person constituted in danger be in the state of grace, at least at the last moment of life (n. 500).

2. That he invoke with his mouth, if he can, otherwise in his heart, the Most Holy Name of Jesus.[1]

3. That he receive the pains of sickness and death itself from the hand of the Lord with a calm and willing mind, in satisfaction for sins.[2]

Note 1. Neither the Bull *Pia Mater* nor the *Raccolta* (p. 529) requires Confession and reception of the Holy Eucharist; hence they are not prescribed, unless the rescript by which the faculty of imparting the blessing is granted to someone requires them, which today is usually the case.[3]

Note 2. When Viaticum, Extreme Unction, and the papal blessing are conferred at the point of death, the *Confiteor*, etc., must be recited three times.[4]

[1] Sacred Congregation of Indulgences, September 23, 1775 (*Decreta authentica*, n. 237, to VII); September 22, 1892 (*A.S.S.* XXV, p. 315).

[2] The Bull *Pia Mater*, already cited.

[3] Beringer-Steinen, I, n. 1027 (*A.A.S.* IX, pp. 54, 69).

[4] Sacred Congregation of Indulgences, February 5, 1841 (*Decreta authentica*, n. 286, to VII).

Section V. On General Absolution with a Plenary Indulgence

533 I. **Notion.** The absolution of which there is question consists in a deprecatory absolution from the punishments of sin, which on certain days is granted to the three Orders of certain religious families; to this absolution is attached a plenary indulgence, applicable also to the departed.

534 II. **Granting of the absolution.**

1. Publicly, that is, outside confession, whether to one or to several, it can be granted: to Religious of the First Order by their own Superior or his delegate; to Nuns of the Second Order and Tertiaries with simple vows, by the confessor of the monastery or another delegated[1] by the Bishop;[2] to secular Tertiaries by the director of the confraternity, and if he for any reason is absent, by anyone approved for confessions.[3]

Privately, or in confession, it can be granted by any confessor;[4] nor, if the penitent is in the state of grace, is it required that confession and sacramental absolution have preceded, but it is enough that it be granted in the confessional.[5]

2. The absolution is of itself to be granted on the very day to which it is attached, namely from midnight to midnight; but Leo XIII declared that any Tertiary "can become a participant in the general absolution on the day before the day on which it is listed in the Index of indulgences of the same Third Order as to be bestowed, yet not publicly, but only privately, namely after completed sacramental confession," or at least in the confessional, as seems able to be added according to what was said above.[6]

3. The formula of absolution to be used is found in the Roman Ritual (edition of 1925), namely:

a) The Formula of General Absolution for Regulars of any Order enjoying this privilege (p. 276).

b) The Formula of Blessing with a plenary indulgence for Secular Tertiaries, and for all others having communication of privileges and graces with them, or with Regulars of any Order (p. 278).

c) "If this indulgence is imparted immediately after sacramental absolution, the rest being omitted, the Priest should begin absolutely from the words: 'Our Lord Jesus Christ,' etc., and so continue to the end, with only the plural number changed into the singular" (p. 279). Indeed in the case this formula

suffices: By the authority granted to me by the Supreme Pontiffs, I impart to you a plenary indulgence of all your sins, in the name of the Father and of the Son and of the Holy Spirit, Amen.[7] (p. 505).

[1] Sacred Congregation of Indulgences, February 11, 1903.

[2] Sacred Congregation of Indulgences, May 27, 1903.

[3] Holy Office, section on indulgences, December 15, 1910.

[4] Sacred Congregation of Indulgences, June 10, 1886; January 30, 1896, to I.

[5] Sacred Congregation of Indulgences, July 21, 1881.

[6] To the Orders of St. Francis these indults were furthermore granted: 1. Friars and Nuns, by decree of August 26, 1895, can receive the absolution on the vigil, or the day preceding those feasts to which it is granted. Indeed, by a privilege granted by Pius X to the Order of Friars Minor Capuchin and thence transferred to the other two families of the First Order, religious who are detained by a lawful impediment, to be recognized by the Superior, so that they cannot receive the General Absolution on the assigned day, are able to receive it on one of the seven days immediately following the assigned feast (Sacred Congregation of Indulgences, December 14, 1904). 2. Nuns of the Second Order impeded by illness can receive the same absolution on a day within the octave, when their own confessor enters the enclosure to hear the confessions of the sick sisters (Sacred Congregation of Indulgences, May 21, 1882). 3. For Tertiaries the Supreme Pontiff granted on January 16, 1886, that if on working days, or days which are not of precept, they are lawfully impeded from being able to receive the said absolution, they can receive it on some feast of precept (even on Sunday) which occurs within the octave of the working days (Stein, *Tractatus de indulgentiis lucrandis*, p. 60).

[7] Cf. Sacred Congregation of Rites, March 22, 1905.

535 III. **Acquisition of the indulgence.** In order that the indulgence be acquired, confession, communion, and the assigned prayers are required.

Section VI. On Real Indulgences

We shall treat first of real indulgences generally, then of some real indulgences in particular.

Chapter I. On Real Indulgences Generally

Real indulgences are those which are attached to pious objects. By the name of pious objects here come: chaplets, rosaries, crosses, crucifixes, small statues, and sacred medals.[1]

[1] Beringer-Steinen, I, n. 832.

536 I. **Required matter.** Pious objects must be made from solid matter, for example from iron, from wood, especially harder wood, from coral, shell, ivory, marble, etc. But those composed of fragile matter, for example from tin, lead, or glass, are excluded;[1] yet chaplets and rosaries can be made from solid and compact glass, from tin, lead, or crystal,[2] from polished steel, etc.[3] Likewise printed or painted images are excluded. Moreover images must represent Saints canonized in the customary form or inserted in duly approved martyrologies.[4]

[1] Cf. Sacred Congregation of Indulgences, January 24, 1846 (*Decreta authentica*, n. 333); Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143).

[2] Sacred Congregation of Indulgences, February 29, 1820 (*Decreta authentica*, n. 249, to I and II); August 8, 1859; Sacred Penitentiary, December 21, 1925 (*A.A.S.* 1926, p. 24).

[3] Sacred Congregation of Indulgences, March 22, 1839 (*Decreta authentica*, n. 271, to II).

[4] Decree of the Sacred Congregation of Rites, June 16, 1764 (*Decreta authentica*, n. 1520); cf. Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143).

537 II. **Attachment of indulgences.**

1. By force of common law Cardinals, from their promotion in Consistory, and Bishops, even titular ones, from the day on which they receive authentic notice of the completed canonical provision, can attach to the things of which we are speaking the indulgences which are customarily granted by the Holy See, that is, the Apostolic or Papal indulgences, as they are called (canon 239, § 1, 5°; canon 349, § 1, 1°). Others also, who receive from the Holy See the simple faculty of blessing rosaries, chaplets, crosses, crucifixes, small statues, and medals, can attach to them only the Apostolic indulgences.[1]

Note. Of itself sacramental jurisdiction is not required in order that someone can receive and exercise the faculty of attaching indulgences. Nevertheless the Sacred Congregation of Indulgences, June 14, 1901, declared that the faculty of blessing pious objects with application of Apostolic and St. Bridget's indulgences is not validly exercised by one who is not approved for hearing confessions, at least of men.

2. The attachment of indulgences is made in the customary form, that is, by a single sign of the cross over the things to be blessed, with the intention of applying the indulgences, without pronouncing a formula of blessing and without sprinkling holy water;[2] and this holds even if several things are blessed in a group, which can well be done (n. 499). Sometimes, however, a special form is prescribed, for example for the rosary of St. Dominic and of the Seven Sorrows of the Blessed Virgin Mary.

3. To one and the same thing or place several indulgences can be attached under various titles (canon 933), provided, however, that the thing has the form required for each indulgence. Besides, these several indulgences can also be attached to the same thing by a single sign of the cross, unless a special form is prescribed for some indulgence. Thus, for example, to one and the same crucifix there can be attached the Apostolic indulgences and those of the Way of the Cross; to one and the same chaplet of five decades there can be attached the indulgences both Apostolic, and of St. Dominic, and of the Crucigeri.[3] But if the matter concerns medals to be blessed in place of scapulars, as many signs of the cross must be made as there are scapulars, and the blessings probably ought to correspond to the individual scapulars; but this blessing can be given, even publicly, by a single sign of the cross for each scapular to several blessed medals, even if they are destined for several persons afterward to be enrolled.[4]

[1] Sacred Congregation of Indulgences, May 29, 1841 (*Decreta authentica*, n. 291).

[2] Sacred Congregation of Indulgences, January 7, 1843 (*Decreta authentica*, n. 313, to II).

[3] Stein, op. cit., p. 41.

[4] Holy Office, June 4, 1913 (*A.A.S.* 1913, p. 303).

538 III. **How acquisition of indulgences has place** was seen above, where there was discussion of real indulgences in particular. Yet recall this: by one and the same work, to which indulgences are attached under various titles, several indulgences cannot be acquired, unless the required work is confession or communion, or unless something else has been expressly provided (canon 933); these things were explained in n. 502.

539 IV. **How cessation of real indulgences happens,** see n. 507.

Note. Among real indulgences, the Apostolic or Papal indulgences should be mentioned in particular.

1. Apostolic indulgences are those which, according to a catalogue customarily issued by the Roman Pontiff after his election, are attached to pious objects by the Supreme Pontiff or by a delegate. It is said "to pious objects," namely those of which there was discussion on p. 407, with the matter also observed of which we spoke under I on the page cited. For the catalogue of indulgences attached to the aforesaid objects by Pius XI, see *A.A.S.* 1922, p. 143.
2. Who can attach the said indulgences to things, and what form is to be used in attaching them, see n. 537.
3. "In order that someone may be able to gain Apostolic Indulgences, it is necessary that he carry upon himself, or decently keep in his house, some one of the things blessed by the Supreme Pontiff himself or by a priest endowed with the faculty."[1] Finally, in order that someone actually gain the indulgences, he must fulfill the prayers or pious works prescribed for each indulgence.

[1] Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143).

Chapter II. On Some Real Indulgences in Particular

Article I. On Chaplets

540 I. **Different chaplets.** The principal chaplets are: the chaplet of the Blessed Virgin Mary, the chaplet of the Seven Sorrows, the chaplet of St. Bridget, etc. The name rosary belongs especially to the chaplet of the Blessed Virgin Mary.

As regards the matter required, see what was said in n. 536. Moreover:

1. The chaplet of the Blessed Virgin Mary must consist of five, ten, or fifteen decades,[1] in each of which one Our Father and ten Hail Marys are recited. Without loss of indulgences, the individual decades can be separated from one another, provided that at least five decades are recited on one and the same day.[2] In the recitation the more principal mysteries of the life, passion, and resurrection of Jesus Christ are to be meditated upon.[3] The custom, though not obligatory, is that the joyful mysteries are recalled on Monday and Thursday, the sorrowful on Tuesday and Friday, and the glorious on Wednesday, Saturday, and Sunday.[4] If some person is incapable of meditation, it suffices to recite the rosary devoutly, provided he takes care to grow accustomed to meditation on the mysteries.[5]

The indulgences attached to the chaplet of the Blessed Virgin Mary are usually called the indulgences of St. Dominic; among them there is, provided that at least five decades are recited, an indulgence of 100 days for each Our Father and Hail Mary. Besides, for the recitation of the third part of the chaplet of the Blessed Virgin Mary before the Most Holy Sacrament, whether exposed or reserved in the tabernacle, a plenary indulgence was granted by the Supreme Pontiff Pius XI on September 4, 1927.[6]

2. The chaplet of the Seven Sorrows consists of seven parts, in each of which one Our Father and seven Hail Marys are said, with three Hail Marys added at the end in honor of the tears of the Blessed Virgin Mary. Meditation on the Sorrows is not necessary.

For each Our Father and Hail Mary an indulgence of 100 days is granted.

3. The chaplet of St. Bridget consists of six decades; in each one Our Father, ten Hail Marys, and one Creed are said, with one Our Father and three Hail Marys added at the end. Meditation on the mysteries is not required.

For each Our Father, Hail Mary, and Creed an indulgence of 100 days is granted, provided that one has the intention of saying the entire chaplet.[7]

St. Bridget's indulgences can also be attached to a chaplet of five decades; then, however, to gain the indulgences, the Creed must be added at the end of each decade.[8]

Note. Among the indulgences which can be attached to chaplets besides those already mentioned, the Apostolic indulgences especially deserve mention (n. 539); likewise the indulgences of the Crucigeri, that is, 500 days for the recitation of each Our Father and Hail Mary, even if the entire chaplet is not recited.[9]

[1] A chaplet consisting of fifteen decades is also called the rosary of St. Dominic.

[2] Rescript of the Sacred Congregation of Indulgences, July 8, 1908 (*Analecta Ordinis Praedicatorum* 1908, p. 634).

[3] Sacred Congregation of Indulgences, August 13, 1726 (*Decreta authentica*, n. 92).

[4] *Raccolta*, n. 194.

[5] Constitution *Pretiosus*, May 26, 1727.

[6] *A.A.S.* 1927, p. 376.

[7] *Raccolta*, I, p. 206.

[8] Sacred Congregation of Indulgences, May 29, 1841 (*Decreta authentica*, n. 291, to VIII).

[9] Sacred Congregation of Indulgences, May 20, 1886.

541 II. **Attachment of indulgences.**

1. As regards the form to be used, see what was said in n. 537.

2. To one and the same chaplet several indulgences can be attached, provided the chaplet has the form required for each indulgence (cf. canon 933). Hence to the chaplet of the Blessed Virgin Mary can be attached the indulgences both proper to the said chaplet, or of St. Dominic (n. 540), and Apostolic (n. 539), and of the Crucigeri (n. 540), and of St. Bridget (n. 540).

542 III. **Acquisition of indulgences.** Having noted above (n. 540 under I), it suffices to add these things:

In order that the indulgences be acquired which require the recitation of certain prayers, the chaplet must be held in the hand and the beads must be passed through successively. If, however, two or more recite the chaplet together, for the acquisition of indulgences it is enough to recite the prayer alternately with a companion, or to follow it mentally while it is recited by another (canon 934, § 3).[1] It is said "to follow it mentally"; hence the faithful must abstain only from those external occupations which impede internal attention to the devout recitation of the rosary prescribed for gaining the indulgences.[2]

2. By one recitation of a chaplet, the indulgences of several chaplets cannot be acquired, unless something else has been expressly provided (cf. canon 933). Something else, however, has sometimes been expressly provided. Thus, for example, one who recites a chaplet to which the

indulgences of St. Dominic and of the Crucigeri are attached acquires both indulgences by one recitation.[3]

[1] *Raccolta*, I, p. 348.

[2] Cf. Sacred Congregation of Indulgences, January 22, 1858 (*Decreta authentica*, n. 384); January 8, 1898.

[3] Sacred Congregation of Indulgences, November 13, 1893 (*A.S.S.* XXVI, p. 310).

543 IV. **How cessation of indulgences has place,** see n. 507.

Article II. On Scapulars

544 Scapulars, which the faithful are accustomed to wear, in their origin and institution are nothing other than the scapulars proper to various religious Orders, reduced to a small form for the greater convenience of the faithful.[1] Therefore they are a sign of a certain union with an Order or Congregation. More recent scapulars, however, are mere emblems or signs of a special devotion, for example toward the Sacred Heart, etc.

[1] Sacred Congregation of Indulgences, June 12, 1907, to I.

545 I. **Different scapulars.** The principal ones are: the Scapular of the Most Holy Trinity (of the Order of Trinitarians); of the Blessed Virgin Mary of Mount Carmel (of the Carmelites); of the Seven Sorrows of the Blessed Virgin Mary (of the Servites); of the Immaculate Conception of the Blessed Virgin Mary (of the Theatines); and also of the Passion of Our Lord Jesus Christ (of the Congregation of the Mission of St. Vincent de Paul).

546 II. **Conditions.** In order that someone enjoy the privileges of scapulars, these must be duly made, duly blessed and imposed by a priest having the faculty, with due inscription added if the matter concerns a scapular which is the badge of some Confraternity - such as, for example, the Scapular of the Blessed Virgin Mary of Mount Carmel, of the Seven Sorrows, and of the Most Holy Trinity - and finally they must be worn in the due manner.

1. They should be duly made, namely from woven wool. Yet nothing prevents the scapular from having ornaments woven in or embroidered with a needle from another material, provided such ornaments are such that the prescribed color predominates.[1]

White is prescribed for the scapular of the Most Holy Trinity, brown or tawny for the scapular of the Blessed Virgin Mary of Mount Carmel, black for the scapular of the Seven Sorrows, blue for the scapular of the Immaculate Conception, red for the scapular of the Passion of Our Lord Jesus Christ. The form should be square or oblong rectangular, but not round, oval, or many-angled.[2]

The ribbons or cords can be from any material and of any color, except the cords of the red scapular, which must be made from red wool. Several scapulars can be attached to two common cords,[3] provided that, if among them there is the Scapular of the Passion, the cords are made from red wool.

Finally, different scapulars must be "distinct, that is, truly several, for example five scapulars, united either by the same number of cords or by only two cords, and in such a way that one part of each scapular hangs from the shoulders and the other from the breast, but not only one scapular on which little pieces of cloth of different color are sewn."[4] With these things considered, the little pieces of cloth should not be so joined that only the extremities of each scapular are visible; but it suffices if the

individual little pieces are sewn together only at the upper part - for example by two cords - and otherwise hang loose.

2. They should be blessed and imposed by a priest having the faculty. Moreover the faculty belongs:

a) To Cardinals, who from their promotion in Consistory enjoy the faculty of blessing, by the sign of the cross alone, scapulars approved by the Apostolic See and of imposing them without the burden of inscription (canon 239, § 1, 5°).

b) To Bishops, even titular ones, who from receiving authentic notice of completed canonical provision can do the same as Cardinals, yet with the rites prescribed by the Church (canon 349, § 1, 1°).

c) To Superiors of the Orders to which the scapular pertains (n. 545).

d) Other priests must receive the faculty from the Holy See or from the Superiors of the Orders; the faculty received, however, is altogether personal, so that it does not belong to a substitute, nor can it be communicated to others, unless that has been expressly signified.[5]

3. They should be duly blessed and imposed;[6] concerning this, observe:

a) Of itself, for scapulars of different species, different blessing and imposition are prescribed. I said of itself, since to many an indult has been granted of blessing and imposing at once, that is, under a single formula, four[7] or even five[8] of the enumerated scapulars. Several scapulars of the same species can be blessed at once (n. 546). The blessing can be done whether the persons to be invested are present or absent.

b) The imposition must be done by the same one by whom the blessing was done.[9] An imposition made on only one shoulder and not around the neck is valid.[10] If several persons are to be invested, it suffices to impose one and the same blessed scapular upon those several persons in alternate turns, yet in such a way that the first scapular which the enrolled person must afterward wear is blessed.[11] It has also been granted to some that each of the faithful may impose the blessed scapular upon himself. If several are concerned, it suffices to pronounce the form of imposition once in the plural number, and this either before or after the imposition of the scapular or scapulars, if there are several.[12]

4. The persons invested should be aggregated to the confraternity, if the imposition of the scapular is connected with the said aggregation (p. 411). Hence the priest continues: *I, by authority*, etc. But in order that the aggregation or reception be established, inscription in the register of the association must absolutely be made; indeed, since confraternities constitute a moral person (cf. canons 687, 708), inscription is necessary for validity (canon 694, § 2).

Beringer-Steinen rightly judge that the Decree of the Holy Office, April 23, 1914, persists,[13] which states: "His Holiness, in the usual audience on April 23, 1914, granted to the Most Reverend Assessor of the Holy Office, after a previous sanation of all defects hitherto admitted in the inscription and transmission of the names of Christ's faithful who have been enrolled in any pious Sodality, declared that, with the obligation in conscience of inscribing and transmitting the names according to decrees and other prescriptions of the Holy See remaining firm, the faithful, by the very fact that they are admitted by one lawfully deputed, are to be considered duly enrolled, only for the effect that they may be able to gain indulgences and become participants in other spiritual graces, even if their names for any reason have not been entered in the register of the Sodality. Anything to the contrary notwithstanding."[14] Besides, Cardinals are exempted from the burden of inscription if the matter

concerns rosaries, medals, or scapulars with which association to some sodality is attached (canon 239, § 1, 5°).

Note 1. Even upon little children a scapular can validly be imposed, so that when they have attained the use of reason, they can enjoy the indulgences and privileges without a new reception.[15] Besides, someone can also impose the scapular upon himself, provided he has received the faculty indiscriminately, and not specifically, for example only for some community of Nuns, etc.[16]

Note 2. Soldiers can be received into the Confraternity of the Blessed Virgin Mary of Mount Carmel, "provided they impose upon themselves the aforesaid scapular, already previously blessed, and also pour out some prayers to the Blessed Virgin Mary (for example by reciting the Hail Mary three times while they impose the scapular upon themselves), and thus are placed under the protection of the same Blessed Virgin."[17]

Note 3. On July 24, 1884, invalid receptions to scapulars and the respective sodalities previously made in good faith were sanated. Besides, receptions into the Confraternity of the Blessed Virgin Mary of Mount Carmel were last sanated on February 4, 1908, and receptions into the Confraternity of the Seven Sorrows on September 12, 1911.[18]

5. They should be duly worn. Moreover:

a) They must be worn day and night, and in such a way that one part hangs from the shoulders and the other from the breast;[19] whether immediately upon the body or over clothing is indifferent.[20]

b) Several scapulars can be worn in the manner of one, namely so that they are suspended by only two cords[21] (p. 412).

c) One who has put aside the scapular for a brief time gains the indulgences; if it is put aside for a long time, the indulgences are suspended. If the scapular has been worn out or lost, or if someone has put it aside and even for a long time has not worn it, he is not bound to a new imposition, but it suffices to resume the scapular; nor is it necessary that the scapular which is resumed be blessed.[22] Otherwise it must be said if someone put aside the scapular out of contempt or at least with the intention of no longer wearing it.

[1] Cf. Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 423).

[2] Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 423); cf. Sacred Congregation of Indulgences, February 12, 1840 (*Decreta authentica*, n. 278).

[3] Sacred Congregation of Indulgences, April 27, 1887, to IV.

[4] Sacred Congregation of Indulgences, August 22, 1872 (*Decreta authentica*, n. 306); April 24, 1843 (*Decreta authentica*, n. 319).

[5] Cf. Sacred Congregation of Indulgences, September 18, 1862 (*Decreta authentica*, n. 394); August 18, 1868 (*Decreta authentica*, n. 421); April 27, 1887.

[6] Cf. Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 421); April 27, 1887.

[7] Formerly the scapular of the Blessed Virgin Mary of Mount Carmel was always excepted from the indult (Sacred Congregation of Indulgences, April 27, 1887).

[8] *Nouvelle Revue Theologique* 1911, p. 430 sq.

[9] Sacred Congregation of Indulgences, June 16, 1872 (*Decreta authentica*, n. 430).

[10] Sacred Congregation of Indulgences, September 27, 1887.

[11] Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 421, to I).

[12] Sacred Congregation of Indulgences, April 18, 1891; June 18, 1898, to IV and V.

[13] Beringer-Steinen, op. cit., p. 49 sq.

[14] *A.A.S.* VI, p. 307 sq.

[15] Sacred Congregation of Indulgences, August 29, 1864 (*Decreta authentica*, n. 410).

[16] Sacred Congregation of Indulgences, March 7, 1840 (*Decreta authentica*, n. 280).

[17] Pius X, January 4 and March 30, 1908.

[18] Beringer-Steinen, II, p. 207.

[19] Sacred Congregation of Indulgences, February 12, 1840 (*Decreta authentica*, n. 277).

[20] Sacred Congregation of Indulgences, March 12, 1855 (*Decreta authentica*, n. 367, to II).

[21] Sacred Congregation of Indulgences, September 26, 1864 (*Decreta authentica*, n. 408, to I).

[22] Sacred Congregation of Indulgences, May 27, 1857 (*Decreta authentica*, n. 379).

547 III. **Metal medals to be substituted for scapulars.** Although Pius X "earnestly desires that the faithful continue to wear" scapulars, nevertheless he graciously conceded that for a scapular or scapulars, except those which are proper to Third Orders,[1] a single metal medal may be substituted, so that, with the laws proper to each scapular preserved, all spiritual favors (not excepting the so-called Sabbatine privilege of the scapular of the Blessed Virgin Mary of Mount Carmel) and all indulgences attached to each one can be participated in. Moreover:

1. On the obverse the medal should bear the image of Our Most Holy Lord Jesus Christ showing his Most Sacred Heart; on the reverse, the image of the Blessed Virgin Mary.[2]

2. The medal must be blessed; moreover, someone can bless several medals at once, whether those which he has before himself, or those "which the faithful have in the church or in some convent, even though these medals are not seen and are not known individually."[3] Besides, the medal or medals must be blessed with as many distinct blessings, that is, signs of the cross, as there are scapulars for which they must substitute. But it does not matter whether or not the order of the different scapulars is observed in making the signs of the cross.[4] "Yet lest," says Vermeersch, "those five signs of the cross, given confusedly, be valid for no definite scapular, the priest blessing will at least mentally assign his sign to each scapular."[5] So also Stein,[6] Beyersbergen.[7] But it is not contradictory that all and each of the signs of the cross - for example, five - should be valid for each of the five scapulars, determined in the mind of the priest, so that, when five signs have been made, the medal supplies those five determinate scapulars. Since, however, the matter is doubtful, the safer part is to be put into practice. Finally, several medals can also be blessed for indeterminate persons, whether already enrolled in the scapular or to be enrolled afterward: if for those not yet enrolled, the medals will enjoy the favors of the scapulars at the time when the persons will have been enrolled by regular imposition.[8] Soldiers, however, even before the scapulars have been imposed, can validly wear a medal in place of scapulars, and by that very fact are enrolled in the Confraternities.[9]

3. One who enjoys the faculty of blessing and imposing determinate scapulars can also bless a medal which supplies for them;[10] nor is it required that the same one who blessed and imposed, or is going to bless and impose, the scapular, also bless the medal.[11]

4. Of one who has put aside the medal, etc., the same must be said as was said of one who has put aside the scapular (p. 414).

[1] Holy Office, December 16, 1910; Sacred Congregation of Religious, March 25, 1922. Nevertheless, considering the cited decree of the Sacred Congregation of Religious, Superiors of the secular Third Order of St. Francis, with respect to their Tertiaries in individual cases, when a just and grave cause is present, can grant permission of substituting a blessed medal for the scapular of the secular Third Order of St. Francis.

[2] Holy Office, December 16, 1910.

[3] Holy Office, June 5, 1913, to I.

[4] Holy Office, June 5, 1913, to II and III.

[5] Vermeersch, *Periodica* VII, p. 224.

[6] Stein, op. cit., p. 54.

[7] *N. K. Stemmen*, 1923, p. 17.

[8] Secretariat of State, March 22, 1912; Vermeersch, *Periodica* VII, p. 224.

[9] Holy Office, December 16, 1910; June 5, 1913, to I.

[10] Holy Office, December 16, 1910.

[11] *Periodica* V, p. 269.

548 IV. **The Sabbatine privilege.** Among the favors attached to the scapular of the Blessed Virgin Mary of Mount Carmel, and likewise to the medal, the so-called Sabbatine privilege deserves special mention; this privilege is reported as having been promulgated by John XXII through a Bull.

Most hold the said Bull to be spurious. There is, however, a Decree of the Holy Office under Paul V, January 20, 1613, which has these words: "The Carmelite Fathers are permitted to preach that the Christian people can piously believe concerning the help of the souls of the brothers and confreres of the sodality of the Blessed Virgin Mary of Mount Carmel, namely that the Most Blessed Virgin, by her continual intercessions and pious suffrages and merits and special protection, after their passing, especially on Saturday, which day has been dedicated by the Church to the same Most Blessed Virgin, will help the souls of the brothers and confreres dying in charity, who in life wore the habit, and observed chastity according to their state, and recited the Little Office, or, if they do not know how to recite, observed the fasts of the Church and abstained from flesh meat on Wednesday and Saturday (unless on those days the feast of the Nativity of the Lord should fall)." Moreover:

1. The Little Office can be said privately in any language. Those who are already bound to it under another title satisfy by a single recitation.
2. The faculty of commuting either the Office or abstinence on Wednesday and Saturday is conferred together with the faculty of aggregating the faithful to the confraternity, and it can be exercised even outside confession. Finally, by Decree of the Sacred Congregation of Indulgences, June 14, 1901,[1] to any confessor was granted the power of commuting abstinence on Wednesday and Saturday.

[1] *A.S.S.* XXXIV, p. 120.

Section VII. On the Heroic Act of Charity

549 I. **Notion.** "The heroic act of charity consists in this, that one of Christ's faithful, either by using some formula or even only mentally, offers to God Almighty for the souls in Purgatory all satisfactory works which he himself, so long as he lives, will perform; likewise all indulgences, both those granted for the departed and those granted only for the living, which he also can and must apply to the departed; finally all suffrages which after death will be able to come to him in any way whatsoever."[1] It is said:

1. Satisfactory works, that is, the satisfactory fruit of his works, which fruit is attached to every good work and of itself is ordered to taking away or lessening the punishments due to one's own sins. But the meritorious fruit of works is not ceded, since it is so personal that it cannot be renounced; nor are works ceded insofar as they are impetratory, whether for oneself or for others.
2. Offers to God; now this oblation can be made to God either immediately or mediately, namely through the Blessed Virgin Mary, in whose hands all satisfactory works, all indulgences, and all suffrages are deposited, to be distributed by her to the souls in purgatory as she pleases.[2] Finally, the offering made to God does not assume the character of a vow, and can always be revoked at will.[3]

That the act explained is greatly to be commended is clear from its very nature; for it is an act of charity toward the departed, by which someone as it were chooses punishments for himself, so that the souls of purgatory may more quickly escape punishment. There is added the fact that the Supreme Pontiffs have enriched the mentioned act with privileges.[4]

[1] Sacred Congregation of Indulgences, December 19, 1885.

[2] Sacred Congregation of Indulgences, December 19, 1885, to III and IV.

[3] Sacred Congregation of Indulgences, December 19, 1885.

[4] Benedict XIII, August 23, 1728; Pius VI, December 12, 1788; Pius IX, September 30, 1852.

550 II. **Privileges.**[1]

1. Priests who have made the praised act enjoy the indult of a privileged altar on individual days.
2. The faithful can gain a plenary indulgence: 1. on individual days on which they receive Holy Communion; 2. on individual Mondays on which they hear Mass in suffrage for the departed, provided that in either case they visit a church or public oratory and there pray according to the intention of the Supreme Pontiff. But if someone is impeded from hearing Mass on Monday, it suffices to assist at the Mass to be heard on Sunday by precept. Priests also can gain the said indulgences, even if they celebrate and by celebrating have already gained another indulgence; since even communion received on the occasion of celebration suffices for acquiring a plenary indulgence, indeed for acquiring several plenary indulgences[2] (canon 933).
3. All indulgences which are gained by those who have made the heroic act of charity are applicable to the departed.[3]

Note 1. The plenary indulgence which a priest gains by force of the privilege of the altar granted on account of the heroic act of charity must be applied to the soul for whom the Mass is celebrated; for the privilege is granted by the Supreme Pontiff in this sense.[4]

Note 2. It was asked whether those who have made the heroic act of charity can, or rather must, apply to the departed the plenary indulgence to be gained at the point of death. The Sacred Congregation of Indulgences left the question in suspense, responding on January 23, 1901: "No interlocutory response is to be given." But of itself nothing prevents the said indulgence from being able to be renounced; that this must be done seems to be deduced from the special character of the heroic act of charity, as explained above.

[1] *Raccolta*, p. 531; Sacred Congregation of Indulgences, December 19, 1885.

[2] Sacred Congregation of Indulgences, May 10, 1844 (*Decreta authentica*, n. 327, to II and III).

[3] *Raccolta*, p. 531.

[4] Sacred Congregation of Indulgences, December 19, 1885.

Section VIII. On the Jubilee

We must treat first of the notion, division, and interpretation; then of the benefits of the Jubilee; finally of the suspension of indulgences and faculties on the occasion of the Jubilee.

Chapter I. On the Notion, Division, and Interpretation of the Jubilee

551 I. **Notion.** Among the Jews the Jubilee meant a year of remission and joy, according to these words of Sacred Scripture: "You shall also number for yourself seven weeks of years, that is, seven times seven, which together make forty-nine years, and you shall sound the trumpet in the seventh month, on the tenth day of the month, at the time of propitiation, throughout all your land. And you shall sanctify the fiftieth year, and shall proclaim remission to all the inhabitants of your land: for it is the Jubilee."[1] Among Christians the Jubilee likewise signifies a time of remission, to which several and special benefits are attached, as we shall explain more fully afterward.

[1] Leviticus 25:8 sq.

552 II. **Division.** The Jubilee is distinguished as ordinary and extraordinary (cf. canon 931, § 3). The ordinary or greater Jubilee is the one which recurs every twenty-fifth year; the extraordinary or lesser Jubilee is the one which is granted on account of special circumstances, for example after the coronation of the Supreme Pontiff.

The ordinary Jubilee is first celebrated at Rome for an entire year, beginning from the first Vespers of the Nativity of the Lord which precede the twenty-fifth year, up to the second Vespers of Christmas Day of the following year; that year is usually called the holy year. When the holy year has elapsed, the Jubilee is extended for a shorter time to the whole world.

The extraordinary Jubilee is usually celebrated at the same time in the City and in the world, and, according to circumstances, for a shorter or longer time.

A Jubilee is also distinguished as universal and particular, according as it is granted to the whole world or only to a part.

553 III. **Interpretation.** Unless the Bull of the Jubilee establishes the contrary, in both the ordinary and the extraordinary Jubilee the rules handed down by Benedict XIV are to be observed.[1]

[1] Sacred Congregation of Indulgences, March 15, 1852. Cf. the Bulls *Apostolica indulta*, August 3, 1744; *Peregrinantes*, May 5, 1749; *Cum nos super*, May 17, 1749; *Convocatis*, November 25, 1749; *Inter praeteritos*, December 3, 1749; *Paterna caritas*, December 17, 1749; *Benedictus Deus*, December 25, 1750; *Celebrationem*, January 1, 1751.

Chapter II. On the Benefits of the Jubilee

The benefits of the Jubilee are, besides the plenary indulgence to be gained, the faculty of choosing a confessor, and the special faculties granted to confessors. For these benefits the Bull by which the Jubilee is granted must be examined each time. For the last Jubilee see *A.A.S.* 1927, pp. 310, 317, 318, 336.

Article I. On the Faculty of Choosing a Confessor

554 I. Nuns, and their novices, candidates, and postulants who are educated by them and live with them, and also all religious sisters of simple vows with novices, candidates, and girls being educated, though not externs and others using a common table with them, and also all oblates without vows approved by Ecclesiastical authority, with novices, candidates, girls, and others living in common with them, can choose for themselves a confessor approved by their Ordinary according to the prescriptions of the Code. This confessor can absolve them from any censures and sins, even those reserved to the Holy Apostolic See in a special manner, excepting the case of formal and external heresy.[2]

II. The faculty formerly granted to regulars and others, after the new Code (cf. canon 519), now lacks practical value.

[1] Cf. Navarrus, *Commentarius de Iubilaeo*; Viva, *De Iubilaeo*; Van de Burgt, *De Iubilaeo*; Bastien, *De Iubilaeo*.

[2] *A.A.S.* 1924, pp. 317, 319.

Article II. On the Special Faculties of Confessors

555 I. **Faculties granted.** To confessors lawfully chosen according to what was said in Article I belongs:

1. The faculty of absolving both from sins and - but in the forum of conscience only - from censures reserved either to the Holy See or to Ordinaries, except those which perhaps are excepted by the Bull, with a salutary penance nevertheless imposed, and with other things to be imposed by law. Therefore, as Benedict XIV teaches, the confessor "should not omit imposing upon each penitent his own salutary penance in the sacrament, not even under the pretext of the Jubilee to be obtained by the same penitent."[1] Other things to be imposed by law are understood as those which by either divine or ecclesiastical law are imposed upon the penitent.[2] Moreover:

a) One who falsely accused a confessor of solicitation cannot be absolved unless he has retracted the accusation and compensated other damages perhaps following upon the accused person, or is prepared to retract the accusation and compensate the damages.[3]

b) Those who have propagated heresy, or at least are guilty of external heresy, should not be absolved before they have abjured the heresy before the confessor and have repaired the scandal, or at least are prepared to repair it.[4]

c) Those who retain or read prohibited books should not be absolved before they have put them away or have seriously promised that they will put them away.[5]

d) Those who have given their name to a condemned secret sect should not be absolved except on the condition that they separate themselves altogether from the respective sect and abjure it, and that books, manuscripts, and signs concerning the sect, if they retain any, be handed into your hands (the

hands of the confessor), to be cautiously transmitted as soon as possible to the Ordinary, or at least, if just and grave causes demand it, to be burned.[6]

e) One who violated the enclosure of Nuns for an evil end, even in occult cases, must be forbidden by the confessor from approaching in the future any monastery and church of Nuns; and he must be warned that he is absolved from the censure in such a way that, if he does not observe the prohibition imposed, he falls back by that very fact into the same censure.[7]

f) One who absolved an accomplice is usually obliged by the Sacred Penitentiary: 1. "that insofar as the accomplice person should approach him again, after being warned of the nullity of the past absolutions, he send that person back to another confessor who is not an accomplice"; 2. "that he abstain in the future from hearing the confessions of any accomplice person, insofar as this can be done without grave scandal"; 3. "that he take care to resign the office of confessor, if he has absolved two accomplices once or one accomplice twice."[8] But more recent Bulls have been accustomed to restrict the faculty of absolving a confessor who has absolved an accomplice.

g) Those who have been excommunicated, suspended, interdicted by name, or otherwise declared to have fallen into sentences and censures, or publicly denounced, should not be absolved unless within the time of the Jubilee they have made satisfaction and have come to agreement with the parties, where that is necessary.[9] But afterward this was added: "But if within the prescribed term, in the judgment of the confessor, they could not make satisfaction, we grant that they can be absolved in the forum of conscience, for the sole effect of obtaining the indulgences of the Jubilee, with the obligation imposed of making satisfaction as soon as they can."

2. The faculty of dispensing with a penitent constituted in sacred Orders concerning an occult irregularity contracted because of violation of a censure.[10]

3. The faculty of commuting any vows whatsoever, even sworn vows and vows reserved to the Apostolic See, into other pious and salutary works. There are excepted: 1. reserved vows of chastity and Religion; 2. vows made and accepted in favor of a third party, as vows made in any Religion; 3. penal vows, which are called preservative from sin, unless the future commutation is judged to be such that it restrains no less from committing sin than the former matter of the vow;[11] the vow of not seeking commutation is not excepted (St. Alphonsus, VI, 537, q. 4). Moreover observe:

a) For the commutation of vows (during the time of the Jubilee) a special cause is not required; but that common cause on account of which the Pontiff was moved to proclaim the Jubilee suffices (St. Alphonsus, II, 537, q. 40).

b) The power of commuting sworn vows quite probably carries with it the power of commuting oaths; nor does St. Alphonsus contradict this, since he speaks only of the power of commuting vows (III, 190).

It is disputed whether the power of commuting an oath of chastity and Religion belongs to the confessor. But it seems improbable that the Church, which denies the power of commuting a vow of some thing, would grant the faculty of commuting an oath concerning the same thing.

4. The faculty of commuting, from a just cause, the works assigned for the Jubilee into other pious works;[12] concerning this see n. 559.

The faculty of dispensing in some impediments of marriage is commonly not granted; yet in the year 1925 some faculty had been granted, but only for the internal forum.

[1] Bull *Convocatis*, § 26.

[2] Cf. Sacred Penitentiary, April 18, 1900.

[3] *A.A.S.* 1924, p. 338, under IV.

[4] *A.A.S.* 1924, p. 311, under IV.

[5] *A.A.S.* 1924, p. 339, under VIII.

[6] *A.A.S.* 1924, p. 311, under IV.

[7] *A.A.S.* 1924, p. 339, under VI.

[8] *A.A.S.* 1924, p. 310, under I.

[9] *A.A.S.* 1924, p. 310, under IV.

[10] Bull *Benedictus Deus*, nn. 4 and 5.

[11] *A.A.S.* 1917, p. 311, under VII, p. 320.

[12] *A.A.S.* 1927, p. 312 sq.

556 II. **Things to be noted.** Concerning the faculties explained above these things are to be noted:

1. It is not permitted to use them except with respect to penitents who have the intention of gaining the indulgence of the Jubilee and therefore of fulfilling the prescribed works.[1] But the fact that someone sinned in hope of receiving absolution by force of the Jubilee does not prevent him from enjoying the favors, provided he is now sorry, and wills to gain the Jubilee and to fulfill the pious works (St. Alphonsus, VI, 537, q. 6). But if the penitent afterward, having changed his mind, does not fulfill the works required for gaining the indulgence, he sins, because he acts against the intention of the Supreme Pontiff who granted the faculties for gaining the Jubilee.[2] Yet it is not established that the sin is grave. Besides, the favors granted, for example the commutation of a vow, persist[3] (St. Alphonsus, VI, 537, q. 3).
2. The faculties must be used in sacramental confession;[4] but it is not required that all the faculties be exercised in the same confession or by the same confessor. Thus, for example, one who in confession for the Jubilee omitted to ask for commutation of a vow can ask for this in another confession and from another confessor. Nor is it required that absolution be granted now to one sacramentally confessed. Hence even if the confessor judges that absolution is to be deferred, he can nevertheless remove, for example, a censure or commute a vow; and if this has taken place, an ordinary confessor also, with the censure and the reservation of the sin removed, can absolve the penitent from sins.
3. Concerning repeated use of the favors, receive these things:

a) A penitent who has enjoyed the favors granted and has fulfilled all the prescribed works cannot enjoy the favors again, for example if he should make a new vow; and this holds even if the indulgence itself can be acquired several times.[5] The faculty of commuting prescribed works is excepted; it is permitted to use this several times[6] (n. 559).

b) One who has enjoyed the favors granted, but before he has fulfilled all the prescribed works needs them again, for example by falling back into censures, can, as seems to have to be said in view of the

Bull *Convocatis*, n. 84 at the end, enjoy the favors again. Namely, the Supreme Pontiff states that "if he has once shared in them (the graces) the first time that he obtained the Jubilee, he cannot become a participant in them again, if after the first acquisition of the Jubilee he falls again into censures, etc." By these words it is implied that he can again become a participant in the graces if before the acquisition of the Jubilee, or before all the works have been fulfilled, he again falls into a censure. Moreover it seems more consonant with the mind of the Church that the faculties granted can be exercised until the faithful person, all the works having been fulfilled, has obtained the Jubilee.[7]

4. If someone has forgotten a reserved sin or reserved censure in a confession otherwise valid, or from a just cause has omitted it, according to many authors the reservation of the sin and the censure have been removed. The reason is that it is fitting to the mind of the Supreme Pontiff, who granted special faculties to the confessor in favor of the penitent, that the well-disposed penitent, insofar as it can be done, enjoy the said faculties (St. Alphonsus, VI, 537, q. 4). But if someone exposed a reserved censure or sin to the confessor, yet confessed invalidly, the reserved censure and the reservation of the sin have not been removed, if the confession was culpably invalid, that is, sacrilegious; since the sincere intention of acquiring the Jubilee is lacking (p. 421). Besides, "since the Pontiff grants the faculty of absolving from reserved things so that the faithful may gain the Jubilee, he is not presumed to grant it for those who cannot gain the Jubilee by that confession" (St. Alphonsus, VI, 537, q. 2). Moreover, because of the latter reason, the same solution seems to have to be admitted against several authors, if the confession was inculpably invalid (St. Alphonsus, loc. cit.).

5. One who confessed during the time of the Jubilee can, if absolution seems to have to be deferred for him and to be granted after the Jubilee, be absolved from reserved things even after the time of the Jubilee (St. Alphonsus, VI, 537, q. 4).

[1] Bulls *Convocatis*, § 24; *Inter praeteritos*, § 62; *Benedictus Deus*, § 6; *Celebrationem*, § 8; Sacred Penitentiary, June 1, 1869; January 15, 1886.

[2] Cf. Bull *Inter praeteritos*, n. 86.

[3] Cf. Bulls *Convocatis*, n. 34; *Inter praeteritos*, n. 86; Leo XIII, Bull *Praesentes Litteras*; Sacred Penitentiary, November 1, 1899.

[4] Bulls *Convocatis*, § 25; *Inter praeteritos*, § 62, compared with *Convocatis*, § 40.

[5] Bulls *Convocatis*, § 52; *Inter praeteritos*, § 84; Sacred Penitentiary, June 1, 1869; Sacred Penitentiary, March 18, 1886.

[6] Sacred Penitentiary, March 18, 1886 (*A.S.S.* XVIII, p. 512).

[7] For the Jubilee of the year 1875, however, the Sacred Penitentiary, January 25, 1875, by mandate of the Supreme Pontiff, declared: "His Holiness declared that by force of the present Jubilee (the faithful) can be absolved only once from censures and reserved cases (and likewise that the indulgence of the Jubilee itself can be acquired only once)." And on the same day the Sacred Penitentiary, to the question "Whether confessors can absolve a penitent who, already absolved from reserved things and censures, has fallen into them again before he has fulfilled the works prescribed for acquiring the Jubilee," responded: "By virtue of the Jubilee one can be absolved only once from reserved things and from censures, or, negatively."

Article III. On the Indulgence

To the Jubilee is attached a plenary indulgence, to be gained only once, unless it is expressly granted as to be acquired several times. Moreover, in the Jubilee of the Holy Year in the City, it is granted several

times to those who repeat the prescribed works.[1] Now we must speak about the works which are usually prescribed for gaining the indulgence.

[1] Bulls *Convocatis*, § 52; *Inter praeteritos*, § 84; *Benedictus Deus*, § 2.

557 I. **Prescribed works.** In the ordinary Jubilee there are commonly prescribed only: confession, communion, and visitation of the designated churches together with prayer according to the mind of the Supreme Pontiff; in an extraordinary Jubilee, besides the works enumerated, fasting and almsgiving are usually enjoined. A few things about each; moreover compare what was said in n. 494.

1. Confession is necessary even for those who have not sinned gravely, although absolution is not required for these.[1] If someone after completing the confession of the Jubilee, but before the last work has been fulfilled, falls into mortal sin, he is bound to confess again, nor does contrition suffice; however, it is not required that the other works, even if already fulfilled in the state of sin, be repeated.[2] The annual confession, by which satisfaction is made for the precept by which one constituted in mortal sin is bound, does not suffice.[3]

2. Communion, certainly worthy communion; the Paschal communion does not suffice;[4] nevertheless in the year 1925, if someone had neglected to receive Paschal communion, communion for the Jubilee also availed for fulfilling the Paschal precept; for the Jubilee, at least of the year 1900, the Sacred Penitentiary declared on March 28, 1900, to 2, that Viaticum suffices.

3. Visitation of churches. Which churches are to be visited and how often are determined in the City by the Supreme Pontiff, outside the City by the Bishop. In instituting the visitations it is permitted to compute the day either according to civil custom (from midnight to midnight) or according to ecclesiastical custom (from first Vespers up to sunset of the following day).[5] When several visitations are prescribed, it is not enough to enter the church once and there recite the prayers several times, but one must go out from the church and enter it again.[6] Moreover the visitations must be made with the intention of worshiping God.[7]

Regulars also are bound to visit the churches designated by the Bishop, unless they enjoy a special privilege; nevertheless commutation can be granted to those lawfully impeded.[8]

4. Prayers to be recited. They must be recited in the place to be visited and according to the mind of the Supreme Pontiff. Oral prayers suffice; merely mental prayers do not, to which therefore an oral prayer would have to be added.[9] Moreover compare what was said in n. 498.

5. Fasting is to be taken in the strict ecclesiastical sense, that is, joined with abstinence, and indeed, considering the old law, with abstinence not only from flesh meat but also from eggs and milk products.[10] Under the new law, however, fasting no longer includes abstinence from eggs and milk products. Fasting also concerns those who otherwise are not bound to it, such as children and the elderly (St. Alphonsus, VI, 534, 3°); nevertheless there is place for commutation (n. 559).

6. If almsgiving is enjoined, as devotion suggests, a modest amount suffices; if it is prescribed according to each one's means, a larger amount must be given by the rich. It is indifferent whether money or another thing is given. Religious, wives, and children of families satisfy by consenting to the alms which the Superior or father gives in the name of the whole community or family. Nevertheless religious and the truly poor can ask for commutation (St. Alphonsus, VI, 538, q. 11).

[1] Bulls *Convocatis*, § 46; *Inter praeteritos*, § 77; cf. Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214); May 6, 1852 (*Decreta authentica*, n. 359, to IV).

[2] Bulls *Convocatis*, § 42; *Inter praeteritos*, § 79; cf. Sacred Congregation of Indulgences, November 28, 1759 (*Decreta authentica*, n. 217, to I).

[3] Sacred Congregation of Indulgences, May 10, 1844 (*Decreta authentica*, n. 327, to I), compared with the Sacred Penitentiary (*A.A.S.* VIII, p. 351).

[4] Sacred Congregation of Indulgences, May 10, 1844 (*Decreta authentica*, n. 327, to I).

[5] Bull *Inter praeteritos*, § 13; Sacred Penitentiary, January 24, 1875.

[6] Sacred Penitentiary, January 25, 1875.

[7] Bull *Inter praeteritos*, § 13.

[8] Bulls *Convocatis*, § 51; *Inter praeteritos*, § 83.

[9] Bulls *Convocatis*, § 51; *Inter praeteritos*, § 83.

[10] Sacred Penitentiary, March 16, 1865; Bucceroni reports other declarations of the same Congregation, *Enchiridion*, n. 1065.

558 II. **Things to be noted concerning the prescribed works.**

1. Works owed by law or precept do not suffice, unless the Supreme Pontiff signifies the contrary.[1] Hence, as has already been noted, annual confession, Paschal communion, etc., do not suffice.
2. The prescribed works, even confession and communion, must be done during the time of the Jubilee;[2] likewise with the intention of gaining the indulgence; but a habitual intention suffices (n. 501).
3. The works enjoined, whether all or some of them, can also be fulfilled outside one's domicile, provided that the ordinances of the Ordinaries of the places are observed.[3]
4. Finally, it does not matter in what order they are fulfilled, nor is it required that they be done in the state of grace, except for the last work.[4]

[1] Bull *Inter praeteritos*, § 53; this speaks of debt in any way whatsoever; but since canon 932 speaks only of law and precept, things owed under another title, for example a vow, now seem to suffice.

[2] Sacred Congregation of Indulgences, December 9, 1763 (*Decreta authentica*, n. 231); May 10, 1844 (*Decreta authentica*, n. 327, to I); canon 931, § 3.

[3] Sacred Penitentiary, January 15, 1886, to VI.

[4] Bulls *Convocatis*, § 47; *Inter praeteritos*, §§ 73-76.

559 III. **Relaxation of the works.** To the Supreme Pontiff alone belongs the faculty of dispensing in some work; but to confessors - not, however, of itself to Superiors[1] - is granted the faculty of commuting for those morally impeded the prescribed works into other pious works; concerning this, observe:

1. The faculty of commutation does not include confession; nor communion except for children who have not yet been admitted to first Communion;[2] nor the prayers to be recited according to the mind of the Supreme Pontiff.[3]
2. Commutation cannot be made into works otherwise owed, unless this is expressly granted;[4] nor, as follows from the nature of commutation, can it be made into notably lesser works.
3. Commutation of itself, that is, considering the norms of Benedict XIV, seems to have to be made in sacramental confession. For thus Benedict XIV established generally concerning the use of

faculties.[5]

4. Even if the indulgence can be acquired several times, nevertheless the commutation of the works enjoined, considering the Bull of Benedict XIV,[6] can be made only once; but the Sacred Penitentiary, March 18, 1886,[7] responded that the works enjoined can be commuted several times.

Note. One who foresees that the time for completing the prescribed works will not suffice for him should ask for commutation or, if the Bull permits it, prolongation of the Jubilee.

[1] Cf. Sacred Penitentiary, April 23, 1886, to II and III.

[2] Considering the kindly mind of the Church, this perhaps can be extended to those very few sick persons who cannot communicate even at home.

[3] *Benedictus Deus*, § 3; *Inter praeteritos*, § 53.

[4] *Inter praeteritos*, § 53.

[5] *Inter praeteritos*, § 63; cf. Sacred Penitentiary, January 30, 1886.

[6] Bull *Convocatis*, §§ 52 and 39.

[7] *A.S.S.* XVIII, p. 512.

Chapter III. On the Suspension of Indulgences and Faculties on the Occasion of the Jubilee

560 In order that the City of Rome during the time of the Jubilee may be celebrated by as great a gathering of mortals as can be, during the Holy Year, that is, the year in which the ordinary Jubilee is celebrated in the City - but not during the time in which the said Jubilee is extended to the world, nor in an extraordinary Jubilee - indulgences and faculties outside the City are moderated as follows:

I. All indulgences - even those which have been granted for the living only - can be acquired for the departed. No indulgences can be acquired for the living, except indulgences granted: 1. to those who are constituted at the point of death; 2. for the recitation of the Angelus of the Lord or the Regina Caeli according to the time, and certain others to be assigned in the Bull.[1]

II. The faculties of absolving from reserved cases and censures, of commuting vows, of dispensing from irregularities and impediments, are suspended, with these exceptions:

1. Faculties granted in any way through the Code of Canon Law, except those which were granted by privilege.
2. Faculties for the external forum granted in any way to Nuncios, Internuncios, Apostolic Delegates, and also to Ordinaries of places and Superiors of Religious Orders over their subjects.
3. Faculties granted by the Sacred Penitentiary for the internal forum, insofar as they are exercised toward penitents who cannot go to the City without grave inconvenience.[2]

[1] *A.A.S.* 1927, p. 306 sq.

[2] *A.A.S.* 1927, pp. 307, 308.

Scholion I. On the Plenary Indulgence at the Point of Death

561 I. At the point of death only one plenary indulgence can be gained, although the dying person may have a right to it under various titles.[1] This holds even if the dying person, because of a less perfect

disposition, acquires only partially the plenary indulgence which he acquires.

This indulgence, which is acquired at the last moment of life, cannot be applied to the departed (n. 530). An exception should more probably be made if the matter concerns one who has elicited the heroic act of charity; for he enjoys the privilege of applying to the departed all indulgences which he gains (n. 550).

II. Concerning the various titles from which a dying person can acquire a right to the said indulgence, it is useful to note these things:

1. It is to be advised that the dying person strive to make several titles his own; for it can happen that the conditions required for some title are not fulfilled, while the conditions established for another title are fulfilled; whence it happens that, with several titles in place, the hope of gaining the indulgence is increased. There is added the fact that several titles can occur without the intervention of a priest, and that the conditions to be fulfilled for different titles especially promote the disposition required for gaining the indulgence.

When an indulgence is granted under the customary conditions, there are required: confession, communion, invocation of the Name of Jesus by mouth, or, if that cannot be done, in the heart, and prompt acceptance of death in satisfaction for sins.

2. The principal titles are:[2]

a) The Apostolic blessing at the point of death, concerning which we spoke at length in n. 530 sq.

b) Enrollment in most confraternities.

In order that the indulgences be gained, the customary conditions are for the most part required (n. 494).

c) Enrollment in an Order, religious Congregation, or Third Order; this holds at least for most Congregations and Third Orders.

For a member of an Order and of a Third Order, confession and communion are required, or, if these cannot be done, a penitential invocation of the Holy Name by mouth, or, if that is impossible, in the heart.

d) Use of a cross or another object to which Papal indulgences are attached.

In order that someone acquire the indulgence: 1. he should carry the object upon himself or keep it decently in his house; 2. he should fulfill the customary conditions.

e) Use of a crucifix, that is, a cross with the image of Christ crucified, to which is attached a plenary indulgence at the point of death *toties-quoties*.[3]

In order that the indulgence be gained, the dying person: 1. should kiss or in some way touch the crucifix;[4] 2. should fulfill the customary conditions.

f) Recitation of the acts of faith, hope, and charity.[5]

It is required only that someone has frequently elicited the said acts in life; it does not matter by what formula he has done this.

g) Recitation of the prayer: Lord my God, from now on I accept from your hand with a calm and willing mind whatever kind of death shall have pleased You, with all its distresses, punishments, and pains.[6]

It is required that, on whatever day he wishes, after confession and communion have been received, by reciting the said act with charity he accept death from God.

h) Sometimes the Supreme Pontiff grants by name a plenary indulgence to a dying person, with no condition established.

[1] Sacred Congregation of Indulgences, January 23, 1901, to II (*Collectio*, n. 2100).

[2] Cf. *N. K. Stemmen*, 1922, p. 72.

[3] *Toties-quoties*, whose meaning in this case is that any one of Christ's faithful constituted at the point of death may be able to acquire a plenary indulgence through the use of this crucifix (Holy Office, June 10, 1914); in what sense this decree is to be understood was declared and confirmed by the declaration of the Sacred Penitentiary, June 23, 1929 (*A.A.S.* 1929, p. 510 sq.).

[4] Holy Office, January 11, 1914.

[5] *Raccolta*, I, p. 18; Sacred Congregation of Indulgences, January 22, 1756.

[6] *Raccolta*, I, p. 148; Sacred Congregation of Indulgences, March 9, 1904.

Scholion II. On *Toties-Quoties* Indulgences

562 I. A *toties-quoties* indulgence is here understood as a plenary indulgence which on the same day can be acquired as often as the work enjoined, usually a visitation of a determinate church with prayer according to the mind of the Supreme Pontiff, is repeated.

II. Especially the following *toties-quoties* indulgences can be acquired, certain conditions being observed: 1. on the feast of the Most Holy Trinity;[2] 2. on the feast of the Most Holy Sacrament;[3] 3. on the last Sunday of the month of June;[4] 4. on the feast of the Blessed Virgin Mary of Mount Carmel;[5] 5. on Portiuncula or the following Sunday;[6] 6. on the feast of the Blessed Virgin Mary of the Seven Sorrows in the month of September, or on the Sunday of the solemnity;[7] 7. on the feast of the Most Holy Rosary or the Sunday of the solemnity;[8] 8. on the Commemoration of All the Faithful Departed.[9]

[1] Cf. *N. K. Stemmen* 1923, p. 68.

[2] Sacred Congregation of Indulgences, August 10, 1904.

[3] Sacred Congregation of Indulgences, July 30, 1906; December 10, 1907.

[4] Sacred Congregation of Indulgences, August 8, 1906; from the audience of Pius X, January 26, 1908; cf. *Collectio precum piorumque operum*, pp. 78-79.

[5] Brief *Quo magis*, May 16, 1892.

[6] Motu proprio, June 9, 1910; Holy Office, May 26, 1911.

[7] Sacred Congregation of Indulgences, September 27, 1888.

[8] Sacred Congregation of Indulgences, July 7, 1885.

[9] Holy Office, June 25, 1914.

Treatise VI. On Extreme Unction

(St. Thomas, *Supplement*, q. 29-32; St. Alphonsus, *Theologia Moralis*, lib. VI, n. 706-733; *Homo Apostolicus*, tr. 17, n. 1-13.)[1]

We shall speak first of Extreme Unction considered in itself, then of its ministration, and finally of the reception of Extreme Unction.

[1] Cf. Billuart, *De Extrema Unctione*, sole dissertation; Schmitz, *De effectibus sacramenti Extremae Unctionis*; Kern, *De sacramento Extremae Unctionis tractatus dogmaticus*; Heimbucher, *Die heilige Oelung*.

Dissertation I. On Extreme Unction Considered in Itself

563 Extreme Unction can be defined: the sacrament by which a sick person, through an anointing with blessed oil and the prayer of the priest, is relieved according to the soul, and, if it is expedient for the soul, also, at least sometimes, according to the body (cf. St. Thomas, *In IV Sent.*, dist. 23, q. 1, a. 1, 2, 3, 4; q. 2, 1 and 2; St. Alphonsus, VI, 706). It is also called simply anointing, or the anointing of the sick, the sacrament of those departing, etc.

With this definition given, we shall treat first of the existence, then of the essence, then of the effects, and finally of the necessity of Extreme Unction.

Part I. On the Existence of Extreme Unction

564 I. Extreme Unction is a true sacrament; this proposition is of faith from the Council of Trent: "If anyone says that Extreme Unction is not truly and properly a sacrament instituted by Christ our Lord, and promulgated by blessed James the Apostle; ... let him be anathema."[1]

Note. It is disputed at what time Extreme Unction was instituted. Some have thought that the anointing performed by the Apostles, of which Mark speaks,[2] was Extreme Unction. But this opinion must be rejected, because the minister of that sacrament is a priest; the Apostles, however, were constituted priests afterwards, namely at the Lord's Supper. Most hold that this sacrament, which is the complement of Penance, was instituted after Christ's resurrection together with Penance.

[1] Session 14, canon 1.

[2] "And they anointed with oil many sick persons and healed them" (Mark 6:13).

565 II. Extreme Unction, even in the case in which several anointings and prayers are used, is only one sacrament; otherwise the dogma concerning the sevenfold number of the sacraments would not stand. This, however, is explained in different ways by different authors. According to some, the diverse anointings and prayers taken together signify and produce one complete effect; but the effect is produced either by parts, as Scotus teaches,[1] or after the last anointing has been performed, as St. Thomas holds (*Supplement*, q. 30, a. 1, ad 3; cf. St. Alphonsus, VI, 707, qu. 2). According to others, the first anointing together with the partial form signifies and effects the entire effect, while the other anointings are regarded only as sacramentals (n. 570).

[1] According to Mastrius, Scotus supposes that the individual actions have their own partial effects. For Scotus says, *In IV Sent.*, dist. 23, at the end, ad 2, that this sacrament is indeed one by unity of integrity, but not by unity of indivisibility, just as its effect is not one indivisibly, because it is not the remission of one venial sin, but one by the unity of the full remission of all venial sins (Gaude, in St. Alphonsus, VI, 707).

Part II. On the Essence of Extreme Unction

Section I. On the Remote Matter

566 I. For validity, so that it be indubitable here, there is required: 1. olive oil; 2. blessed either by a Bishop or by a presbyter who has obtained delegated faculty to bless it; and this 3. with the special blessing of the oil of the sick. From the preceding, olive oil and a blessing performed by a Bishop or by a delegated presbyter are certainly required; the special blessing is probably required.

1. Olive oil is certainly required. This is clear: 1. from the words of St. James: "anointing him with oil."[1] But oil spoken of simply is olive oil. 2. From the Council of Florence.[2] 3. From the consensus and practice of the Eastern and Western Church (St. Alphonsus, VI, 709; cf. canons 937 and 945).

2. A blessing performed either by a Bishop or by a presbyter who has obtained delegated faculty to bless the oil is certainly required; in other words, a blessing performed by a simple priest who has not been delegated is not sufficient. This is clear from the response of the Holy Office, which, with Gregory XVI approving, responded to the question whether in a case of necessity a parish priest could use oil blessed by himself for the validity of the sacrament of Extreme Unction: "Negatively, according to the form of the decree of Thursday before the Most Holy Father, January 13, 1611."[3] The same Holy Office, on May 15, 1878, declared: "Oil blessed by a presbyter who has not been furnished with a special faculty by the Holy See is matter wholly unfit for the Sacrament of Extreme Unction, and cannot validly be used even in extreme necessity." This is clear besides from the matters by which it will immediately be proved that, in itself, a blessing made by a Bishop is required, and therefore that a simple priest in himself lacks this faculty and needs delegation (cf. canon 945). Hence, for the sake of completeness, further observe:

a) In itself, a blessing made by a Bishop is required. This is clear 1. from the Council of Trent;[4] 2. from the Council of Florence;[5] 3. from the decree of the Holy Office, approved by Paul V.[6]

b) The Supreme Pontiff can confer upon a simple priest the power of consecrating the oil. This is clear from the Decree of Clement VIII, *Sanctissimus Dominus*;[7] from the Constitution of Benedict XIV, *Etsi pastoralis*;[8] from the declaration of the Holy Office cited above;[9] from canon 945; and from the fact that priests of the Eastern Church and the Italo-Greeks enjoy and use this faculty.[10]

c) It is doubtful whether even a Bishop, in himself, that is, without delegation of the Supreme Pontiff, can confer upon a simple priest the faculty of consecrating the oil.

3. It is altogether doubtful whether for validity the special blessing is required, or whether the blessing by which the chrism of Confirmation or the oil of catechumens is consecrated is sufficient (cf. canon 945). Hence in a case of necessity the sick person can, or even must, be anointed, conditionally of course, with the chrism of Confirmation or with the oil of catechumens. If afterwards the oil of the sick can be had, the sacrament should be repeated conditionally (St. Alphonsus, VI, 709, dub. 2).

[1] James 5:14.

[2] Denzinger-Bannwart, n. 700.

[3] September 14, 1842 (*Collectio de Propaganda Fide*, n. 956).

[4] Session 14, *De sacramento extremae unctionis*, cap. 1.

[5] Denzinger-Bannwart, n. 700.

[6] January 13, 1611 (*Collectio de Propaganda Fide*, n. 956, note).

[7] August 31, 1595.

[8] May 26, 1742, § 4.

[9] May 15, 1878.

[10] Cf. Kern, op. cit., p. 124 sq.

567 II. For liceity there is required: 1. that matter certainly valid be used; 2. that the oil have been blessed on the Lord's Supper, on the most recent Thursday before Easter (canon 734, § 1).[1] "Therefore let the parish priest," says the Roman Ritual,[2] "have the sacred Oil of the sick, which each year, on Thursday in the Lord's Supper, blessed by the Bishop, is to be renewed, the old having been burned; nor should the old be used unless necessity urges" (cf. the cited canon). If the blessed oil seems insufficient, "other unblessed olive oil should be added, even repeatedly, but in a smaller quantity" (canon 734, § 1).[3] Thus the admixture can be made several times, even if finally the quantity of unblessed oil is greater, provided that in each admixture it is smaller.[4] Nevertheless, on Thursday in the Lord's Supper it is not permitted to bless part of the Holy Oils in order at once to mix that part with unblessed oils.[5] Besides, note:

a) Old oils are not to be used unless necessity urges (canon 734, § 1).

b) The parish priest must request the holy oils from his Ordinary; and he should carefully keep the oil of the sick in a clean and decently adorned place, in a silver or tin vessel, and should not retain it at home unless because of necessity or another reasonable cause, with the license of the Ordinary having been obtained (canon 946, joined with 735). A reasonable cause is, for example, a greater distance of the parish house from the church.[6]

[1] On Thursday in the Lord's Supper, threefold oil is blessed by the Bishop, namely: 1. the oil of the sick; 2. the oil of catechumens; 3. chrism, which consists of olive oil and balsam. The oil of the sick is marked on the vessel with the letters O. I. or with the letter I alone; the oil of catechumens with the letters O. C. or the letter O alone; chrism with the letters Ch. or the letter C alone.

[2] Title V, cap. 1, n. 3.

[3] Roman Ritual, loc. cit.

[4] Pius VI, April 1, 1794; Sacred Congregation of the Council, September 25, 1862.

[5] Sacred Congregation of Rites, December 7, 1744, n. 2883; January 28, 1910 (*A.A.S.* 1910, p. 118).

[6] Sacred Congregation of Rites, *Decreta authentica*, n. 2650, to the third factual case; 3276, ad 5; 3739, ad 2; 3779, ad 7.

Section II. On the Proximate Matter

568 I. For validity, so that it be indubitable here, these suffice: 1. anointings of the different senses together with partial forms; 2. in a case of necessity, a single anointing in one sense with the prescribed shorter form, which will be cited immediately. It is said:

1. Anointings of the different senses together with the particular forms suffice. Moreover, they suffice even if the anointing of a paired part, for example of one eye, etc., is omitted.

2. In a case of necessity, a single anointing in one sense with the prescribed shorter form suffices. This is clear: 1. from canon 947, § 1; 2. from the Roman Ritual;[1] 3. from a decree of the Holy Office

approved by Pius X.[2]

The decree states: "When this Supreme Congregation was asked that one short formula be determined in the administration of the sacrament of Extreme Unction in a case of imminent death, the Most Eminent and Reverend Father General Inquisitors, after the matter had been most maturely weighed and after the vote of the Reverend Consultors had been had, decreed: In a case of true necessity the form is sufficient: 'Through this holy anointing may the Lord forgive you whatever you have committed. Amen.'" The decree indeed explicitly speaks only of the abbreviated form, but implicitly signifies that the single anointing corresponding to it is sufficient. Besides, note:

a) Likewise outside necessity a single anointing in one sense with the prescribed shorter form seems sufficient: both because, with respect to validity, a distinction is not readily to be admitted; and because St. James[3] speaks only of anointing the sick person, without mention of the parts of the body. Finally, this is supported by the very great variety which, with respect to the number and place of anointings, has prevailed in the Greek and Latin Church.[4]

b) Whether a single anointing in one sense together with the particular form suffices for validity is not beyond doubt. If it suffices, the later anointings seem to be regarded as sacramentals, which plainly express the effect of Extreme Unction. If it does not suffice, it must be said that the effect is produced in the last necessary anointing according to these words of St. Thomas: "When there are many actions ordered to the same effect, the last is formal with respect to all the preceding and acts in virtue of them; and therefore in the last action grace is infused, which gives the sacrament its effect" (*Supplement*, q. 30, a. 1, ad 3).

[1] Title V, cap. 1, n. 21.

[2] April 24, 1906.

[3] James 5:14.

[4] Kern, op. cit., p. 131 sq.

569 II. For liceity outside the case of necessity there is required: 1. that the members to be designated be anointed, and this 2. in the prescribed order; 3. by the minister's own hand, that is, with the right thumb, no instrument being used; and 4. in the manner of a cross (canon 947, joined with the Roman Ritual).

1. Members to be anointed. The organs of the five senses must be anointed, namely the eyes, ears, nostrils, mouth, and hands (canon 947, § 1, joined with the Roman Ritual, title V, c. 1, n. 15). The anointing of the kidneys is always to be omitted (canon 947, § 2).[1] The anointing of the feet can be omitted for any reasonable cause (canon 947, § 3). If someone is mutilated in some member, the part nearest that place is anointed, with the same form of words.[2] If someone lacks a sense itself, for example hearing, or has always lacked it, nevertheless the organ is anointed. With respect to paired organs, the anointing should be made separately on each organ, but under one form, beginning from the right; except the lips, which are anointed with a single anointing.

The anointing of the organs of the five senses is prescribed under grave obligation. Likewise the anointing of each of the paired organs seems to oblige under grave obligation, so that only a grave cause excuses, for example the difficulty of turning the sick person and reaching the paired organs (St. Alphonsus, VI, 710).

2. The prescribed order obliges, so that every inversion is a sin; indeed an inversion of at least several anointings seems to be grave (St. Alphonsus, VI, 710). Now, considering the prescribed order, the following are anointed:

a) The eyes, over both closed eyelids.

b) The ears, at the lower parts of the auricles.

c) The nostrils, over each nostril, and indeed from the side, lest sneezing be excited.

d) The mouth, over each closed lip; with a single anointing by which both lips are anointed; but if this cannot conveniently be done, it is sufficient to anoint one lip.

e) The hands, in the middle of the palms; but the hands of a priest are anointed on the outside.

f) The feet, on the upper part or on the soles according to the prevailing custom.[3]

3. The anointings should be made by the minister's own hand, that is, with the right thumb;[4] not with another finger nor with a brush or similar instrument: a contrary custom, if it prevails anywhere, cannot be observed.[5] Nevertheless, in a case of grave necessity, for example if contagion is to be feared from contact, as if some sick person is suffering from leprosy, plague, or smallpox, it is permitted to use a brush or small rod[6] (St. Alphonsus, VI, 710).

4. In the manner of a cross, as the Roman Ritual has it.[7]

5. Finally, it is very much recommended that for each anointing the thumb be dipped in the oil, all the more because some doubt whether one drop suffices for all the anointings (St. Alphonsus, VI, 709, dub. 4).

[1] In place of the kidneys, in some dioceses the anointing of the breast was permitted. Now, with the anointing of the kidneys forbidden, the anointing of the breast also is to be omitted.

[2] Roman Ritual, title V, cap. 1, n. 19.

[3] Sacred Congregation of Rites, August 27, 1836, n. 2743.

[4] Roman Ritual, title V, c. 2, n. 8.

[5] Sacred Congregation of Rites, May 9, 1857, n. 3051.

[6] Sacred Congregation of Rites, May 9, 1857, ad II, n. 3051.

[7] Roman Ritual, title V, c. 2, n. 8.

570 III. For liceity in a case of necessity a single anointing in one sense, or more rightly on the forehead, with the prescribed shorter form suffices, with the obligation remaining of supplying the individual anointings when the danger has ceased (canon 947, § 1). It is said:

1. In a case of necessity. But a case of necessity is present: 1. when there is some danger that the sick person may die before the individual anointings have been performed; 2. when several persons must be anointed and it is feared that, if each is anointed in the ordinary manner, someone may die without Extreme Unction; 3. when, if the individual anointings are performed, danger of contagion can arise or increase; nevertheless, if the danger arises from contact, it should be forestalled by use of a brush or small rod; 4. when a longer ministration exposes the sacrament to danger of irreverence, as can happen, for example, in anointing an insane person.

2. When the danger has ceased, the individual anointings must be supplied. That is, they must be supplied if the danger on account of which the single anointing was used has ceased. Hence they must be supplied if the sick person has survived; if the danger has ceased that one of several persons to be anointed may die without Extreme Unction; if the danger of contagion has ceased, for example because a brush has been brought by which the individual anointings can be performed.

c) The individual anointings must be supplied; and indeed absolutely, not conditionally, and, as seems most probable, always. I said absolutely, for thus the Holy Office expressly states.[1] I said always, because both canon 947, § 1, and the Holy Office[2] and the Roman Ritual[3] state without any restriction that the anointings are to be supplied, provided, however, that the danger of death continues. But the reason why they are prescribed to be supplied is that the sick person not be deprived of the sacramentals which seem to be contained in the anointings to be supplied and which plainly express the effect of Extreme Unction (n. 570).

Note 1. Not all agree in defining the nature of the anointings to be supplied. Some have thought that the sacrament is iterated in the supplied anointing. This, however, is not satisfactory, both because in that opinion the anointings would have to be supplied conditionally, since it is doubtful whether Extreme Unction can validly be repeated in the same danger, a doubt which is not considered removed either by the decrees cited above or by the Code; and because the iteration of the sacrament in the same danger is severely prohibited by the Code itself.

Others judge that the supplies are parts which with the preceding anointing constitute one whole, whether they are considered as partial sacraments or as the perfection or extension of the sacramental sign itself. But neither does this opinion seem correct, both because it supposes that the preceding anointing lacks the perfection of the sacrament, which is admitted with difficulty, and because, once this opinion is admitted, the anointings cannot be supplied if the moral union between them and the earlier anointing has ceased.

Others teach that the supplies are integral parts of the sacrament. But then also moral union between them and the essential part seems to be required; and if that is lacking, the supplies would have to be omitted.

These things being posited, it remains to be said, as it seems, that sacramentals, or ceremonies very efficacious by reason of the accompanying prayers of the Church, are contained in the supplied anointings.[4]

Note 2. What has been said about the anointings to be supplied after a single anointing is also to be applied to anointings neglected in the ordinary ministration, for example through forgetfulness; these therefore must likewise be supplied. If, however, it is feared that, because of the space of time, the required union is lacking, the sacrament is in itself to be repeated conditionally.

[1] March 9, 1917.

[2] January 31, 1907.

[3] Title V, cap. 1, n. 21.

[4] Cf. *Nederlandsche Katholieke Stemmen*, 1917, p. 241; 1928, p. 92.

Section III. On the Form and on the Union of Matter and Form

571 I. The ordinary form in the Latin Church is the prayer prescribed by the Roman Ritual for the individual anointings, namely: "Through this holy Unction, and His most tender mercy, may the Lord forgive you whatever you have committed through sight, or through hearing, etc. Amen."[1] That the words "and His most tender mercy" are not required for validity is gathered from the form to be used in a case of necessity, in which the aforesaid words are omitted. Nevertheless, outside a case of true necessity, the omission is held to be gravely illicit (St. Alphonsus, VI, 711, dub. 2).

Among the Orientals this or a similar form is used: "Holy Father, physician of souls and bodies, who sent Your only-begotten Son, Our Lord Jesus Christ, healing every disease and freeing us from death, heal also Your servant N. from the bodily infirmity detaining him, and give him life through the grace of Your Christ, by the intercessions of N. N. and of all the Saints. Amen."

[1] Title V, cap. 1, n. 20. From the new editions of the Roman Ritual, the word "Amen" is to be said by the priest.

572 II. "In a case of necessity a single anointing in one sense, or more rightly on the forehead, suffices with this shorter form: 'Through this holy Unction may the Lord forgive you whatever you have committed. Amen.'" Thus the Roman Ritual,[1] canon 947, § 1, and the Decree of the Holy Office.[2] As it is useful to note in passing, everyone is under obligation to hold the aforesaid shorter form by memory.

Note. As is gathered from the words of St. James,[3] it is required for the essence of the form that it be deprecatory formally, or according to sense (St. Thomas, *Supplement*, q. 29, a. 8; St. Alphonsus, VI, 711, dub. 1). But nothing seems to prevent a form that is grammatically indicative from being formally deprecatory, namely from the intention of praying to God, an intention, I say, sufficiently manifested by the very nature of the action.

[1] Loc. cit., n. 21.

[2] April 24, 1906.

[3] James 5:14 sq.

573 III. With respect to the union of matter and form, it is sufficient to have noted: For validity, the union which we described in the treatise on the Sacraments in general suffices (n. 22). With respect to liceity, these words of the Roman Ritual are to be observed: "While the priest anoints the eyes, ears, and other members of the body which are paired, let him take care that, in anointing one of them, he does not complete the form of the Sacrament before he has anointed both members of this kind."[1]

[1] Title V, cap. 1, n. 18.

Scholion. On the Special Character of Extreme Unction

574 Extreme Unction is primarily a sacrament of the living, secondarily a sacrament of the dead (St. Alphonsus, VI, 731). I said:

I. Extreme Unction is primarily a sacrament of the living, that is, in itself and primarily it is ordered to second grace, or to the increase of grace. For 1. St. James and the Council of Trent set forth first grace as an effect of Extreme Unction only conditionally; by this it is suggested that the said sacrament is not primarily ordered to that effect; this being posited, it remains that we say that it is primarily ordered to second grace, that is, to the increase of grace. 2. If Extreme Unction were primarily ordered to conferring grace, and not to the increase of grace, the sacrament of Penance would not be, for all those who have fallen after Baptism, a necessary means of salvation to be employed in fact or in desire. It

would be sufficient for the sick to have recourse to Extreme Unction. The Roman Catechism teaches the same: "For this sacrament was not instituted in the first place for the remission of graver crimes, but Baptism alone and Penance by their own power effect this."[1]

II. Extreme Unction is secondarily a sacrament of the dead, that is, also in itself, but only secondarily, it is ordered to first grace. I said in itself; for St. James[2] and Trent,[3] whose words are cited in the note, because they expressly state that sins are remitted through Extreme Unction, seem to suggest that the said sacrament by its nature is ordered also to that effect. There is added the fact that the form of the sacrament also expresses the remission of sins, indeed expresses that alone. I said only secondarily; this follows from the things by which we proved that Extreme Unction is primarily ordered to second grace. Therefore this sacrament differs from the other sacraments of the living, which confer first grace only accidentally.

Corollary I. But if you ask further what, with respect to the remission of mortal sins, those words "in itself, but secondarily" imply when Extreme Unction is being discussed, and what those words "accidentally" imply when the other sacraments of the living are being treated, it must be said thus: If someone constituted in mortal sin receives a sacrament of the living, Christ in Extreme Unction intends to infuse sanctifying grace in order to remit sin; while in the other sacraments of the living He intends to infuse sanctifying grace for another end proper to each sacrament.

Corollary II. As to the mode by which Extreme Unction remits sins, it must be said that mortal sins are remitted directly; concerning venial sins, it is disputed whether they are remitted directly or indirectly (p. 210).

[1] Part 2, c. 6, q. 14.

[2] "If," he says, "he be in sins, they shall be forgiven him" (James 5:15).

[3] "It wipes away offenses, if there are any to be expiated, and the remains of sin" (Session 14, cap. 2).

Part III. On the Effects of Extreme Unction

575 The primary effect, to which all the other effects are reduced, is disputed. According to the Scotists, Extreme Unction is ordered to the final remission of venial sins in the dying person who is now incapable of helping himself; from this remission of venial sins follows the relief of sorrow and sluggishness, which are effects of sin. They argue from the form of the sacrament, which seems directly destructive of sin. According to St. Thomas (*Supplement*, q. 30, a. 1) and St. Alphonsus (VI, 721, 731), it is ordered primarily to helping and strengthening the soul of the sick person, or to healing his spiritual infirmity, which is left in us from original and actual sin and which must especially be healed in the last struggle. But sins are remitted secondarily, namely insofar as they obstruct spiritual strengthening. This opinion is supported by the words of St. James, who seems to mention the remission of sins as a secondary effect: "And the prayer of faith shall save the sick man, and the Lord shall raise him up; and if he be in sins, they shall be forgiven him."[1] In particular, the following are enumerated:

I. Sanctifying grace, in itself and primarily second grace, or the increase of grace; likewise in itself but secondarily first grace, as follows from the things said above (n. 574).

II. Sacramental grace, which consists in this, that the sanctifying grace which Extreme Unction increases is ordered to this: that the sick person not be cast down by illness, but on the contrary be strengthened in illness, and, having been strengthened, vigorously fight against the last temptations and readily bear the final pains; and it brings with itself a right to actual graces to be received in order to those effects. Now, that the sacramental grace of this sacrament is what we have described is supported first by these words of St. James: "And the Lord shall raise him up," that is, shall stir him up and strengthen him.[2] Then the Council of Florence says: "The effect of this sacrament is the healing of the mind and, insofar as it is expedient, also of the body."[3] And the Council of Trent says: "Our most merciful Redeemer, who wished that at every time there be provided for His servants salutary remedies against all the weapons of all enemies, just as in the other sacraments He prepared the greatest helps by which Christians could preserve themselves whole, while they lived, from every graver harm of the spirit, so by the Sacrament of Extreme Unction He fortified the end of life as by a certain strongest protection. For although our adversary seeks and seizes occasions throughout the whole of life so that he may in any way be able to devour our souls, nevertheless there is no time at which he more vehemently strains every nerve of his cunning to destroy us utterly and, if he can, to disturb us even from confidence in the divine mercy, than when he perceives that the end of life is impending for us."[4] Tradition is added, whose testimonies Kern brings forward (St. Thomas, *Supplement*, q. 30, a. 1, ad 2; St. Alphonsus, VI, 731).[5]

III. The remission of mortal sins; this is clearly gathered from the words of St. James and Trent cited above (St. Thomas, *Supplement*, q. 30, a. 1; St. Alphonsus, VI, 731). It is required, however, that the sick person be attrite, at least habitually. But this also suffices, since that cannot be demanded which already of itself remits mortal sins, namely contrition.

IV. The remission of venial sins. For St. James and the Council of Trent do not distinguish between mortal and venial sins. Besides, there is no reason to exclude venial sins; indeed, since lesser offenses are more easily remitted, there is rather reason to include them. Nevertheless they are not remitted unless the sick person is at least habitually attrite for them.

V. The remains of sins, as the Council of Trent cited above expressly states (St. Thomas, *Supplement*, q. 30, a. 1, ad 2; St. Alphonsus, VI, 731). "But the remains of sin here are not called dispositions left from acts, which are certain begun habits, but a certain spiritual weakness existing in the mind itself; when it has been removed, even if the same habits or dispositions remain, the mind cannot be inclined to sin in the same way" (St. Thomas, loc. cit.; St. Alphonsus, loc. cit.).

VI. The remission of punishments, which by some is also referred to the remains of sins of which we have just spoken, more or less fully according to the disposition of the recipient. Thus it is taught not improbably: for since the end of this sacrament is also the consummation of the Christian life, as the Council of Trent speaks,[6] or the final disposition of the soul so that it may enter glory, it also remits temporal punishment; but, because Extreme Unction works by way of medicine, whose effect depends on the disposition of the subject, a greater or lesser remission of punishment is given according as the disposition of the subject is better or less good.

VII. Health of the body. This is clear both from the words of the Council of Florence cited above and from the Council of Trent, according to which the anointed person "sometimes obtains health of body, where it is expedient for the salvation of the soul."[7] Besides, note:

1. Extreme Unction does not confer health of body if it is not expedient for the salvation of the soul. "The operative reason," says St. Thomas, "never induces a secondary effect except insofar as it is expedient for the principal effect; therefore from this sacrament bodily healing does not always follow, but when it is expedient for spiritual healing" (*Supplement*, q. 30, a. 2). But it is disputed whether this sacrament confers health whenever it is expedient for the soul, or only sometimes, that is, according to the order of divine wisdom and providence, as is said. Some deny that it always produces that effect whenever it profits the soul. They deduce that this happens only sometimes from the words of the Council of Trent cited above. Others teach the contrary, and think that the sense of the words of the Council of Trent is this: "sometimes, namely, where it is expedient for the salvation of the soul."

2. Extreme Unction confers health not by way of miracle, but insofar as spiritual strengthening overflows into the body, and brings with it a right that the means of recovering health be directed by the special Providence of God. "The unction," as the Council of Trent teaches, "raises up and confirms the soul of the sick person, exciting in him great confidence in the divine mercy; by this confidence the sick person, being relieved, bears the inconveniences and labors of illness more lightly, resists more easily the temptations of the devil lying in wait for his heel, and sometimes obtains health of body, where it is expedient for the salvation of the soul."[8] And St. Thomas teaches that in Extreme Unction grace is conferred "not only so that it may remove guilt, but also the remains of guilt and the infirmity of the body" (*Supplement*, q. 29, a. 5), so that healing according to the holy Doctor must be called an effect of the grace conferred. Hence they are deprived of the aforesaid effect who defer reception of the sacrament so long that health cannot be expected without a miracle (St. Alphonsus, VI, 714).

[1] James 5:15.

[2] James 5:15.

[3] Denzinger-Bannwart, n. 700.

[4] Session XIV, *De extrema unctione*, Prooemium.

[5] Op. cit., p. 238.

[6] Session XIV, doctrine on the Sacrament of Extreme Unction.

[7] Session XIV, *De extrema unctione*, cap. 2.

[8] Loc. cit.

Part IV. On the Necessity of Extreme Unction

576 I. Necessity of means must be denied, both because of canon 944, which denies it, and because of the reasons for which we denied the necessity of means of Confirmation (n. 116).

577 II. Necessity of precept. 1. There is an obligation of receiving Extreme Unction. This is deduced first from canon 944: "It is lawful for no one ... to neglect it." Then he who neglects a special means, instituted by Christ, by which the sick person is fortified and strengthened in those most serious moments of life on which eternity proximately depends, seems to sin against charity toward himself.[1]

2. The obligation is quite probably only light. I understand the obligation in itself, because one who neglects Extreme Unction can accidentally sin gravely, for example by reason of scandal or contempt.[2] But in itself a grave obligation is quite probably lacking. The reason is that such an obligation is not established either from the nature of this sacrament, "which is not necessary for salvation, but only useful" (St. Alphonsus, VI, 733), or from a positive precept, because it is not clear that the words of St. James, "let him bring in the priests," are to be understood of a precept and not only of counsel; nor from the precept of charity toward oneself, "for charity does not oblige under grave precept to that which is better" (St. Alphonsus, loc. cit.). Finally, the Code does not settle this controversy, neither insofar as it concerns divine law, which it does not intend to interpret,[3] nor insofar as the ecclesiastical Legislator imposes a grave precept in canon 944. If he had intended that, he would certainly have used clearer and weightier words.

Objection. The Council of Trent declares: "Now, as regards the prescription of those who ought both to receive and to minister this sacrament," etc.

Response. The Council does not intend to urge the obligation of reception, but rather to signify to whom the reception and to whom the ministration of the sacrament belongs.

[1] Cf. Council of Trent, session 14, *De sacramento extremae unctionis*, at the beginning and cap. 2.

[2] Cf. Council of Trent, loc. cit., cap. 3.

[3] Cf. Preface.

Dissertation II. On the Ministration of Extreme Unction

578 I. The ministering person. 1. Every priest, and only a priest, validly administers Extreme Unction (canon 938, § 1). This is of faith from the Council of Trent.[1] It can, moreover, as is clear from the Tradition and practice of the Church, be ministered both by one and by several priests.[2] But if several minister the sacrament, each should take care that he himself pronounce the respective form for the matter applied by himself. In the Latin Church it must be ministered by one alone.

But if the minister fails while ministering, and another is immediately present, the latter should continue where the other stopped. If a longer delay, for example a quarter of an hour, has intervened, the other should repeat conditionally the anointings performed by the first, namely because of doubt whether the union which perhaps is required between the particular anointings is present; then he should complete the others (St. Alphonsus, VI, 724).

Note. A priest cannot validly confer Extreme Unction on himself, as is deduced from the constant tradition and usage of the Church (n. 21).

2. The Ordinary and the parish priest of the place in which the sick person is staying licitly minister this sacrament; for that reason they are called the ordinary ministers of Extreme Unction. Besides, in a case of necessity, and likewise with the permission, either given or reasonably presumed, of the same parish priest or local Ordinary, any other priest can minister this sacrament (canon 938, § 2). In addition, the prescriptions of canons 397, 3°, and 514, §§ 1-3, remain firm; see these in the treatise on the Holy Eucharist, n. 164.

[1] Session 14, *De sacramento extremae unctionis*, canon 4.

[2] In the Greek Church Extreme Unction is conferred by seven, or at least by three, priests (Papp-Szilagyi, *Enchiridion iuris ecclesiastici orientalis*, p. 2, § 81). Cf. Sacred Congregation of Propaganda Fide, March 23, 1844 (*Collectio*, n. 818).

579 II. Obligation of ministering. 1. The ordinary minister is bound: 1. from justice and under grave obligation to minister Extreme Unction to subjects who ask for it, and indeed in good time; 2. under grave obligation to use prudent diligence so that subjects who are negligent about salvation may be warned in good time (St. Alphonsus, VI, 714, 729; cf. canon 939). As to the extent to which the ordinary minister is bound even with danger to life, see the treatise on the Sacraments in general, n. 34. Besides, these words apply to him before others: "With every zeal and diligence care must be taken that the sick receive it while they are fully in possession of themselves" (canon 944).

2. Any priest in a case of necessity is bound from charity to procure Extreme Unction for a sick person (canon 939). A case of necessity as taken here is already present if the ordinary minister is lacking and there is danger in delay. But the obligation in itself is light; accidentally it is grave if either the reason of grave scandal is added, or the sick person is probably in the state of mortal sin and will not be saved securely enough by confession, for example because he is deprived of the senses. That is, for receiving Extreme Unction fruitfully, attrition suffices, while for confession accusation is also required (St. Alphonsus, VI, 729).

3. Those who from charity or piety are bound to provide for the salvation of the sick person are likewise, in themselves, bound under light obligation to take care that the sick person receive Extreme Unction; under grave obligation in the case in which other priests are bound under grave obligation to minister it, as was explained under 2.

580 III. Things to be observed in ministering. 1. The Oil of Extreme Unction should be carried to the sick in the simple manner prescribed by the Roman Ritual,[1] not solemnly with surplice and lights,[2] unless the Holy Eucharist is carried at the same time. But if the latter is not carried at the same time, the minister, for example the sacristan, or the priest himself, should carry the surplice with him.

2. In the ministration itself, the following are prescribed under grave obligation: 1. sacred vestments, namely surplice and stole; to omit either is quite probably only venial; 2. the prayers assigned by the Ritual for the priest. Urgent necessity excuses from the foregoing.

3. It is prescribed under light obligation that a minister be used, and that he be male. If a male is lacking, a woman seems able to answer.

4. A lighted candle seems to be only of counsel, unless the priest needs it, since it is said to be lit "so that it may provide light to the one anointing." Likewise it seems to be counsel rather than a true precept that those standing by recite the Penitential Psalms and the Litanies. Finally, it is not established that it is prescribed under sin that, contrary to ancient custom, Extreme Unction be ministered after Viaticum (St. Alphonsus, VI, 716, 726-728).

[1] Title V, cap. 1, n. 13, and cap. 2, n. 2.

[2] Sacred Congregation of Rites, January 23, 1606, n. 106.

Dissertation III. On the Reception of Extreme Unction

We must speak first of the person receiving, then of the manner of receiving Extreme Unction, and finally of the repeated reception of Extreme Unction.

Part I. On the Person Receiving

581 I. In order that someone be capable of receiving Extreme Unction, it is required: 1. that he be baptized; 2. that he be or have been in possession of reason; 3. that his health be gravely afflicted, and indeed at least to that degree from which death not rarely follows within a time not very long; but such a degree also suffices, at least for validity. It is said:

1. That he be baptized (cf. n. 38).

2. That he be or have been in possession of reason; hence canon 940, § 1 indeed states that Extreme Unction cannot be given except after the use of reason has been attained, but does not add that actual or habitual use of reason is required.[1] The reason seems to be that the gravely sick person who neither has nor has had the use of reason is, and was, and will be, at least in himself, incapable of actual strengthening, to which the sacramental grace of Extreme Unction gives a right (St. Alphonsus, VI, 718). I said "and will be incapable," as a perpetually insane person. I said "and will be, at least in himself, incapable," as a gravely sick infant, who in himself will either recover or die before the use of reason, while accidentally it will happen that he is going to prolong the grave illness until he will attain the use of reason, and thus will be capable of spiritual strengthening. Therefore little children and the perpetually insane cannot be anointed. But adults who have lucid intervals, or who at least were not perpetually insane, are capable; likewise those who are delirious;[2] likewise children as soon as they have reached the use of reason (St. Alphonsus, VI, 720).

In doubt whether the sick person has attained the use of reason - understand: whether he either enjoys the use of reason or at some time enjoyed its use - the sacrament should be ministered conditionally (canon 941), for example: "if you are capable."

Question. Is one who has never sinned personally capable of Extreme Unction?

Response. It seems that it must be affirmed, because he is capable of the primary effect of the sacrament, that is, strengthening of soul. That it is not required that someone have sinned after Baptism follows from the fact that the Holy Office[3] and the Sacred Congregation of Propaganda Fide[4] responded that a pagan who becomes gravely sick immediately after receiving Baptism is to be anointed.

It is disputed whether the Blessed Virgin Mary was capable of Extreme Unction. It seems that it must be denied, because Extreme Unction strengthens by way of spiritual medication. Hence the Council of Florence, as we have already noted, teaches: "The effect of this Sacrament is the healing of the mind." But the Blessed Virgin Mary was incapable of strengthening of this kind.

3. That health be gravely afflicted, and indeed at least to that degree from which death not rarely follows within a time not very long; but such a degree also suffices, at least for validity. I said:

a) That health be gravely afflicted, whether from disease taken in the stricter sense, or from a similar cause, for example from a wound, from difficult childbirth, from poison swallowed, or from old age. That this is required is proved first by the words cited above of St. James, who advises the sick person to summon the priests, who will save him and comfort his depressed spirit; these things you would scarcely apply to one suffering from a slight illness. Then Benedict XIV in the Bull *Ex quo primum*, § 46, teaches that Extreme Unction is to be ministered "only to faithful persons gravely sick." Then the

Council of Trent teaches that this sacrament was instituted by Christ so that He might "fortify the end of life as by a certain strongest protection" (p. 437). Finally, the whole rite of Extreme Unction does this one thing, that it commends to the divine mercy the sick person constituted in danger of death[5] (St. Thomas, *Supplement*, q. 32, a. 2; St. Alphonsus, VI, 713, dub. 2).

b) That health be afflicted at least to that degree from which death not rarely follows within a time not very long, or at least to that degree that death not very remote must be feared. This is deduced from the fact that several ecclesiastical documents expressly state that Extreme Unction is not to be conferred except on those who are in danger of death or whose death is feared. Thus, for example, canon 940, § 1: "Extreme Unction cannot be given except to a faithful person who, after attaining the use of reason, is in danger of death by reason of infirmity or old age." Likewise the decree of Eugene IV in the Instruction to the Armenians: "This sacrament must not be given except to a sick person whose death is feared." But these things in their obvious sense signify the state described by us (St. Thomas, loc. cit.; St. Alphonsus, loc. cit.).

c) Such a degree also suffices, at least for validity. This is drawn from the fact that the Sacred Congregation of Propaganda Fide responded[6] "Affirmatively" to the question: "Sometimes Missionaries encounter someone suffering from hectic fever, that is, a kind of consumption, or from another illness, who, experience being the guide, is going to live for several more months, but will die within the year: it is asked whether in such a case the Missionary can minister Viaticum and Extreme Unction to him, because when the time of receiving them is actually at hand, the Missionary will not be able to be present in the same place, either because of great distance or because of another impediment." I said at least for validity, because from the response cited it does not follow that, in itself or in ordinary circumstances, the sacrament is licitly conferred in a case in which death is judged to be fairly distant; therefore further observe: as soon as the state just described is present, the sacrament is indeed conferred validly; but with respect to liceity, take the following:

a) If death is judged to be fairly far away, as in the case just set forth and resolved by the Sacred Congregation of Propaganda Fide, one may doubt whether the sacrament is already in itself licitly conferred.

b) If death is indeed judged to be more at hand, but not yet imminent, the sacrament is licitly conferred, although its conferral can be deferred.

c) If death seems imminent, Extreme Unction must be conferred;[7] nor is it permitted to wait until the sick person begins to lack the full use of reason. "The reason," says St. Alphonsus, "is that thus he is deprived of the richer fruit which he would have received if he had received the sacrament while he was in possession of reason, since then he would have disposed himself more for it. Likewise because he is deprived of spiritual strength for resisting the devil and for bearing the inconveniences of illness. Likewise because, if the sick person perhaps were in mortal sin and had received the sacrament while in possession of reason, by the help of attrition he perhaps would have obtained grace, of which otherwise he is deprived. Finally, because by virtue of this sacrament he perhaps would have obtained health of body, if it had been conferred at a suitable time; for although this sacrament by a certain supernatural power also works bodily health if it is expedient for the salvation of the soul, as Trent says, nevertheless it does not work by way of miracle, but in a certain ordinary way, namely by helping natural causes, as the Doctors commonly say. All these things at least when taken together seem to bring grave harm to the sick person" (VI, 714). Hence canon 944: "With every zeal and diligence care

must be taken that the sick receive it while they are fully in possession of themselves." And the Roman Catechism says: "They sin most gravely who are accustomed to observe that time for anointing the sick person when, all hope of recovery now having been lost, he begins to lack life and senses."[8]

[1] Cf. Roman Ritual, title V, cap. 1, n. 8.

[2] Cf. Roman Ritual, loc. cit., n. 11.

[3] May 10, 1703 (*Collectio*, n. 256, ad 8).

[4] September 26, 1821 (*Collectio*, n. 768).

[5] Kern, op. cit., p. 294.

[6] February 20, 1801 (*Collectio*, n. 651).

[7] Cf. Council of Trent, session 14, *De extrema unctione*, Prooemium and cap. 3; Roman Ritual, title V, cap. 1, n. 5.

[8] Part 2, cap. 6, n. 9.

582 Corollary I. Extreme Unction cannot be conferred on those whose death is imminent from a merely external cause, for example "on those about to enter battle, or about to undertake navigation, or a journey, or other dangers, or on criminals soon to be punished with the final penalty."[1] Nor can it be ministered when the danger of death is not yet present but will arise shortly, for example from the dangerous surgical operation itself about to be undergone, or from the difficult childbirth itself about to follow; otherwise, if someone is already actually in danger.

Corollary II. A woman in childbirth who "labors in childbirth with only common pains will indeed not be able to be anointed, even if she gives birth for the first time, or at another time had been in danger of death; because then she is not yet laboring under a dangerous infirmity" ... "But otherwise, if the woman has already begun to be distressed by very grave torments, so that she is already actually in proximate danger of death; because then she is truly already dangerously sick" (St. Alphonsus, VI, 713, dub. 3). The old cannot be anointed because of advanced age alone; otherwise if there is added such weakness of the vegetative functions that health must be called gravely afflicted. Hence canon 940, § 1 speaks of old age by reason of which someone is in danger of death. And the Roman Ritual states: "Extreme Unction is to be ministered to those who fail because of old age and seem day by day about to die, even without another infirmity."[2]

Those about to undergo a dangerous operation, but not yet constituted in danger of death, cannot be anointed before the operation; nor can the same be anointed as soon as they have been deprived of the senses by chloroform, unless the state of the sick person induced by the chloroform is regarded as gravely dangerous. If the disease is lethal, and physicians can avert the danger of death by the operation to follow, the sick person can be anointed if he does not wish to undergo the operation; if he wishes to suffer it, the matter seems doubtful.

But if it is rightly feared that someone, for example a person condemned to death, is going to die from fear, he is certainly validly anointed if fear has so afflicted his health that, even if the fear vanished, nevertheless grave danger would persist. Otherwise he seems able to be anointed only doubtfully validly, because it is doubted whether fear can really be called a disease.

Corollary III. A merely estimated danger of death does not suffice; for the things by which we proved that danger of death is required, in their obvious sense, signify a truly existing danger and not merely an estimated one. I add these things: suppose that someone lying on the ground, according to

bystanders, is in danger of death and is anointed by a priest. A physician arrives and declares that he is well, but completely drunk. Who would say that he had been validly anointed?

Corollary IV. When it is doubted whether the sick person is really in danger of death, or whether he is dead, this sacrament should be ministered conditionally (canon 941). As to the extent to which one apparently dead can be conditionally absolved and anointed, this has been set forth in the treatise on Penance, n. 477.

[1] Roman Ritual, title V, c. 1, n. 9.

[2] Title V, cap. 1, n. 5.

583 II. Once the requisites for the capacity of receiving Extreme Unction have been posited, it must be given, and indeed absolutely, not only to those who here and now ask for it, but also "to sick persons who, when they were in possession of their mind, asked for it at least implicitly or would probably have asked for it, even if afterwards they lost the senses or the use of reason" (canon 943).[1] But "this sacrament is not to be conferred on those who, impenitent, contumaciously persevere in manifest mortal sin; but if this is doubtful, it is to be conferred conditionally" (canon 942). It is said:

1. They asked for it at least implicitly; these words certainly comprehend those who had, and did not retract, an implicit will or intention in the stricter sense, for example the will of dying as a Christian (p. 33). With respect to implicit intention in the most general sense - for example the will of employing the means of salvation - the matter seems doubtful and not settled by the Code (p. 33).
2. Or would probably have asked for it; for one who, in possession of himself, would probably ask for Extreme Unction is presumed to have had, and not retracted, an explicit will or intention of receiving Extreme Unction, or at least an implicit intention in the stricter sense.
3. This sacrament is not to be conferred on those who contumaciously persevere in manifest mortal sin.

What if someone rejected the priest up to the deprivation of the senses?

Response 1. If he did not certainly reject him from an evil will, but perhaps because he was not sufficiently conscious of the danger, with also an indifferent spirit being added, Extreme Unction can be conferred.

Response 2. If he certainly rejected the priest from an evil will, considering the reverence due to the sacrament, it is better, as it seems, not to anoint him, unless the deprivation of the senses endures longer, or the dying person gives a sign which with some probability can be regarded as a declaration of a changed will.

4. But if this, that is, contumacy, is doubtful, it is to be conferred conditionally, namely, considering the more obvious sense, under the condition: "If you are now not contumaciously persevering in mortal sin." Nevertheless, it can seem to someone that this is the sense of the canon: "If you are doubtful about the contumacy, the sacrament is to be conferred conditionally," the determination of the condition being left undecided; this being posited, the canon does not prevent the condition "if you are capable," etc., from being added. Besides, it is certainly lawful to minister the sacrament "according to the mind of the Church."

[1] Roman Ritual, title V, cap. 1, n. 11.

Scholion. On the Anointing of Baptized Non-Catholics

584 We speak of baptized non-Catholics who are in good faith, or at least not certainly in bad faith. Now:

I. Outside the danger of death, baptized non-Catholics cannot licitly be anointed, according to what was said in the treatise on Penance (n. 478).

II. In danger of death. We distinguish between non-Catholics who admit Extreme Unction and those who reject it.

1. Those who admit Extreme Unction, as for example schismatics, can be anointed as follows:

a) If they are already deprived of the senses, scandal having been removed, they can be anointed according to what was set forth in the treatise on Penance (n. 478).

b) If they are not deprived of the senses, in themselves they cannot be anointed; accidentally they seem able to be anointed according as we spoke about the granting of absolution (n. 478).

2. Those who reject Extreme Unction should not be anointed; nevertheless I would not condemn one who conditionally anoints them, according to what was said in the treatise on Penance (n. 478).

Corollary I. In doubt whether the person to be anointed is baptized, or validly baptized, first he must be baptized or rebaptized conditionally.

Corollary II. Prudence, considering the common good, can readily prohibit a non-Catholic from being anointed. Besides, as we already noted in the treatise on Penance, one who assists a dying non-Catholic should strive to bring him to acts of contrition and charity, so that he may be saved more securely.

Corollary III. Having set forth those things which regard the subject of Extreme Unction, it is useful to state briefly to which dying persons deprived of the senses Extreme Unction can be conferred. Now it can be conferred: 1. on Catholics, even if they have not fulfilled religious duties or have been deprived of the senses in the act of sin; 2. on those whom, after an examination has been made if the occasion allows, you suspect with some probability to be Catholics; 3. on apostates; 4. on heretics who admit Extreme Unction, or have shown an inclination toward the Catholic Church; likewise, others add, on those who do not admit Extreme Unction and have not shown the said inclination, unless, however, prudence prohibits them from being anointed.

From those enumerated, only those are excepted who here and now certainly persevere contumaciously in mortal sin.

Part II. On the Manner of Receiving Extreme Unction

585 With respect to both the valid and licit reception of Extreme Unction, we refer to those things which we noted in the treatise on the Sacraments in general. It is useful, however, to complete in a few words those things which regard licit reception. Now:

I. For licit reception the state of grace is required. For the reverence due to the sacrament requires a state which corresponds to the end to which it is primarily ordered. But Extreme Unction is primarily ordered to increasing grace. Therefore the state of grace must already be present. If, however, someone attrite and in good faith receives the sacrament, he recovers grace (n. 6).

II. The state of grace can be recovered, by one who is in mortal sin, by reason of Extreme Unction either through confession or through perfect contrition; but by reason of Communion, if this is placed before Extreme Unction, it must be recovered through confession (n. 43). But Communion - although at most only under light obligation - is to be placed before Extreme Unction, according to these words of the Roman Ritual: "From the general custom of the Church it is to be observed that, if time and the condition of the sick person permit, the Sacraments of Penance and Eucharist be given to the sick before Extreme Unction"[1] (St. Alphonsus, VI, 716).

Note 1. If the one to be anointed is excommunicated, he should be freed from excommunication before he is absolved from sins and given holy Communion and Extreme Unction.

Note 2. If the sick person suffers from frenzy or insanity, care must be taken that he do nothing against the reverence of the sacrament, for example, if necessary, by binding or firmly holding the sick person (St. Alphonsus, VI, 732).

[1] Title V, cap. 1, n. 2.

Part III. On the Repeated Reception of Extreme Unction

586 The Council of Trent[1] declares: "But if the sick recover after receiving this Unction, they will be able to be helped again by the aid of this Sacrament when they fall into another like danger of life." And canon 940, § 2 says: "In the same infirmity this sacrament cannot be repeated, unless the sick person after receiving the Unction has recovered and has fallen into another danger of life." So also the Roman Ritual.[2] With these things premised, I say:

I. Extreme Unction can be repeated in another infirmity; in other words, it can be repeated: 1. as often as someone after an infirmity has been driven out, or after health has been recovered, is again dangerously sick; 2. as often as in the same infirmity the danger of death has vanished and afterwards arises again (St. Thomas, *Supplement*, q. 33, a. 2; St. Alphonsus, VI, 715). This follows from the Council of Trent and canon 940, § 2 cited above. The reason is that Extreme Unction was instituted precisely for the danger of death; hence it can at least then be repeated when the danger is repeated.

Question. Can Extreme Unction be repeated if a grave danger is increased, or if, while a danger endures, another disparate danger is added?

Response. It seems that it must be altogether denied; for the Council of Trent above and canon 940, § 2 require that the sick person, after he has recovered, become gravely sick again. Some indeed permit Extreme Unction to be repeated if the sick person, after the same grave danger has endured for a long time, is in much graver danger. They allege as reason that in this hypothesis the danger, according to common estimation, is morally considered another danger. But even this opinion cannot be reconciled with the words of the Council of Trent and the cited canon.

Objection. Canon 940, § 2 declares: "In the same infirmity this sacrament cannot be repeated." But in the hypothesis posited a new infirmity or new danger is added.

Response. From the cited words of the Council of Trent, and likewise from the words of the canon which follow the opposed words, it follows that by "the same infirmity" is understood the same lethal condition of the sick person; this condition is aggravated by a new infirmity or new danger. Meanwhile the sacrament continues to confer helps against the new illness.

Corollary. As often as Extreme Unction according to what has been said is licitly repeated, so often also it must be repeated. This seems to be commonly admitted if someone after recovering health becomes dangerously sick again; not so if in the same illness the danger of death vanished and afterwards arises again. But since the obligation is founded, as it were, in the danger of life, likewise the obligation of repeating seems to be present as often as the danger is repeated.

II. Extreme Unction cannot licitly be repeated in the same infirmity; whether it can validly be repeated is doubtful. Kern[3] and others affirm, especially because for several centuries in a great part of the Church there prevailed the use of repeating the sacrament seven times[4] in the same danger. Others deny or doubt; and to the argument of their adversaries they respond that it seems doubtful whether the said repetition of which Kern speaks was regarded as a repetition of the sacrament. That is, according to some,[5] all the anointings taken together were regarded as one sacrament; according to others,[6] the repeated anointings, that is, those which followed the first ministration, were like sacramentals strengthened by liturgical prayers.

Question. Does a most grave cause excuse from the prohibition, for example if someone after receiving Extreme Unction has certainly or probably sinned gravely, and, not yet having confessed, is deprived of the senses?

Response. I think that in the proposed case the sacrament can be repeated conditionally, namely because in this way provision is made for the salvation of the dying person much more securely than through absolution.

III. In doubt whether the danger was absent, a sick person who again becomes gravely sick can be anointed again, and indeed conditionally if grave doubt persists; absolutely if it is sufficiently established that the danger was absent. Nevertheless, commonly it will not be sufficiently established unless the sick person has been better for a notable time, for example for several weeks (cf. St. Alphonsus, VI, 715).

Practical Note.

[1] Session 14, *De extrema unctione*, cap. 3.

[2] Title V, cap. 1, n. 8.

[3] Op. cit., p. 338 sq.

[4] That is, here the anointings were repeated for seven continuous days; there seven priests, one after another, performed the complete sacramental rite.

[5] Schmid, in *Zeitschrift fur katholische Theologie*, t. XXV, p. 258 sq.

[6] De Smet, in *Collationes Brugenses*, 1910, p. 192 sq.

587 It is useful to note two practical things:

I. Especially through Extreme Unction provision is made for the salvation of the dying person, above all of one deprived of the senses. That is: 1. attrition suffices for Extreme Unction; for Penance confession is also required; 2. habitual attrition suffices for Extreme Unction; the same cannot be said quite so absolutely about Penance (n. 41); 3. Extreme Unction received without attrition can revive; Penance received in that way is received invalidly, so that there can be no question of reviviscence.

II. Care must be taken that Extreme Unction be given in good time, both so that the sick person may sooner receive the spiritual fruits of the sacrament, and so that, if it is expedient for the soul, he may also recover bodily health.

Treatise VII. On Order

(St. Thomas, *Supplement*, q. 34-40; St. Alphonsus, *Theologia Moralis*, lib. VI, n. 734-830; *Homo Apostolicus*, tr. 17.)[1]

[1] Cf. Benedict XIV, *De Synodo dioecesana*, lib. 8, c. 9-11 and lib. 12, c. 3 and 4; Many, *De sacra ordinatione*; Gasparri, *De sacra ordinatione*; Wernz-Vidal, *Ius canonicum*, t. V; Pesch, *Praelectiones dogmaticae de Ordine*.

588 I. By the institution of Christ there exists in the Church a twofold state, namely that of clerics and that of lay persons. Now "those who have been assigned to the divine ministries by at least the first tonsure are called clerics" (canon 108, § 1).

II. Clerics "are not all in the same grade, but among them there is a sacred hierarchy in which some are subordinated to others" (canon 108, § 2). The aforesaid hierarchy is called the hierarchy of Order.[1]

III. The distinct grades of the hierarchy of Order are counted as eight from the Council of Trent,[2] namely Porter, Lector, Exorcist, Acolyte, Subdiaconate, Diaconate, Presbyterate, and Episcopate.[3]

1. "Porter is the order by which there is conferred upon someone a special power of opening and closing the door of the church, and of admitting the worthy and excluding the unworthy" (St. Alphonsus, VI, 735).
2. "Lector is the order by which there is conferred upon someone a special power of reading psalms and lessons from the pulpit in church, and of catechizing or instructing the people in matters of faith" (St. Alphonsus, loc. cit.).
3. "Exorcist is the order by which there is conferred upon someone a special power of casting out demons" (St. Alphonsus, loc. cit.).
4. "Acolyte is the order by which there is conferred upon someone a special power of serving the subdeacon in solemn Mass, by lighting candles, preparing and handing to him the cruets of wine and water" (St. Alphonsus, loc. cit.).
5. "Subdiaconate is the order by which there is conferred upon someone the power of serving the deacon in solemn Mass and solemnly chanting the Epistle" (St. Alphonsus, loc. cit.).
6. "Diaconate is the order by which there is conferred upon someone a special power of immediately assisting the presbyter in solemn Mass and solemnly chanting the Gospel" (St. Alphonsus, loc. cit.).
7. "Presbyterate is the order by which there is conferred upon someone a special power of consecrating the Body and Blood of Christ, and also of absolving from sins and feeding subjects by work and doctrine" (St. Alphonsus, loc. cit.).
8. "Episcopate is the order by which there is conferred upon someone a special power of confirming the faithful and ordaining the ministers of the sacraments, taking 'ministers' more broadly, that is, not only for those who confect the sacraments, but also for those who minister by office to those confecting them, and also of consecrating things pertaining to divine worship" (St. Alphonsus, VI, 735).

a) Tonsure is not an order, but a preparation for them, or "it is a solemn ecclesiastical rite, consisting in a slight cutting of the hair with certain words, celebrated by a suitable minister, signifying by the

institution of the Church that a baptized male is transferred from the lay state into the lot of the Lord and the clerical state" (St. Alphonsus, loc. cit.).

b) Episcopate and Presbyterate are often designated by the one name of Priesthood; hence Bishops are called priests of the first order, presbyters priests of the second order. Therefore many enumerate only seven orders. Now the priesthood, which, as was said, includes Episcopate and Presbyterate, the Diaconate, and the Subdiaconate are called major or sacred Orders; the others are called minor Orders.

c) "In the following canons," so says canon 949, "by the name of major or sacred orders are understood presbyterate, diaconate, subdiaconate; but by the name of minor orders, acolytate, exorcistate, lectorate, porterate." And canon 950 says: "In law the words 'to ordain,' 'order,' 'ordination,' 'sacred ordination,' comprehend besides episcopal consecration the orders enumerated in canon 949 and the first tonsure itself, unless something else is drawn from the nature of the matter or from the context of the words."

IV. Episcopate, Presbyterate, and Diaconate are of divine institution. But the Episcopate by divine law is a grade distinct from the Presbyterate and superior to it.[4] Subdiaconate and the minor orders do not seem to be of divine institution.

1. That the Episcopate and Presbyterate, together with the office of certain ministers, are of divine institution, the Council of Trent defined in these words: "If anyone says that in the Catholic Church there is not a hierarchy instituted by divine ordination, which consists of Bishops, Presbyters, and Ministers, let him be anathema."[5] Canon 108, § 3 agrees.
2. That Bishops are superior to presbyters, the Council of Trent likewise teaches, although it does not expressly say "by divine law": "If anyone says that Bishops are not superior to Presbyters, or that they do not have the power of confirming and ordaining, or that the power which they have is common to them with Presbyters, let him be anathema."[6]
3. That the minor orders are not of divine institution is proved especially from this, that in the most ancient documents, where the different grades of the Hierarchy are discussed, only Episcopate, Presbyterate, and Diaconate are enumerated.[7]

With these things premised, we shall speak first of Order considered in itself, then of its ministration, then of the reception of Order, and finally of certain matters which regard both ministration and reception.

[1] The ecclesiastical hierarchy taken generally is: the body of clerics who, according to various grades, enjoy sacred power in the Church. It is distinguished into the hierarchy of Order and the hierarchy of Jurisdiction, according as the sacred power concerns the ministry of divine worship, for example the dispensation of the sacraments, etc., or the governance of the faithful.

[2] Session 23, canons 2 and 4.

[3] Among the Greeks only four Orders are conferred: two major, namely Priesthood and Diaconate, and two minor, namely Subdiaconate and Lectorate. But the Maronites have the order of Cantorate, to which tonsure is attached; and the Armenians have four minor orders just as the Latins do.

[4] Bishops are superior to presbyters both by reason of teaching and governance and by reason of Order. The first is proved in the treatise on the Church; the second is discussed here.

[5] Session 23, canon 6.

[6] Session 23, canon 7.

[7] Gasparri, *De sacra ordinatione*, n. 41.

Dissertation I. On Order Considered in Itself

Part I. On the Existence of the Sacrament of Order

589 Here dogmatic theologians first inquire whether Order, taken generally, is a sacrament; then to which grades the character of a sacrament belongs. Now:

I. Order, or sacred Ordination, is a true and properly so-called sacrament of the New Law; this proposition is of faith from the Council of Trent: "If anyone says that Order, or sacred Ordination, is not truly and properly a sacrament instituted by Christ the Lord, or that it is a certain human fiction devised by men unskilled in ecclesiastical matters, or that it is only a certain rite of choosing ministers of the Word of God and of the Sacraments, let him be anathema."[1]

II. With respect to the diverse grades of Order, the character of a sacrament belongs to the Presbyterate and Diaconate, and very probably to the Episcopate; the Subdiaconate more probably, and the minor Orders almost certainly, are not sacraments. It is said:

1. Presbyterate is a sacrament. This is proximate to faith from these words of the Council of Trent: "If anyone says that through sacred Ordination the Holy Spirit is not given, and that therefore Bishops say in vain: Receive the Holy Spirit; or that through it a character is not imprinted; or that he who was once a priest can become a layman again, let him be anathema."[2]

Christ instituted the Presbyterate, with respect to the power of consecrating and offering the true Body and Blood of the Lord, at the Last Supper. "If anyone says," so says the Council of Trent, "that by those words, 'Do this in commemoration of Me,' Christ did not institute the Apostles as priests, or did not ordain that they and other priests should offer His Body and Blood, let him be anathema."[3] But with respect to the power of remitting and retaining sins, He instituted it after the resurrection, when He handed this power to the Apostles in these words: "Receive the Holy Spirit. Whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained."[4]

2. Diaconate is a sacrament. It is the very common opinion of theologians, and so certain that it cannot be denied without temerity.[5]

3. Episcopate is a sacrament distinct from Presbyterate. This is today the common and very probable opinion (St. Alphonsus, VI, 738).[6]

Christ instituted the Episcopate after His resurrection and before the ascension, as theologians commonly admit (St. Alphonsus, *Opera dogmatica*, 7, p. 123, fourth, and p. 124, sixth).

4. Subdiaconate and the minor orders do not seem to be sacraments, because they do not seem to have been instituted by Christ (cf. St. Alphonsus, VI, 737).[7]

In writings left to us from antiquity, the first mention of these orders, as of a matter known to all, occurs in St. Cornelius, Pope, around the year 252; he speaks thus about Novatian: "Therefore that defender of the Gospel was ignorant that there ought to be one Bishop in the Catholic Church, in which it was not hidden from him - for how could it be hidden? - that there were forty-six Presbyters, seven Deacons, seven Subdeacons, forty-two Acolytes, and fifty-two Exorcists and Lectors together with Porters."[8] Anastasius Bibliothecarius also relates in the history of Pope St. Caius, who held the See of Peter from the year 283 to 296: "He established that all Ordinations in the Church should ascend thus: if someone deserved to be a Bishop, he should be ordained Porter, Lector, Exorcist, Sequens (Acolyte), Subdeacon, Deacon, Presbyter, and thereafter Bishop."[9]

III. Although the character of a sacrament belongs to several Orders, nevertheless it must simply be said that there is only one sacrament of Order. For "the division of Order is not of an integral whole into its parts, nor of a universal whole, but of a potestative whole, whose nature is this: that the whole according to its complete notion is in one, while in the others there is some participation of it. And so it is here. For the whole fullness of this Sacrament is in one order, namely the priesthood; but in the others there is a certain participation of order. And therefore all orders are one sacrament" (St. Thomas, *Supplement*, q. 37, a. 1, ad 2).

[1] Session 23, canon 3.

[2] Session 23, canon 4.

[3] Session 22, canon 2.

[4] John 20:22-23.

[5] Cf. Pesch, op. cit., n. 615.

[6] Cf. Pesch, op. cit., n. 614.

[7] Pesch, op. cit., n. 592.

[8] Epistle to Fabian of Antioch, c. 3.

[9] *Historia de vitis Romanorum Pontificum*, c. 29.

Part II. On the Essence of the Sacrament of Order

There will also be discussion of the essence of Orders which are not sacraments.

590 I. The essence, or matter and form, of Orders which are not numbered among the sacraments. 1. The matter of the minor Orders, according to the opinion of all, is the handing over of the instruments;[1] the form is the words which accompany the respective handing over.

2. The matter of the Subdiaconate[2] according to some is the handing over of the empty chalice with the paten, while the form is the correlative words; according to others, the handing over of the chalice with the paten and of the book of Epistles, and the form the respective words; according to a very few, finally, all the things prescribed in the ordination constitute the matter and form.

Corollary I. According to the more common opinion, to the handing over of the instruments there must correspond for validity an acceptance made by physical contact, so that moral acceptance, for example by a nod, does not suffice. The reason is that the word "touching," which the Pontifical uses, designates physical touch. Nevertheless, it does not obstruct validity that the acceptance is made by a hand covered with a glove.

Corollary II. Once the almost morally certain opinion is admitted which does not hold the minor Orders to be sacraments and teaches that they are of ecclesiastical institution - once, I say, this opinion is admitted - the Supreme Pontiff can sanate in the root all defects, even substantial ones. There are also those who think that they are certainly validly conferred if the essentials have been observed according to a probable interpretation, since the Church is considered to supply insofar as there is need. But these things cannot practically be applied to the Subdiaconate, since the opinion which denies the character of a sacrament to that Order is indeed very probable, but still is not certain.

[1] In the Greek Church, imposition of hands is performed outside the church.

[2] The source note marker is attached to the Subdiaconate heading; the surrounding note text gives no further substantive detail beyond the preceding observation.

591 II. The essence, or matter and form, of Orders which are sacraments.

1. Matter and form of the Diaconate. In the ordination of a Deacon: 1. "The Pontiff, extending his right hand, places it upon the head of each one to be ordained, ... saying to each: Receive the Holy Spirit, for strength, and for resisting the devil and his temptations, in the Name of the Lord."[1] 2. The Pontiff continues, holding his right hand extended, even to the end of the Preface: "Send forth upon them, we ask, O Lord, the Holy Spirit," etc. 3. Lastly, he hands to all the book of the Gospels, saying: "Receive," etc. Now:

a) The matter of the Diaconate according to some is only the imposition of the right hand; according to others it is only the handing over of the instruments; according to still others it is each ceremony (St. Alphonsus, VI, 748, 737).

Corollary. In order that the matter be indubitable, the last opinion must be followed. In addition, in the imposition of the hand, physical touch is required, at least so that every doubt be forestalled, although mediated touch suffices, for example through a hand wrapped in a glove or over the small cap of the ordinand.[2]

b) The form of the Diaconate according to some consists only in the words "Receive the Holy Spirit," etc., which the Bishop pronounces while imposing the right hand on each; according to others it is only the preface or eucharistic prayer; according to others it is the words "Receive power," which the Bishop pronounces while handing to all the book of the Gospels; according to still others it is both the words "Receive the Holy Spirit," the preface, and the words "Receive power" (St. Alphonsus, VI, 748, 737).

Corollary. In order that the form be indubitable, the last opinion must be followed. In addition, if the Diaconate has been doubtfully validly conferred, provision should be made for convalidation (cf. n. 594).

[1] Roman Pontifical, p. 41.

[2] Holy Office, June 22, 1892.

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2. Matter and form of the Presbyterate. In the ordination of a Presbyter: 1. The Bishop "at the same time imposes both hands upon the head of each one to be ordained successively, saying nothing. The same is done after him by all the Priests who are present." This is called by many the first imposition. 2. Then "both the Pontiff and the priests hold their right hands extended over them"; this extension is called by many the second imposition, but it should rather be called a continuation of the first. While the Pontiff holds his hand extended, he says: "Let us pray, dearest brethren," etc. Afterwards "the Pontiff, having laid aside the miter, turned toward the altar, says: Let us pray. And the ministers: Let us bend the knees. Response: Arise. And immediately, turned toward the ordinands, he says: Hear us, we ask," etc. Then, with hands extended before the breast, he says the Preface. 3. The Pontiff "hands to each one successively the chalice with wine and water and the paten placed over it with the host, and they, the ordinands, receive it between the index and middle fingers, and touch the cup of the chalice and the paten at the same time, the Pontiff saying to each: Receive the power to offer Sacrifice to God and to celebrate Masses, both for the living and for the dead, in the Name of the Lord." 4. Finally, he places both hands upon the heads of the ordinands, saying: "Receive the Holy Spirit. Whose sins you shall forgive, they are forgiven them, and whose sins you shall retain, they are retained."[2] This is called the last imposition. Now:

a) The matter of the Presbyterate according to some is only the imposition of hands upon each; according to others, only the extension of the hand toward all; according to others, the imposition of hands upon each and the extension of the hand, which extension is regarded as a continuation of the first imposition, so that both constitute one imposition; according to others, only the handing over of the instruments; according to others, both the imposition of hands upon each, the extension of the hand, and the handing over of the instruments; others hold that the power of sacrificing is conferred in the handing over of the instruments, and the power of absolving in the last imposition of hands (St. Alphonsus, VI, 749). Now:

a) It is most probable that the imposition of hands alone is the matter of the Presbyterate; this opinion Cardinal van Rossum solidly proves.[3] Nevertheless, as we said, it is further disputed whether the imposition of hands upon each alone, or the subsequent extension of the hand, or both, constitutes the matter.

b) Those who hold also either the handing over of the instruments alone as matter, more commonly require physical touch of those instruments, although mediated touch, or touch performed by a veiled

hand, suffices (St. Alphonsus, VI, 742, 743). Three things must be touched: the chalice, the paten, and the host; and, so that all anxiety be forestalled, care must be taken that each be touched. Nevertheless, for validity these suffice: 1. the touch of the chalice and host, the paten not being touched;[4] 2. the touch of the chalice and paten, the host not being touched[5] (St. Alphonsus, VI, 751, 752). Almost the same seems to have to be said of the touch of the paten and host.[6] It is more doubted: 1. whether the touch of the chalice alone, or of the paten alone, or of the host alone suffices; 2. whether the chalice and paten must be consecrated; 3. whether the paten and chalice without host and wine suffice[7] (St. Alphonsus, VI, 750).

b) The form of the Presbyterate consists in the words which correspond to the matter; but in designating the form, authors differ according to the diversity of the matter which they admit. Of those who hold only the imposition of hands as the matter, some place the form in the words alone which are said during the extension of the hand which follows the imposition of hands upon each, in other words, in the prayer "Let us pray, brethren," etc.; others in the prayer "Hear us," etc. alone; others in the Preface alone; others in the prayer "Hear us," etc. and the Preface; others in the prayer "Let us pray, brethren," etc., and the prayer "Hear us," etc. and the Preface.

Corollary. In order that the Presbyterate be conferred certainly validly, there are required: 1. imposition of hands upon each; 2. extension of the hand toward all together with the exhortation "Let us pray, brethren," the prayer "Hear us," and the following Preface; 3. handing over of the consecrated chalice and paten with bread and wine, together with the accompanying words; 4. physical touch of the chalice, paten, and host, or at least of the chalice and host, or of the chalice and paten; 5. imposition of hands at the end of Mass with the words "Receive the Holy Spirit. Whose sins," etc.

[1] Cf. G. Cardinal van Rossum, *De essentia sacramenti Ordinis*.

[2] Roman Pontifical.

[3] *De essentia sacramenti Ordinis*, p. 62 sq.

[4] Holy Office, July 25, 1866; November 22, 1871; June 9, 1875; July 22, 1892.

[5] Holy Office, responses just cited.

[6] Holy Office, March 17, 1897; cf. Sacred Congregation of Rites, December 3, 1661, n. 1221.

[7] Sacred Congregation of the Council, February 11, 1708; Holy Office, July 6, 1898; January 11, 1899.

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3. Matter and form of the Episcopate. In the ordination of a Bishop: 1. The Consecrator, with the assisting Bishops helping, places the open book of the Gospels upon the neck and shoulders of the one to be consecrated, saying nothing. 2. The Consecrator and the assisting Bishops touch the head of the one to be consecrated with both hands, saying: "Receive the Holy Spirit." When this has been done, the Consecrator, standing, with the miter laid aside, says: "Be propitious, O Lord," etc. 3. The Consecrator, with hands extended before the breast, says the Preface. 4. The Consecrator hands the closed book of the Gospel to the consecrated one, saying: "Receive the Gospel," etc.

a) The matter of the Episcopate according to some is only the imposition of the hands of the Consecrator; according to others, only the imposition of the three Bishops; according to others, the imposition of hands and of the book of the Gospels upon the neck and shoulders of the one to be consecrated;[1] according to a very few, besides the things enumerated, the handing over of the book of the Gospels is also required.

b) The form of the Episcopate according to very many is only the preface said or sung by the consecrating Bishop; according to others it consists in the words of the Consecrator alone pronounced in the imposition of hands, namely "Receive the Holy Spirit"; according to others, the same words pronounced by the three Bishops; according to others, the words cited and the prayer "Be propitious," etc.; according to others, the cited words, the prayer "Be propitious," etc., and the following Preface; according to a very few, even the words pronounced in the handing over of the book pertain to the form.

Corollary. In order that the Episcopate be conferred certainly validly, all things are required which with some probability are said to pertain to the matter or form.

[1] Roman Pontifical. In the imposition of the book the Consecrator says nothing; but those who hold it to be partial matter refer also to the imposition of the book the words to be pronounced in the imposition of hands.

Scholion. On Correcting Defects of Ordinations

594 I. Obligation of correcting defects. Commonly there is an obligation of correcting defects: 1. if the ordination was doubtfully valid, in other words, if the defect concerned something certainly or probably essential; 2. if it concerned something accidental which is of the greatest moment. I said commonly; for after receiving a higher Order there is no obligation of correcting defects, even essential ones, admitted in the conferral of lower Orders. The reason is that one who receives a higher Order is considered eminently to receive the lower ones. Nevertheless: 1. a doubtfully valid ordination to the Diaconate, as being an Order of greater moment and a sacrament, seems to have to be convalidated even after the Presbyterate has been received; since the Holy Office[1] resolved that ordination to the Diaconate had to be repeated with respect to a priest whose head the Bishop, while conferring the Diaconate, had not physically touched. 2. Likewise a doubtfully valid ordination to the Presbyterate must be repeated even after the Episcopate has been received; both because the Presbyterate is an Order of the greatest moment and a sacrament, and because it is very doubtful whether the Episcopate contains the Presbyterate, indeed whether the Episcopate is validly conferred on one who is not a priest (St. Alphonsus, VI, 793).[2]

II. Manner of correcting defects. 1. If the defect concerned something certainly or probably essential, commonly the whole ordination must be reiterated. I said commonly, because there are exceptions, for example if in the ordination of a presbyter the last imposition was omitted; in that case it suffices to supply it, as we shall immediately explain.

2. If the defect concerned something accidental, there is no obligation of supplying it, unless it concerns an accidental element of very great moment. In this matter such an element is judged to be the anointing of the hands; but not the imposition of the hand of the presbyters. Nor is there sufficient certainty about others. Besides, from the response of the Holy Office: nothing is to be supplied if in place of the oil of catechumens the oil of Holy Chrism was used (St. Alphonsus, VI, 758).

[1] January 20, 1875 (*Collectio*, n. 1431).

[2] Besides, canon 1004 is to be observed: If someone, already promoted to some orders in an eastern rite, has obtained from the Apostolic See an indult of receiving higher orders in the Latin rite, he must first receive in the Latin rite the orders which he did not receive in the eastern rite.

595 Corollary I. The whole ordination must be repeated: 1. if in the ordination of a Deacon or Presbyter the first imposition was omitted; 2. if in it physical contact did not take place;[1] 3. if the second imposition of hands was omitted by the Bishop, that is, the one which follows the first, in which nothing is said;[2] 4. if the handing over of the instruments was omitted, or the respective words were not added or were substantially corrupted;[3] 5. if the chalice was handed over without wine or the paten without the host;[4] 6. if it is doubted whether the ordinand physically touched the instruments or one of those instruments whose touch, according to what was said on p. 456, is regarded as necessary with some probability.

Corollary II. It suffices to supply the defect if in the ordination of a Presbyter the third imposition of hands was omitted, or if the form corresponding to that imposition was essentially corrupted.[5]

Corollary III. Nothing is to be repeated: 1. if the Bishop after the first imposition, duly performed, "did not hold his hands extended over the ordained person also through the interval which intervenes between the first and second imposition of hands";[6] 2. "if the Bishop, after physical touch of the heads of the ordinands, had his hand extended over the ordinands at least immediately before the recitation of 'Let us pray,'" etc.[7]

[1] July 22, 1874 (*Collectio*, n. 1421).

[2] Holy Office, July 4, 1900 (*Collectio*, n. 2086); May 7, 1902 (*Collectio*, n. 2140).

[3] Holy Office, November 30, 1898; cf. response of the Holy Office, July 19, 1899 (*Collectio*, n. 2058).

[4] Holy Office, June 20, 1886; September 1, 1892; July 6, 1898 (*Collectio*, n. 2008); January 11, 1899 (*Collectio*, n. 2032).

[5] Sacred Congregation of Rites, May 22, 1841, n. 2836; Holy Office, March 4, 1874.

[6] Sacred Congregation of Rites, June 14, 1893, n. 3307.

[7] Holy Office, September 12, 1877 (*Collectio*, n. 1482); November 30, 1898.

596 III. Time for correcting defects. "As often as an ordination must be repeated or some rite supplied, whether absolutely or conditionally, this can be done even outside the times and secretly" (canon 1007).

Note 1. "Even if someone could rest in the first ordination on account of some opinion considered morally certain, nevertheless he will not sin if, while the opposite opinion of others stands for the nullity of the sacrament, he is ordained again conditionally for greater peace of soul; and the Bishop also can licitly do this for his benefit. And the reason seems to be that anxiety itself about the doubt, provided it is vehement, is a just cause for repeating ordination conditionally" (St. Alphonsus, VI, 751). Nevertheless one must beware of scruples, which easily creep in; that is, the anxious and agitated ordinand, after such a great series of actions, easily doubts whether he duly performed something. But ordinarily doubts of this kind should be rejected at once, and to this end it should be considered that both the Bishop and the ministers carefully attend lest anything be omitted either by the one ordaining or by the one being ordained, especially from those things which perhaps are required for validity.

Note 2. If some doubt arises about the validity of an ordination, recourse must be had to the Sacred Congregation of the Sacraments, which, if the doubt is connected with dogmatic doctrine, will remit the matter to the Holy Office. Religious should approach the Sacred Congregation of Religious, which will have recourse to the Sacred Congregation of the Sacraments. If the discussion concerns a case of conscience, the Sacred Penitentiary should be approached.

Part III. On the Effects of the Sacrament of Order

597 The effects of the sacrament of Order are:

I. Sanctifying grace: in itself second grace, accidentally first grace (n. 6).

II. Sacramental grace, which consists in this: that the sanctifying grace which the sacrament of Order confers is both directed to this, that the ordained lead a life congruent with their state and faithfully fulfill the ministries annexed to it, and gives a right to actual graces to be obtained in order to those effects.

III. Character. 1. The existence of character is clear from what was said in n. 8. But from the fact that character is imprinted through the sacrament of Order, it is deduced that through all Orders which are sacraments, and therefore through Diaconate, Presbyterate, and Episcopate, character is imprinted. It is disputed, however, whether those individual Orders imprint a distinct character, or only one character, which is enlarged through the following Orders.

2. The effect of the character is that a man receives the power of confecting and administering sacred things and is deputed to them. Nevertheless, character and power do not differ in reality, but consist in the same real quality. But what kind of power is conferred by the individual Orders is sufficiently clear from what was said in n. 588.

Dissertation II. On the Ministration of Order

We shall speak first of the person ministering, then of the liceity of ministering.

Part I. On the Person Ministering

598 I. The ordinary minister of sacred ordination is a consecrated Bishop (canon 951); namely, in this sense, that, once his consecration is posited, he always confers Orders validly. It is disputed only whether a Bishop acts validly who, without an apostolic dispensation, consecrates a Bishop without two other assisting Bishops. That such a manner of acting is illicit is clear both from canon 954 and from the Roman Pontifical; nevertheless it seems altogether to be said that it is valid. For so Pius IV in the Brief of August 11, 1562, the Holy Office,[1] and the Sacred Congregation of Propaganda Fide.[2] There is added the fact that only one of the Bishops in the Roman Pontifical is called the consecrator, and that in the other sacraments also one minister suffices.

Corollary. Ordinations performed by Jansenist, Old Catholic, and Russian Bishops are valid. But the ordinations of Anglicans are invalid by defect of minister, form, and intention, as Leo XIII authentically declared.[3]

[1] March 13, 1669 (*Collectio*, n. 177).

[2] May 18, 1695 (*Collectio*, n. 239).

[3] Constitution *Apostolicae curae*, September 13, 1896.

599 II. The extraordinary minister of sacred ordination is one who, although he lacks the episcopal character, has received from law or from the Apostolic See by a special indult the power of conferring some Orders (canon 951). Now this power has been conferred by law as follows:

1. Cardinals, from their promotion in Consistory, enjoy the faculty of conferring first tonsure and minor Orders, provided the one to be promoted has dimissorial letters from his proper Ordinary (canon 239, § 1, 22).
2. A Vicar and Prefect Apostolic, an Abbot or Prelate nullius, if they lack the episcopal character, can nevertheless, in their own territory and only while they hold office, confer first tonsure and minor Orders both on their own secular subjects according to the norm of canon 956,[1] and on others who exhibit the dimissorial letters required by law; ordination performed by them outside these limits is null (canon 957, § 2).
3. A Provicar and Proprefect, and others to whom the care of a vicariate or prefecture has devolved according to the norm of canon 309, enjoy the faculty with which the Vicar or Prefect was endowed (canon 310, § 2).
4. A regular Abbot of governance, even without a territory nullius, can confer first tonsure and minor Orders, provided the one to be promoted is subject to him by force of at least simple profession, and he himself is a priest and has legitimately received the abbatial blessing. Outside these limits, ordination conferred by him, every contrary privilege having been revoked, is null, unless the one ordaining is endowed with the episcopal character (canon 964, 1°).

Question. Can the Supreme Pontiff confer on a simple priest the power of ministering the Subdiaconate and Diaconate?

Response 1. With respect to the Subdiaconate, it is commonly admitted: both because it is not a sacrament; and because Pope St. Gelasius, in his letter to Bishop Lucianus,[2] seems to teach this implicitly; and because Supreme Pontiffs have several times put this doctrine into practice.[3]

Response 2. With respect to the Diaconate, there is dispute. Some affirm it, relying on the Bulls of which there will be discussion presently. Others deny it, and they respond to the things alleged by their opponents: 1° the Bull of Innocent VIII directed to the Cistercian Abbots (1489), at least insofar as it grants the faculty of conferring the Diaconate, does not seem genuine;[4] 2° the Bull of Boniface IX to the Augustinian Abbot of the monastery of St. Osyth in the province of London (1400), by which, besides the faculty of ministering the Subdiaconate and Diaconate, the faculty of ministering the Presbyterate was also conferred, was revoked by him in the year 1403.[5] There is added that the said Bull probably conferred nothing else except permission to receive Orders independently of the Bishop of London, so that the matter concerned not the power of Order but the power of jurisdiction.

[1] Cf. p. 462.

[2] Migne, *Patrologia Latina* LIX, p. 50 (in VI).

[3] Cf. Many, *De S. Ord.*, p. 146.

[4] Cf. Gasparri, *De Sacr. Ordin.*, t. II, p. 85; Wernz, *Ius Decretalium*, II, p. 48; Pastor, *Geschichte der Papste*, III, p. 253.

[5] Cf. Gillmann, *Zur Lehre der Scholastik vom Spender der Firmung und des Weihesakraments*, p. 137; Sagmuller, *Kirchenrecht*, I, p. 202 (ed. 1914); *Dictionnaire de theologie catholique*, s.v. Ordre, la theologie moderne, col. 1386.

Part II. On the Liceity of Ministering

600 First note these special points prefaced by the Code: 1° No one may promote to a higher Order one ordained by the Roman Pontiff without the faculty of the Apostolic See (canon 952). 2° Episcopal consecration is reserved to the Roman Pontiff in such a way that no Bishop may consecrate anyone as Bishop unless the pontifical mandate has first been established (canon 953). The consecrating Bishop, however, must employ two other Bishops who assist him in the consecration, unless there has been a dispensation from the Apostolic See in this matter (canon 954). The dispensation is given in such a way that two priests from the more worthy assist the consecrating Bishop.

Besides those special points, this principle holds with respect to the liceity of ministering Orders: In order that someone who enjoys the power of ordaining may licitly minister Orders, it is required that he either be the Superior of the one to be ordained, or have received dimissorial letters from the Superior of the one to be ordained in this matter (canon 955, § 1); and these things also hold if first tonsure is in question (canon 950; Pontifical Commission).[1] Having noted this principle, we shall speak separately about the ordination of seculars and of religious.

[1] February 17, 1930 (*A.A.S.* 1930, p. 195, ad I).

601 I. Ordination of seculars. The Code states: Each one is to be ordained by his proper Bishop, or with that Bishop's legitimate dimissorial letters (canon 955, § 1). Therefore a Bishop licitly ordains: 1° his own subject, unless this subject is of an oriental rite, in which case he cannot licitly ordain him without an apostolic indult; 2° another's subject who presents to him legitimate dimissorial letters received from his proper Bishop. Here, however, there are equated with a Bishop the Vicar and Prefect Apostolic, the Provicar and Proprefect, and others to whom the care of a vicariate or prefecture has devolved according to the norm of canon 309, and an Abbot or Prelate nullius (canon 957; canon 310, § 2). If, however, they lack the episcopal character, their power of validly ordaining is limited, as we said in n. 599.

But in order that the requisites for licit ordination may be clearer, something fuller must be said both about the proper Bishop and about dimissorial letters.

1. The proper Bishop, as regards the ordination of seculars, is only the Bishop of the diocese in which the one to be promoted has either: 1° domicile together with origin;[1] or 2° simple domicile without origin, but after an oath has been emitted by which the one to be promoted confirms his intention of remaining perpetually in the diocese; or 3° simple domicile without origin and without oath, namely if it is a question of promoting to Orders a cleric who has already been incardinated in the diocese by first tonsure, or of promoting a student who is destined for the service of another diocese according to the norm of canon 969, § 2, or of promoting a professed religious, of whom canon 964, n. 4 treats[2] (canon 956).

2. Dimissorial letters are letters by which a Bishop or competent Superior sends a subject to the minister of ordination so that he may be ordained by him. Now:

a) Dimissorial letters for seculars can be given, so long as they retain jurisdiction in the territory, by: 1° the proper Bishop, after he has legitimately taken possession of his diocese, although not yet consecrated; 2° the Vicar General, yet by special mandate of the Bishop; 3° with the consent of the Chapter, the Vicar Capitular after a year from the vacant see; within the year, however, only for those

constrained by reason of a benefice received or to be received, or by reason of some certain office for which, on account of the necessity of the diocese, provision must be made without delay; 4° the Vicar and Prefect Apostolic, an Abbot or Prelate nullius, although they lack the episcopal character, even for major Orders (canon 958, § 1); 5° the Provicar and Proprefect Apostolic who has assumed the whole governance (canon 310, § 2, compared with canon 958, § 1, 4°; Pontifical Commission).[3]

Note. The Vicar Capitular is not to grant dimissorial letters to those who have been rejected by the Bishop (canon 958, § 2).

Those enumerated above likewise can give dimissorial letters: 1° for non-exempt religious; 2° for exempt religious professed with temporary vows and to be promoted to major Orders. For their ordination is governed by the law of seculars (canon 964, 4°).

b) Dimissorial letters are not to be granted unless all testimonies which are required by law have first been obtained (canon 960, § 1); for what testimonies are required by law, see n. 650. Furthermore, note: If after dimissorial letters have been given by the Ordinary new testimonies are necessary according to the norm of canon 994, § 3 (n. 650), an outside Bishop is not to ordain before he has received them (canon 960, § 2). But if the one to be promoted has spent time sufficient to contract an impediment according to the norm of the same canon 994 (n. 650) in the very diocese of the ordaining Bishop, this Bishop is to collect the testimonies directly (canon 960, § 3).

c) Dimissorial letters can be sent by the proper Bishop, likewise by the others enumerated under a), even by a Cardinal suburbicarian Bishop,[4] to any Bishop having communion with the Apostolic See, with the sole exception, apart from an apostolic indult, of a Bishop of a rite different from the rite of the one to be promoted (canon 961); likewise dimissorial letters can be sent to those who, according to what was said on p. 462, are equated with a Bishop.

Note. The proper Bishop is not to dismiss his subjects to another unless a just cause prevents him from ordaining them himself (canon 955, § 2).

[1] The place of origin of a son, even a neophyte, is that in which, when the son was born, the father had domicile, or, in the absence of domicile, quasi-domicile; or, if the son is illegitimate or posthumous, the mother. If it is a question of the son of vagabonds, the place of origin is the very place of birth; if of an exposed child, it is the place in which he was found.

[2] Cf. n. 602.

[3] July 20, 1929, ad I (*A.A.S.* 1929, p. 573).

[4] Before the Code a Cardinal suburbicarian Bishop could direct dimissorial letters only to the Cardinal Vicar of the City.

602 II. Ordination of religious. 1. A regular Abbot of governance, even without a territory nullius, can confer first tonsure and minor Orders, provided the one to be promoted is subject to him by force of at least simple profession, and he himself is a priest and has legitimately received the abbatial blessing. Outside these limits, ordination conferred by him, every contrary privilege having been revoked, is null, unless the one ordaining is endowed with the episcopal character (canon 964, 1°).

2. Exempt religious can licitly be ordained by no Bishop without dimissorial letters from their proper major Superior (canon 964, 2°). But:

a) The said Superiors can grant dimissorial letters to those professed with temporary vows only for first tonsure and minor Orders (canon 964, 3°); but to those professed with perpetual vows, also for major Orders.

b) Dimissorial letters from a religious Superior must be sent to the Bishop, or quasi-Bishop, for example a Prefect Apostolic and so on, of the diocese, or quasi-diocese, in which the religious house is situated, to whose family the ordinand belongs (canon 965). Only then can the Superior send dimissorial letters to another Bishop, when the diocesan Bishop has given permission, or is of a different rite from the religious to be ordained, or is absent, or is not going to have an ordination at the next legitimate time, or finally when the diocese is vacant and is not ruled by someone endowed with the episcopal character (canon 966, § 1). But it is necessary that in individual cases this be established for the Bishop who is to ordain from an authentic testimony of the episcopal Curia (canon 966, § 2). Religious Superiors should take care not to send a subject to be ordained to another religious house in fraud of the diocesan Bishop, or deliberately defer the granting of dimissorial letters to that time when the Bishop will be absent or will have no ordinations (canon 967).

Note. The privilege of receiving Orders from any Catholic Bishop must have been granted to religious nominally and directly, not by communication, after the Council of Trent, as Benedict XIV had decreed in the Constitution *Impositi nobis*.[1]

c) A religious Superior in his dimissorial letters must testify not only that the one to be promoted has emitted religious profession and belongs to the family of the religious house subject to him, but also about studies completed and about the other things required by law (canon 995, § 1); for what testimonies are required by law, see n. 650. For the rest, the Bishop, after receiving these dimissorial letters, does not need other testimonial letters (canon 995, § 2).

3. The ordination of: 1° non-exempt religious; 2° exempt religious professed with temporary vows and to be promoted to major Orders is governed by the law of seculars, every indult granted to Superiors to give dimissorial letters to those professed with temporary vows for major Orders having been revoked (canon 964, 4°).

4. Novices are not to be promoted to Orders during the novitiate (canon 567, § 2).

[1] February 27, 1747.

603 III. Points to be noted concerning the ordination both of seculars and of religious. 1. He who can give dimissorial letters for receiving Orders can also confer those same Orders himself, if he has the necessary power of Order (canon 959).

2. Any Bishop, after receiving legitimate dimissorial letters, licitly ordains another's subject, provided he himself can in no way doubt the genuine trustworthiness of the letters (canon 962).

3. Dimissorial letters can be limited or revoked by the grantor himself or by his successor, but once granted they are not extinguished when the right of the one giving them is dissolved (canon 963).

Dissertation III. On the Reception of Order

We shall treat first of the person receiving Orders, then of admission and preparation for the reception of Orders, and finally of the manner of receiving Orders.

Part I. On the Person Receiving Orders

604 The subject capable of receiving ordination is every baptized male who has not yet received it (canon 968, § 1).

It is said every, even infants and those perpetually without use of reason. "By the concordant judgment of theologians and canonists," says Benedict XIV, "it has been determined that this ordination is to be considered valid but illicit, provided it labors under no substantial defect of matter, form, and intention in the ordaining Bishop; the contrary opinion, which has rare followers and which has never pleased the supreme tribunals and Congregations of the City, not being heeded."[1] It was disputed only to some extent whether the Episcopate can validly be received before the use of reason has been acquired. Today, however, this is commonly admitted (cf. St. Thomas, *Supplement*, q. 39, a. 2).

Nevertheless, an infant ordained in this way without his own will is bound by no obligations of clerics unless, fully master of his mind after completing the sixteenth year, he has ratified the ordination.[2]

Nor, in order that someone be capable of receiving a higher Order, is it required that he have received a lower Order. An exception, however, according to the much more common opinion, is the Episcopate, which cannot validly be conferred if the priesthood has not already been received (St. Alphonsus, VI, 793).

[1] Instruction *Eo quamvis tempore*, § 20, May 4, 1745.

[2] Benedict XIV, cited Instruction, § 28 sq.; Constitution *Anno vertente*, § 7 sq., May 19, 1750.

Part II. On Admission and Preparation for the Reception of Orders

605 I. No one from among seculars is to be ordained who, in the judgment of his proper Bishop, is not necessary or useful for the churches of the diocese. Yet the Bishop is not prohibited from promoting his own subject who is destined in the future, after legitimate excardination and incardination, for the service of another diocese (canon 969).

II. First tonsure and Orders are to be conferred only on those who have the purpose of ascending to the Presbyterate and whom one may rightly conjecture will someday be worthy priests (canon 973, § 1). Yet an ordained man who refuses to receive higher Orders can neither be compelled by the Bishop to receive them, nor be prohibited from the exercise of the Orders received, unless he is held by a canonical impediment or some other grave cause stands in the way, in the judgment of the Bishop (canon 973, § 2).

III. The Bishop is to confer sacred Orders on no one unless from positive arguments he is morally certain about that person's canonical suitability; otherwise he not only sins most gravely, but also commits himself to the danger of communicating in another's sins (canon 973, § 3). It is said from positive arguments; therefore it does not suffice that nothing is opposed, or that the ordinand has not committed a sin which can be juridically proved. For the rest, these things do not suffice for acquiring moral certainty.

Nor is one to depart from these things on account of a shortage of priests. "Care must be taken," says Benedict XV in his letter to the Bishops of Bolivia,[1] "lest those less worthy also be admitted to the priesthood by reason of necessity... Therefore we must weigh not how many, but what kind of sacred ministers we take up; and, after trying all the things which prudence may suggest for fostering the pursuit of the priesthood among youth, let us diligently commend the matter to God, in whose hand it is." Add these words of the Fourth Lateran Council: "It is better... to have fewer ministers, but upright... and useful ones, than more who... will be of no avail."[2] Likewise these words of St. Thomas: "God never so deserts His Church that suitable ministers sufficient for the necessity of the people cannot be found, if the worthy were promoted and the unworthy repelled. Even if as many ministers could not be found as there now are, it would be better to have a few good ministers than many bad ones" (*Supplement*, q. 36, a. 4, ad 1).

But if applicants are superabundant, the Bishop, in order to guard against idleness, should choose the better ones and leave aside the less suitable; and, with the things that must be observed being observed, religious Superiors also can apply these things with respect to those whom they foresee will be almost useless in religion for undertaking priestly offices.

IV. The proper Bishop or major religious Superior can forbid his clerics ascent to Orders for any canonical cause, even occult, and even extrajudicially, with the right of recourse to the Holy See remaining intact, or also to the Moderator General if it is a question of religious whose ascent has been forbidden by the Provincial Superior (canon 970).

V. Care must be taken that those aspiring to sacred Orders be received into the Seminary from tender years; but all are bound to remain there at least through the entire curriculum of sacred theology, unless the Ordinary has dispensed in particular cases for a grave cause, his conscience being burdened. Those who aspire to Orders and legitimately remain outside the Seminary are to be commended to a pious and suitable priest, who is to watch over them and form them to piety (canon 972).

[1] August 4, 1918.

[2] Chapter 27.

Part III. On the Manner of Receiving Orders

Section I. On the Requisites for Valid Reception

606 I. In infants and those perpetually without use of reason, no intention is required; this follows from the fact that they are incapable of eliciting an intention and yet, if they are ordained, they receive ordination validly (n. 604).

II. In adults intention or consent is required; habitual intention suffices. But it is disputed to some extent whether consent to the very Order to be received is required, or whether it suffices that the ordinand consent to the application of the external rite, although he does not wish to receive the Order (n. 40).

One who consents through grave fear, for example compelled by threats or terror, is indeed validly ordained; but as canon 214 has it: "A cleric who, compelled by grave fear, receives a sacred Order and afterward, once the fear has been removed, has not ratified the same ordination at least tacitly by the exercise of the Order, while nevertheless intending by such an act to subject himself to clerical obligations, is to be reduced to the lay state by sentence of a judge, after the coercion and the lack of ratification have been legitimately proved, without any obligations of celibacy and of the canonical hours. But coercion and lack of ratification must be proved according to the norm of canons 1993-1998."[1] These things, as is clear, do not pertain to him whom fear impressed from within, for example fear that, if the lay state is chosen, he will lead a miserable life, has led to Orders.

[1] Cf. *A.A.S.* 1931, p. 120 and p. 457 sq., where there are: 1° the remedy for preventing ordinations from fear; 2° the rules to be observed in processes concerning the nullity of sacred ordination or of the burdens inhering in sacred Orders.

Section II. On the Requisites for Licit Reception

607 In order that someone licitly receive Orders, he must be endowed with certain requisites, and be immune from irregularity or some other impediment (cf. canon 968, § 1). But those who are held by irregularity or some other impediment, even if it arose after ordination and even without their own fault, are prohibited from exercising the Orders received (canon 968, § 2). We shall speak first about the positive requisites, then about irregularities and the other impediments from which the ordinand must be immune.

Chapter I. On the Positive Requisites

608 *(n. 608 stands at the heading Chapter I. On the Positive Requisites.)*

609 608-609. Canon 974 states: "In order that someone may licitly be ordained, that is, receive tonsure and Orders, there are required: 1° received sacred Confirmation; 2° morals congruent with the Order to be received; 3° canonical age; 4° due knowledge; 5° reception of the lower Orders; 6° observance of interstices; 7° a canonical title, if it is a question of major Orders. As regards episcopal consecration, the prescription of canon 331 is to be observed." We shall speak of each, omitting those things which pertain to episcopal consecration, after first saying certain things about vocation, about the state of grace, and about the intention of ascending to the Presbyterate, and adding some things about the intention with which Orders are to be received.

I. Vocation;[1] concerning which it is useful to establish the following.

1. At least some vocation must be admitted altogether, so that it is licit for no one to approach ordination merely of his own accord. This is clear from these words of Sacred Scripture: "Nor does anyone take the honor to himself, but he who is called by God as Aaron was";[2] these words some, considering the context, understand of ecclesiastical vocation, others of divine vocation.

2. A twofold vocation is required, ecclesiastical, that is, proceeding from the Bishop, and divine.

a) No one denies that ecclesiastical vocation is required. For the rest, the Cardinal Secretary of State on July 2, 1912, signified that Pius X approved the judgment pronounced by the Commission of Cardinals concerning the work of Lahitton; and this judgment declared that the work *La vocation sacerdotale* was in no way to be reproved, indeed that in many respects it was outstandingly to be praised, for example "insofar as it maintains: 1° that no one ever has any right to ordination antecedently to the election of the Bishop," etc.[3]

b) Divine vocation also is required. For: 1° Canon 1353 enacts: "Let priests, especially pastors, take care that boys who show signs of ecclesiastical vocation be guarded with special care from the contagion of the world, be formed to piety, be imbued with the first studies of letters, and that the seed of divine vocation in them be fostered." And canon 1357, § 2 states: "Above all let the Bishop strive frequently to visit the Seminary personally, and to acquire for himself a fuller knowledge of the character, piety, vocation, and progress of the students, especially on the occasion of sacred ordinations." But by these words ecclesiastical vocation cannot be signified, since it has not yet taken place. There is added the authority of the Holy Fathers and Doctors of the Church. Thus, for example, St. Cyprian,[4] St. Cyril of Alexandria,[5] St. Bernard,[6] St. Thomas (p. 3, q. 27, a. 4), and St. Alphonsus (VI, 802) teach.

Nor is opposed the judgment pronounced by the Commission of Cardinals concerning the work of Lahitton, which praises the said work "insofar as it maintains: 1° (that which we have already noted) that no one ever has any right to ordination antecedently to the free election of the Bishop; 2° that the condition which must be attended to on the part of the one to be ordained, and which is called priestly vocation, by no means consists, at least necessarily and by ordinary law, in some internal aspiration of the subject or invitations of the Holy Spirit toward entering the priesthood; 3° but on the contrary, that nothing more is required in the ordinand, in order that he be duly called by the Bishop, than right intention together with suitability placed in those gifts of grace and nature, and proved through that probity of life and sufficiency of doctrine, which produce a founded hope that he will be able rightly to undertake the offices of the priesthood and holily observe its obligations." But these things are well composed with the opinion which admits divine vocation, if it is said that in the foregoing the discussion concerns those things which must be attended to by the Bishop in order that he may duly call someone to Order; it suffices to attend to the signs of divine vocation. There is added that right intention cannot be had without the grace of God; and, strictly speaking, this already suffices for us to be able to speak of divine vocation.

3. The signs of divine vocation are right intention and suitability. Right intention consists in the will of embracing Orders with a view to the glory of God and the salvation of souls (St. Alphonsus, VI, 802). Suitability is constituted by due knowledge and due probity of life, of which there will be discussion in nn. 613 and 615.

Sometimes extraordinary signs of divine vocation are present, when, namely, God manifests it in a miraculous way, as happened in St. Paul, or by unusual movements of grace.

Corollary I. One who does not follow a recognized vocation cannot be excused from sin, since, deprived of the special graces especially annexed to vocation, he exposes himself to grave danger of departing from the way of salvation (cf. the things said by St. Alphonsus about the religious state, IV, 78).

Corollary II. One who embraces the clerical state without vocation seems to sin gravely. The reason is that he undertakes obligations so difficult that they are scarcely observed without special helps, without a founded hope of receiving those helps (St. Alphonsus, V, 803).[7]

Corollary III. It is unlawful to force anyone in any way, for any reason, to the clerical state, or to turn away from the same state one who is canonically suitable (canon 971).

[1] Cf. Lahitton, *La vocation sacerdotale*; Jansen, in *Ned. Kath. Stemmen*, 1911, p. 324 sq.; 1912, p. 270 sq.; Hurtaud, *La vocation au sacerdoce*; Vermeersch, *De vocatione religiosa et sacerdotali*.

[2] Heb. 5:4; cf. 1 Tim. 3:10; Roman Catechism, p. II, c. 7, q. 3.

[3] *A.A.S.* 1912, p. 485.

[4] Epistle 55 to Pope Cornelius, n. 5, Migne, t. 3, col. 803.

[5] *De adoratione in Spiritu et veritate*, book II, Migne, t. 182, col. 585.

[6] Sermon 58, *In Cantica*, n. 3, Migne, t. 183.

[7] Cf. Roman Catechism, p. 2, c. 7, qq. 3 and 4.

610 II. The state of grace is required under grave obligation in receiving Orders which are sacraments; with respect to the others, there is not a grave obligation.

611 III. The intention of ascending to the Presbyterate (canon 973, § 1); the direct grave obligation is not sufficiently established, but one who receives a major Order without the said intention commonly gravely deceives his Superiors.

612 IV. Received sacred Confirmation, which canon 974, § 1, 1° prescribes, and concerning which the Council of Trent says: "Let those not be initiated by first tonsure who have not received the Sacrament of Confirmation."[1] Now the obligation of receiving Confirmation before first tonsure is quite probably only slight, because the Council of Trent, from which the Code is not judged to depart, speaks more mildly. Nor do the words of the Sacred Congregation of the Council[2] seem to be pressed too much, since it declares that one who has received first tonsure or Orders without being confirmed, as one badly promoted, cannot ascend to other Orders nor receive benefices without dispensation of the Apostolic See.

[1] Session 23, cap. 4, *De reformatione*.

[2] September 27, 1601.

613 V. Morals congruent with the Order to be received (canon 974, § 1, 2°; cf. canon 973); by these are understood especially piety, chastity, and sobriety, exercised, of course, through acts which do not merely present the external appearance of virtue. Therefore the said virtues are prescribed also by ecclesiastical law. Likewise they are prescribed by the moral law, and indeed, especially with respect to sobriety and chastity, under grave obligation: both by reason of the sacred and most worthy office, and by reason of the danger lest the ordained man, deprived also of the assistance of conjugal life, fall into many sins and be a grave scandal to others (St. Alphonsus, VI, 63 sq.; *Homo Apostolicus*, last tract, n. 16, 17). St. Thomas says thus: "Through Sacred Order someone is deputed to the most worthy mysteries,

by which service is rendered to Christ Himself in the sacrament of the altar, for which a greater interior sanctity is required than the religious state requires" (2.2, q. 184, a. 8). And elsewhere: "One who is entangled in some vice ought not to be admitted to the ministry of Order" (*Supplement*, q. 35, a. 1, ad 3). Again: "For the suitable execution of Orders not just any goodness suffices, but excellent goodness is required" (*Supplement*, q. 35, a. 1, ad 3). And: "Those who are applied to the divine mysteries ought to be perfect in virtue" (In 4 Sent., d. 24, q. 3, a. 1). And: "Interior perfection is required for this, that someone worthily exercise acts of this kind" (2.2, q. 184, a. 6; cf. q. 189, a. 1, ad 3).

How greatly Bishops and other ecclesiastical Superiors must attend to morals congruent with the Order to be received is gathered from innumerable ecclesiastical documents, of which it is pleasing to bring forward the principal ones. Innocent III, in his Decretal which begins *A multis*, *De Aetat. et Quantit.*, enacts: "Let no one be permitted to approach sacred Order unless he is either a virgin or is of proved chastity." The Council of Trent says: "Let Bishops know... that not every individual established in that age must be assumed to these Orders, but only those who are worthy, and whose proved virtue is old age."[1] The Roman Catechism says: "In him who is to be created a priest, integrity of life and morals ought greatly to be commended."[2] The same things are inculcated by Benedict XIV in his Encyclical *Ubi primum*,[3] Leo XIII in the Encyclical *Etsi nos*,[4] in his letter to the Bishops of Prussia,[5] and in his Encyclical to the Bishops of Italy,[6] and Pius X in the Motu proprio *Sacrorum Antistitum*.[7]

Corollary I. The things we have said about the moral law hold perfectly indeed for the priesthood alone, but less perfectly also for the Subdiaconate, and a fortiori for the Diaconate; and this all the more because today hardly anyone receives a major Order without being about to ascend to the priesthood.

Corollary II. Definitive judgment about the required morals belongs to the Bishop. Hence canon 1357, § 2: "Above all let the Bishop strive frequently to visit the seminary personally, carefully to watch over ecclesiastical instruction, and to acquire for himself a fuller knowledge of the character, piety, vocation, and progress of the students, especially on the occasion of sacred ordinations." A grave obligation also falls on Superiors, Directors, and confessors to keep the unworthy from Orders, with the things that must be observed being observed. "Whoever," says Leo XIII in his Encyclical to the Bishops of Italy,[8] "in the course of education shall have shown inclinations less suited to a priestly vocation, let them be sent away; and in admitting clerics to Sacred Orders the greatest weighing must be applied." And the Sacred Congregation of Bishops and Regulars, in the norms for the seminaries of Italy, stated: "Besides the spiritual director of the students, certain learned and pious priests shall be designated for hearing their confessions; mindful of their grave obligation and according to the track of approved authors, they will provide counsels and lights to their penitents in their doubts, imposing the obligation of withdrawing from the ecclesiastical state on those who have shown themselves not to be called" (n. 2).[9]

Corollary III. One habituated in vice, for example of lust or drunkenness, is bound under grave obligation to desist from receiving sacred Order until he has put on morals congruent with the Order, indeed until for a notable time, for example for six months, he has conducted himself as amended, so that he must be said to have put on different morals and can form moral certainty that he will fulfill the obligations annexed to the Order. Except the case, however not easily to be presumed, in which someone is healed by an extraordinary impulse of grace (St. Alphonsus, VI, 802). So also the Venerable Paul Segneri, Leonard of Port Maurice, and innumerable others; cf. also the norms of the Sacred Congregation of Bishops and Regulars cited above.

For the rest, with respect to sins of lust, one must proceed more severely if the sins are with persons of the other sex than if they are solitary; still more severely if the discussion concerns sins with persons of the same sex. If the latter arise from a passing passion, greater hope of amendment shines forth; but if they proceed from an abnormal and permanent passion - in which case affection toward the other sex is lacking - hope of amendment is to be regarded as practically none.

In doubt whether morals congruent with the Order to be received are present, ordination should be deferred, unless, all things considered, it is better to persuade the ordinand to abstain from receiving Sacred Orders.

[1] Session 23, cap. 12, *De reformatione*.

[2] Part II, c. VII, q. 28.

[3] December 3, 1740.

[4] February 25, 1884.

[5] January 6, 1886.

[6] December 8, 1902.

[7] September 1, 1910.

[8] December 8, 1902.

[9] In *Monitor ecclesiasticus* 1910, p. 123.

614 VI. Canonical age for tonsure and minor Orders is not directly established; but, as canon 976, § 1 states: "No one, whether secular or religious, is to be promoted to first tonsure before the theological course has been begun." With respect to major Orders, canon 975 enacts: "The Subdiaconate is not to be conferred before the twenty-first year has been completed; the Diaconate before the twenty-second has been completed; the Presbyterate before the twenty-fourth has been completed." In doubt whether someone has arrived at the required age, he cannot receive the Order, because the prohibition of receiving it, as the prior thing, is of the better condition (St. Alphonsus, VI, 799; t. I, n. 229).

615 VII. Due knowledge is imposed both on religious and on seculars. Now:

1. No one, whether secular or religious, is to be promoted to first tonsure before the theological course has been begun (canon 976, § 1).
2. The Subdiaconate is not to be conferred except at the end of the third year of the theological course; the Diaconate, except when the fourth year has begun; the Presbyterate, except after the middle of that same fourth year (canon 976, § 2).
3. The theological course must have been completed not privately, but in schools instituted for this according to the plan of studies determined by canon 1365 (canon 976, § 3).
4. In order that someone can be promoted to the Episcopate, he must be endowed with the degree of doctor or at least licentiate in sacred theology or canon law in some university or Institute of studies approved by the Holy See, or at least be truly expert in those same disciplines; but if he belongs to some religious institute, he must have from his major Superiors either a similar title or at least a testimony of true expertise (canon 331, § 1, 5°).

616 VIII. Reception of lower Orders; namely, Orders are to be conferred gradually, so that ordinations by leap are altogether prohibited (canon 977; cf. Council of Trent).[1] The prohibition of receiving

Orders by leap is grave, as is clear both from the gravity of the words which the cited canon and Council of Trent use, and from the attached penalty (cf. canon 2374).

[1] Session 23, canon 2 and cap. 11, 14, *De reformatione*.

617 IX. Observance of interstices is chiefly prescribed so that "those promoted may exercise themselves in the Orders received, according to the prescription of the Bishop" (canon 978, § 1), and may always show themselves more suitable for receiving the Presbyterate;[1] these words, however, are not to be understood as of strict precept. These interstices are to be observed:

1. The interstices between first tonsure and the Ostiariate, or between the individual minor Orders, are entrusted to the prudent judgment of the Bishop (canon 972, § 2). Nevertheless it is not licit: 1° to confer first tonsure together with any of the minor Orders; nor 2° to confer all minor Orders at the same time (cf. canon 978, § 3). Yet a contrary custom is not reproved, as happens in those cases of which we shall now speak.
2. Between the Acolytate and the Subdiaconate at least one year must intervene; between the Subdiaconate and the Diaconate, and likewise between the Diaconate and the Presbyterate, at least three months, unless the necessity or utility of the Church, in the judgment of the Bishop, requires otherwise (cf. canon 978, § 2). The year of interstices can be computed either ecclesiastically, for example from one Saturday within the Octave of Pentecost to another, or civilly, for example from the first day of March to the same day of the next following year.

As is clear from the cited canon, the Bishop can dispense from interstices for a cause of public necessity or utility, not only seculars but also religious; and because no limitation is added, he can even grant that Orders be conferred on continuous days. Seculars and non-exempt religious are dispensed by the proper Bishop; exempt religious by him who legitimately ministers Orders to them. Nevertheless, without the special permission of the Roman Pontiff it is never licit: 1° to confer minor Orders with the Subdiaconate; 2° to confer two sacred Orders on one and the same day, any contrary custom being reproved (cf. canon 978, § 3).

Note. Regulars enjoy the privilege of receiving Orders without observing interstices. Some indeed deny this, because Gregory XIII, who granted to the Society of Jesus the privilege of receiving Sacred Orders on individual Sundays and on three feast days even continuous, stated that this privilege was incommunicable. But it is more truly and more commonly affirmed; because other Pontiffs gave to other Orders so broad a communication of the privileges of the Society of Jesus that it also contains this privilege; for example, Urban VIII, by the Constitution *Redemptoris nostri*,[2] to the Order of the Most Holy Trinity; Alexander VIII, by the Constitution *Inscrutabili*,[3] to the Order of Blessed Mary of Mercy (cf. St. Alphonsus, VI, 797, dub. 3; *De privilegiis*, 9). Moreover Ferraris[4] reports that Clement VIII[5] granted to the Congregation of St. John the Evangelist in Lusitania the same dispensation from interstices, without a clause excluding communication; and the other Regular Orders certainly participate in this privilege. Then Leo XII, by the Constitution *Plura inter*,[6] granted anew to the Society of Jesus the faculty of receiving Orders "with interstices by no means observed," with no exclusionary clause added.

Objection. After Trent the practice became established in the Roman Curia of not granting indults except with an added or understood condition that the days of ordination should be feast days, and indeed interposed days, not continuous ones.[7]

Response: "This limitation commonly regarded only indults granted to ordinands, but not privileges granted to Regulars or even sometimes to Bishops. But the addition of such a condition again proves that privileges which had previously been granted without such clauses are not subject to the aforesaid limitations."[8]

[1] Council of Trent, cap. 11-13, *De reformatione*.

[2] March 22, 1634, n. 2.

[3] July 28, 1690.

[4] *Interstitia*, n. 14-16.

[5] November 23, 1596.

[6] July 11, 1826.

[7] Cf. Decree of Innocent XII, December 14, 1693; Giraldi, II, 95.

[8] Aertnys-Damen, II, 578; cf. Sacred Congregation of Rites in one Marianopolitan case, May 18, 1883 (n. 587 in the old collection), not taken up in the authentic collection, n. 3574.

618 X. Canonical title, if it is a question of major Orders. A title of support is understood, that is, a guarantee by which provision is made for the suitable and of itself perpetual support of the ordinand. It is required, however, if it is a question of receiving major Orders (canon 974, § 1, 7°),[1] lest perhaps the ordained man be forced to provide for himself by begging or in some other way which cannot be reconciled with the dignity or offices of the state. "One ordained in sacred Orders, if he loses the title, is to provide another for himself, unless, in the judgment of the Bishop, provision has otherwise been made for his suitable support" (canon 980, § 1). "But those who, apart from an apostolic indult, knowingly ordain their own subject in sacred Orders without a canonical title or permit him to be ordained, must themselves and their successors provide the necessary sustenance to the same needy person, until provision has otherwise been made for his suitable support" (canon 980, § 2). Finally, if a Bishop has ordained someone without a canonical title with an agreement that the ordained man not ask sustenance from him, this agreement lacks all force (canon 980, § 3). With respect to the required title, observe:

1. For secular clerics the canonical title is the title of benefice, and, failing that, of patrimony or pension. This title must be both truly secure for the whole life of the ordained man and truly sufficient for his suitable support, according to the norms to be given by Ordinaries for the different necessities and circumstances of places and times (canon 979). If not even one of the titles just assigned is available, it can be supplied by the title of service of the diocese, and, in places subject to the Sacred Congregation of Propaganda Fide, by the title of mission (canon 981, § 1). Now:

a) The title of benefice is that which is founded in a benefice; but a benefice actually obtained and peacefully possessed is required. But resignation of the benefice by whose title the cleric was ordained is null unless express mention is made that the cleric had been promoted by that title and had substituted for it another legitimate title of ordination, by grant of the Ordinary (canon 1485).

b) The title of patrimony is that which is founded in patrimony. By the name of patrimony here are understood goods possessed by the ordinand and sufficiently free from mortgage or other burden. "It is indifferent whether the patrimony is constituted in stable and certain fruitful goods, or in things which are equated with immovables. Thus a lay chaplaincy can be a title of patrimony, provided those who

enjoy the right of naming have pledged their good faith, with the authority of the Bishop interposed, that they will not revoke the chaplain until provision has been made for him by a suitable benefice or patrimony."[2]

c) The title of pension is that which is founded in a pension. By the name of pension is understood a stipend of support assigned to the ordinand and to be supplied to him annually, whether from ecclesiastical benefices or from other goods. Hence also a personal pension.[3]

Note. As formerly, so also now the insufficiency of one title can be supplied by another title.[4]

d) The title of service of the diocese and of mission carries with it that the ordinand, by interposing an oath, devotes himself perpetually to the service of the diocese or mission, under the authority of the local Ordinary for the time being. The Ordinary must confer on the priest whom he has promoted by the title of service of the church or mission a benefice, office, or subsidy sufficient for his suitable support (canon 981).

2. For religious, the title is established as follows:

a) For Regulars the canonical title is solemn religious profession, or the title, as it is called, of poverty (canon 982, § 1); note that solemn profession alone is a title for Regulars.

b) For religious of perpetual simple vows, whether emitted in an Order or in a religious Congregation, the title is that of the common table, of the Congregation, or another similar title, according to the norm of the constitutions (canon 982, § 2); that is, as the legitimate constitutions have established or will establish in the future.

c) Other religious, that is, religious of temporary vows, whether emitted in an Order or in a religious Congregation, and likewise novices, as regards the title of ordination, are governed by the law of seculars (canon 982, § 3). The title of the common table does not belong to these religious, because they are not yet devoted to religious life, and therefore lack the right of receiving perpetual support from the goods of the religious institute.

[1] Council of Trent, session 21, cap. 2, *De reformatione*.

[2] Gasparri, n. 606.

[3] Aertnys-Damen, II, 590; cf. St. Alphonsus, VI, 817.

[4] Cf. Benedict XIV, *Quaestiones canonicae*, 46.

619 XI. Right intention; concerning this it suffices to have observed these things:

1. A merely natural intention, that is, one resting on a natural motive alone, does not suffice, so that someone can be excluded for that cause.
2. An intention at least predominantly or equally supernatural suffices to this extent, that one approaching with an intention of this kind cannot be kept away.

Chapter II. On Irregularities and Other Impediments

(St. Alphonsus, *Theologia Moralis*, book VII, c. 5; *Homo Apostolicus*, tr. 19, c. 3.)

We shall speak first about irregularities and impediments in general, then about irregularities and impediments in particular, and finally about the cessation of irregularities and impediments.

Article I. Irregularities and Impediments in General

620 I. Notion. An irregularity is a canonical impediment of itself perpetual, which prohibits the reception and exercise of Orders (cf. canons 968 and 983). It is called an impediment:

1. Canonical, that is, established by ecclesiastical law.
2. Of itself perpetual, that is, one which is not removed except by dispensation; and by this reason it differs from a simple impediment.
3. Of the reception and exercise of Orders. But by the name Orders here first tonsure also comes (canon 950). The reception and exercise of Orders are prohibited, but not the exercise or acts of jurisdiction alone, such as to dispense, to absolve from a censure, to give the faculty of absolving from sins (St. Alphonsus, VII, 342). Finally, the functions of the Acolytate are no longer prohibited, since today they are permitted even to laymen.
4. It prohibits; but it does not render the reception and exercise of Orders invalid. The prohibition, however, is grave, as is drawn both from the nature of the thing and from the grave penalties to be imposed on a transgressor (canon 2374).

A simple impediment is a canonical impediment of itself temporary, which prohibits the reception and exercise of Orders (cf. canons 968 and 987). It is called of itself temporary, that is, one which can cease without dispensation or by the fact itself.

Note. Irregularities and impediments have been established so that provision may be made for the reverence due to Orders, but not by way of penalty, except perhaps secondarily if it is a question of an irregularity from delict (St. Alphonsus, *Homo Apostolicus*, tr. 17, n. 73).

621 II. The origin of irregularities is ecclesiastical law (canon 983); the same holds for simple impediments. Moreover, the cited canon sufficiently signifies that irregularity is introduced by written law alone, not by custom.

622 III. Interpretation; concerning it observe:

1. Laws which constitute an irregularity or impediment, as restricting rights, are subject to strict interpretation (cf. canon 19).
2. Only the baptized are bound by the said laws; this, however, does not prevent a fact which had place before baptism from being able to induce irregularity after baptism, as if someone had been insane before baptism. The impubes are not exempt from the law.
3. In doubt of law - that is, in doubt whether the law has been passed or extends itself to some case - the law does not urge. In doubt of fact - that is, in doubt whether the fact which carries an irregularity or impediment with it took place, or was such as is supposed by the law - the law likewise does not urge; for it is a question of doubt of a fact founding a prohibiting law (St. Alphonsus, VII, 422, 432; t. I, n. 228);[1] moreover, in the latter doubt the Bishop can dispense for precaution (cf. canon 15).
4. Ignorance of irregularities, whether from delict or from defect, and of impediments, does not excuse from them (canon 988).

[1] Sacred Congregation of the Council, June 27, 1857 (*A.S.S.* I, p. 350).

623 IV. Multiplication. Irregularities and impediments are multiplied from their different causes, but not from the repetition of the same cause, unless it is a question of irregularity from voluntary homicide (canon 989). It is said:

1. From their different causes; as if someone is illegitimate and perpetrates homicide. Yet note that formally different causes suffice, and that several formally different causes can be contained in one and the same physical act; as if someone by the same blow were to kill another and attempt to take his own life.

2. Unless it is a question of irregularity from voluntary homicide. Procurement of abortion does not come under the name of homicide; for canon 985, 4° distinguishes this from homicide, and the law is of strict interpretation. But craniotomy and similar cruel killings of an infant are comprehended under that name.

Article II. Irregularities in Particular

Of irregularities, some are from defect, others from delict.

§ I. Irregularities from Defect

624 By force of canon 984 the following are irregular from defect:

I. From defect of birth: "Illegitimates, whether the illegitimacy is public or occult, unless they have been legitimated or have professed solemn vows" (cited canon, n. 1). Now:

1. Who are illegitimate, see in the treatise on matrimony.

2. Irregularity from defect of birth is removed: 1° by legitimation, about which later; 2° by dispensation (n. 644); 3° by solemn religious profession. This removes the irregularity, but does not legitimate; hence an illegitimate person solemnly professed cannot be constituted major Superior in his Religion (canon 504).

Note. Illegitimates cannot be admitted into the Seminary (canon 1363, § 1); nevertheless legitimation by the subsequent marriage of the parents suffices.[1]

[1] Pontifical Commission, July 13, 1930 (*A.A.S.* 1930, p. 365).

625 II. From defect of body: "Those defective in body who cannot safely by reason of weakness, or decently by reason of deformity, perform the ministry of the altar. Yet to impede the exercise of an Order legitimately received, a graver defect is required; nor because of this defect are acts prohibited which can rightly be placed" (cited canon, n. 2°). Therefore the following are irregular:

1. Those who by reason of weakness cannot safely perform the ministry of the altar. To this class belong: 1° those lacking the index finger or thumb, that is, the customary fingers with which the host is broken; likewise those who have hands so trembling that there is danger of spilling the Blood; likewise those lacking either arm or either hand; 2° the deaf who cannot hear the responding minister; but deafness supervening upon the priesthood does not stand in the way of the celebration of Mass; 3° the mute, likewise those stammering so much that they cannot pronounce whole words, or cannot except with great difficulty, so that they provoke laughter; 4° the blind, likewise the partially blind, who cannot read except very large characters; but not one who lacks only one eye, provided it is not the left eye, or the eye of the Canon, and provided the deformity is

removed by a glass eye.[1] But if the eye of the Canon is lacking, a dispensation can be given if the other eye is sufficiently fit for reading the Canon without deformity (St. Alphonsus, VII, 404-409).

2. Those who by reason of deformity cannot decently perform the ministry of the altar. To this class belong: 1° those deprived of a conspicuous member, unless the deformity is removed by an artificial member. Those who lack the three rear fingers are irregular for receiving Orders, but not for exercising them; 2° those having a conspicuous member very deformed, whether the deformity arises from nature or from disease, for example from leprosy. Deformity of the legs can ordinarily be sufficiently covered by a cassock; 3° the monstrous, such as pygmies, the very hunchbacked, and hermaphrodites; yet the latter defect does not induce irregularity if it is occult and the male sex prevails. Likewise those notably limping are irregular (St. Alphonsus, VII, 410-412).

Note 1. Since all Orders, even first tonsure, are ordered to the priesthood, one excluded from the priesthood must also be regarded as excluded from the other Orders.

Note 2. To impede the exercise of an Order legitimately received a graver defect is required than to impede the reception of an Order (canon 984, 2°). Moreover, one who by reason of some defect is impeded from some exercise of an Order received is not therefore impeded from acts which can rightly be placed (canon 984, 2°); so that, for example, a blind priest can well hear confessions.

Note 3. In doubt whether some defect stands in the way of the reception or exercise of an Order, the Ordinary should be consulted (St. Alphonsus, VII, 414).

[1] With respect to partially blind priests, the Sacred Congregation of Rites established the following on January 12, 1921:

1. A partially blind priest, or one laboring under such weakness of visual power, whether accidentally or habitually, that he can read only very large type, can obtain from the Supreme Pontiff or the Sacred Congregation of Rites, unless the Bishop has been furnished with an apostolic faculty, a dispensation to celebrate either the votive Mass of the Blessed Virgin Mary or the Mass which they call the daily Mass of the Dead.

2. The conditions added in the instrument of a privilege of this kind are not mere matters of rituality and style, but obligatory in conscience.

3. If in the privilege it is said: Provided the petitioner is not entirely blind, and meanwhile he becomes blind, then he must abstain from celebrating Mass until he has obtained a new indult; and once this has been obtained, he is bound under grave obligation to use the assistance of another priest, although perhaps this obligation was not expressly added in the indult. After these things noted by the Sacred Congregation, the rules to be followed in celebration follow (*A.A.S.* 1921, p. 154-156).

626 III. From defect of mind: "Those who are or have been epileptic, insane, or possessed by a demon; but if after receiving Orders they have become such and it is certainly established that they are now free, the Ordinary can again permit his subjects the exercise of the Orders received" (canon 984, 3°).

1. Epilepsy must be taken in the strict sense, so that it does not comprehend a certain disease of the stomach which carries with it certain signs of epilepsy. Furthermore, if the disease supervenes upon the priesthood and recurs rarely, for example only once in a month, without emission of sounds, foaming, and notable contraction of the body, the priest will be able to celebrate privately, with a fasting priest joined to him who may complete the Mass when the disease comes on (St. Alphonsus, VIII, 399). There are also those who judge that one who had been freed from epilepsy

before puberty is not irregular. But this opinion is with difficulty composed with the words of the law, which states absolutely: "Those who are or have been epileptic."

2. Insanity is understood which flows from a permanent cause; but an insane person is irregular even if he has lucid intervals.

3. Possession by a demon; concerning which, see t. I, n. 700.

4. Just as those healed cannot receive Orders without the permission of the Holy See, so neither can they receive a higher Order without the same permission.

5. Under the name of Ordinary, of which the cited canon speaks, come both the Ordinary of the place and the major Superior in an exempt clerical religion (canon 198, § 1).

627 IV. From defect of sacrament: "Bigamists, namely those who have successively contracted two or more valid marriages" (canon 984, 4°). "It is said: from defect of sacrament, because he who has married two wives cannot aptly signify the union of Christ with the Church, His one spouse" (St. Alphonsus, VII, 436). This irregularity, at least with respect to some major Orders, is of apostolic origin, according to these words of St. Paul: "Therefore a Bishop must be irreproachable, the husband of one wife... Let deacons be husbands of one wife."[1]

For irregularity it suffices that several marriages have been validly contracted; it is not required, however, that they have been consummated.

Note. One who before Baptism successively contracted several valid marriages seems, after Baptism has been received, to become irregular.

[1] 1 Tim. 3:2, 12.

628 V. From defect of reputation: "Those who are marked by infamy of law" (canon 984, 5°). It is called an irregularity from defect, because the infamy itself which induces irregularity is not a delict. What infamy of law is and who contract it, see in the treatise on ecclesiastical penalties.

629 VI. From defect of mildness: "The judge who has pronounced sentence of death" (canon 984, 6°). If a capital sentence has been established collegially, those judges are irregular who agreed to the capital penalty, not the others who cast a contrary vote. Furthermore this irregularity is not to be extended to a region where sentence of death, although pronounced, is nevertheless no longer carried into execution; nor to the case in which a leader in war orders someone to be killed without any military council having been held, because he does not proceed as judge. Nor are jurors irregular, since they pronounce sentence only about the truth of the fact, but do not establish the penalty.

Moreover, from defect of mildness the following is irregular: "Those who have undertaken the office of executioner and their voluntary and immediate ministers in the execution of a capital sentence" (canon 984, 7°). Among these are not counted: 1° soldiers who kill the enemy in battle, or by command of the leader or of a military council kill a guilty person, because they are not said to have undertaken the office of executioner; 2° those who, for example, erect the scaffold or lead the one condemned to death to the place of punishment, because they are not immediate ministers of the executioner; but indeed those who, for example, place the head of the condemned man under the machine, etc. (St. Alphonsus, VII, 461-468).

§ II. Irregularities from Delict

630 Preliminary points. In order that a delict may produce irregularity, it is required that it be a grave sin, perpetrated after baptism, except the case of which under II, and external (canon 986). It is said sin:

1. Grave; hence whatever excuses from mortal sin also excuses from irregularity. Of this kind is ignorance of the very law prohibiting the act. Grave fear, even only relatively such, necessity, indeed even grave inconvenience, generally excuse from observing a merely ecclesiastical law, and therefore bring it about that one is immune from irregularity who, from grave fear, necessity, or by reason of grave inconvenience, places an act forbidden by ecclesiastical law alone (cf. canon 2205, § 2).
2. Perpetrated after baptism; since it is not fitting that account be taken of a sin which is judged to have been entirely destroyed by baptism.

Now by force of canon 985, the following are irregular from delict:

631 I. Apostates from the faith, heretics, schismatics (canon 985, 1°); concerning whom there was discussion in t. I, n. 492. One who is a heretic in good faith does not contract irregularity; but since good faith is judged to be absent for the external forum, a dispensation is needed.

632 II. Those who, except in a case of extreme necessity, have allowed baptism to be conferred on them by non-Catholics in any way (canon 985, 2°). It is said:

1. By non-Catholics; under this name come heretics, schismatics, and, according to some, even unbelievers, since they, equally with heretics and schismatics, are truly non-Catholics. Others, and indeed most, exclude unbelievers.
2. In any way, that is, whether some rite, heretical or Catholic, was employed, or was not employed.
3. Have allowed, that is, those who asked, or at least permitted, that baptism be conferred on them by a non-Catholic.

633 III. Those who have dared to attempt marriage or to place only the civil act, either themselves being bound by the matrimonial bond, or by sacred Order, or by religious vows even simple and temporary; or with a woman bound by the same vows or joined in valid marriage (canon 985, 3°). Those attempt marriage who, conscious of a diriment impediment, approach the minister of the Church; those place the civil act who enter into civil marriage, as it is called. It is said have dared; hence, since the words of the law are judged to contain nothing useless, any diminution of imputability seems to exempt from irregularity (cf. canon 2229, § 2); except, however, diminution of imputability which flows from ignorance of the irregularity (canon 988). Therefore the following are irregular:

1. Those who, themselves bound by the matrimonial bond or by sacred Order or by religious vows, even simple and temporary, have dared to attempt marriage or place only the civil act.
2. Those who, although not bound by the matrimonial bond or by sacred Order or by religious vows, have dared to attempt marriage or place only the civil act with a woman bound by religious vows, even simple and temporary, or joined in valid marriage.

634 IV. Those who have perpetrated voluntary homicide or procured the abortion of a human fetus, the effect following, and all cooperating (canon 985, 4°).

1. Homicide is understood as committed positively and with grave fault; not, however, as merely permitted, although without sufficient cause.
2. What is understood by procurement of abortion, see in the treatise on ecclesiastical penalties.
3. The words the effect following and cooperators are referred both to homicide and to procurement of abortion. With respect to the effect, it is required that this follow from the force inflicted, not from care perhaps omitted. As regards cooperators, just as the old law, so also the new law is judged to regard only positive cooperators, or those who by command, counsel, consent, or help cooperate in homicide or procurement of abortion; likewise those who by false testimony or unjust sentence cooperate in homicide; finally those who voluntarily fight in an unjust war. This last point is said theoretically, since scarcely ever is there sufficient certainty about the injustice of a war. Negative cooperators are immune from irregularity, even if from justice they are bound to impede homicide or procurement of abortion (St. Alphonsus, VII, 367-376).

635 V. Those who have mutilated themselves or others, or have attempted to take their own life (canon 985, 5°). Mutilation is understood as the cutting off of a member, but not merely its weakening or wounding. But a cutting off of a member objectively and subjectively gravely culpable is required; when this is had, we explained in t. I, n. 526.

636 VI. Clerics exercising the medical or surgical art forbidden to them, if death follows therefrom (canon 985, 6°). It is required that the cleric gravely offend against the law which prohibits him the medical or surgical art, and that death follow from the art exercised as from its cause; hence irregularity is absent if death, for example, is to be attributed to the bad treatment of another physician who had been called in.

637 VII. Those who place an act of Order reserved to clerics constituted in sacred Order, either lacking that Order, or prohibited from its exercise by a canonical penalty, whether personal, medicinal or vindicative, or local (canon 985, 7°). The matter concerns an act of Order - not of mere jurisdiction - and of the greater or sacred Order. Considering the tenor of the canon, it seems to make no difference whether the act is placed solemnly or not, that is, with or without the insignia proper to the Order. Yet if it is placed solemnly, grave matter will more easily be had, which in the case, as in every irregularity from delict, is required. Now the following contract irregularity:

1. All, both clerics and laymen, who place an act of sacred Order while lacking the Order whose act they place; as if a simple priest were to ordain a cleric.
2. All, both clerics and laymen, who place an act of sacred Order from whose exercise they are prohibited by a canonical penalty, whether personal, medicinal or vindicative, or local; as if a priest were to celebrate in an interdicted place. But it is required that someone be impeded from the exercise of Order by force of a contracted penalty, not by a mere prohibition. Hence one who, for example, was ordained by a non-Catholic in good faith and exercises the Order without dispensation, is not irregular, although, until he has received dispensation, he is prohibited from the exercise of the Order so received.

Corollary I. The following are irregular: a priest who ministers Confirmation or performs consecrations, etc.; likewise a deacon who celebrates Mass, sacramentally absolves, or ministers Extreme Unction; likewise a subdeacon who solemnly baptizes or in solemn Mass, although without stole, acts as deacon or with stole sings the Gospel; likewise a minor cleric who in solemn Mass acts as

subdeacon, that is, does all those things which are proper to the subdeacon, or with maniple sings the Epistle. But if he sings the Epistle without maniple, although he assists clothed in a tunicle, yet not doing those things which are proper to the subdeacon, he does not contract irregularity, because such assistance was declared licit by the Sacred Congregation of Rites.[1] Three things are proper to the subdeacon: to pour water into the chalice before the offertory; to touch the chalice or remove and replace the pall; to wipe the chalice after the ablution.

Corollary II. The following are not irregular: a priest who hears confessions without jurisdiction, because he does not place an act of Order which he lacks; nor a priest who, lacking the required faculty, grants a dispensation, because he places an act of mere jurisdiction; nor a deacon who solemnly baptizes or distributes the Holy Eucharist without the required commission, because, since the Order of Diaconate is ordered in some way to the said acts, he does not place an act of Order which he lacks; nor a minor cleric who without the insignia proper to the Order exercises a higher minor Order, apart from the Exorcistate; nor, as is clear, an inferior cleric who in solemn Mass without maniple fulfills several parts of the subdeacon which, namely, are permitted to him; nor finally, as is likewise clear, a layman who exercises the Acolytate or Lectorate according to today's approved practice.

Note. The Sacred Consistorial Congregation, by the decree *Magni semper*,[2] established certain laws for priests emigrating from Europe or from the shores of the Mediterranean to America or the Philippine Islands. If they rashly violate these, according to n. 16 of the same decree they remain suspended from divine things by the fact itself; and by violating this censure they fall into irregularity, absolution from which is reserved to the same Sacred Congregation, that is, to the Holy See.[3]

[1] March 19, 1906 (*A.S.S.* XXXIX, p. 119).

[2] December 30, 1918.

[3] Vermeersch-Creusen, *Epitome*, II, n. 258.

Article III. Impediments in Particular

638 The following are simply impeded:

I. Children of non-Catholics, so long as the parents remain in their error (canon 987, 1°).

1. By the name children are understood only descendants in the first degree; and this now also holds if the father is non-Catholic.[1]
2. Under the name of non-Catholics come heretics and schismatics; most authors exclude unbelievers.
3. It suffices that either parent be non-Catholic, even if the mixed marriage was contracted with dispensation.[2]
4. The impediment ceases by the conversion of the parents. It is disputed whether it ceases by the death of the parents; but it seems to be denied, because that had no place in the old law, from which in doubt there must be no departure.

[1] Pontifical Commission, July 14, 1922 (*A.A.S.* 1922, p. 528).

[2] Pontifical Commission, October 16, 1919 (*A.A.S.* 1919, p. 478).

639 II. Men having a wife (canon 987, 2°). Without dispensation these cannot receive even a minor Order or tonsure itself, even if they are perpetually separated. But a married man who without

apostolic dispensation has received major Orders, although in good faith, is prohibited from the exercise of those Orders (canon 132, § 3). Now:

1. A dispensation is not granted to a married man unless the wife consents and is prepared to enter religion or to emit a vow of chastity, at least for the time of the life of her consort, or unless the wife has perpetually lost the right to the conjugal debt.[1]

2. A spouse who has received sacred Order is prohibited from the use of marriage (canon 1114).

[1] Ecclesiastical law, c. 4-6 X, 3, 32; Decree of Gratian, C. 27, q. 2, c. 19-26.

640 III. Those who hold an office or administration forbidden to clerics and for which they must render accounts, until, after the office and administration have been laid aside and the accounts rendered, they have become free (canon 987, 3°). Such an office is discharged, for example, by treasurers and depositaries of public money, notaries, tutors, curators (St. Alphonsus, III, 838). After an Order has been received, offices of this kind can be accepted only with the permission of the Ordinary (cf. canon 139, § 3).

641 IV. Slaves in slavery properly so called, before liberty has been accepted (canon 987, 4°).

V. Those who are bound by civil law to ordinary military service, before they have completed it (canon 987, 5°).

1. Those who by the law itself are called to care for the sick are not said to be bound to military service.

2. Annual exercises to which citizens are bound after ordinary service has been completed do not pertain to ordinary military service.[1]

3. Those are also judged still bound by law to military service who perhaps will be called to military service, but are not yet called, either because they are unequal in age, or because they have been declared temporarily unfit.[2]

[1] Sacred Congregation of Religious, January 1, 1911 (*A.A.S.* 1911, p. 37).

[2] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 344-345).

642 VI. Neophytes until, in the judgment of the Ordinary, they have been sufficiently proved (canon 987, 6°). Those are called neophytes who were converted to the faith in adult age and recently baptized; but not heretics recently converted to the faith who had at least probably been validly baptized. The establishment of this impediment corresponds to these words of St. Paul: "Therefore a Bishop must be... not a neophyte, lest, being lifted up into pride, he fall into the judgment of the devil."[1]

[1] 1 Tim. 3:2-6.

643 VII. Those who labor under infamy of fact, while it endures, in the judgment of the Ordinary (canon 987, 7°). When infamy of fact is contracted, see in the treatise on ecclesiastical penalties (cf. canon 2293, § 3).

Article IV. Cessation of Irregularities and Impediments

Certain irregularities, for example that which arises from defect of body (n. 625), and likewise simple impediments, cease when the cause ceases. The irregularity which is from defect of birth ceases either

by legitimation or by solemn religious profession (n. 624). But all irregularities and all simple impediments can cease through dispensation; about this more must be said.

644 I. Power of dispensing. 1. Ordinaries can by themselves or through another dispense their subjects from all irregularities arising from occult delict, excepting that which arises from voluntary homicide or abortion, or another brought to the judicial forum (canon 990, § 1). Now under the name of Ordinaries come both Ordinaries of places and major Superiors of an exempt clerical religion (canon 488, 8°). An irregularity is brought to the judicial forum when the party is either summoned to court or cited, or spontaneously presents himself before the judge (canon 1711).

2. Any confessor can dispense from irregularities arising from delict in more urgent occult cases - excepting, however, voluntary homicide or abortion and others brought to the judicial forum - in which the Ordinary cannot be approached and danger of grave harm or infamy threatens, but only for this purpose, that the penitent may licitly be able to exercise Orders already received (canon 990, § 2). Under the name of confessor comes everyone who enjoys sacramental jurisdiction. But he can dispense those to whom his jurisdiction extends, and this, as is now commonly admitted, even outside confession.

3. By common privilege: 1° Regular Prelates, with respect to their subjects, enjoy the same faculty which belongs to Bishops by common law, according to what was said under 1.[1] 2° Regular confessors possess a similar faculty with respect to seculars (St. Alphonsus, VI, 355; *De privilegiis*, n. 104).

4. By proper or communicated privilege, Regular Ordinaries can dispense all their own from every irregularity. This power, which is sometimes reserved to the Superior General, is valid only for the internal forum alone, if the irregularity has arisen from voluntary homicide.[2] Indeed every year, on Monday after the first Sunday of Lent, local Superiors of Regulars, by themselves or through confessors to whom they have committed this, can dispense their subjects, even novices, living within the cloister under obedience, in every irregularity contracted on any occasion or from any cause.[3] So Vermeersch-Creusen.[4]

Yet note that, if it is a question of enormous excess or defect, recourse must be had to the Holy See, according to the norm of the ancient law stating: In a general grant there do not "come those things which someone would not likely grant in particular."[5]

Note. The Sacred Consistorial Congregation, in the Decree *Redeuntibus*, established these things:

"1° To all Ordinaries of places and of religious there is granted the faculty of dispensing from irregularity from defect of body with their priests returning from military service, as often as from the written testimony of the master of ceremonies who has subjected the priest to examination it is plainly established that he can, without another's help, observe with decorum all the necessary rites prescribed in the celebration of Mass; the conscience of the same Ordinaries being burdened concerning this. But in graver or doubtful cases, and as often as it is a question of those not promoted to the priesthood, recourse must be had to the Holy See.

"2° Likewise to all Ordinaries there is granted the faculty of dispensing, at least for precaution, from the irregularity which formerly was called by canonists from defect of mildness, as often as priests, clerics, and students of seminaries or religious institutes have fallen into it not from their own act but from necessity, namely compelled to take up arms and perhaps to inflict death or mutilation. But as

often as it is a question of clerics in sacred Orders who, not compelled by necessity of the laws, have offered themselves of their own accord to take up arms, or have taken them up, recourse must be had to the Holy See for dispensation, with the prescription of canon 188, n. 6° remaining firm."[6]

Finally the same Sacred Congregation responded affirmatively to the doubt: "Whether clerics in sacred Orders assigned to the assistance of wounded or sick soldiers, who from this ministry preferred of their own accord to pass over to fighting military service, yet without inflicting death or mutilation, are bound, according to the mind of the Decree *Redeuntibus*, to obtain a dispensation from the Holy See in order to be restored to the exercise of sacred ministry."[7]

Since it is not clear that a true irregularity is had in the foregoing, a dispensation is not required except for precaution; or, too, the word dispensation can be taken in a broader sense, namely for permission; and this permission is prescribed so that someone who perhaps became unworthy in war may not exercise ecclesiastical functions.

[1] Sixtus IV, Constitution *Regimini universalis*, August 31, 1474, n. 14; Julius II, Constitution *Virtute conspicuos*, July 28, 1506, n. 27; Paul III, Constitution *Licet debitum*, October 18, 1549, n. 27; Gregory XIV, Constitution *Illius qui*, September 21, 1591, n. 27; Leo XII, Constitution *Plura inter*, July 11, 1826, n. 2.

[2] Cf. Pius V, Constitution *Dum ad Congregationem*, June 13, 1571.

[3] Cf. Paul III, Brief *Exponi nobis super*, March 12, 1545.

[4] *Epitome Iuris Canonici*, II, 261.

[5] Rule 81 in VI; cf. Clement IV, Constitution *Virtute conspicuos*, July 21, 1265, n. 11.

[6] October 25, 1918 (*A.A.S.* 1918, p. 481).

[7] March 28, 1919 (*A.A.S.* 1919, p. 177).

645 II. Petition for dispensation. In prayers for dispensation from irregularities and impediments, all irregularities and impediments must be indicated; indeed, if it is a question of irregularity from voluntary homicide, even the number of delicts must be expressed (canon 991). In the case in which recourse must be had to the Holy See, the prayers should be directed to the Congregation of the Holy Office, if it is a question of irregularities arising from delict against the Faith, against Baptism, against Matrimony, except the single case in which someone not yet a cleric attempted marriage with a woman joined in valid marriage, and against Order, if it is a question of those who have been dismissed by the Holy Office with a canonical penalty or censure and have violated it, or of the impediment of children born of non-Catholics and of neophytes. In other cases the prayers should be directed, for seculars, to the Congregation for the Discipline of the Sacraments; for religious, to the Sacred Congregation of Religious; but for all occult cases recourse can be had to the Sacred Penitentiary.

646 III. Interpretation of dispensation. 1. A general dispensation is valid - besides for the irregularities and impediments expressed - also for those concealed in good faith, with the exception of irregularity from voluntary homicide or abortion, from cooperation in the aforesaid, and from another brought to the judicial forum; there is also excepted the case in which a number of homicides lower than the number of delicts has been expressed, although in good faith. In this case the dispensation is altogether invalid, or effects nothing, whether it is a question of a general dispensation or of a particular one (canon 991, §§ 1 and 2).

2. A general dispensation for Orders is valid also for major Orders; and the dispensed person can obtain non-consistorial benefices, even with cure of souls,[1] but cannot be nominated Cardinal of

the Holy Roman Church, Bishop, Abbot or Prelate nullius, or major Superior in an exempt clerical religion.

[1] Ecclesiastical benefices are called: 1° consistorial, those which are usually conferred in Consistory; the rest non-consistorial; 5° with cure of souls or without cure of souls, according as they have care of souls annexed or not (canon 1411, 1°, 5°).

647 IV. Manner of dispensing. A dispensation granted in the non-sacramental internal forum is to be committed to writing; and there must be a record of it in the secret book of the Curia (canon 991, § 4). For the rest, it does not matter in what form the dispensation is granted; therefore this or a similar form can be used: I dispense you in the irregularity, or irregularities, which you have contracted for this or that cause (St. Alphonsus, VII, 353).

Dissertation IV. On Those Things which Regard Both the Ministration and the Reception of Order

Following the Code, we shall treat first of those things which must precede sacred ordination, then of the rites and ceremonies, next of the time and place of sacred ordination, and finally of the notation and testimony of ordination performed.

Part I. On Those Things which Must Precede Ordination

In setting out those things which must precede ordination, account must be taken both of the Code and of the Instruction of the Sacred Congregation of the Sacraments[1] and of the Sacred Congregation of Religious.[2] The matters to be attended to regard the petition of the ordinand, inquiries, testimonies to be brought forward, examination, denunciations, and spiritual exercises.

[1] December 27, 1930 (*A.A.S.* 1931, p. 120 sq.).

[2] December 1, 1931 (*A.A.S.* 1932, p. 74 sq.).

648 I. Petition of the ordinand. All, both seculars and religious, who are to be promoted to Orders are to disclose their purpose before ordination at an opportune time, either personally or through others, to the Bishop or to another who in this matter acts in the place of the Bishop (canon 992); and these things are determined more fully in the cited Instructions as follows:

1. Secular ordinands:

a) As the time approaches in which candidates are going to receive first tonsure and minor Orders, they themselves are to present, at least two months beforehand, to the rector of the seminary a written petition, composed and signed by their own hand, in which they candidly signify that with a wholly free and spontaneous will they ask for first tonsure and afterward minor Orders. The said petition, to which there must be added an attestation concerning Baptism received and the sacrament of Confirmation received, is presented to the Bishop by the same rector of the Seminary, together with his personal information about the petitioner's suitability for the clerical state.

b) Before the Subdiaconate, likewise before the Diaconate and Presbyterate, they must write with their own hand a declaration, confirmed by oath, in which they acknowledge that they approach the Order with complete freedom and that they have duly considered all burdens annexed to it. The tenor of the declaration to be written and confirmed is found in *A.A.S.* 1931, p. 127.

2. Religious ordinands:

a) While they are still in the novitiate, before profession of temporary vows, which must altogether precede promotion to tonsure and minor Orders, they are to present to the Superior a written petition in which, in express words, they give testimony concerning their vocation to the religious and clerical state, and at the same time disclose a firm purpose of perpetually binding themselves to the clerical service in the religious state. The said petition and declaration are to be preserved in the archive.

b) Before the Subdiaconate, and in Orders of solemn vows before the emission of those vows, they must present to the Superior a testimony subscribed by their own hand and confirmed by the faith of an oath before the Superior; the tenor of the said testimony is found in *A.A.S.* 1932, p. 80.

649 II. Inquiries. 1. With respect to secular ordinands, the Instruction of the Sacred Congregation of the Sacraments prescribes:

a) Before the conferral of first tonsure and minor Orders, the Ordinary will remit the candidate's petition to the rector of the Seminary or to another, with a mandate of inquiring into the suitability and qualities of the petitioner. To this end, the rector will hear the prefects and teachers of the students not only separately, but also convoked together. Furthermore, the pastor of the candidate and of his family should be heard; likewise others, if it is judged opportune, according to the norms added to the

Instruction. Finally, the mind of the candidates must be explored individually by the proper Bishop or, if he is impeded, by the Vicar General, or by the rector of the Seminary, or even by those who are deputed to protect the discipline of the whole seminary.

b) Before the Subdiaconate a new investigation is to be instituted, which, however, taking account of the inquiry already previously instituted, is to inquire concerning the candidate's morals and his moral qualities.

c) Before the Diaconate and Presbyterate it is usually sufficient to keep before one's eyes the inquiries already performed, unless meanwhile new circumstances must be weighed which force one to doubt the sincere purpose of the candidate, or his moral suitability for observing the burdens and carrying out the obligations received with Sacred Orders. But if the Bishop, before someone is initiated to the Diaconate or to the priesthood, has as certain from the confessions of the one to be promoted or from other certain indications and proofs received, that he is truly destitute of a sacred vocation, he should not omit to approach the Holy See, candidly and plainly reporting the state of the matter, or the arguments by which a vehement doubt is fostered concerning the suitability of the subdeacon or deacon for bearing greater burdens worthily and faithfully. The matter is indeed of such great moment that the conscience of Ordinaries remains gravely burdened by this obligation, so that the danger may be removed of imposing hands on a deacon or priest who is unequal to sustaining the most grave burden of Sacred Orders.

2. With respect to religious ordinands the Sacred Congregation of Religious prescribes:

a) Before the minor Orders, the Superiors of religious are to institute an inquiry concerning each candidate, and are not to allow anyone to ascend to Orders so long as the requisites in the one to be promoted have not been established for them by careful scrutiny. In order to obtain this more certainly, they should seek the testimony of the Master of spirit and of others to whom, because of special frequency with the students, it has fallen to know well their life and morals. Concerning the inquiries made and the result of the scrutiny, a proper document is to be drawn up and preserved in the archive. Finally, the Superior himself, either by himself or through another endowed with knowledge and prudence and suited to gaining the confidence of the young men, should take care to question them, so that at last he may be made more certain that they freely and knowingly desire Orders in the religious state.

b) Before the Subdiaconate the Superiors must institute a new inquiry concerning the aforesaid. In order to accomplish this, they should again inspect the documents of the inquiry already performed and preserved in the archive, and compare new testimonies concerning morals and spiritual qualities with the old, so that they may well know how the young men have conducted themselves from first profession, both in religious discipline and in progress in clerical studies.

c) Before the Diaconate and Presbyterate there is no need to require such broad information and new testimonies; nevertheless Superiors should keep watch and see whether, in the interval from the conferral of one sacred Order to another, new things have happened which either disclose a doubtful vocation to the priesthood, or show none at all. In this case, after a very diligent investigation has been performed and the counsel of prudent men has been used, let them entirely forbid the reception of the new Order, and report the matter to this Sacred Congregation, by which, for individual cases, what shall have seemed more opportune in the Lord will be decreed.

650 III. Testimonies to be brought forward. 1. Seculars or religious who, as pertains to ordination, are governed by the law of seculars, are to bring forward from canon 993:

a) The testimony of the last ordination, or, if it is a question of first tonsure, of Baptism and Confirmation received.

b) Testimony concerning studies completed, required for the individual Orders according to the norm of canon 976 (n. 615).

c) The testimony of the rector of the Seminary, or of the priest to whom the candidate was commended outside the Seminary, concerning the good morals of the same candidate.

d) Testimonial letters of the Ordinary of the place in which the one to be promoted has stayed for so much time that he could have contracted a canonical impediment there. Now the time in which the one to be promoted could have contracted a canonical impediment is, regularly, for soldiers three months after puberty, and for others six months after puberty; but the ordaining Bishop, according to his prudence, can require testimonial letters even because of a shorter time of residence, and also because of time which preceded puberty. If the Ordinary of the place has not sufficiently known the one to be promoted either by himself or through others, so that he can testify that during the time in which he stayed in his territory he contracted no canonical impediment, or if the one to be promoted has wandered through so many dioceses that it becomes impossible or too difficult to seek all testimonial letters, let the Ordinary provide at least through a supplementary oath to be made by the one to be promoted. If after testimonial letters have been obtained and before the ordination has been performed, the one to be promoted has again stayed in the same territory for the aforesaid space of time, new testimonial letters of the Ordinary of the place are necessary (canon 994).

e) Testimonial letters of the religious major Superior, if the one to be promoted is enrolled in some religious institute.

2. Religious who are not governed by the law of seculars must likewise bring forward testimonial letters, namely dimissorial letters which also contain testimonies, according to these words of canon 995: "The religious Superior also, in his dimissorial letters, must testify not only that the one to be promoted has emitted religious profession and belongs to the family of the religious house subject to him, but also concerning studies completed and the other things required by law. The Bishop, after receiving these dimissorial letters, does not need other testimonial letters."

651 IV. Examination. 1. Each one to be promoted, whether secular or religious, must undergo a previous and diligent examination concerning the very Order to be received. But those to be promoted to sacred Orders are also to make trial in other treatises of sacred theology (canon 996, §§ 1 and 2).

2. It belongs to Bishops to establish by what method, before what examiners, and in what treatises of sacred theology those to be promoted must make trial (canon 996, § 3). Under the name of Bishops here also come an Abbot or Prelate nullius, a Vicar and Prefect Apostolic (canon 957, § 1).

3. This examination, whether for secular clerics or for religious, is received by the local Ordinary who ordains by proper right, or gives dimissorial letters; however, for a just cause, he can also commit it to the Bishop who is to ordain, if that Bishop is willing to undertake this burden (canon 997, § 1). But the Bishop who ordains another's subject, whether secular or religious, with legitimate dimissorial letters by which it is asserted that the candidate was examined according to the norm of § 1 and found suitable, can acquiesce in this attestation, but he is not bound to do so; and if

according to his conscience he judges that the candidate is not suitable, he is not to promote him (canon 997, § 2). It is said:

a) For religious. Regulars are not excepted; but a privilege by which some are exempted from episcopal examination has remained intact.

b) Who ordains by proper right; namely, by force of canons 956, 957 (n. 601), and 965 (n. 602). The reception of the examination then also belongs to the Bishop of the diocese in which is situated the religious house to whose family the ordinand belongs, when it is a question of religious who can be dismissed by Superiors to any Bishop.

c) Or gives dimissorial letters: namely, according to canon 958 (n. 601); but not one who gives them by force of canon 964, 2° and 3°, because he does not come under the name of local Ordinary (canon 198, § 2).

d) But the Bishop, etc.; under which name here too come an Abbot or Prelate nullius, a Vicar and Prefect Apostolic (canons 215, § 2; 957, § 1).

652 V. Denunciations. 1. The names of those to be promoted to the individual sacred Orders, except religious of perpetual vows, whether solemn or simple, are to be publicly announced in the parochial church of each candidate (canon 998, § 1). But the publication is to be made on a feast day of precept in church during the solemnities of Masses, or on another day and hour when a greater attendance of the people is had in church (canon 998, § 2); but the Ordinary, according to his prudence, can both dispense from this publication for a just cause, and command that it be performed also in other churches, and substitute for the publication a public posting at the doors of the church for several days, among which at least one feast day is comprehended (canon 998, § 3). Now the parochial church is the parochial church of the parish in which the candidate has domicile or quasi-domicile, or, if he is a vagabond, actually stays. If someone has several proper parishes, publication is to be made in several parochial churches.

2. If within six months the candidate has not been promoted, the publication is to be repeated, unless something else seems right to the Ordinary (canon 998, § 2).

3. All the faithful are bound by obligation to reveal to the Ordinary or pastor before sacred ordination impediments to sacred Orders, if they know any (canon 999).

4. To the pastor who performs the publication, and also to another if this seems expedient, the Ordinary is to entrust the task of diligently inquiring from trustworthy persons concerning the morals and life of the ordinands, and of transmitting to the Curia testimonial letters referring to the investigation itself and the publication. The same Ordinary should not omit to make other inquiries, even private ones, if he has judged this necessary or opportune (canon 1000).

653 VI. Spiritual exercises. 1. Those who are to be promoted to first tonsure and minor Orders are to spend at least three entire days in spiritual exercises; but those who are to be promoted to sacred Orders, at least six entire days. But if some within a half-year are to be promoted to several major Orders, the Ordinary can reduce the time of exercises for ordination to the Diaconate, yet not below three entire days (canon 1001, § 1). If some receive major Orders at a short interval, spiritual exercises for six entire days are always to be set before the sacred Order which is first to be conferred; before the other Orders, at least one day, if this can be done.[1]

2. If, after the exercises have been completed, sacred ordination is deferred beyond a half-year for any cause, the exercises are to be repeated; otherwise the Ordinary is to judge whether they are to be repeated or not (canon 1001, § 2). Ordinary is understood as the Ordinary of the place, and, if it is a question of an exempt clerical religious institute, the major Superior (canon 198).
3. Religious should perform these spiritual exercises in their own house or in another according to the prudent judgment of the Superior; seculars, however, in the Seminary or in another pious or religious house designated by the Bishop (canon 1001, § 3).
4. The Bishop is to be made certain of the spiritual exercises performed by testimony of the Superior of the house in which they were performed; or, if it is a question of religious, by attestation of the major Superior (canon 1001, § 4).

[1] Sacred Congregation for the Discipline of the Sacraments, April 27, 1928 (*A.A.S.* 1928, p. 359).

Part II. On the Rites and Ceremonies of Sacred Ordination

654 I. In conferring any Order whatever, the minister is to observe exactly the proper rites described in the Roman Pontifical or in other ritual books approved by the Church, which it is licit in no way to omit or invert (canon 1002).

II. The Mass of ordination or of episcopal consecration must always be celebrated by the minister of ordination or consecration himself (canon 1003).

III. If someone, already promoted to some Orders in the oriental rite, has obtained from the Apostolic See an indult for receiving higher Orders in the Latin rite, he must first receive in the Latin rite the Orders which he has not received in the oriental rite (canon 1004).

IV. New priests must recite the Mass together with the Bishop, beginning from the Oblation, or from the words *Suscipe Sancte Pater*. Those things which are sung by the Bishop are read by them.[1] Concerning the intention to be formed by them, see the treatise on the Holy Eucharist, n. 160.

V. All promoted to major Orders are bound by the obligation of receiving Holy Communion in the ordination Mass itself (canon 1005). Therefore those promoted to minor Orders are not bound by the obligation. For the rest, priests are certainly bound under grave obligation, since it is a question of completing the sacrifice by them; with respect to the others, the grave obligation is not sufficiently established (St. Alphonsus, VI, 801).

VI. The obedience which priests promise to the Bishop in ordination is understood as that which is owed according to the canons. Nevertheless, there remains for them the liberty of embracing the religious state, unless the Church would suffer grave detriment from the departure (St. Alphonsus, VI, 828),[2] or the ordinand, by institution of the Holy See, is bound by oath to devote his work to the good of his diocese or of the missions (canon 542, 1°).

VII. Finally, the minister of ordination at the end enjoins these things on the ordained: "Let each one promoted to first tonsure or to the four minor Orders say once the seven penitential psalms with the Litanies, versicles, and prayers. Those promoted to the Subdiaconate or Diaconate, the nocturn of that day. But those ordained to the Presbyterate, after your first Mass, say three other Masses, namely one of the Holy Spirit, another of Blessed Mary ever Virgin, and the third for the faithful departed." Now that by these words a true obligation is imposed seems to be deduced from the very tenor of the words and from the accurate assignment of the matter; but a grave obligation is not sufficiently signified (St. Alphonsus, VI, 829). For the rest, note:

1. By the Nocturn of that day is understood the single Nocturn of the feria or the first Nocturn of Sunday or of a feast, according as the ordination took place on a feria, feast, or Sunday; nevertheless the Bishop can also assign another Nocturn instead of the first.[3] For the Nocturn the Psalms with antiphons suffice, without readings, invitatory, and hymn.[4]
2. The Masses to be said must be votive Masses, unless a feast of the Blessed Virgin Mary occurs or the Mass to be said is of the Holy Spirit. They must be said, moreover, as soon as it is licit for them to be said. But since only the quality of the Mass is prescribed, the application is free and therefore a stipend can be received for them (St. Alphonsus, VI, 829).

[1] Sacred Congregation of Rites, November 12, 1831, ad 11, n. 2682; September 20, 1749, n. 2404.

[2] Benedict XIV, Constitution *Ex quo dilectus*, January 14, 1747.

[3] Sacred Congregation of Rites, June 27, 1899, n. 4042.

[4] Sacred Congregation of Rites, July 10, 1893.

Part III. On the Time and Place of Sacred Ordination

655 I. Time. 1. Episcopal consecration must be conferred within the solemnities of Masses, on a Sunday or on the birthday of the Apostles (canon 1006, § 1).

2. Ordinations in sacred Orders are to be celebrated within the solemnities of Masses on the Saturdays of the Four Times, on the Saturday before Passion Sunday, and on Holy Saturday (canon 1006, § 2). Yet if a grave cause intervenes, the Bishop can have them also on any Sunday or feast day of precept (canon 1006, § 3). A feast day of precept is understood, whether local or universal, even if it is not in force in the place of ordination; suppressed feast days are excluded, since in reality they are not feast days of precept.
3. First tonsure can be conferred on any day and hour; minor Orders on individual Sundays and double feasts, yet in the morning (canon 1006, § 4).
4. A custom against the times of ordinations prescribed in the preceding paragraphs is reproved; and these are also to be observed when a Bishop of the Latin rite, by apostolic indult, ordains a cleric of an oriental rite, or conversely (canon 1006, § 5). Now Regulars enjoy, whether directly or by force of communication, the privilege of receiving Orders, even sacred Orders, outside the times established by law.[1]

It is disputed, however, whether the privilege must be restricted to Sundays and feast days of precept, or can be extended to all days. Some teach that the privilege must be taken in the restricted sense, both because "in a general grant those things do not come which someone would not likely grant in particular";[2] and because from the responses of Sacred Congregations it is drawn that the words outside the times, where there is discussion of a faculty or indult, and therefore by parity of reason also where there is discussion of a privilege, must be taken in this sense: that nevertheless a Sunday or feast day of precept must be chosen,[3] yet a revoked feast is not excluded.[4] The said responses, as being particular and not published, indeed do not directly bind all others; nevertheless they seem to bind them indirectly, insofar as the sense of the privilege is drawn from them. Others judge that the privilege is extended to all days, since on the one hand the obvious sense of the words outside the times manifestly favors the more benign opinion, and on the other hand the sense of the privilege is not drawn with sufficient certainty from the said responses of the Sacred Congregations, which are particular and not published, nor expressly speak about privilege. While the doubt stands, since it is a question of a privilege, we adhere in practice to the more benign opinion (cf. canon 68).

It is further disputed what sort of feast days are understood if some privilege is expressly restricted to feast days. Some think that any double feast is also understood, both because days of this kind also come under the name feast in the Liturgy. But more probably only feast days of precept are understood, yet including revoked feasts. The reason is that only these are called feast days in Canon Law, as is drawn both from the Council of Trent[5] and from several responses of Sacred Congregations[6] (St. Alphonsus, VI, 797, dub. 4; *De privilegiis*, n. 116).

[1] Sixtus IV, Constitution *Sedes Apostolica*, February 1, 1476; Pius V, Constitution *Religionis zelus*, March 30, 1571.

[2] Rule of Law 81 in VI.

[3] Cf. Gasparri, cited work, nn. 52 and 72.

[4] Sacred Congregation of Rites, November 2, 1831; Sacred Congregation of Propaganda Fide, July 19, 1838 (*Collectio*, n. 873).

[5] Session 24, cap. 1, *De reformatione*.

[6] In *Nouvelle Revue Theologique* 1883, p. 387, 495; cf. Aertnys-Damen, II, 578, qu. 2°.

656 II. Place. 1. A Bishop outside his proper territory, without the permission of the Ordinary of the place, cannot confer Orders in whose conferral pontificals are exercised, with the prescription of canon 239, § 1, n. 15 remaining intact[1] (canon 1008). Now to exercise pontificals in law is to perform sacred functions which, from liturgical laws, require pontifical insignia, that is, the staff and miter (canon 337, § 3). But pontifical insignia are required in the conferral of first tonsure and minor Orders when they are conferred within the solemnities of Masses.

2. General ordinations are to be publicly celebrated in the cathedral church, the canons of the church being called and present; but if in another place of the diocese, the clergy of the place being present, the more worthy church, insofar as it can be done, should be approached. But the Bishop is not prohibited, if a just cause persuades, from having particular ordinations also in other churches and likewise in the oratory of the episcopal house, or of the Seminary, or of a religious house (canon 1009, §§ 1 and 2). General ordinations are those which, for all suitable persons who desire to be ordained, take place at the times established by law, that is, on the Saturdays of the Four Times, on the Saturday before Passion Sunday, and on Holy Saturday (canon 1006, § 2); likewise, as some add, considering canon 1006, § 3, on any Sunday or feast day of precept.[2] Particular ordinations are those which are done outside the times established by law, or at least are not conferred for all suitable persons who desire to be ordained.

3. First tonsure and minor Orders can also be conferred in private oratories (canon 1009, § 3).

[1] Considering the cited canon, Cardinals enjoy the faculty of performing pontificals with throne and baldachin in all churches outside the City, after the Ordinary has been forewarned, if the church is a cathedral.

[2] Vermeersch-Creusen, *Epitome Iuris Canonici*, II, 270.

Part IV. On the Notation and Testimony of Ordination Performed

657 I. When the ordination has been completed, the names of the individual ordained persons and of the ordaining minister, the place and day of ordination, are to be noted in a special book, to be diligently kept in the Curia of the place of ordination, and all the documents of the individual ordinations are to be accurately preserved (canon 1010, § 1).

II. To each of the ordained there is to be given an authentic testimony of the ordination received; those who have been promoted by an outside Bishop with dimissorial letters are to show it to their proper Ordinary for the notation of the ordination in a special book to be preserved in the archive (canon 1010, § 2).

III. Furthermore, the local Ordinary, if it is a question of those ordained from the secular clergy, or the major Superior, if of religious ordained with his dimissorial letters, is to transmit notice of the celebrated ordination of each subdeacon to the pastor of baptism, who is to note it in his book of the baptized (canon 1011).

Scholion. On Penal Sanctions

658 The following are established:

I. With respect to the minister. They incur by the fact itself suspension for a year from conferral of Orders, reserved to the Apostolic See: 1° those who have ordained another's subject without the dimissorial letters of the proper Ordinary; 2° those who have ordained their own subject, who stayed elsewhere for so much time that he could have contracted a canonical impediment there, without due testimonial letters; 3° those who have promoted someone to major Orders without a canonical title; 4° those who, without prejudice to legitimate privilege, have promoted a religious belonging to a family which is outside the territory of the ordaining Bishop himself, even with dimissorial letters of the proper Superior, unless it has been legitimately proved that some one of the cases occurs of which in canon 966[1] (canon 2373).

II. With respect to the subject. 1. They contract by the fact itself suspension from divine things, reserved to the Apostolic See, who presume to receive Orders from one excommunicated, suspended, or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic; but one who in good faith has been ordained by any of these persons lacks the exercise of the Order thus received until he is dispensed (canon 2372). Dispensation from this suspension must be sought from the Holy Office, but it is scarcely, or hardly at all, granted.

2. One who maliciously approaches Orders without letters, or with false dimissorial letters, or before the canonical age, or by leap, is by the fact itself suspended from the Order received; but one who does so without testimonial letters, or while held by some censure, irregularity, or other impediment, is to be punished with grave penalties according to the circumstances of things (canon 2374).

III. With respect to minister and subject. 1. A Bishop consecrating someone as Bishop, the assisting Bishops or, in place of Bishops, the assisting priests, and the one who receives consecration without an apostolic mandate, are suspended by the law itself until the Apostolic See has dispensed them (canon 2370).

2. All, even those increased with episcopal dignity, who knowingly have promoted to Orders through simony or have been promoted, or have ministered or received other sacraments, are suspected of heresy; clerics, furthermore, incur suspension reserved to the Apostolic See (canon 2371).

IV. With respect to others. 1. A Vicar Capitular granting dimissorial letters for ordination against the prescription of canon 958, § 1, n. 3,[2] by the fact itself lies under suspension from divine things (canon 2409).

2. Religious Superiors who, against the prescription of canons 965-967,[3] have presumed to send their subjects to an outside Bishop to be ordained, are by the fact itself suspended for a month from the celebration of Mass (canon 2410).

[1] Cf. n. 602.

[2] Cf. n. 601.

[3] Cf. n. 602.

Treatise VIII. On Matrimony

(St. Thomas, *Supplement*, qq. 41-68; St. Alphonsus, *Theologia Moralis*, book VI, nn. 831-1148; *Homo Apostolicus*, tr. 18).[1]

We shall speak first of those things which customarily or necessarily precede matrimony; then of matrimony itself.

[1] Cf. Encyclical of Leo XIII, *Arcanum*, February 10, 1880; Encyclical of Pius XI, *Casti connubii*, December 31, 1930; Sanchez, *Disputationum de S. Matrimonio libri decem*; Feye, *De impedimentis et dispensationibus matrim.*; Gasparri, *Tractatus canonicus de matrimonio*; Wernz-Vidal, *Ius canonicum*, t. V, *Ius matrimoniale*; Desmet, *De sponsalibus et matrimonio*; Vlaming, *Praelectiones iuris matrimonii*.

Dissertation I. On Those Things which Customarily or Necessarily Precede Matrimony

The things which customarily or necessarily precede matrimony are: 1° betrothals; 2° the examination concerning free status; 3° publications; 4° prenuptial instruction; 5° the reception of the sacraments.

Part I. On Betrothals

We shall treat first of the notion, division, fittingness, and governance of betrothals, then of their form, then of their effects, and finally of the dissolution of betrothals.

Section I. On the Notion, Division, Fittingness, and Governance of Betrothals

659 I. The notion of betrothals. Betrothals[1] are the mutual promise of matrimony between one man and one woman who are capable. It is said:

1. A promise. Therefore a desire, a mere purpose, or a simple negotiation about entering matrimony does not suffice.
2. Mutual. Therefore it is not sufficient that only one party promise, even if the other accepts the promise; but a counter-promise also is required (canon 1017, § 1). As is clear from what has been said, betrothals constitute a contract, and indeed an onerous one; hence for them, as for every contract of this kind, consent is required:

a) Internal. If it is not internal, consent or volition is lacking in reality. Therefore a fictitious promise does not suffice, that is, one made externally but without the mind of promising. One who wishes to enter betrothals, but has the mind of not binding himself, seems not to enter betrothals, because he excludes that without which the contract cannot exist (cf. vol. I, n. 834). But one who wishes to enter betrothals acts validly, even if he has the mind of not fulfilling the obligation (cf. ibid.). In addition, one who has promised fictitiously is guilty of fraud, and therefore is bound to prevent or compensate the damage; even, if this cannot be done in another way, by now promising truly (St. Alphonsus VI, 832, 833).

b) Fully deliberate; for only an act of this kind can produce an obligation and the acquisition of a right. Hence betrothals entered, for example, in drunkenness, by one half-insane, are invalid; likewise betrothals made from a sudden movement of passion can be invalid (St. Alphonsus VI, 831).

c) Sufficiently free from error; wherefore it is enough to note:

α) Error concerning the person with whom betrothals are entered renders these betrothals invalid. The reason is that in betrothals the person constitutes the object of the contract. But error concerning the object of a contract invalidates the contract (vol. I, n. 836).

β) For the same reason, error concerning a quality or circumstances of the person with whom betrothals are entered renders these betrothals invalid if the error redounds into error concerning the person. Otherwise it does not invalidate them, because consent to the object of the contract is not lacking; nevertheless it renders them rescindable if, had the error not existed, the betrothals would not have been entered; practically, if the error concerns a notable defect. These things indeed do not of themselves hold for all onerous contracts, but with regard to betrothals they are admitted in law, as will be explained later (St. Alphonsus, *Homo Apostolicus*, tr. 18, n. 2).

d) Sufficiently free from fear. Fear which so disturbs the use of reason that the act is not fully deliberate invalidates betrothals (vol. I, n. 840). These things set aside:

α) Fear, whether arising from within, or from a necessary cause, or inflicted justly or unjustly by a free cause, does not invalidate betrothals. The reason is that fear does not prevent the contracting party

from furnishing perfect consent. But every contract is intrinsically constituted by perfect consent (St. Alphonsus VI, 844; cf. vol. I, n. 840).

Objection. Grave fear, inflicted unjustly and for extorting consent, invalidates betrothals at least by canon law, just as it invalidates matrimony (canon 1087, § 1), according to that rule: connected things ought to have the same reckoning.

Response. The assertion seems to have to be denied; for since the application of the assigned rule is in itself rather difficult, the Code certainly, if it had wished the rule to be applied, would have stated that betrothals are invalidated by the said fear in the same way as matrimony.

β) Fear renders betrothals rescindable if it has been inflicted both unjustly and by the other contracting party, and has given cause to the contract. If one of the assigned conditions is lacking, fear does not render betrothals rescindable (vol. I, n. 840).

e) External, namely insofar as it must be made known to the other party. Of itself, however, it is indifferent whether it is manifested by words, in writing, or by a sign, for example by a nod. But, with positive law considered, it is required that the legitimate form, to be explained later, be observed (St. Alphonsus VI, 838).

f) Made known to the other party, as was explained in vol. I, n. 834.

g) Made known by the promisor or in his name (vol. I, ibid.).

h) Simultaneous, the one with the other, because otherwise they do not truly agree into one. Of itself, however, it suffices that one consent while the consent previously given by the other persists (vol. I, n. 834).

3. Of matrimony; others say of future matrimony, so that betrothals may be more expressly distinguished from matrimony not yet consummated, which formerly came under the name of betrothals concerning the present, while betrothals properly so called were called betrothals concerning the future.

4. Between one man and one woman. Hence there would not be betrothals if someone promised matrimony to two at the same time.

5. Capable, that is, it is required that the promisors be both actually capable of promising matrimony and at least later capable of contracting it; these things, however, need explanation, which we shall add in the corollaries.

[1] Betrothals are so called from promising, namely from the practice of the Romans, by which one who wished to take a girl as wife addressed her father or guardian with the solemn formula: "Do you promise?" and he responded: "I promise." She who was promised was the bride, that is, the promised one; he to whom she was promised was the bridegroom; he who promised was the sponsor; the whole contract was betrothals; the day on which it was entered was called sponsal.

660 Corollary I. Betrothals entered by those who are held by a diriment or prohibitive impediment are to be judged thus:

1. If they are entered absolutely, they are invalid; for then matrimony is not reached insofar as it is valid and licit. The same must be said if they are referred to a time at which the impediment has not yet ceased.

2. If they are referred to the time at which the impediment has ceased:

a) They are valid if they are entered under the condition of an impediment removed without dispensation. Hence if someone says: "I shall contract with you if you have been converted to the Catholic faith," he is bound to wait for a reasonable time; and if the other is converted to the faith, the betrothals become absolute. Yet it is especially disputed whether these things also hold for the impediment of bond, namely when a married person promises matrimony to someone under the condition of the matrimonial bond being dissolved by death. Many judge that betrothals of this kind are invalid, because just as a subsequent matrimony extinguishes betrothals entered with a third person, so an antecedent matrimony ought to prevent valid betrothals from being entered with a third person. But the antecedent seems to have to be rejected, as we shall say in n. 677.

b) If they are entered under the condition of an impediment removed by dispensation, for example if someone says: "I shall contract with you if the Church dispenses," it is more disputed whether they are valid and consequently, when the dispensation has been obtained, become absolute by that very fact. Now then:

α) It seems that an affirmative answer is to be given if the dispensation can reasonably be expected, and it is a question of a matrimony which neither under a moral respect is dangerous, nor of itself injurious to the sacrament; for example, if someone should enter betrothals with his niece. The reason is that the promise regards matrimony insofar as it is valid and honorable in the full sense. The positive law, which, with certain declarations considered, formerly seems to have stood in the way, no longer seems to have to be urged, since the Code is silent.

β) It seems that a negative answer is to be given if it is a question of a matrimony which remains full of danger and of itself inflicts injury upon the sacrament; for example, if someone should enter betrothals with a heretic. The reason is that, as it seems, an obligation to enter such a matrimony cannot arise.[1]

Corollary II. Betrothals entered by children without the knowledge of their parents are of themselves contracted illicitly; nevertheless they are valid, unless the matrimony itself is illicit for them. Likewise betrothals contracted against the will of parents are valid or invalid according as the matrimony itself which is promised must be held licit or illicit (St. Thomas II-II, q. 104, a. 5; *Supplement*, q. 47, a. 6; St. Alphonsus VI, 849, 851).

Corollary III. Betrothals, just like other contracts, can also be entered through a procurator (n. 666); likewise by letters, if only the law of nature is considered, but not if canon law is considered (n. 666).

[1] The Holy Office, December 12, 1888, responded: "Betrothals between one Catholic party and the other schismatic or heretical party are illicit and therefore invalid, unless they are celebrated after previous legitimate dispensation" (*Collectanea*, n. 1696).

661 II. Division of betrothals. Betrothals are distinguished into:

1. Solemn and non-solemn, according as the legitimate form is or is not observed.
2. Absolute and conditional, according as they are neither suspended by a condition concerning the future nor made less firm by a resolutory condition; or are entered under some one of the aforesaid conditions.
3. Confirmed and bare or simple, according as an oath or earnest money or other stipulations, for example penalties against those withdrawing, are or are not added.

662 III. Fittingness of betrothals. Betrothals indeed are not prescribed; nevertheless the contract of betrothals is "decent and fitting before the celebration of matrimony. For in this way the betrothed obtain the opportunity of examining their morals and character. For since it is a question of entering matrimony, which induces a perpetual and indissoluble bond, the greatest circumspection and mature deliberation are needed, lest, if persons unequal in morals are joined to one another in perpetuity, marriages should obtain unhappy outcomes. Moreover, it is necessary that certain preparations precede the celebration of nuptials; and lest the delay thence arising render uncertain the hope of future matrimony, the betrothal pledge is aptly interposed. Furthermore, when betrothals are arranged, there is an easy occasion for the consent of parents, or of those who have authority over the betrothed, to intervene. Although that consent is not necessary at least for validity, nevertheless it is useful in the highest degree, and clandestine betrothals or inconsiderate negotiations are already wont of themselves to offend parents (cf. the cited c. 1.3. CXXX. q. 5). Finally, when betrothals have been publicly celebrated a just time before matrimony, impediments which perhaps stand in the way of matrimony are more easily detected."[1]

[1] Wernz-Vidal, *Ius canonicum*, t. V, n. 81.

663 IV. Governance of betrothals. Since betrothals by their nature are ordered to matrimony, their governance belongs to the same persons to whom the governance of matrimony belongs, that is, if it is a question of baptized persons, to the Church (n. 718). Now only the Supreme Pontiff enjoys legislative power in it, so that Bishops cannot, for example, establish impediments of betrothals. Nevertheless judicial power belongs to them, or the power of judging betrothal cases. What belongs to the pastor is explained in n. 670.[1]

[1] Cf. n. 670.

Section II. On the Form of Betrothals

664 The legitimate form of betrothals, likewise of a unilateral promise, is set forth in these words: A promise of matrimony, whether unilateral or bilateral or betrothal, is invalid for both forums unless it has been made by a writing signed by the parties and either by the pastor or the local Ordinary, or by at least two witnesses (canon 1017, § 1). If both parties or either party does not know how or cannot write, for validity this is to be noted in the writing itself and another witness is to be added, who signs the writing with the pastor or local Ordinary, or with the two witnesses of whom in § 1 (canon 1017, § 2).

665 I. Explanation of the legitimate form. For the legitimate form of betrothals it is required: 1° that it be contracted by writing; 2° that the day, month, and year of the contract entered be affixed; 3° that the writing be duly signed.

1. That it be contracted by writing, in other words, either one or both parties must promise matrimony to the other in writing. But if the promise is made under a condition, likewise if a time is added for ending the obligation, these seem necessarily to have to be expressed; for they so alter the promise that, if they are omitted, it is not designated according to its substantial elements. Other stipulations of some moment also are usefully expressed. Moreover, it is not required that the parties themselves draw up the writing; nor does anything prohibit a determined formula from being printed, or made lithographically or in another way, for the common use of contracting parties. The signature, however, is to be made as will soon be explained.

2. The day, month, and year on which the betrothals are entered are to be affixed. The affixing of a false date stands in the way of the value of the contract; since in that case the date is not in reality affixed. Some, however, relying on the analogy of civil law, judge that betrothals are valid if the inscription of the false date arose from an involuntary error, and the true date can be drawn from the context.

It is doubted whether or not the affixing also of the place in which the promise is made is required for validity. For the affirmative opinion there militates first, that custom interprets the signing of the date in such a way that the place also is affixed. Next, where there is question of betrothals signed by the pastor or by the Ordinary, the affixing of the place is very greatly conducive to a document which can firmly prove the validity of the betrothals, since for the aforesaid persons to sign validly it is required that they perform this within the place of their territory. That the Sacred Congregation of the Council, when it responded that the date had to be added, was silent about the affixing of the place is perhaps explained by the fact that it was not asked about it. Since the matter is doubtful, the affixing of the place should not in practice be omitted.[1]

3. That the writing be duly signed. On this point observe:

a) The writing of itself must be signed either by the parties together with the pastor or local Ordinary, or by the parties together with two witnesses. If both parties or either party does not know how or cannot write, for validity this is to be noted in the writing itself and another witness is to be employed, who is joined either as a second witness to the pastor or Ordinary, or as a third witness to the other witnesses. It is not required and it does not suffice that the party who does not know how or cannot write affix a mark in place of name and surname. It suffices that one witness be added, whether both parties or either party does not know how or cannot write, since the law speaks only of another witness to be added. The party who alone can write seems not to be bound to sign. For the obvious sense of the law sufficiently insinuates that the signature of the pastor, or of two witnesses, and of the added witness suffices. Nevertheless, on account of some doubt, it is expedient to follow the safer course.

One does not know how to write who is ignorant of letters; one cannot write who is physically impeded from writing. One who affixes his name while guided by the hand of another seems to sign validly if he is only helped, so that he himself exists as the principal cause. But if someone is like a mere instrument, for example because he has in no way been taught the method of writing or has a hand suffering from perfect paralysis, he affixes his name invalidly. Likewise one who uses a typewriter signs invalidly; for he must be said to print rather than to write. In addition, that manner of signing is destitute of every sign of authenticity. For the same reasons one signs invalidly who employs an instrument which reproduces the name in the likeness of an engraved character.

Who come under the name of pastor and local Ordinary, see n. 734. Now the pastor seems to sign validly even if he has not yet obtained possession of the benefice, since the law, where it speaks of the promise of matrimony, does not speak of a requirement of this kind, and requires only that one be pastor. For the same reason, the same seems to have to be said of a pastor excommunicated by sentence, or interdicted, or suspended from office, or declared such. But the pastor and local Ordinary cannot grant to another, for example to a vicar or secretary, the faculty of signing the promise of matrimony as an authorizing witness.[2]

As witnesses there can be employed any who, with the law of nature considered, are capable of giving testimony.[3] Hence infidels, heretics, women, and those under puberty are not excepted, although, where Catholics can be had, it is not fitting that heretics or infidels be employed. It is clear that even the pastor and Ordinary can be taken as common witnesses.

b) The pastor or local Ordinary taken as an authorizing witness is bound to sign the writing within his own territory. But this also suffices. Therefore it is not required that the pastor or Ordinary who is employed be proper to either contracting party, for example by reason of domicile; but it is required and suffices, both for validity and for liceity, that he be the pastor or Ordinary of the place in which he signs the contract.[4]

c) The parties are bound to sign the writing in one context with the pastor or Ordinary, or with the two witnesses;[5] in other words, it is required that each be present to all the others as they sign.

[1] Sacred Congregation of the Council, July 27, 1908, to II. This and similar responses were mere explanations of law previously existing and inserted into the Code; hence we judge that they persist, with canon 6, 2°, and canon 23 considered.

[2] Sacred Congregation of the Council, March 30, 1908, to VI.

[3] Cf. Sacred Congregation of the Sacraments, March 12, 1910, to IV.

[4] Sacred Congregation of the Council, March 30, 1908, to VII.

[5] Sacred Congregation of the Council, July 27, 1908, to I.

666 As custom has it in civil contracts, so also it is expedient that the betrothal contract be read aloud before it is signed. Likewise it is useful that the document which contains the contract be preserved with the pastor or Ordinary of the place who signed it, while a copy is nevertheless handed to each party.

Corollary. Since the parties are bound to sign the writing in one context with the pastor or local Ordinary, or with two witnesses, betrothals cannot be contracted between absent persons except through a procurator. That they can be entered through a procurator follows from the fact that otherwise provision would not have been made for contracting betrothals by those who cannot meet with one another. Next, unless the contrary is established, it must be judged that with regard to contracts the faculty persists of doing through another what one can do through oneself. As to the manner of employing a procurator, however, it is expedient to observe what canon 1089 establishes concerning marriages to be contracted through a procurator.[1]

[1] As matrimony, so says the cited canon, is validly entered through a procurator, there is required a special mandate to contract with a certain person, signed by the mandator and either by the pastor or Ordinary of the place in which the mandate is made, or by a priest delegated by either, or by at least two witnesses. If the mandator does not know how to write, this is to be noted in the mandate itself and another witness is to be added who also signs the writing; otherwise the mandate is invalid. If, before the procurator has contracted in the name of the mandator, the latter has revoked the mandate or fallen into insanity, the matrimony is invalid, although either the procurator or the other contracting party may have been ignorant of these things. For matrimony to be valid, the procurator must perform his office personally.

667 II. Necessity of the legitimate form. a) A promise of matrimony, whether bilateral or betrothal, or unilateral, made without the statutory form, is void or invalid for both forums (canon 1017, § 1).

Therefore informal promises made after the statutory form, as being wholly void, of themselves induce no obligation either of justice or of fidelity. I said of themselves; for it cannot be denied that, accidentally, an obligation can arise from an informal promise. Thus, for example, one would be bound

to restore damage who deceitfully entered betrothals with a person ignorant of the invalidating law, and by acting thus was the cause why the other party suffered damage. Likewise one would be bound by the obligation of restitution who deceitfully had intercourse with a betrothed woman who judged that the private betrothals entered by her were valid. Finally, one who after informal betrothals had been entered no longer wished to enter matrimony would be bound to warn the other party, who would be foreseen as about to make expenses for the future matrimony, etc.

Question. Whether an informal promise of betrothals is also invalid?

Response. We judge that this must be denied, because the law speaks only of a promise of matrimony; the force of this argument is increased by the fact that an invalidating law is to be interpreted strictly (cf. canon 19).

b) Although an informal promise of matrimony is invalid, nevertheless it does not seem illicit. For the end of the legislator is sufficiently obtained by the mere invalidation of the informal promise, without a prohibition being added. Add that a law which not only invalidated but also prohibited informal promises would provide occasion for innumerable and continual transgressions, and therefore would not be conducive to the common good.

668 III. Subjects of the legitimate form. The following are subject to the form of betrothals:

1. Catholics of the Latin rite, not of the Oriental rite (canon 1), as is clear.
2. Baptized non-Catholics. It is indeed true that heretics and schismatics were immune from the Pian law, even insofar as it regarded betrothals; but the Code repeats that immunity only with respect to marriages. It is also true that heretics and schismatics, according to many, are not held by many ecclesiastical laws;[1] but they extend this immunity only to laws which more nearly regard the sanctification of souls rather than public order. Finally, the special reason which holds for exemption from the form of celebration of matrimony, namely the preventing of concubinage, cannot be urged here.

Corollary. Catholics of the Latin rite are subject to the form whether they enter betrothals among themselves, or with a Catholic of the Oriental rite, or with a non-Catholic, baptized or not baptized. Baptized non-Catholics are subject to the form whether they contract betrothals among themselves, or with a Catholic, or with a non-Catholic, baptized or not baptized. The non-baptized are not subject to the form if they enter betrothals among themselves; but they are subject to it if they do so with a baptized person.

[1] We abstract from the question whether or not this opinion is sufficiently founded (cf. vol. I, n. 129).

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Forms of Betrothals

I.

Betrothals signed by the contracting parties and the pastor.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals.

At Rome, on the day..... of the month..... of the year.....

Signature of the bridegroom

Signature of the bride

Signature of the pastor

II.

Betrothals signed by the contracting parties and two witnesses.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals.

At Rome, on the day..... of the month..... of the year.....

Signature of the bridegroom

Signature of the bride

Signature of the first witness.

Signature of the other witness.

III.

Betrothals signed by the pastor and a witness.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals. The contracting parties, or one of the contracting parties, N.N., cannot write. Hence N.N., son of....., has been taken as witness.

At Rome, on the day..... of the month..... of the year.....

(Signature of the party who can write.)

Signature of the pastor

Signature of the witness taken.

IV.

Betrothals signed by three witnesses.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals. The contracting parties, or one of the contracting parties, N.N., cannot write. Hence N.N., son of....., has been taken as third witness.

At Rome, on the day..... of the month..... of the year.....

(Signature of the party who can write.)

Signature of the first witness

Signature of the second witness

Signature of the third witness.

Section III. On the Effects of Betrothals

Chapter I. On Absolute Betrothals

670 The effects of betrothals are distinguished into natural and canonical. The natural effects are: 1° the obligation of entering matrimony; 2° incapacity validly to contract betrothals with a third person; 3° incapacity licitly to contract matrimony with a third person; 4° the obligation of carrying on betrothal conversation with the bride or bridegroom; 5° the obligation of avoiding betrothal conversation, and still more lustful acts, with another. There is added 6° a canonical effect situated in this, that an action is given, not indeed for seeking the celebration of matrimony, but for the reparation of damages, if any are owed (canon 1017, § 3).

I. The obligation of entering matrimony; and indeed an obligation of commutative justice, and a grave one. The obligation must be fulfilled: if the time for fulfilling has been prefixed, at this time; if it has not been prefixed, at the time when the other party reasonably asks for matrimony. If the other party through shame or fear does not ask, it is not licit to wait beyond a reasonable time (St. Alphonsus VI, 845). Thus the matter stands of itself; for by reason of a just cause it is licit to defer nuptials. Moreover, commonly it is to be advised that the betrothed enter matrimony as soon as it can conveniently be done, lest namely they remain longer in danger of sin.

What if one party refuses to enter matrimony, but the other urges the betrothals?

Response 1. The confessor, if the refusing party truly brings forward a just cause, can pronounce that he or she can withdraw from the betrothals. If the party brings forward a more or less doubtful cause, or, to take the matter practically, if he or she brings forward changed affection as the cause, there will be added a founded fear lest the matrimony have a bad outcome; this fear constitutes a cause for withdrawing from betrothals (n. 680). If a cause for withdrawing is in reality lacking, the confessor should proceed by advising rather than by commanding; at times also a dispensation can be obtained from the Holy See (n. 681).

Response 2. The pastor should furthermore keep before his eyes these words of canon 1017, § 3: "From a promise, although it is valid and no just cause excuses from fulfilling it, no action is given for seeking the celebration of matrimony; nevertheless one is given for the reparation of damages, if any are owed." This action, however, is of mixed forum and does not suspend the celebration of matrimony with another.[1]

II. Incapacity validly to contract betrothals with another person. Therefore betrothals of this kind are not only illicit, but also destitute of every value, unless they are contracted under the condition: "If the prior betrothals are dissolved." The reason is that no one can confer on someone a right in a thing after he has already granted a right in it to another. But if intercourse has followed upon betrothals entered with another, the prior bride does not lose her right. Nevertheless she should be advised to yield her right spontaneously, unless she herself would suffer notable damage from it, or regard the very matrimony not contracted as a grave damage (St. Alphonsus VI, 848).

III. Incapacity licitly to contract matrimony with another; which is clear.

IV. The obligation of carrying on betrothal conversation with the bride or bridegroom, namely according to the circumstances and honest morals of the region; which likewise is clear.

V. The obligation of avoiding betrothal conversation, and still more acts of lust, for example fornication, with another. Here, however, it is disputed whether fornication with a third person of itself takes on the nature of injustice, and of grave injustice. Now with St. Alphonsus (VI, 847) the nature of grave injustice is denied with sufficient probability, because the arguments of the adversaries prove the matter in no way, as will be clear from the objections to be discussed.

Objection 1. Fornication renders the promised thing, that is, the body in order to matrimony, notably worse.

Response. First, what the adversaries suppose is deservedly called into doubt, namely that by betrothals there is induced an obligation of justice of handing over the body such as it was at the time of the promise. If it is a question of another promise, this will sometimes be clear from the circumstances; but in the case at hand the matter seems doubtful. Next, it is by no means clear that the body is rendered notably worse in order to matrimony by fornication.

Objection 2. Fornication is at least implicitly excluded by the betrothal contract, so that fornication is opposed to the contract and therefore to justice.

Response. It is not clear that fornication is excluded by the betrothal contract itself. In addition, if the assertion is admitted, the same seems to have to be said about immodest touches committed with another person, so that these too would be opposed to justice.

Note 1. As was said above, from betrothals, even if they are valid and here and now bind, no action is given for seeking the celebration of matrimony, but one is indeed given for the reparation of damages, if any are owed (canon 1017, § 3; p. 508).

Note 2. Effect of a unilateral promise. A unilateral promise of matrimony is presumed to have induced a grave obligation of justice. For an obligation of this kind is judged to have been undertaken if, as we suppose to have taken place, witnesses or a public writing are added to the promise. As to an action arising from a unilateral promise, however, the things said under the note concerning an action arising from betrothals hold, as is clear from the documents cited there.

[1] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 345).

Chapter II. On Conditional Betrothals

671 I. Betrothals under a condition concerning the past or the present are valid or not valid according as the condition has been fulfilled or has not been fulfilled. Those who doubt about the fulfillment are bound to inquire into the truth, and meanwhile to abstain from betrothals and matrimony with a third person.

II. Betrothals under a condition concerning the future are to be judged thus:

1. If the condition is resolutory,[1] the betrothals are valid from the beginning, but, when the condition has been fulfilled, they are dissolved by that very fact.
2. If the condition is suspensive and honorable,[2] the following must be said:

a) While the condition has neither been fulfilled nor definitively failed, the betrothals remain in suspense. Nevertheless the parties are bound to wait and not maliciously to impede, indeed honestly to procure, the event of the condition. Betrothals entered with a third person would be invalid, unless they were made under the condition: "if the prior conditional betrothals definitively fail." The reason is that betrothals of this kind would regard an illicit thing.

b) When the condition has been fulfilled, the betrothals by that very fact become absolute, without prejudice, however, to what was said concerning the condition: "If ecclesiastical authority dispenses" (n. 660). Except the case in which either party legitimately revoked consent before the condition was fulfilled. But what if consent was illegitimately revoked before the condition was fulfilled? In the case, the obligation of entering matrimony certainly remains, not however by force of the betrothals, which cannot be perfected when the will has ceased, but by force of the obligation of repairing the injury (vol. I, n. 848).

c) When the condition has definitively failed, the betrothals fall. Yet one who maliciously impeded the fulfillment of the condition is bound to repair the right of the injured party; and the injured party has a right to true consent.

3. If the condition is suspensive and base,[3] these things hold:

a) While the condition has not yet been fulfilled, the betrothals more probably remain in suspense. Nevertheless each party can and must revoke consent; and when consent has been revoked by either party, the contract altogether vanishes.

b) When the condition has been fulfilled, and consent has not been revoked, the betrothals more probably become absolute (vol. I, n. 849, compared with n. 833).

[1] "I promise you matrimony, but if that matter does not succeed, I shall be free."

[2] "I promise you matrimony if the parents consent."

[3] "I promise you matrimony if you admit intercourse."

Scholion. On Accidental Elements of Betrothals

672 I. A penalty is added to betrothals if the parties agree that something is to be paid by the one withdrawing. A stipulation of a penalty to be paid by one withdrawing justly is illicit and invalid, as being injurious to the freedom of matrimony. But a penalty established against one withdrawing unjustly is valid and licit (St. Alphonsus VI, 853, q. 1). Appeal can no longer be made to positive law, from which many, while others contradicted, were drawing the contrary, since the Code is silent about it.

II. A mode is a burden added by one party to a perfected betrothal contract and accepted by the other.[1] A mode differs from a suspensive condition. For the latter brings it about that the contract is not perfected before the condition has been fulfilled, while an added mode supposes a perfected contract. Nevertheless the added mode can be intended in such a way that, if the other party does not fulfill it, neither is the prior party bound to sustain the betrothals.

III. Earnest money is a thing given to the other party in pledge of future matrimony. When matrimony follows, the earnest money can be reclaimed, unless the mind of the betrothed was contrary. If matrimony does not follow, it must be restored by the one withdrawing unjustly, but can be kept by

the other party. If one withdraws justly from the betrothals, custom has it that each party restore the earnest money received (St. Alphonsus VI, 852).

IV. Iocalia are gifts given to the other party, not as a pledge of future matrimony, but as a sign of love and under the hope of nuptials. When matrimony follows, they can be retained. If matrimony does not follow, they must be restored by the one by whose fault the matrimony is not contracted, except if they are small and are not reclaimed by the other party; but they can be retained by the other party. If through the fault of no one matrimony is omitted, custom has it that each party restore the iocalia received, perhaps excepting smaller ones.

V. An oath added to valid betrothals, or to a valid unilateral promise, adds to the obligation of justice an obligation of religion. When the betrothals fall, the obligation of the oath falls (canon 1318, § 1).

An oath added to invalid betrothals, or to an invalid unilateral promise, for example from defect of legitimate form, is invalid, because the accessory follows the principal (canon 1318, § 1).

[1] "I promise you matrimony; you, however, must do this or that."

Section IV. On the Dissolution of Betrothals

Preliminary note. Of the causes for dissolving betrothals, some by their own force dissolve or extinguish them; others furnish to both parties, or to one party, the right of dissolving or rescinding them. In addition, the causes have force even if the betrothals have been confirmed by oath. They are:

673 I. Mutual consent, sufficiently free from error, fraud, and fear (St. Alphonsus VI, 855, 856).

674 II. A notable defect pre-existing the betrothals and afterwards detected; likewise a notable change supervening upon the betrothals, which render matrimony more burdensome, and, if they had been known or foreseen, would have deterred from the betrothals. The reason is drawn from this, that betrothals, as ordered to matrimony, which carries with it a perpetual society of life, are judged to have been contracted under the condition: "provided the matter is as it appears, and is not changed for the worse"; or at least with the right retained of dissolving them if the aforesaid condition is not fulfilled (St. Thomas, *Supplement*, q. 43, a. 3, ad 3; St. Alphonsus VI, 86). Indeed, even a prudent and persistent suspicion of a notable defect or change suffices, because it is a grave inconvenience to contract with such a suspicion.

In the cases set forth, the dissolution of betrothals can be made by one party or by both, according as one or both would suffer inconvenience if, notwithstanding the change, matrimony were contracted. Commonly, however, the inconvenience will not follow for the party who has suffered the change, but for the other alone.

The defect and change can concern goods: 1° of the body, as if there is detected or supervenes a grave and incurable disease, or stinking breath, notable deformity, loss of sight or hearing, etc.; 2° of the soul, as if the bridegroom is detected to be, or becomes, irreligious, drunken, a gambler, prodigal, harsh in morals, etc.; 3° of fortune, as if the bridegroom or bride is detected to be, or becomes, poor, or is frustrated of a great inheritance or expected lucrative office, etc. And these things indeed are admitted by all, because in the cases set forth the detected defect and the supervening change render matrimony more burdensome. But:

It is disputed whether a notable supervening change furnishes the right of withdrawing when, if it had been foreseen, it indeed would have impeded the betrothals, but nevertheless does not render

matrimony more burdensome; for example, if an unexpected and rich inheritance comes to someone. Now a sufficiently probable opinion affirms, because each person is presumed to have contracted betrothals under the condition: "provided no notable change supervenes." Add that, according to common estimation, the neglect of great gain is equated with grave damage; and this being posited, from the acceptance of men the change of which we speak is morally the same as that which renders matrimony more difficult. Finally, in the case in which a rich inheritance comes to someone, there enters a disparity of condition, which, as will be said under III, involves a cause for dissolving betrothals. St. Alphonsus would not indeed praise, but neither would he condemn, the one who, when marriage with an exceedingly better bride has been offered, should choose this bride (VI, 876).

Note. A party laboring under an occult defect is bound to manifest this to the other party before the betrothals or, once the betrothals have been contracted, before the nuptials, as follows: 1° "If the defect would render the nuptials pernicious, as if it were infamy, leprosy, the French disease, or another contagious disease, he is bound to manifest it or to withdraw from the nuptials, unless the other party labors under the same defect. The reason is that, just as one sins against justice who sells harmful merchandise to another who believes it good, so a fortiori one does who wishes to contract matrimony with a pernicious defect. 2° But if the defect would not render the nuptials harmful, but only less desirable, namely if the bride were poor though she is thought rich, ignoble though noble, deformed though beautiful, corrupted though a virgin, then, although she herself cannot deceive the man by pretending that she is immune from such a defect, nevertheless she is not bound to manifest the defect; but even when questioned she can dissemble by answering equivocally" (St. Alphonsus VI, 864-865). Thus custom has it. If, however, there is grave danger that the defect may afterwards be detected and provoke grave discords, it is to be advised that it be manifested (St. Alphonsus, ibid.).

Disparity of condition and the dissent of parents are partly referred to the cause set forth.

675 III. Disparity of condition, whether arising from disparity of status, or from nobility, or from disparity of fortune:

a) If it is so great that the matrimony is illicit because of dishonor to the family, the betrothals are null from the beginning.

b) If it is not so great, but nevertheless notable, the betrothals are valid and of themselves irrescindable, if the parties contracted them with knowledge of the disparity. If it is afterwards detected, or supervenes after the betrothals have been contracted, these can commonly be rescinded.

676 IV. The dissent of parents operates thus:

1. Due dissent, namely because the matrimony is illicit, argues that the betrothals were null from the beginning (St. Alphonsus III, 644; VI, 851, 877).

Here it is customary to ask whether a prodigal promise of matrimony as such, that is, one made to a bridegroom or bride of much inferior condition or fortune, but without dishonor to the family, is illicit and invalid, as being about an illicit thing. To this question we respond with St. Alphonsus (VI, 851): If no reason honors a promise of this kind, it regards a venially evil thing, and therefore is null. "Nevertheless, since the fault of prodigality is not more than venial, any middling just cause can remove the vice of prodigality. Hence the bridegroom who marries an unequal woman will be sufficiently excused if he knows in her some special prerogative, namely of providence, devotion, great honesty, or even of some natural endowment, on account of which the bridegroom judges that he will

lead a quiet life with her. Hence it is inferred that scarcely can a case occur in which the bridegroom would not be bound to marry her, because very rarely will there be lacking some one of these causes which will excuse the fault of prodigality."

2. Reasonable dissent, although not due, will often be a reason why it is licit to rescind betrothals. Almost the same must be said about less reasonable and continuing dissent, so that hope of removing it is lacking; in which case children often will be able, especially if the dissent was not foreseen, to withdraw from the betrothals, namely on account of the inconveniences joined to their execution and the evils to be feared. Nevertheless, commonly they are not bound to this, the more so because, once matrimony has been contracted, the inconveniences not so rarely vanish.

677 V. Violation of fidelity furnishes to the innocent party the right of withdrawing, while the guilty party remains bound until the innocent party has used his or her right. To this are referred:

1. Courtship with a third person, or frequenting with a view to matrimony. A fortiori:
2. Betrothals attempted with a third person, or even a gratuitous promise of matrimony made to a third person.
3. Matrimony entered with a third person. Here, however, it is disputed whether by matrimony of this kind the betrothal obligation is extinguished on both sides, or whether for the unfaithful betrothed the obligation is only suspended, namely during the matrimony. Now with St. Alphonsus (VI, 875) and others, against many, it seems that one must say that for the unfaithful party the obligation is only suspended. The reason is that an obligation contracted, if an impediment is placed illegitimately, is not extinguished except by an impediment which by its nature is simply indissoluble. But matrimony is not by its nature simply indissoluble. Indeed, by its proper nature it cannot be dissolved by the authority of the spouses, but it can be dissolved in another way, for example by the death of a spouse. This is confirmed from the fact that matrimony does not extinguish, but only suspends, the obligation of a vow of religion, so that the one vowing, when the spouse has died, is bound to fulfill the vow (St. Alphonsus, ibid.).

Objection. In the case of a vow, the supervening bond is of a different nature, while the bond of matrimony is of the same nature as the bond of betrothals.

Response. This seems to make no difference; in other words, only this must be considered, whether or not the subsequent bond is by its nature simply indissoluble; because the nature of an obligation as such carries with it that it must always be fulfilled as long as it can be fulfilled. Hence if the subsequent bond is temporal, the obligation is only suspended.

4. Fornication; concerning which several things must be noted.

a) Antecedent fornication of the bride, afterwards detected, gives to the bridegroom the right of withdrawing; and this holds even if the bride was oppressed by force, because according to common estimation she is of less worth than she was thought to be. Antecedent fornication of the bridegroom, detected after the betrothals, confers on the bride the right of withdrawing: 1° if the bridegroom is detected to have acted thus frequently; 2° if he has received offspring from another; 3° if it is hard for the particular bride to marry a man who has fornicated even once (St. Alphonsus VI, 861). I said "for the particular bride"; namely, it must be considered in what manner the bride is to be judged to have contracted the betrothals. Now a bride to whom it matters little whether or not the bridegroom had

previously fornicated is not judged to have entered betrothals under the condition: "provided the bridegroom is not detected to have committed fornication."

b) Subsequent fornication of either party gives to the other party the right of withdrawing. This holds even if the bride was oppressed by force, since according to common estimation she has been made of less worth, so that a notable change has supervened which renders matrimony more burdensome. If both parties have fornicated, the bridegroom, as is now commonly admitted, can withdraw. But it is disputed whether of itself the same is licit for the bride. Most of the older authors deny, relying on this reason: the fornication of the bride is judged both far more shameful and consequently also a graver delict than the fornication of the bridegroom, so that an uncompensated excess favors only the bridegroom. There are, however, those who judge that in many regions, according to common estimation, the bridegroom is rendered almost as contemptible by fornication as the bride, perhaps the lowest common populace excepted; and if this is admitted, the subsequent fornication of both also furnishes to the bride the right of withdrawing.

Corollary. The things said about fornication hold almost also for immodest touches with a third person, especially if they are more frequent or are done with several persons. Indeed, familiarity with a third person can be such that it furnishes to the other party the right of withdrawing, the more so because in this whole matter attention must also be given to a founded fear that fidelity may afterwards be violated. Finally, the aforesaid things are also to be applied to other graver crimes perpetrated by the bridegroom or bride, for example homicide, bestiality, heresy (St. Thomas, *Supplement*, q. 43, a. 3, ad 6; St. Alphonsus VI, 860).

5. The departure of either party into a distant region, from which return cannot be hoped for soon, if it happens while the other party is unaware or unwilling, gives to this party the right of marrying another. The reason is that the long expectation of some good involves a notable diminution of happiness (St. Alphonsus VI, 860).

6. Delay of matrimony produces these effects:

a) If the term is prefixed solely for urging the obligation, the party prepared can withdraw: 1° if the other party delays matrimony without a just cause, because by acting thus he or she violates fidelity; 2° if he or she delays justly, but with grave inconvenience to the prepared party, which can be prevented by withdrawing.

b) If the term is prefixed for ending the obligation: 1° if both parties have been at fault, each party is free, both because of the stipulation added to the contract and because each party seems to have yielded his or her right; 2° if neither party has been at fault, each seems free, namely with the stipulation added to the contract considered; 3° if one party has been at fault, certainly the other party is freed; but it is disputed whether the prior party also is free if the other urges matrimony. Now commonly it seems to have to be denied, because no one is judged to have bound himself in such a way that the obligation ceases even if he himself is the cause why it was not fulfilled (St. Alphonsus VI, 867, 868).

The term is commonly prefixed for urging the obligation; yet sometimes the contrary can be drawn from the tenor or from the circumstances.

678 VI. Election of a more perfect state; concerning which both the liceity of choosing a more perfect state and the effect of the election made must be explained.

1. Liceity of choosing a more perfect state. Notwithstanding betrothals, it is licit to choose a more perfect state, as follows:

a) It is licit to choose the religious state. The reason is drawn from the fact that in betrothals there is a tacit condition: "Unless I shall have chosen the religious state"[1] (St. Alphonsus VI, 870, dub. 1). Likewise it is licit to emit a vow of choosing the religious state; for it is licit to vow what it is licit to perform.

b) It is disputed whether it is licit: 1° to choose the clerical state; 2° to emit a private vow of perpetual chastity. It is affirmed with sufficient probability, because there is probably in betrothals the tacit condition: "Unless I shall have chosen a more perfect state" (St. Alphonsus VI, 873). It is illicit to choose mere celibacy without a vow of perpetual chastity; for one who has promised matrimony is not judged to have retained the right of not marrying.

Furthermore, the election, of itself licit, of a more perfect state is illicit: 1° if someone obtained intercourse under the promise of matrimony; 2° if someone is bound to repair damage which can be repaired by matrimony alone; 3° if someone does not proceed sincerely, namely from desire of a more perfect state, but fraudulently, for example so that he or she may be freed from the betrothals and, after obtaining a dispensation, may marry another (St. Alphonsus VI, 873; III, 649).

2. Effects of the election made. a) The election of any more perfect state, even of mere celibacy, frees the other party; both because the one choosing the more perfect state renounces the betrothals, and because, when one party withdraws voluntarily, the other party by that very fact recovers liberty (St. Alphonsus VI, 873).

b) Religious profession itself and the reception itself of major Order extinguish the betrothals, or free both parties. The reason is that they constitute a state which cannot be composed with the execution of the betrothals and is of itself perpetual. It is disputed whether the same effects are produced, or whether for the receding party they only suspend the obligation, by: 1° the emission of a vow of chastity to be observed perpetually in the world; 2° mere entrance into Religion; 3° mere entrance into a seminary; 4° reception of minor Order; 5° vows alone of entering Religion, or of embracing major Order, or of emitting a private vow of perpetual chastity. Nevertheless it seems one must say that at least entrance into Religion or a seminary, likewise the reception of minor Order and vows alone of entering Religion, of receiving Sacred Orders, or of emitting a vow of chastity, only suspend the betrothals for the one entering or vowing, because through those things a state of itself perpetual is not yet undertaken (St. Alphonsus VI, 870-873).

[1] Cf. chapters 2 and 7, *De conversione coniugatorum*.

679 VII. A supervening diriment impediment. 1. If an indispensable and perpetual impediment supervenes, that is, one in which a dispensation cannot be given or hoped for, for example impotence, the betrothals fall for both parties. Nevertheless the party who, conscious that the impediment would arise, caused it, must compensate the damage that will follow for the other party.

2. If an impediment supervenes which indeed is indispensable but temporal, namely the impediment of bond, the betrothals are dissolved for the party to whom fidelity has been violated; for the other party they are more probably only suspended, as was said in n. 677. Meanwhile this party is bound to reparation of the damage inflicted on the other party.

3. If a dispensable impediment supervenes, the party who did not induce the impediment is freed. The party who gave cause to the impediment, if indeed he or she acted conscious that the impediment would arise, must procure a dispensation, even with grave inconvenience; but if he or she was ignorant of the impediment, after the manner of an inculpable debtor from contract, more probably he or she is bound to ask for a dispensation if it can conveniently be obtained; indeed even with grave inconvenience, if the damage of defloration must be repaired or infamy prevented (St. Alphonsus VI, 857, 858).

Concerning a supervening prohibitive impediment, for example a vow, etc., enough has been said in n. 678.

680 VIII. Founded fear that the matrimony will be unhappy. For no one is judged to have bound himself to a burden of this kind.[1]

[1] Austrian Instruction, February 2, 1856.

681 IX. Dispensation can be granted by the Supreme Pontiff, as is clear both from the fact that he can dissolve the firmer bond of ratified matrimony (canon 1119), and from the practice of the Holy See. Inferior Prelates lack this power; nevertheless, when the cause has been examined and is manifest, they can declare or judge that betrothals are invalid, dissolved, or rescindable. For dispensation a just cause is required; and in general this can be said to be present if from the dispensation greater goods are foreseen than from the execution of the betrothals.

Note. One who without a just cause withdraws, or unjustly has introduced a cause for withdrawing, is bound to compensate damage arising from his or her unjust action; but not the gain to which the other party would have acquired a right only after the nuptials had been contracted.

Part II. The Examination, Especially concerning Free Status

682 "Before matrimony is celebrated, it must be certain that nothing stands in the way of its valid and licit celebration" (canon 1019, § 1). Now "in danger of death, if other proofs cannot be had, unless contrary indications are present, the sworn affirmation of the contracting parties that they have been baptized and are detained by no impediment suffices" (canon 1019, § 2). Outside danger, however, there must be certainty about these things according to the ordinary norm of law, and indeed both of common law and of particular law constituted by statutes or legitimate custom (cf. canon 1020, § 3).

With common law considered, an examination is prescribed, which is customarily called an examination concerning free status, because it especially regards that status.

I. The necessity of the examination is clear from canon 1020, § 1: "The pastor, to whom the right belongs of assisting at matrimony, is diligently to investigate beforehand, at an opportune time, whether anything stands in the way of contracting matrimony."

II. The examiner is the pastor to whom the right belongs of assisting at matrimony (canon 1020, § 1); but since generally the pastor of the bride assists at the matrimony, he in practice acts as examiner.

III. Matter of the examination. The pastor is to investigate:

1. Into the dwelling of the betrothed, if any doubt remains, namely so that he may judge whether in reality it belongs to him to assist at the matrimony, with canon 1097 considered (n. 736); in which parishes the publications are to be made (n. 686); whether either party is a vagrant, in which case license of assisting must be sought from the Ordinary (n. 695).
2. Into impediments which perhaps stand in the way of matrimony. "Then," says canon 1020, § 2, "he is also to question the bridegroom and the bride separately and cautiously, whether they are detained by any impediment."[1] This inquiry seems also to have to be performed if the pastor is morally certain about immunity from impediments. The inquiry especially regards public impediments; the investigation of occult impediments, which cohere with sin, seems able to be left to the confessor.
3. Into consent, namely, "whether they give it freely, especially the woman" (the cited canon).
4. Into baptism; for "unless baptism has been conferred in his own territory, the pastor is to require testimony of baptism from each party, or only from the Catholic party if it is a question of matrimony to be contracted with dispensation from the impediment of disparity of cult" (canon 1021, § 1).

An extract from the baptismal register can serve very greatly for detecting impediments, if there are any, for example of bond, consanguinity, etc.; that this end may be obtained more securely, it is especially to be advised that the testimony of baptism be of a more recent date.

5. Into Confirmation; for betrothed "Catholics who have not yet received the sacrament of Confirmation are to receive it before they are admitted to matrimony, if they can do this without grave inconvenience" (canon 1021, § 2).[2]
6. Into the requisites from civil law; namely, let him see whether the betrothed have fulfilled or can fulfill the requisites from law.

7. Into the consent of those whose consent is required, even with civil law alone considered. Moreover, "the pastor is gravely to exhort minor children of families not to enter nuptials without the knowledge of their parents or when their parents are reasonably unwilling; but if they refuse, he is not to assist at their matrimony unless he has first consulted the local Ordinary" (canon 1034). Civil law is especially to be attended to with regard to minors and soldiers.
8. Into Christian doctrine, "whether they have been sufficiently instructed in Christian doctrine, unless on account of the quality of the persons this last question appears useless" (canon 1020, § 2).[3]

Note. "It belongs to the local Ordinary to give special norms for an investigation of this kind by the pastor" (canon 1020, § 3).

[1] Roman Ritual, title VII, chapter 1, n. 1.

[2] Roman Ritual, title VII, chapter 1, n. 14.

[3] Roman Ritual, title VII, chapter 1, n. 1; Constitution of Benedict XIV, *Nimiam licentiam*, May 18, 1743, n. 10; Instruction of the Sacred Congregation for the Discipline of the Sacraments, July 7, 1921 (*A.A.S.*, p. 348).

Part III. Publications

683 Publications are understood as public announcements by which the faithful are informed of nuptials to be contracted by certain persons, made for this end, that one who knows an impediment of matrimony may disclose it to the pastor. Publications are also called announcements, proclamations, banns.[1] The following are to be considered:

[1] *Bannum* is a German word which signifies: 1° a place of jurisdiction, for example the bann of Rome; 2° the exercise of jurisdiction by public edict, for example by proclamation of matrimony.

684 I. Existence of the law. "It is to be publicly announced by the pastor between whom matrimony is to be contracted" (canon 1022).[1] Nevertheless "publications are not to be made for marriages which are contracted with dispensation from the impediment of disparity of cult or mixed religion, unless the local Ordinary, according to his prudence, scandal being removed, has judged it opportune to permit them, provided that apostolic dispensation has preceded and mention of the religion of the non-Catholic party is omitted" (canon 1026).

[1] Roman Ritual, title VII, chapter 1, n. 6.

685 II. The object of the law is set forth in canons 1023-1025 inclusive, especially canon 1024: "Publications are to be made on three continuous Sundays and other feasts of precept in church during the solemnities of Masses, or during other divine offices to which the people frequently come." The following must be explained:

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1. Parish of the publications. The publications must be made in the parish of the betrothed, as is deduced from the fact that they are to be made by the proper pastor (canon 1023, § 1). Now the parish of the betrothed is that in which they have domicile or quasi-domicile (canon 94, § 1), or, if it is a question of vagrants or of those who have only diocesan domicile or quasi-domicile, actual residence (canon 94, §§ 2 and 3). If a party has stayed in another place[1] for six months after having attained puberty,[2] the pastor is to set forth the matter to the Ordinary, who according to his prudence is either to require publications to be made there, or to prescribe that other proofs or conjectures concerning freedom of status be gathered (canon 1023, § 2).[3] If there is some suspicion of a contracted impediment, the pastor is to consult the Ordinary even for a shorter stay; and the Ordinary is not to permit the matrimony unless first the suspicion is removed according to the norm of § 2 (canon 1023, § 3). Finally, particular statutes are to be observed which regard publications and are not opposed to common law; these commonly especially regard marriages of soldiers and vagrants.

a) If the betrothed belong to one and the same parish, the publications are to be made in that parish alone.

b) If the betrothed belong to different parishes, the publications must be made in both.[4]

c) If either party or both belong to several parishes, the publications must be made in each parish.

d) The marriages of minor children are proclaimed both in the quasi-domicile which they perhaps have acquired and in the domicile of those under whose power they are subject; for they necessarily retain this (canon 93, § 1).

e) The marriages of adult children are also to be published in the domicile of the parents, unless they have renounced this. But concerning this renunciation it is often difficult to be certain, so that doubt remains whether or not they are to be announced in the domicile of the parents. In practice, one who follows the current practice is safe.

f) The marriages of vagrants, besides in the parish in which they have actual residence, in some places by force of particular law must also be announced in the parish of origin, or at least in that in which they have stayed longer.[5]

g) The marriages of soldiers, besides in their proper parish, in some places by force of particular law must also be proclaimed in the parish in which they actually stay.

[1] It is not said "elsewhere in a parish," so that the precept does not have force if it is a question of another parish of the same place.

[2] A minor, if male, is judged pubescent from the completed fourteenth year; if female, from the completed twelfth year (canon 88, § 2).

[3] The Pontifical Commission, June 2-3, 1918, to the doubt: If a party, after attaining puberty, has stayed for more than six months in very distant and remote regions, from which, in order that regular attestation of freedom of status may be had, a longer time is required, while nevertheless the celebration of matrimony is urgent, does the oath of the party with the testimony of two, or if two cannot be had, at least of one, who stayed with him or her in those regions, suffice in the case for making freedom of status certain? responded that the matter is remitted to the prudent judgment of the Ordinary, who can prescribe other proofs, not excluding a supplementary oath, according to the norm of canon 1023, § 2 (*A.A.S.* 1918, p. 345); cf. Instruction of the Sacred Congregation for the Discipline of the Sacraments, June 4, 1921, under 4° (*A.A.S.* 1921, p. 348).

[4] Roman Ritual, title VII, chapter 1, n. 7.

[5] Thus, for example, in the Netherlands (Provincial Council of Utrecht, p. 123).

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2. The person publishing. Publications of matrimony must be made by the proper pastor (canon 1023, § 1). He, however, can also satisfy the law through another, for example through a vicar, through any other priest, through a deacon, etc. Nevertheless it is less fitting to use a layman or even a simple cleric.

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3. Number of publications. Publications must be made three times, as is clear from what is to be said under 4.

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4. Time of the publications. They must be made:

a) On Sundays and other feasts of precept, whether general or particular, and this even if perhaps only the obligation of hearing Mass persists. But it is doubtful whether publications can be made on general feasts in those places where the said feasts do not have force. On suppressed feasts publications cannot of themselves be made; but just as the local Ordinary can dispense from publications for a legitimate cause (canon 1028), so also for a just cause in particular cases he can permit them to be made on abrogated feasts, provided solemn offices must be held as before, and the attendance of the people at church is frequent.[1]

b) On continuous Sundays and other feasts of precept, that is, succeeding one another in such a way that no other Sunday or feast is interposed. As to the practice of making publications only on Sundays,

while omitting feasts occurring within the week, if it is immemorial, it can be tolerated by the Ordinary if it cannot prudently be removed (canon 5). But if three feast days should immediately succeed one another, the practice seems licit that on those days at most two publications be made. For since otherwise the time for revealing impediments is so brief, the letter of the law is deservedly judged not to have to be urged. If, however, all the announcements are made on three continuous and suitable days, the obligation is satisfied (cf. St. Alphonsus VI, 992).

Note. Publications are not prohibited during the closed time.

c) During the solemnities of Masses, that is, during the parochial or principal Mass, as authors commonly taught, or during other divine offices to which the people frequently come, for example in a private Mass, in Vespers or Lauds, as they are called; but not, as it seems, in offices at which a determined class of the faithful, for example members of some Congregation, rather than "the people," is present. Moreover, it suffices that the publications be made in one of the suitable offices.

[1] Cf. Sacred Congregation of the Council, June 17, 1780; April 19, 1823.

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5. Place of the publications. They must be made in church (canon 1024); under this name here comes primarily the parish church, as follows from the fact that they must be performed by the pastor (canon 1023, § 1). Yet it seems that they can also be made in a filial church which has a territory separated from the territory of the mother church, namely for those who belong to the territory of that church.[1] Finally, accidentally they can be made in a church or chapel which for a time holds the place of the parish church, or in which extraordinary divine offices for the parishioners are celebrated.[2]

[1] Sacred Congregation of the Council, in the Cologne case, in *Revue Theologique francaise* 1901, p. 117.

[2] Sacred Congregation of the Council, July 1, 1724; Roman Ritual, title VII, chapter 1, n. 8.

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6. Manner of making the publications. The formula is set forth by the Roman Ritual, and it must be observed at least as to substance. Finally, it is clear that the announcements are to be made in the vernacular language, and with a living and clear voice.

Note. The local Ordinary can, for his territory, substitute for publications the public affixing, at the doors of the parish church or another church, of the names of the contracting parties for a space of at least eight days, yet in such a way that, in this space, two feast days of precept are included (canon 1025).

692 III. Gravity of the law. The precept obliges even if the pastor is certain about the free status of those about to marry. For it is founded on the presumption of common danger, so that it does not cease even if in a particular case the absence of danger is established. The obligation, however, is grave from its genus. Therefore it is a grave sin: 1° to omit all announcements; 2° to omit two, or to neglect the greater part of the precept. It is light to omit one (St. Alphonsus VI, 990), likewise, for example, to make two announcements outside the church, etc., provided nevertheless that there is a sufficiently large concourse of people.

693 IV. Dispensation. 1. The person competent to dispense, besides the Supreme Pontiff, is the proper local Ordinary, who can dispense from publications even to be made in another diocese (canon 1028, § 1). Furthermore, in many dioceses, by delegation of the Bishop, the faculty of dispensing at least from

one or even two publications has been granted to Deans. If there are several proper Ordinaries, for example if those about to marry belong to different dioceses, the one in whose diocese the matrimony is celebrated has the right of dispensing; but if the matrimony is entered outside their proper dioceses, any proper Ordinary can dispense (canon 1028, § 2).

2. A cause for dispensing is certainly required, and indeed, if the one dispensing is inferior to the Holy See, it is required for validity (canon 84, § 1). Since the law is grave, a grave and urgent cause also is required; but it is more easily licit to dispense from one or two publications than from all. For dispensation from all, a most grave cause is required.[1]

The causes are customarily distinguished into necessary, that is, such as those in which dispensation ought to be granted, and gracious, that is, such as those in which it can be granted but ought not be granted.

a) Necessary causes are enumerated by St. Alphonsus (VI, 1005): 1° "If there is probable fear lest the matrimony be maliciously impeded; ... 2° if the matrimony is necessary for avoiding damage or infamy of the contracting parties or offspring; namely, if defloration has preceded, and there is fear lest the man change his will. Likewise, if one of the betrothed were at the point of death and there were offspring to be legitimated; ... 3° if danger of soul, body, or fortune is imminent; ... 4° if the bridegroom is immediately about to set out far away, and the necessity of contracting is urgent on account of one of the causes described above; 5° if the parents or guardian intend that the virgin marry an unworthy man"; 6° if the closed time is near at hand, and on the one hand nuptials then cannot be entered without scandal, while on the other hand the matrimony cannot conveniently be deferred, etc.

b) A gracious cause is present if the dispensation seems useful or reasonable, as if it is a question of the marriage of great princes; if dispensation is sought by a man of great merit, for whom to deny it would be grave; if those about to marry are old or of very disparate condition; indeed, in the case, embarrassment can be so great that it is a necessary cause for dispensing (St. Alphonsus VI, 1006). Moreover, Bishops are generally warned not to dispense easily.[2]

3. Things to be observed in the petition for dispensation. It is sought by the pastor who assists at the matrimony; but by the confessor if the matrimony must be contracted or convalidated secretly. The petition is made in the name of those about to marry. In the supplication there are to be expressed: 1° the names, surnames, parish, and commonly also diocese of the petitioners; with regard to widows or widowers, it is expedient that the name and surname of the deceased spouse be added; 2° what is sought, namely whether dispensation from one, two, or all announcements; 3° the cause why dispensation is sought; 4° the Ordinary is to be made certain of the truth of the cause, into which namely the very person who petitions for dispensation is bound to inquire.[3]

[1] Cf. Constitution of Benedict XIV, *Nimiam licentiam*.

[2] Constitution of Benedict XIV, *Satis vobis*, November 17, 1741.

[3] Let the formula of supplication be: Most Excellent and Most Reverend Lord, Peter N. and Anna N. humbly seek from Your Excellency dispensation from one, or from two, or from all announcements. The cause is... After diligent examination, I have found and testify that the things set forth are true, Your Excellency's most humble servant, N.N., pastor at N.

694 V. A cause excusing from announcements is had when on the one hand there is a true necessity of entering matrimony, and on the other hand dispensation cannot be obtained in time or cannot be sought without danger of violating the sacramental seal. Now the necessity of entering matrimony is

commonly present if one of the necessary causes for dispensing enumerated above is had. Nevertheless, let the matter be treated cautiously and prudently, and if dispensation can be obtained in time, it is to be sought (St. Alphonsus VI, 1003 under 7, 1007 dub. 2).

695 VI. Things to be noted. Once the investigations and publications have been completed, the following things are to be attended to:

1. The pastor is not to assist at matrimony before he has received all necessary documents (canon 1030, § 1), namely testimony of baptism perhaps conferred elsewhere (p. 518), testimony of investigations and publications perhaps instituted elsewhere (n. 686), testimony of the license of the Ordinary or his delegate if it is a question of a vagrant (p. 524), and, according to the circumstances, testimony of the death of the previous consort, etc. A document of Confirmation is not required, although Catholics, before they are admitted to matrimony, must receive that sacrament if they can do this without grave inconvenience (canon 1021, § 2).

If, with the nuptial day pressing and unable conveniently to be deferred, the testimonial letters have not yet been received, the pastor, insofar as can be done, is to take care that they are received. If time is lacking, recourse is to be made, if it can be done, to the Ordinary; otherwise the pastor proceeds by epikeia, provided he is certain about free status.

2. Furthermore, the pastor is not to assist, unless a reasonable cause requires otherwise, before three days have elapsed from the last publication (canon 1030). According to canon 34, § 3, 3°, the day of the last publication is not computed in these three. If matrimony has not been contracted within six months, the publications are to be repeated, unless it seems otherwise to the local Ordinary (canon 1030, § 2).

3. When doubt has arisen about the existence of some impediment: 1° the pastor is to investigate the matter more accurately, by questioning under oath at least two trustworthy witnesses, provided it is not a question of an impediment from knowledge of which infamy would arise for the parties, and, if it is necessary, the parties themselves also; 2° he is to perform or complete the publications, if the doubt arose before the publications had been begun or completed; 3° he is not to assist at matrimony without consulting the Ordinary, if he has prudently judged that the doubt still remains (canon 1031, § 1).

4. When a certain impediment has been detected, one must proceed thus:

a) If the impediment is occult, the pastor is to perform or finish the publications, and is to bring the matter, while suppressing the names, to the local Ordinary or to the Sacred Penitentiary (canon 1031, § 2, 1°). But if everything is already prepared for the nuptials and the matrimony cannot be deferred without probable danger of grave evil until a dispensation is obtained from the Holy See, and not even the local Ordinary can be approached, or cannot be approached except with danger of violation of secrecy, the pastor is to proceed according to the norm of canon 1045, as will be explained later.

b) If the impediment is public and is detected before the publications have been begun, the pastor is not to proceed further until the impediment is removed, even if he knows that dispensation has been obtained only for the forum of conscience; if it is detected after the first or second publication, the pastor is to complete the publications and bring the matter to the Ordinary (canon 1031, § 2, 2°).

5. Finally, if no impediment has been detected, neither doubtful nor certain, the pastor, after the publications have been completed, is to admit the parties to the celebration of matrimony (canon

1031, § 2, 3°).

Question. What if the pastor or the Ordinary alone knows an impediment, and matrimony is publicly sought?

Response 1. The pastor cannot assist at the matrimony, lest he concur in an invalid matrimony and in the grave inconveniences perhaps to follow from it; these are to be prevented even more by the pastor than by others (St. Alphonsus VI, 1002).

Response 2. The Ordinary, for the same reason, cannot give a sentence in favor of the matrimony. Nor does it stand in the way that by preventing the matrimony he acts as judge and witness; "because someone can well be judge and witness when it is a question of impeding sin" (St. Alphonsus VI, 1002).

Question. What if the impediment is detected in sacramental confession?

Response 1. If the impediment is public, the confessor is to warn the penitent about the necessity of dispensation and send him or her to the pastor; or, if the confessor is the pastor, he is to warn the penitent to manifest the impediment to him outside confession.

Response 2. If the impediment is occult, the confessor likewise generally is to warn the penitent about the necessity of dispensation, and he himself can obtain it for the forum of conscience. I said generally, because the penitent can sometimes be left in good faith, according to what was said in n. 396.

6. In order that the validity of matrimony to be contracted by vagrants may be consulted the more, canon 1032 establishes: "Except in a case of necessity, the pastor is never to assist at the marriage of vagrants of whom in canon 91 unless, after the matter has been brought to the local Ordinary or to a priest delegated by him, he has obtained license to assist." Now:

a) Under the name of vagrants there certainly come those who, having uncertain seats, lack domicile, quasi-domicile, and monthly residence.

It is disputed whether those too are comprehended who are destitute of domicile and quasi-domicile, but not of monthly residence. Now they seem to be comprehended, because canon 1032 expressly speaks of "the matrimony of vagrants of whom in canon 91." Now, with canon 91 considered, those of whom we speak are vagrants.

Objection. Canon 1097, § 1, 2° distinguishes those who enjoy monthly residence from vagrants.

Response. With canons 1032 and 1097, § 1, 2° considered, it seems that one must concede and say that the word vagrants in canon 1032 is used in a broader sense, and in canon 1097, § 1, 2° in a more restricted sense.

b) The Ordinary whose license is required is the Ordinary of the place in which the matrimony is contracted.

c) The aforesaid license is required even if only one party is a vagrant. This is deduced from the end of the law, namely of preventing invalid marriages; and this end is urgent whether both parties or only one is a vagrant.

d) License is not required in a case of necessity, for example if there is danger that the parties, if license is awaited, would contract merely civilly; if there is necessity of undertaking a long journey, which is so urgent that time for obtaining license does not remain, etc.

Scholion I. On the Obligation of the Faithful

696 I. All the faithful are bound to reveal impediments, if they know any, to the pastor or Ordinary before the celebration of matrimony (canon 1027); this obligation, as is drawn from the nature of the thing prescribed, is of itself grave. It is said:

1. If they know any, that is, if they have certain or probable knowledge of a diriment or prohibitive impediment. Therefore one is not bound who heard the matter from a person not worthy of trust, unless there is hope of further detecting the truth (St. Alphonsus VI, 994).
2. They are bound to reveal impediments before the celebration of matrimony to the pastor or local Ordinary. But one who warns those about to marry that a dispensation must be sought or that matrimony must not be entered, foreseeing that the warning will be beneficial, satisfies the obligation. Indeed, if it is a question of an infamous impediment, he must first give the aforesaid warning, unless hope of fruit is lacking, or another cause excusing from the warning is present (St. Alphonsus, ibid.).

II. The following are excused from the obligation set forth:

1. One who knows that a dispensation has been obtained or sought, or at least will be sought.
2. One who cannot reveal the impediment without grave inconvenience to himself or his own, or to the community, is excused from the burden of revelation, although he can be bound to warn those about to marry.
3. One who knows an impediment under secrecy is excused thus:

a) If the secret is natural or promised, he is not excused, because the reverence due to the sacrament and the avoidance of evils arising from invalid matrimony prevail over the obligation annexed of itself to the said secrets. And this holds even if an oath has been added (St. Alphonsus VI, 994).

b) If the secret is committed, and it is a question of one who is not bound by force of office to keep the secret, he is not excused for the reason given above. But one who by force of office is bound to keep the secret is excused, because the common good, to which it is of the highest interest that such a secret be kept, prevails over the reverence of itself due to the sacrament and over the avoidance of the evils which are annexed to invalid matrimony.

Scholion II. On the Obligation of the Confessor

697 I. If the confessor detects an impediment which requires dispensation for the external forum, let him send the penitent to the pastor. If the confessor himself is the pastor of the penitent, let him exhort the penitent to open the impediment to him outside confession.

II. If the confessor detects an occult impediment, let him generally warn the penitent about the necessity of dispensation, and, if the penitent consents, he can obtain it for the forum of conscience. The faculty of the confessor sometimes to dispense will be spoken of later.

Part IV. Prenuptial Instruction

698 I. The necessity and matter of instruction are set forth in canon 1033: "Let the pastor not omit, according to the diverse condition of the persons, to teach the betrothed:

1. "The sanctity of the sacrament of matrimony," that is, the nature and dignity of matrimony, and the manner of preparing themselves worthily for the reception of the sacrament; wherefore "let him vehemently exhort them, before the celebration of matrimony, to confess their sins diligently and piously receive the Most Holy Eucharist."
2. "The mutual obligations of spouses," especially the licit use of matrimony.
3. "The obligations of parents toward offspring," especially the manner of conferring Baptism in a case of necessity. Likewise:
4. At least the first elements of Christian doctrine, if the bridegroom or bride are found ignorant; "but if they refuse this instruction, there is no place for rejecting them from matrimony, according to the norm of canon 1066," that is, let him assist only if a grave cause is urgent, concerning which, if it can be done, let him consult the Ordinary.[1]

II. Instructor and time of instructing. The instruction is to be made by the pastor (canon 1033), for example on the occasion of the examination of the betrothed, and generally before proceeding to the publications. But instruction concerning the use of matrimony and the manner of baptizing in a case of necessity is to be made a little before or immediately after the matrimony has been contracted. For an example of instruction, see our little work whose title is *On the Virtue of Chastity and the Opposed Vices*.

[1] Roman Ritual, title VII, chapter 1, n. 14; Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 345).

Part V. Reception of the Sacraments

699 I. With divine law considered, of itself there is no obligation to confess before matrimony. It suffices to have recovered the state of grace, if perhaps lost, by an act of perfect contrition (n. 43). Likewise, as is clear, of itself there is no obligation of receiving the Holy Eucharist. Accidentally, with regard to each sacrament, there can be an obligation, especially by reason of avoiding scandal.[1]

II. With common ecclesiastical law considered, likewise the obligation is lacking. This is deduced from canon 1033, which decrees only: "Let the pastor vehemently exhort the betrothed that before the celebration of matrimony they diligently confess their sins and receive the Most Holy Eucharist." Thus also the Roman Ritual.[2]

Nevertheless, canon 1066 should be noted: If a public sinner or one notoriously bound by censure has first refused to approach sacramental confession or to be reconciled with the Church, the pastor is not to assist at his or her matrimony unless a grave cause is urgent, concerning which, if it can be done, he is to consult the Ordinary.

III. It is disputed whether or not particular law can impose reception of the sacraments.[3] But certainly it cannot convert neglect of reception into an impediment of matrimony itself; for this power belongs only to the supreme ecclesiastical power (canon 1038, § 2).

IV. With regard to Confirmation, canon 1021, § 2 establishes: Catholics who have not yet received the sacrament of Confirmation are to receive it before they are admitted to matrimony, if they can do this without grave inconvenience.

[1] Cf. Sacred Congregation of Propaganda Fide, April 17, 1820; Sacred Congregation of the Council, August 28, 1852.

[2] Title VII, chapter 1, n. 14.

[3] Roman Ritual, title VII, chapter 1, n. 14.

Dissertation II. On Matrimony Itself

Matrimony can be both merely a contract, as the matrimony of non-baptized persons, and a contract which at the same time is a sacrament, as matrimony entered by baptized persons. Namely, Christ elevated to the dignity of a sacrament the very contract which existed from the beginning of the human race. Now many of the things to be said hold both for matrimony which is merely a contract and for that which is also a sacrament. Hence before we speak specifically about matrimony insofar as it is a sacrament, we shall first discuss matrimony in general. Therefore let there be:

Part I. On Matrimony in General

We shall speak first of its nature, then of its division, then of its institution, ends, goods, honesty, and governance, finally of its properties, and last of all of the effects of matrimony.

Section I. On the Nature of Matrimony

Chapter I. Summary Exposition

700 Matrimony can be considered in becoming and in completed fact.

I. Matrimony in becoming is an onerous contract, by which a capable man and woman hand over and accept the right over the body, exclusive and perpetual, in order to acts of themselves apt for generation (cf. canon 1081). It is said:

1. An onerous contract; by these words the constitutive act of matrimony is indicated, according to these words of canon 1081, § 1: "Matrimony is made by the consent of the parties, legitimately manifested between persons capable by law; and this consent cannot be supplied by any human power."
2. A capable man and woman; by these words the subject of matrimony is assigned, namely a man and a woman who actually enjoy the use of reason and are not bound by a diriment impediment (cf. canon 1081, § 1).
3. Hand over and accept the right over the body, exclusive and perpetual, in order to acts of themselves apt for generation; these things will be more fully developed in their own place. Behold the essential object of the matrimonial contract, into which therefore the will must necessarily be borne. But once consent has been given to this object, matrimony is constituted by that very fact, without intercourse being added, as many formerly judged. Thus Nicholas I in the *Responses to the Consultations of the Bulgarians*,[1] Innocent III in c. 22 *De Sponsalibus*,[2] Eugene IV in the Decree for the Armenians,[3] etc. Thus also canon 1081, § 1, just cited. And it is confirmed from the fact that certainly a true matrimony was contracted between the Blessed Virgin Mary and St. Joseph, without intercourse nevertheless having been added (St. Alphonsus VI, 879).

Corollary. The reciprocal right over the body of the consort, and that exclusive and perpetual, is the true and sole essential object of the matrimonial contract. Hence marriages which are called for a time, or by way of experiment, or friendly marriages, are not true marriages.[4]

The communion of table, bed, and dwelling belongs only to integrity; union of minds and goods not even to integrity, but only to a good outcome or to the better being.

[1] Denzinger-Bannwart, n. 334.

[2] Denzinger-Bannwart, n. 404.

[3] Denzinger-Bannwart, n. 703.

[4] Encyclical *Casti connubii* (*A.A.S.* 1930, p. 558).

701 II. Matrimony in completed fact is the very conjunction itself, or the permanent bond, which arises from the contract.

This definition of matrimony is customarily handed down, almost taken from Roman law: the marital conjunction of a capable man and woman, retaining or carrying with it an undivided society of life. In this definition the word conjunction, taken actively, denotes matrimony in becoming; taken passively, matrimony in completed fact. By undivided society of life, however, the unity and indissolubility of matrimony are designated.

Corollary. Matrimony, even when abstraction has been made from the character of sacrament, belongs not only to the order of justice and temperance, but also to the order of religion. Thus Leo XIII teaches in the Encyclical *Arcanum*,[3] where matrimony is said to be "by its nature, by its force, of its own accord sacred." Thus also Pius XI teaches.[4] The same is drawn from the fact that the end of matrimony is not only the procreation and education of children as such, but as servants of God. Indeed, from the beginning God, by a primitive supernatural ordination, put into every matrimony the character of an adumbration of the supernatural union both of the Divine Word with human nature and of Christ with the Church; which Innocent III,[5] Honorius III,[6] Leo XIII,[7] and Pius XI[8] teach.

[1] Cf. De Smet, op. cit., n. 193; *Nederlandsche Katholieke Stemmen*, 1905, p. 12 sq.; *Revue du clerge francais*, t. 1, p. 745 sq.

[2] Matrimony is derived, according to some, from the words mother and office, because it is especially the office of the mother to generate and educate offspring; according to others, from the word mother alone, "for *monium* is a mere extension of the word, as from father comes patrimony, from holy comes sanctimony" (Forcellini, *Totius latinitatis lexicon*, under Matrimony). It is denominated from the mother rather than the father because the burdens of matrimony, namely conception and birth of offspring, belong to the mother, likewise especially, at least, education. Matrimony is also called *coniugium* from joining together, consortium from with and lot, nuptials and connubium from veiling, because girls formerly covered or veiled the head before they were handed over to a man.

[3] February 10, 1880.

[4] Encyclical *Casti connubii* (*A.A.S.* 1930, p. 570).

[5] Chapter *Gaudemus*, *De divortiis* (Decretals, book 4, title 19, c. 8).

[6] Chapter *Ex parte tua*, *De transactionibus* (Decretals, book 1, title 36, c. 11).

[7] Encyclical *Arcanum*.

[8] Encyclical *Casti connubii* (*A.A.S.* 1930, p. 552).

Chapter II. Fuller Exposition

The fuller exposition is contained chiefly in the development of the properties of matrimonial consent itself. Now on each side there is required consent that is true, fully deliberate, sufficiently free from ignorance, error, force, and fear, external, made known to the other party, and simultaneous. It is said:

702 I. True or internal, in other words, there is required an act of the will of contracting matrimony (cf. canons 1081 and 1086).

In the internal forum, one asserting that he or she consented only fictitiously must be believed according to the truthfulness of the person. In the external forum, fiction is not admitted unless it is proved (canon 1086, § 1); and this commonly will be very difficult.

One who consents fictitiously sins against justice unless he is unjustly forced to matrimony; but with sufficient probability he does not commit sacrilege unless there is abuse of the sacred rite. The reason is that, because of defect of consent, the sacrament which could be violated is lacking (St. Alphonsus VI, 62). But he is bound: 1° to abstain from those things which are licit only for spouses; 2° not to

contract matrimony with another before an ecclesiastical judge has declared according to the norm prescribed by law that the prior nuptials were null; 3° to repair the damage caused by the fiction, unless someone has been unjustly forced to matrimony. Now commonly he cannot repair the damage except by now consenting truly. The reason is that the deceived party commonly will not be able to enter another matrimony, because the fiction, and therefore the nullity of the prior nuptials, commonly will not be able to be proved. And from this very fact another reason for now consenting truly is added, namely the danger of incontinence which otherwise would arise from a cohabitation to be prolonged. Finally, if perhaps offspring has been received, the good of this offspring also requires matrimony. Nevertheless, one who consented fictitiously is excused from furnishing true consent: 1° if he was unjustly forced to matrimony, in which case he is not even bound to repair the damage; 2° if the other party also consented fictitiously, or if that party renounced his or her right; 3° if much greater damages are foreseen as about to arise from a true matrimony, in which case the damage must be repaired in another way (St. Alphonsus VI, 887, 1113).

703 II. Fully deliberate; as was said about contracts generally (vol. I, n. 834). Hence a matrimony contracted by one insane, sleeping, or plainly drunk would be invalid. With regard to those half-drunk and those more or less foolish, the validity will easily be doubtful. The insane who have lucid intervals are sometimes, at that time, sufficiently in possession of reason; nevertheless, as St. Thomas teaches (*Supplement*, q. 58, a. 2), "it is not safe that he contract matrimony, because he would not know how to educate offspring." Sometimes, however, matrimony of this kind is rightly commended, for example for legitimating offspring. Meanwhile this kind of matrimony will more easily be advised where the man is insane in this way than where the woman is, on account of the greater danger to offspring on the part of an insane woman. If each is insane in this way, matrimony between them can scarcely, or hardly at all, be licit. If some just cause for admitting such an insane person to matrimony seems to be present, the matter will prudently be brought to the Ordinary.[1]

[1] Thus approximately Dens, *De matrimonio*, n. 97.

704 III. Sufficiently free from ignorance; concerning which observe that ignorance differs from error. Ignorance is the mere defect of knowledge, and does not import an opinion or judgment; error, however, imports an opinion or judgment, and a false one. Now ignorance of the matrimonial object invalidates consent, because the will is not borne toward the unknown. Hence:

Corollary I. Those who are ignorant that matrimony is a permanent society between man and woman for procreating children contract invalidly (canon 1082, § 1). This ignorance is not presumed after puberty (canon 1082, § 2). It is said permanent; by this word indissolubility properly so called, or the essential property of matrimony, is not understood; otherwise the Code would also make mention of other equally essential properties, for example unity. But there is understood some permanence which must last more or less, and is supposed in every society.

Corollary II. Those who are ignorant that the procreation of offspring is obtained by means of bodily union seem to contract invalidly, because there is ignorance of the object, that is, of the right over the body in order to procreating children.

Corollary III. Those who are ignorant only of the mode of union or intercourse have sufficient knowledge of the object, because the said ignorance does not prevent them, by explicitly handing over the right over the body in order to procreation, from at least implicitly handing over the right to acts of themselves apt for generation. Thus also the Sacred Congregation of the Council.[1] The aforesaid things

hold even if someone, once the truth was known, would not have entered matrimony, since the question is not what someone would have done, but what he did.

[1] March 15, 1856; December 18, 1869.

705 IV. Sufficiently free from error. Error can regard the object of matrimony or its properties, the person or that person's qualities, and finally the value of the matrimony. Now:

1. Error concerning the object of matrimony invalidates the matrimonial contract, because then the will is borne toward an object diverse from the object of the matrimonial contract, so that consent to the object of matrimony is lacking.

Corollary I. The following contract invalidly: 1° those who judge that matrimony is not ordered to procreating children; 2° those who judge that children are procreated in a way other than by bodily union, for example by union of minds.

Corollary II. Those who err only concerning the mode of bodily union contract validly.

2. Simple error concerning the unity or dissolubility of matrimony, or its sacramental dignity, even if it gives cause to the contract, does not vitiate consent (canon 1084). The reason is that in the case there is not error concerning the object of the matrimonial contract taken simply, but only concerning that which in the object is quasi-secondary or consequent; in other words, one does not err concerning the right over the body of the consort, but either concerning the exclusive or perpetual right, or concerning the dignity intrinsic to matrimonial consent. But such error does not prevent the one consenting to the right over the body from consenting at least implicitly to the exclusive and perpetual right, and to the dignity intrinsic to the consent (cf. St. Thomas, *Supplement*, q. 51, a. 2, ad 2). It was said:

a) Simple error; for one contracts invalidly if either or both parties by a positive act of the will exclude some essential property of matrimony (canon 1086, § 2), or, if it is a question of baptized persons, the sacramentality of matrimony. Hence the Holy See has several times declared invalid the marriages of those heretics who, with the rite by which they enter nuptials considered, explicitly or implicitly stipulate that matrimony will be dissolved in the case of adultery.[1]

b) Even if it gives cause to the contract; for the question is only what someone did, not what he would have done if the error had been absent.

3. Error concerning the person renders matrimony invalid (canon 1083, § 1); and this holds whether the error is invincible or vincible, antecedent or giving cause to the contract, or merely concomitant. The reason is that in the case consent is borne toward an object diverse from the object of the present contract: for consent regards the right over the body, for example, of Peter, while the object of the present contract is the right over the body, for example, of Paul. Therefore consent to the object of this contract is lacking.

4. Error concerning a quality[2] of a person commonly does not invalidate matrimony; and this holds even if the error gave cause to the contract and was induced by fraud. The reason is that such error does not prevent consent to the substance of the object. Canon 1083, § 2 is consonant.

I said commonly does not invalidate matrimony; for it invalidates it:

a) If error of quality redounds into error of person (canon 1083, § 2, 1°). But this has place when the quality about which there is error distinguishes the person from every other, and the contracting party

determines for himself the person with whom he intends to contract precisely through that quality; as if someone intends to contract with the first-born daughter of a prince, and externally contracts with another whom he erroneously thinks to be the first-born (St. Alphonsus VI, 1010, 1013, 1015).

b) If a free person contracts matrimony with a person whom he thinks free, while on the contrary that person is a slave, with slavery properly so called. Thus by force of positive ecclesiastical law (canon 1083, § 2, 2°). But slavery properly so called is required, that is, one which extends so far that a human being can be bought and sold like an irrational animal, according to works (St. Alphonsus VI, 1017, 1018; vol. I, p. 537).

Question. Whether the matrimony is valid if a free unbelieving person, from error, married a faithful person who is a slave?

Response. Many deny, because the law does not distinguish. Others affirm, because the impediment in the case seems to affect no party: not the unbelieving party, because he or she is not subject to the Church; nor the faithful party, since the impediment seems to have been constituted in favor only of the free party who errs.

5. Finally, knowledge or opinion of the nullity of the matrimony does not necessarily exclude matrimonial consent (canon 1085). The reason is that such knowledge or opinion does not necessarily prevent someone, as far as is from himself, from having the will to contract. If the case occurs, one must see whether the contracting party in fact, as far as was from himself, intended matrimony. But if that had place, the matrimony was valid at once if the opinion was false; if it was true, the matrimony can afterwards be convalidated. But if the contracting party, with knowledge or opinion of nullity, intends concubinage or a simple civil ceremony, consent is lacking. I said intends, because it does not stand in the way of validity that someone merely judges[3] it to be concubinage or a mere ceremony. In practice one more easily doubts about the intention of contracting true matrimony if it is a question of well-instructed Catholics who for some reason contract merely civilly, see a mere ceremony in a matrimony of this kind, and therefore more easily do not seek matrimony properly so called but only legal convenience. Indifferent and not well-instructed Catholics are more easily presumed to contract validly; a fortiori non-Catholics.[4]

[1] Holy Office, April 6, 1843 (*Collectanea*, n. 965).

[2] If the one erring binds his consent to the quality as to a condition without which not, the matrimony is certainly invalid; not, however, by reason of error, but on account of the lacking condition.

[3] Sacred Congregation of Propaganda Fide, October 1, 1785 (*Collectanea*, n. 580).

[4] Holy Office, July 2, 1897, to the Archbishop of Cologne.

706 V. Sufficiently free from force and fear. Concerning this canon 1087 says: "Matrimony entered by reason of force or grave fear inflicted from without and unjustly, from which, in order that one may free himself, he is compelled to choose matrimony, is also invalid. No other fear, even if it gives cause to the contract, carries with it the nullity of matrimony." Therefore:

1. Absolute force renders matrimony invalid; since in the case the external act is posited under physical coercion, with the mind resisting completely, consent of the will is lacking. With regard to force or violence in a qualified sense (vol. I, n. 28), the things said about the full deliberation required, and the things to be said about fear, suffice.

2. With regard to fear,[1] these things hold:

a) Grave fear, inflicted from without and unjustly, from which, in order that one may free himself, he is compelled to choose matrimony, dirimently impedes this matrimony (canon 1087, § 1), at least by canon law. It is said:

α) Grave fear; either absolutely or relatively to the person on whom the fear has been inflicted. It makes no difference whether someone fears a grave evil for himself or for those intimately joined to him.

β) Inflicted from without; that is, by a free cause. Hence, for example, a matrimony entered from fear lest life otherwise be hard would be valid.

γ) Inflicted unjustly. Now fear is certainly inflicted unjustly if someone uses an unjust means, or by an unjust means extorts matrimony whether owed or not owed, or, as others state the same thing, if the one inflicting fear does not have the right of executing what he threatens; as if a father, who catches a young man acting basely with his daughter, threatens him with death unless he marries her.

It is disputed whether fear is inflicted unjustly if someone by a means not unjust in itself extorts matrimony not owed, or if the one inflicting fear indeed has the right of executing what he threatens, but does not have a right to matrimony; as if a girl should threaten a young homicidal man that she will denounce him to the judge unless he marries her, or if a physician, who is bound only from charity to undertake the care of a sick girl, denies his help unless the girl marries him.

Response. Some affirm, because one acts unjustly who through grave fear tries to obtain that to which he has no right, for example matrimony. Others deny, because one does not act unjustly who offers to another a means, for example the choice of matrimony, by which he may avoid a damage which can be inflicted on him without injustice. But it seems one must distinguish thus: If the avoidance of the imminent evil, for example denunciation to the judge or denial of medical care, is esteemed to be of as much value as the choice of matrimony, the answer seems to have to be denied, because an unjust pact is not had. Otherwise, if the avoidance of the imminent evil is not worth so much, then the pact is unjust (cf. St. Alphonsus VI, 1051, 1053).

δ) From which, in order that one may free himself, he is compelled to choose matrimony. These things are certainly verified, and therefore the matrimony is certainly invalidated, if fear is inflicted for extorting matrimony with the one inflicting the fear. Likewise it seems invalid if fear is inflicted for extorting matrimony with someone other than the one inflicting the fear, because there is in reality coercion to matrimony itself.

But it is controverted whether it is necessary that fear be inflicted for extorting matrimony, or whether the intention of matrimony on the part of the one fearing the evil suffices, who in matrimony sees a necessary remedy against a greater evil to be avoided. Some deny that fear inflicted for extorting matrimony is required, and draw the reason from the tenor of the Code, "from which in order that one, etc." But the affirmative answer seems to have to be given, because before the Code it was taught with sufficient commonness that fear inflicted for extorting matrimony was required. Now the Code is not presumed to have departed from the old disposition unless the tenor of the law sufficiently signifies this; and the latter does not have place, since the canon can well be harmonized with the old disposition and be understood thus: "from which, in order that one may free himself, he is compelled to choose matrimony," namely because the fear is inflicted precisely for extorting matrimony. If fear is

inflicted for another end, one is not so properly compelled to the choice of matrimony (St. Alphonsus VI, 1049).

ε) At least by canon law. It is disputed whether also by natural law, so that the described fear would also invalidate the marriages of unbelievers. Some deny, because fear does not impede consent simply voluntary into the contract. Others affirm, because a contract caused by gravely injurious fear and irrescindable, and therefore such that the grave injury which was the cause of the contract cannot be repaired, seems to have to be excluded. But if the prior opinion is admitted, such a contract would be had, namely matrimony, since it cannot be rescinded. St. Thomas admits the latter opinion (*Supplement*, q. 47, a. 3; cf. St. Alphonsus VI, 1054; *Homo Apostolicus*, tr. 18, n. 64).

Objection. If the latter opinion is admitted, even fear not inflicted for extorting matrimony would invalidate it, because such fear would also involve an injury which could no longer be repaired.

Response. Fear not inflicted for extorting matrimony indeed involves an injury, but one independent of matrimony, of which it was only the occasion, not the cause; but an injury independent of matrimony can be repaired even if the matrimony is valid and can no longer be rescinded.

Question. Whether, with canon law alone considered, matrimony is valid if the party who suffered fear is an unbeliever?

Response. Many deny, because the law does not distinguish. Others affirm, because the impediment in the case seems to affect no party: not the unbelieving party, because he or she is not subject to the Church; nor the faithful party, since the impediment seems to have been constituted in favor only of the party who suffered fear.

With natural law considered, the said matrimony is held by many to be invalid, according to the things set forth.

b) No other fear, for example light fear, or grave fear but justly inflicted, carries with it the nullity of matrimony, even if it gives cause to the contract (canon 1087, § 2). This is clear if the speech is about fear justly inflicted; if it is a question of fear lightly unjust, it is deduced from the fact that, on the one hand, fear does not impede simply voluntary consent, and on the other hand the reparation of a light injury is not to be valued so highly that on account of it, if excluded, the contract must be called invalid (St. Alphonsus VI, 1055). Furthermore note:

α) One who through grave and unjust fear forces another to matrimony sins gravely both against justice and, on account of the nullity of the sacrament, against religion. Therefore he is bound to repair the injury, even, if it cannot be repaired in another way, by convalidating the matrimony, at the will of the one who suffered fear (St. Alphonsus VI, 1057).

β) The Church never dispenses in the impediment of fear, because the dispensation would confirm the injury inflicted on the party who suffered fear, and would bring it about that the one inflicting fear would receive advantage from his crime.

How matrimony contracted from fear can be convalidated will be explained later.

[1] What fear is and in how many ways it is distinguished, see vol. I, nn. 838 and 839.

707 VI. External or manifest (canon 1081, § 1); this quality is required both because matrimony is a contract (vol. I, n. 834), and so that it may be a sacrament, for a sacrament does not subsist without a sensible sign. If someone consented externally but not internally, to revalidate the matrimony it

suffices afterwards to supply internal consent. Moreover, for validity it does not matter whether consent is expressed by words or by another sign, for example by a nod. Indeed, of itself even silence, for example on the part of the bride, with the circumstances considered, can be a manifestation of consent.

As to liceity, however, from the precept of the Church it is required that "the spouses express matrimonial consent by words; nor is it licit for them to use equivalent signs if they can speak" (canon 1088, § 2). This obligation seems grave.

708 VII. Made known to the other party; and indeed by the contracting party or in his name, as was explained in vol. I, n. 834.

709 VIII. Simultaneous, because otherwise they do not truly consent into one. Nevertheless it suffices that one consent while the consent of the other persists (vol. I, n. 834).

Corollary I. Matrimony, like other contracts, can also be contracted between absent persons, for example through a mere messenger, by letters, by means of telephone or telegraph. But this now cannot be done by those who are bound by the ecclesiastical form, for "to contract matrimony validly it is necessary that the contracting parties be present either personally or through a procurator" (canon 1088, § 1).

Corollary II. Matrimony, just like other contracts, can also be entered through a procurator (the cited canon). But from canon 1089, without prejudice to diocesan statutes added on this matter,[1] for matrimony to be validly entered through a procurator, it is required:

1° That the procurator have a special mandate to contract with a certain person (§ 1).

2° That the mandate be signed by the mandator and either by the pastor or Ordinary of the place in which the mandate is made, or by a priest delegated by either, or by at least two witnesses. If the mandator does not know how to write, this is to be noted in the mandate itself and another witness is to be added, who also signs the writing; otherwise the mandate is invalid (§ 2).

3° That, before the procurator has contracted in the name of the mandator, the latter has not revoked the mandate nor fallen into insanity; because then the matrimony is invalid, although either the procurator or the other contracting party may have been ignorant of these things (§ 3).

4° That the procurator perform his office personally (§ 4). Hence the procurator cannot delegate another, nor, as it seems, can this faculty be granted to him by the mandator.

Note. When matrimony is to be contracted through a procurator or through an interpreter, the pastor is not to assist unless there is a just cause and it is in no way licit to doubt about the authenticity of the mandate or the trustworthiness of the interpreter, after having obtained, if time permits, the license of the Ordinary (canon 1091).

[1] Statutes added on this matter do not regard validity.

Scholion. On Conditional Matrimony

Of the conditions which can be added to the matrimonial contract, some are not repugnant to the substance of matrimony,[1] others are repugnant to it as restricting the rights essentially annexed to matrimony.[2] We shall speak of each separately; and after these have been treated, we shall add certain things about matrimony under mode, cause, or demonstration.

[1] I contract with you if you are a virgin.

[2] I contract with you if you abstain from intercourse.

710 I. Conditions not repugnant to the substance of matrimony. 1. Matrimony under a condition concerning the past[1] or the present[2] is valid or not valid according as the condition has been fulfilled or not fulfilled (canon 1092, 4°). But the licit use of matrimony is suspended until there is certainty about the fulfillment (St. Alphonsus VI, 890).

2. Matrimony under a condition concerning the future is to be judged thus:

a) If the condition is concerning the future necessary[3], when it is known as such, the matrimony is valid at once, unless the contracting parties intend to suspend the matrimony until the event of the condition. In the external forum this condition is held as not added (canon 1092, 1°), that is, the matrimony is judged valid at once unless the suspensive intention is proved (St. Alphonsus VI, 891).

b) If the condition is concerning the future impossible,[4] when it is known as such, the matrimony is null if it is seriously placed. In the external forum this condition likewise is held as not added (canon 1092, 1°), or the contracting party is presumed to have willed matrimony until the contrary is proved (St. Alphonsus VI, 891).

c) If the condition is concerning the future contingent, the following must be said:

α) If the condition is licit,[5] the validity of the matrimony is suspended (canon 1092, 3°; St. Alphonsus VI, 892).

β) If the condition is base[6] and is seriously placed, according to many the matrimony is simply null, but more probably only the validity is suspended (vol. I, n. 849). In the external forum this condition too is held as not added (canon 1092, 1°; St. Alphonsus VI, 891).

[1] I contract with you if you have done this or that.

[2] I contract with you if you are noble.

[3] I contract with you if the sun will rise tomorrow.

[4] I contract with you if you extinguish the sun.

[5] I contract with you if the parents have died.

[6] I contract with you if you have admitted intercourse.

711 II. Conditions repugnant to the substance of matrimony. Concerning these canon 1092, 2° says: "A condition once placed and not revoked, if it concerns the future against the substance of matrimony, renders it invalid." Gregory IX hands down the same doctrine more fully: "If conditions against the substance of marriage are inserted, for example if one says to the other: I contract with you, if you avoid generation of offspring; or: until I find another richer in honor or means; or: if for gain you hand yourself over to be adulterated, the matrimonial contract, however favorable it may be, lacks effect."[1] Therefore:

1. Conditions against the substance of matrimony are those which are repugnant to the object of the matrimonial contract, that is:

a) Either to the right over the body of the consort, in other words, to the right to acts of themselves apt for generation, as if you say: I contract with you if you abstain from intercourse; if you perform it onanistically.

b) Or to the exclusive right over the body of the consort, or to the unity of matrimony, as if you say: I contract with you if you hand yourself over to be adulterated for gain.

c) Or to the perpetual right over the body of the consort, or to the indissolubility of matrimony, as if you say: I contract with you if, after one or another offspring has been procreated, you abstain from intercourse, or from intercourse rightly performed; or: We contract until domestic life is disturbed or until we marry others, and similar things (St. Alphonsus VI, 881, 882).

Corollary I. Conditions which are opposed to the moral or religious good of offspring are not against the substance of matrimony, and therefore do not invalidate it; as if you say: I contract with you if you educate the offspring in unbelief, in heresy. The reason for the assertion is that the said condition is not repugnant to the object of the matrimonial contract. Add that the Church has indeed reproved marriages of this kind, but has never declared them invalid. Finally, if the contrary opinion were admitted, even marriages contracted under the condition of educating offspring in other delicts would be invalid; and so far as I know no one has admitted this.

Corollary II. Nor are conditions which are opposed to the physical good of offspring against the substance of matrimony, as if you say: I contract with you if you procure an abortion, if you cast away or kill the child once born. The reason again is that not even a condition of this kind is repugnant to the object of the contract.

2. The conditions set forth under 1 are repugnant to the substance of matrimony if they truly remove or diminish the right itself to arise from the matrimonial contract, or if they are placed as to be fulfilled from justice, or if they are brought into a pact, or at least are so intended that the contracting party positively intends to contract in such a way and not otherwise. The reason is that the said conditions understood thus prevent consent to the object of the matrimonial contract (n. 700).

If the aforesaid conditions are not brought into a pact, and neither party in another way restricts consent to the object of the matrimonial contract, the matrimony is valid. Therefore the following do not stand in the way of validity:

a) A mere will or purpose, or even some agreement without a pact, whether of abstaining from intercourse, or of performing it onanistically, or of procreating one or another offspring and abusing matrimony otherwise, or of abstaining from intercourse rightly performed until they have arrived at better fortune, etc.

b) The mere purpose of preserving perpetual continence in matrimony.

c) A simple promise, by which the contracting parties bind themselves from fidelity alone to preserve continence.

d) A vow of preserving chastity, by which either or both parties bind themselves, or attempt to bind themselves, to God alone.

Question 1. Whether a condition made by pact of preserving perpetual continence is repugnant to the substance of matrimony and therefore invalidates it?

Response. Some affirm, because matrimony essentially hands over the right to the use of the body of the consort. But this right is excluded by the aforesaid pact. Therefore such a pact destroys the object of the matrimonial contract.[2]

Others judge that matrimony of this kind can be valid, because that pact can be so intended that it leaves the radical or bound right, excluding only the expedit right to the use of the body. But, they say, the former alone, not the latter, belongs to the substance of matrimony; and they think this must be drawn from the fact that, while the conjugal bond remains, the expedit right is lost through adultery, or even through a pact of preserving chastity entered after matrimony has been contracted (cf. St. Alphonsus VI, 881, 1°, 882, 1°).

Question 2. Whether a condition made by pact of abstaining from intercourse for a time, for example until they have arrived at better fortune, or of having intercourse only when conception is less probable, is repugnant to the substance of matrimony and therefore invalidates it?

Response. Speaking theoretically, one can respond what was responded to the preceding question. But in practice it is to be observed: 1° in the case in which there is a true pact, and it, as commonly happens, is not added from a motive of virtue, the matrimony is invalid, since in practice both the expedit and the radical right are limited.

Note. "Pastors should never admit these conditional marriages without a most urgent cause, on account of the many inconveniences and difficulties which can afterwards occur against their validity" (St. Alphonsus VI, 892).

[1] C. ult. *De conditionibus appositis in desponsatione vel in aliis contractibus*; cf. *Collectanea de Propaganda Fide*, n. 222, n. 100, 1327 to doubt 3, 1465.

[2] Some undeservedly try to prove this opinion from the fact that the Blessed Virgin Mary, who had vowed perpetual virginity, in order licitly to contract with St. Joseph, had to enter a pact of preserving chastity. For to contract licitly it sufficed that she knew certainly, whether naturally or by revelation, for example concerning virginity never to be lost, that her spouse would not use matrimony.

712 III. Matrimony entered under a mode is valid. For a mode supposes a contract complete in its being, to which it is added. Nevertheless matrimony is invalid: 1° if the mode, or rather quasi-mode, added is repugnant to the substance of matrimony and is brought into a pact, as: "I contract with you, but you must abstain from right intercourse"; 2° if both parties or either party positively intends that he or she be bound only in that way, and not otherwise. The reason is that then something substantial of the object is excluded, so that consent to it is lacking. But in these cases it is not a question of a mode properly so called, since, as was said, it supposes a completed contract.

Note. Matrimonial consent once furnished perseveres until it is revoked; and it is presumed to persevere until its revocation is established. This holds even if the matrimony was entered invalidly by reason of an impediment (canon 1093).

Section II. On the Division of Matrimony

713 Matrimony is chiefly divided:

I. Into valid or true, and invalid. Invalid matrimony is called putative if it has been celebrated in good faith by at least one party, until each party becomes certain of its nullity (canon 1015, § 4).[1]

II. Into legitimate, ratified, and ratified and consummated.

1. Legitimate is called: valid matrimony between non-baptized persons (canon 1015, § 3).
2. Ratified is: valid matrimony between baptized persons, not yet completed by consummation (canon 1015, § 1).[2] Under the name of ratified matrimony also seems to come matrimony validly

contracted between non-baptized persons and persisting after the baptism of both spouses. But in canon law there does not seem to come under the name of ratified matrimony a matrimony validly contracted either between a baptized party and a non-baptized party, or between non-baptized parties of whom only one is baptized. Whether the said marriages are or are not a sacrament does not seem to matter, because it is a question of a canonical notion rather than of a theological fact.

3. Ratified and consummated is called valid matrimony between baptized persons if between the spouses there has taken place the conjugal act to which the matrimonial contract by its nature is ordered, and by which spouses become one flesh (canon 1015, § 1). But that the notion of consummation may be more fully developed, I note these things:

a) Only valid matrimony can be consummated, or consummation presupposes valid matrimony.

b) Matrimony is certainly consummated by intercourse, that is, by penetration, whether perfect or partial, of the female vessel together with effusion of seed in it.

c) It is disputed whether matrimony is consummated if male seed is deposited at the vulva and is received within the female vessel. Some affirm, especially if offspring arises, because in this way the spouses are made one flesh. But it seems that it must be denied altogether, because consummation is made by the conjugal act to which the conjugal contract is by its nature ordered; but an act of this kind is lacking in the posited hypothesis, since an act from which generation does not follow except accidentally, of which sort is the depositing of seed at the vulva, cannot be called the conjugal act to which the conjugal contract is by its nature ordered; in a word, there is lacking an act of itself apt for generation (St. Thomas, In IV, dist. 41, q. un., a. 1, sol. 4, ad 2).

d) A fortiori matrimony is not consummated if seed is introduced into the vagina merely by chance, for example on the occasion of pollution, or by means of artificial fecundation, as it is called.

e) Once matrimony has been celebrated, if the spouses have cohabited together, consummation is presumed until the contrary is proved (canon 1015, § 2).

III. Into public and secret, or of conscience. Public is that which is celebrated "in the face of the Church," as it is said, or with the usual publicity. Secret or of conscience is that which is celebrated with announcements omitted and secretly, according to the norm of canons 1105-1107 (canon 1104), about which it will be said later. Note also clandestine matrimony, as it was formerly called, that is, matrimony which was contracted without the legitimate form being employed, or without pastor and witnesses. Nowadays matrimony of this kind cannot be contracted validly except among non-Catholics (canon 1099, § 2).

IV. Into ecclesiastical and civil. Ecclesiastical is that which is entered according to ecclesiastical laws; civil, that which is contracted according to civil laws. The latter is called merely civil if ecclesiastical matrimony is entirely neglected.

Finally, and this it helps to note for completeness, morganatic matrimony is called that which a noble man contracts with a person of inferior condition, by this pact: that the wife and offspring to be received from her receive only a certain part from the goods of the man, and are excluded from the other goods and from the titles and dignities of the man. Matrimony of this kind especially had place among the Germans; it was called, as it seems, *ad morganaticam*, on account of the portion of goods which was granted to the wife on the second day of the marriage, and which in German is called *Morgengabe*.[3]

[1] The Code does not speak of matrimony which was formerly called presumed; hence it is judged already to have vanished.

[2] Ratified is said, that is, ratified or confirmed by the sacrament (chapter 7 *De divortiis*; St. Thomas, *Supplement*, q. 59, a. 5, ad 1).

[3] Cf. *Staatslexikon*, s.v. *Ebenburtigkeit*.

Section III. On the Institution, Ends, Goods, Honesty, and Governance of Matrimony

714 I. Institution of matrimony. God Almighty instituted matrimony, insofar as it is merely a contract, in the very creation of male and female. For he willed, as is clear even from the very capacity and inclination of male and female for generating, that the human race be preserved and propagated, and this fittingly, that is, in such a way that provision is of itself made for the preservation and education of offspring. But this does not happen fittingly except through those who are joined by the matrimonial bond. In addition, God also promulgated by positive law matrimony, instituted in creation itself and promulgated through the light of reason, namely through the mouth of Adam, who, led by divine instinct, declared: "This now is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken from man. Wherefore a man shall leave his father and mother, and shall cling to his wife; and they shall be two in one flesh."[1] Finally, God himself, after he had already instituted matrimony, solemnly signified that it is ordered to propagating the human race: "Increase and multiply."[2]

Concerning the institution of matrimony insofar as it is a sacrament, see n. 729.

Note. Insofar as God wills that the human race be propagated through matrimony, and to that end communicated to human nature the capacity and inclination for generating, matrimony is customarily called an office of nature.

[1] Gen. 2:23-24.

[2] Gen. 1:28.

715 II. Ends of matrimony. The primary end of matrimony is the procreation and education of offspring; the secondary end is mutual aid and the remedy of concupiscence (canon 1013, § 1). The assigned ends are the intrinsic ends of matrimony, to which several extrinsic ends can be added, which can be intended by the contracting parties. Therefore:

1. The intrinsic ends are:

a) Procreation and education of offspring; these constitute the principal end. Education, however, is understood as education both according to the body and according to the soul, and in the worship of God (St. Thomas, *Supplement*, q. 59, a. 2; n. 701).[1]

b) Mutual aid, which is a secondary end together with the end to be assigned under c).

c) The remedy of concupiscence, or its mastery. The Apostle assigns this end in these words: "But because of fornication, let each man have his own wife";[2] and: "For it is better to marry than to burn."[3] Matrimony attains this end both by quieting concupiscence through conjugal acts, and, insofar as it is a sacrament, by the power of sacramental grace, by which spouses use matrimony rightly and guard against illicit things both in and outside matrimony.[4]

2. Multiple extrinsic ends are licitly intended by contracting parties, for example heirs to be left, splendor of family,[5] peace to be established, health of body, etc. (St. Alphonsus VI, 881-883).

[1] Encyclical *Casti connubii*, December 31, 1930 (*A.A.S.* 1930, p. 144).

[2] 1 Cor. 7:2.

[3] 1 Cor. 7:9.

[4] Buys, *Nederlandsche Katholieke Stemmen*, 1930, pp. 326 and 333.

[5] Cf. Roman Catechism, q. 13.

716 III. Goods of matrimony. A threefold good of matrimony is customarily assigned, and is also assigned by Pius XI,[1] namely:

1. The good of offspring, which consists in the conception, birth, and education of offspring both as to the body and as to the soul, and, as to the soul, both spiritual and religious (St. Thomas, *Supplement*, q. 59, a. 2).
2. The good of faith or fidelity, which is situated in this: that the debt is neither denied to the consort nor permitted to anyone else, and that not even to the consort is granted what, as contrary to divine laws and most alien from conjugal fidelity, can never be granted.
3. The good of the sacrament, by which are denoted both the indissolubility of the bond and the elevation of the matrimonial contract into an efficacious sign of grace.

[1] Encyclical *Casti connubii* (*A.A.S.* 1930, p. 543).

717 IV. Honesty of matrimony; concerning which note:

1. Matrimony is objectively honorable. This is clear first from the fact that God instituted it, Christ raised it to the dignity of a sacrament, and Sacred Scripture commends it.[1] It is clear next from the fact that it is the single means of fittingly obtaining the propagation of the human race willed by God (n. 714); likewise from the fact that matrimony is ordered "not only to propagating the human race, but to begetting offspring for the Church, citizens of the saints and members of the household of God; namely, that a people might be procreated and educated for the worship and religion of the true God and of Christ our Savior."[2]

Corollary. All who are capable of matrimony can contract matrimony, unless they are prohibited by law (canon 1035). This also holds concerning those who can procreate only miserable offspring. "It is certainly not lawful," says Pius XI, "to burden with grave fault those men, otherwise capable of matrimony, who, even after all care and diligence have been employed, are conjectured to beget only defective offspring, if they contract marriage, although often matrimony must be dissuaded for them."[3]

Nor can the aforesaid persons of themselves, at least practically, be accused of light fault; for with regard to offspring, it is always better for the offspring to be thus than not to be;[4] and with regard to the inconveniences that will arise for society and family, it is not established that the most valid right of contracting matrimony does not prevail over the avoidance of those inconveniences. Add that even those of whom we speak, by procreating offspring, however miserable, conduce to the good of the species (vol. I, n. 740). This is confirmed by the practice of the Church, which in no way keeps the said persons from matrimony (St. Thomas, *Supplement*, q. 64, a. 1, ad 4; St. Alphonsus VI, 951).

Whether the State can forbid matrimony to some will be explained under V.

2. Matrimony, although it is objectively honorable, does not oblige individual persons, because only that precept obliges individual persons which of itself and first regards the good of individuals. But the precept of matrimony of itself and first does not regard the good of individuals, but the good of the multitude or species (St. Thomas, *Contra Gentiles*, book 3, ch. 137; II-II, q. 152, a. 2). Accidentally there can be an obligation, for example if someone has procreated offspring from some woman.

There are those who judge that the law of matrimony was imposed on the human race; this does not please others, because one cannot grasp a precept which does not oblige determinate persons and cannot be fulfilled by the community as such. Moreover, God can reach, and does reach, the willed end without a precept, that is, the propagation of the human race, namely by implanting in human nature the capacity and vehement inclination for generating.

Objection. From the fact that some power is conferred on man, an obligation of using it is rightly deduced. But the generative power is conferred on individual persons.

Response. The major, besides the fact that it must be distinguished in multiple ways, certainly is to be denied if it is a question of a power conferred for the good of the species, because it suffices that many use it. "Namely, from divine providence," says St. Thomas, "those things are given to man which are necessary for the whole species, and yet it is not necessary that every man use each one of them. For the industry of building and the power for fighting have been given to man, and yet it is not necessary that all be builders or soldiers. Similarly, although the power of generating and those things which are ordered to its act have been provided for man by God, nevertheless it is not necessary that every man intend the act of generation" (*Contra Gentiles*, book 3, ch. 136).

3. Matrimony, however honorable it is, nevertheless must be placed after virginity and chaste celibacy; likewise chaste widowhood after second nuptials.

The former has been proved and vindicated against objections in the treatise on the offices of clerics (vol. I, n. 1168); the latter is clear from canon 1142, and rests on the same principles.[5]

[1] 1 Cor. 7:9, 28, 36, 39; 1 Tim. 4:1-3; 5:14; Eph. 5:22-23; Heb. 13:4.

[2] Encyclical of Leo XIII, *Arcanum*, February 10, 1880; Encyclical of Pius XI, *Casti connubii*, December 31, 1930 (*A.A.S.* 1930, p. 544).

[3] Encyclical *Casti connubii* (*A.A.S.* 1930, p. 565).

[4] Cf. our little work *On the Virtue of Chastity and the Opposed Vices*, n. 98.

[5] Cf. our little work *On the Virtue of Chastity and the Opposed Vices*, nn. 18-19.

718 V. That the governance of matrimony may be distinctly explained, two things must be distinguished: 1° the marriages of baptized persons and of non-baptized persons; 2° the bond itself, namely its validity and liceity, and its effects, set forth in n. 724.

1. Marriages of baptized persons. The marriage of baptized persons is governed not only by divine law, but also by canon law (canon 1016), and not by civil law. This is clear both from innumerable ecclesiastical documents,[1] and from the fact that the marriage of baptized persons is a sacrament. But the governance of the sacraments belongs to the Church alone.

Corollary I. The Church can establish diriment and impedient impediments (canons 1016, 1038), and by her own right treat cases which regard the bond, that is, its validity and liceity, its inseparable

effects, likewise its separable ecclesiastical effects (canon 1960), and, if they are treated incidentally and accessorily, even merely civil effects (canon 1961).

Corollary II. The civil State is bound to recognize the rights of the Church and the things established by her. But it cannot, with regard to the marriages of baptized persons, establish diriment or prohibitive impediments; nor treat cases which regard the bond of those marriages, their inseparable effects, and their separable ecclesiastical effects. It is competent, however, concerning the merely civil effects of matrimony (canon 1016), and concerning cases about those same effects, if they are treated principally (canon 1961). Likewise it can, not by reason of matrimony considered in itself, but for the sake of protecting social order, prescribe certain formalities, for example the registration of marriage in the registers of civil status, and punish by civil penalties, for example monetary fines or the withdrawal of certain merely civil effects, spouses who have neglected those formalities; nevertheless it cannot establish conditions without whose fulfillment matrimony by baptized persons cannot be entered.

Corollary III. The civil legislator cannot simply forbid matrimony to any baptized person. This follows from the things said above. Yet he can require that, for example, those bound to military service abstain from matrimony for a time; nor by this is there conceded to the civil State a faculty of establishing impediments properly so called, or impediments directly impeding matrimony. For such a disposition cannot be made by reason of matrimony itself, but so that social order may be provided for; hence one who transgresses these things does not sin against religion, as does one who does not observe ecclesiastical statutes. Besides this, the civil State can sometimes indirectly keep someone from matrimony, for example by casting a guilty person into prison.

Corollary IV. Of itself there is no obligation of observing civil laws which exceed the power of the civil legislator. Accidentally, however, there is commonly such an obligation, namely so that disturbance and damages otherwise going to follow for the spouses and offspring may be forestalled.

2. Marriages of non-baptized persons. The marriage of non-baptized persons is governed not only by divine law, but also by civil law, and not by ecclesiastical law. This is clear both from the documents to be assigned in Corollary I, and from the fact that the common good requires that the matrimonial contract be governed by positive human law. But the governance of the matrimonial contract entered by non-baptized persons does not belong to the Church, because she lacks power over non-baptized persons. Therefore it remains that it belongs to the civil legislator, and not to the Church. Let him beware, however, lest he exceed the limits of his power, for example by simply forbidding matrimony to some, etc., matters which we shall set forth more fully in the corollaries.

Corollary I. The civil legislator can, much more probably, establish impediments, both prohibitive ones properly so called and diriment ones, between non-baptized persons; likewise he can treat cases regarding those marriages.[2] For, first, the public good seems to require that laws looking to this be able to be enacted. But besides civil rulers no competent legislator can be assigned who would be able to frame such laws.

The major is clear: a) from the fact that the Church herself judged such laws necessary with regard to the marriages of her subjects; b) from the common practice of peoples somewhat cultivated;[3] c) from the fact that it is especially fitting that some marriages be illicit and invalid which, considered under natural law alone, would be valid, for example marriages entered before marriageable age or without any public form.

The minor follows first from the fact that the competent legislator is not the Church, to whom infidels are not subject; nor another religious authority, since such an authority does not exist, or at least is not legitimate. Therefore it remains that we say that the said power belongs to the civil legislator. A second argument is drawn from the solutions of the Holy Office[4] and of the Sacred Congregation of Propaganda Fide.[5] The power set forth is usually called devolutive, because power over matrimony, as being a sacred thing, belongs of itself to the religious power alone.

Corollary II. The civil legislator cannot absolutely forbid matrimony to a non-baptized person who is capable of matrimony, for example for reasons called eugenic.[6] So Leo XIII[7] and Pius XI.[8] The reason is that the right of contracting matrimony is older than the State itself, and therefore must rather be protected by the State, as being destined for the good of citizens, but cannot be extinguished by it. Add that human authority cannot directly impede the good of the species, that is, enact a law with the end that procreation be impeded. But if the prohibition has place, practically it is made for that end. The major is drawn from the fact that the good of the species is not subordinated to the end of the civil State.

Corollary III. The civil legislator cannot render anyone, even a non-baptized person, incapable of matrimony, for example by the means assigned in note 6. So Pius XI[9] and the Holy Office.[10] Add the reasons just brought forward in Corollary II. Add that neither can public authority directly mutilate an innocent person (vol. I, n. 740).[11]

But insofar as the civil legislator can deprive a criminal, as punishment, of the generative faculty, this has been set forth in vol. I, n. 742.

Corollary IV. The civil legislator cannot, as we think, prescribe a medical inspection to be carried out before nuptials, unless a grave abuse would counsel it. For a matter which is an impediment to liberty in this matter, and so intimately affects an individual affair, ought not to be imposed except for a most grave cause, practically for a true abuse. But a true abuse - I am not speaking of particular cases - will not easily have place, nor will it easily be established. Hence these things should be left to parents, or even to those about to marry, who, if they please, can request the testimony of an approved physician.

[1] Cf. Council of Trent, session 24, canons 3, 4, 9, 12; constitution of Pius VI *Auctorem fidei*; *Syllabus* of Pius IX, propositions 68-70, 74; constitution of Leo XIII *Arcanum*.

[2] Cf. Resemans, *De competentia civili*.

[3] Cf. Esmein, *Le Mariage*, I, p. 343.

[4] October 29, 1739; September 20, 1854.

[5] October 8, 1631; June 26, 1820.

[6] The eugenic system intends the improvement of the race, and, to obtain that end, promotes laws which forbid matrimony to some or render them incapable of generating, for example through vasectomy in men, tubectomy or salpingectomy in women, etc.

[7] Encyclical *Rerum novarum*, May 15, 1891.

[8] Encyclical *Casti connubii* (*A.A.S.* 1930, p. 564).

[9] Encyclical *Casti connubii* (*A.A.S.* 1930, pp. 564 and 565).

[10] March 31, 1931.

[11] Encyclical *Casti connubii*, loc. cit.

Section IV. On the Properties of Matrimony

Two properties of matrimony especially are assigned, namely unity and indissolubility; and these indeed are essential, and in Christian matrimony obtain a peculiar firmness (canon 1013, § 2).

Chapter I. On the Unity of Matrimony

719 The unity of matrimony consists in the conjunction of only one man with only one woman, that is, monogamy. Opposed to unity are simultaneous polyandry, which is the simultaneous conjunction of one woman with several men, and simultaneous polygamy, which is the simultaneous conjunction of one man with several women. Now:

I. Simultaneous polyandry is prohibited by natural law; both because natural law is opposed to several heads in the same society, and because the education of offspring, which belongs to the primary ends of matrimony, is ruined. For the care both of father and of mother is required for the education of offspring. But from the fact that several men use the same wife, uncertainty arises as to who is the father of the offspring to be born; and this uncertainty will bring it about that no one has care of the offspring (St. Thomas, *Supplement*, q. 65, a. 1, ad 8).

II. Polygamy is prohibited by natural law. That it is prohibited to Christians is of faith from the Council of Trent;[1] that it is prohibited to all is clear from Sacred Scripture.[2] But that it is prohibited to all by natural law is gathered from the fact that it is opposed to the secondary ends of matrimony; namely, to mutual help, which will suffer detriment from the lack of peaceful cohabitation; and to the quieting of concupiscence on the part of the wives, to each of whom the debt will not be rendered sufficiently. There are added the Instruction of the Holy Office,[3] and canon 1013, § 2, which counts unity among the essential properties of matrimony.

In the Old Law polygamy, besides for the reason alleged by Christ, that is, because of hardness of heart, was also conceded by God, so that the human race, and especially the Jewish race, might be multiplied more quickly (cf. St. Thomas, *Supplement*, q. 65, a. 2). The said concession also seems to have been extended to the nations. But Christ the Lord removed the aforesaid concession,[4] so that in the evangelical law simultaneous polygamy is wholly and everywhere prohibited.

[1] Session 24, canon 2.

[2] Matthew 19:4 sq.

[3] June 20, 1866 (*Collectanea*, 1354).

[4] Matthew 19:4 sq.

Chapter II. On the Indissolubility of Matrimony

720 Indissolubility is the property by force of which the bond of matrimony, while the spouses are living, cannot be dissolved.

Indissolubility is distinguished as twofold, intrinsic and extrinsic. Intrinsic indissolubility consists in this, that matrimony cannot be dissolved by the cause through which it arose, that is, by the consent of the contracting parties. Matrimony is said to be extrinsically indissoluble insofar as it is not dissolved by God and cannot be dissolved by another external cause. Therefore matrimony is extrinsically soluble insofar as God has either established that in some case it will be dissolved by the fact itself, or has bestowed on some power the faculty of dissolving it. Now:

I. Every marriage is entirely intrinsically indissoluble, that is, it can never be dissolved by the consent of the contracting parties. This is clear from Sacred Scripture,[1] from the Council of Trent,[2] from proposition 67 proscribed by Pius IX in the *Syllabus of Errors*,[3] and from the encyclical of Pius XI *Casti connubii*;[4] likewise from reason. Matrimony, as a natural society, must of itself be apt for the ends of matrimony, to which education belongs. But soluble matrimony is not of itself apt for education; for such a marriage would greatly harm education, which requires a prolonged union of the parents and demands that parents leave goods to their children. Add that solubility is opposed to the very close friendship proper to matrimony, and exposes the morals of married persons to dangers (St. Thomas, *Contra Gentiles*, book 3, ch. 123; *Supplement*, q. 67, a. 1; St. Alphonsus VI, 956). Add besides that the matrimony of Christians, by the fact that it has been raised to the dignity of a sacrament, has received a new firmness.

II. With regard to extrinsic indissolubility, first note that the faculty of dissolving any marriage whatever by its own authority belongs to no human power; for no human power can by its own authority dissolve a right established by a higher power, such as is the natural law, by force of which matrimony cannot be dissolved. Hence if some human power can dissolve certain marriages, it cannot do this except in the name of God, or by vicarious power, as it is called. With these preliminary points established, concerning the extrinsic indissolubility of matrimony the following are laid down:

1. Matrimony between baptized persons:

a) If it is consummated, it is entirely indissoluble. This is clear 1° from ecclesiastical documents, that is, from canons of Councils and Synods, from decrees of the Holy See,[5] and from canon 1118, which declares: "A valid ratified and consummated marriage cannot be dissolved by any human power and by no cause, except death." It is deduced 2° from the fact that the Church has never used such a power. The reason is that ratified and consummated matrimony, by God's ordinance, perfectly represents the indissoluble union of Christ with the Church (p. 553).

Objection. Christ the Lord, when promulgating in the Gospel the indissolubility of Christian matrimony, nevertheless made an exception for the case of adultery: "But I say to you, that whoever shall put away his wife, except for fornication, and shall marry another, commits adultery" (Matthew 19:9). Therefore, in the case of adultery by one spouse, marriages even of baptized persons can be dissolved. So the Greek schismatics and most Protestants.

Response. As is clear from the context and from the parallel passages (Mark 10:11; Luke 16:18; 1 Corinthians 7:10, 11), Christ proclaimed the absolute indissolubility of the matrimonial bond, even for the case of adultery. Therefore he added absolutely: "And he who shall marry her that has been put away commits adultery."

Therefore it must be said that the exceptive clause "except for fornication" affects only the prior part of the sentence, "Whoever shall put away his wife, commits adultery" (or: "causes her to commit adultery," Matthew 5:32), but not the other part of the sentence: "Whoever shall marry another commits adultery."

Christ, therefore, when the Pharisees ask, "Is it lawful for a man to put away his wife for any cause whatever?" answers that it is indeed lawful to put away a wife for the cause of fornication; nevertheless it is never lawful to put away a wife in such a way that one marries another wife while the former is

living. In other words, Christ teaches that in the case of adultery by one spouse separation, as they say, with regard to bed and cohabitation, is lawful, but that the matrimonial bond itself is not dissolved.

b) If it is not consummated, it is dissolved both by law itself through solemn religious profession, and by dispensation from the Apostolic See granted for a just cause, with both parties asking, or with one of the two asking even if the other is unwilling (canon 1119). It is said:

alpha) Through solemn religious profession; this is recognized in the law of the Decretals both by Alexander III[6] and by Innocent III,[7] and is of faith from the Council of Trent.[8] Moreover note well that the said force does not belong to simple profession, even one emitted in the Society of Jesus or by nuns, nor to the reception of Order itself, nor to the vow of chastity solemnized in the reception of Order.[9] Finally, since the marriage is not dissolved except at the very moment of solemn profession, the other party cannot pass to new nuptials before it is emitted.

It is disputed whether solemn religious profession dissolves marriage by ecclesiastical law[10] or by divine positive law.[11] Now it seems to dissolve it by ecclesiastical law, and not by divine positive law. For, first, the opinion which asserts divine positive law is not proved, although such an assertion would seem to have to be proved. Next, *a priori* it seems little probable that a thing which belongs solely to an ecclesiastical institution, namely the solemnity of vows,[12] would by divine law have the force of dissolving matrimony. Then, solemn and simple vow seem not to differ in nature or substance;[13] and, this being supposed, it is difficult to admit that an irritant force concerning matrimony belongs by divine law to the former, when the same cannot be affirmed of the latter. Finally solemn profession, considering only divine positive law, does not dirimently impede matrimony to be contracted, so that the later marriage, considering that law alone, can be reconciled with solemn profession; and, this being supposed, it can scarcely be admitted that a marriage already contracted, attending to divine positive law alone, is dissolved by solemn profession.

Objection. The Council of Trent declares: "If anyone says that a ratified but not consummated marriage is not dissolved through solemn religious profession by one of the spouses, let him be anathema."[14] Hence the dissolution of the said marriage through solemn profession is a dogmatic, immutable truth. But if you admit ecclesiastical law, solemn profession can be deprived of the privilege.

Response. The opposed canon of the Council of Trent proves divine law no more than canon 9, session 13 and canon 2, session 23 prove the Easter precept and minor Orders to be of divine law. The cited canons condemn the errors of heretics with regard to the statutes of the Church; namely, those who deny force to the said statutes deny the power of the Church, which is heretical.[15]

Note. Solemn religious profession does not seem to dissolve a marriage entered between non-baptized persons and consummated in infidelity, even if after conversion it has not been consummated; since it is clear from no ecclesiastical document that such force belongs to the said profession, although those who judge that marriage is dissolved by natural law or by divine positive law through solemn profession ascribe the aforesaid force to it with greater right than others do.[16]

beta) Through dispensation granted by the Apostolic See for a just cause. This is clear from the constant practice of the Church.[17] A just cause is required, however, because the Church proceeds by vicarious power; and just causes are, for example, notable error of quality in contracting marriage; voluntary and too-protracted delay by one spouse in consummating the marriage; extraordinary and implacable enmities of the spouses; supervening disease, especially that which impedes the use of

marriage; supervening crime, especially if a lengthy punishment of imprisonment is inflicted on the delinquent; probable impotence of one spouse, which nevertheless cannot be proved either to have been antecedent or to be perpetual; asserted but not sufficiently proved nullity of the marriage, for example under the head of force and fear, joined with certainty of non-consummation.[18] If the case and cause seem to occur, the matter should be referred to the Ordinary and through him recourse should be had to the Holy See, namely so that useless wanderings about may be avoided.

Note. A dispensation granted by the Holy See concerning a ratified and non-consummated marriage, or a permission made for passage to other nuptials on account of the presumed death of a spouse, always carries with it a dispensation from the impediment arising from adultery with a promise or attempted celebration of marriage, if there should be need of one (canon 1053).

2. Matrimony between a baptized party and a non-baptized party:

a) If it is not consummated, it is dissolved - as has been said concerning marriage entered between baptized persons - both by law itself through solemn religious profession, and by dispensation from the Apostolic See granted for a just cause (canon 1119).

b) If it is consummated, it likewise very probably can be dissolved by the Holy See, according to the doctrine soon to be handed down, by which any marriage can be dissolved by the Supreme Pontiff which has not been consummated after the baptism of both parties, except only the marriage of which neither party is baptized.

3. Matrimony between non-baptized persons:

a) If neither party is converted to the faith, that is, baptized, it is also extrinsically indissoluble. For a marriage of this kind cannot be dissolved: not by civil power, since it cannot dissolve the natural law (p. 548); not by the Supreme Pontiff, since he lacks power, even vicarious power, over infidels; nor by force of any law by which God has established that in some case marriage will be dissolved. In the Old Law, indeed, there had been conceded to the Jews the faculty of giving a bill of repudiation for dismissing wives, and this faculty also seems to have been extended to the nations.[19] But Christ the Lord revoked the bill of repudiation and restored to matrimony its primitive indissolubility, as is clear from Matthew.[20]

b) If one party is converted to the faith:

alpha) It is dissolved, the requisite conditions being fulfilled, in favor of the faith from the Pauline privilege (canon 1120, § 1), or in the case of the Apostle, as it is called; the Pauline privilege will be discussed particularly in the scholion.

Likewise it can be dissolved by the Holy See: certainly, if the marriage has not been consummated after conversion; very probably, even if it has been consummated after conversion. This follows from the things to be said under c).

c) If both parties are converted to the faith, it can be dissolved by the Holy See: certainly, if the marriage has not been consummated after the conversion or baptism of one of the converts; very probably, even if it has been consummated after the conversion of one of the converts; but not if it has been consummated after the conversion of both. It is said:

alpha) Certainly, if it has not been consummated after the baptism of one of the converts. For from ecclesiastical documents, especially from the constitution of Gregory XIII *Populis ac nationibus*,[21] it is

deduced that marriages of this kind can be dissolved. But they are not dissolved by force of the Pauline privilege, which does not regard the marriage of two converted infidels (n. 721).

The major is proved: the constitution of Gregory XIII decrees: "Considering that marriages of this kind contracted among infidels are indeed true, yet are not to be judged so ratified that, when necessity counsels, they cannot be dissolved... we grant the faculty of dispensing,... so that they may be able to contract marriage with any one of the faithful... provided that it is established... that the absent spouse cannot be lawfully admonished.... And these marriages indeed, even if afterwards it should become known that the former infidel spouses could not declare their will because they were justly impeded, and that they had even been converted to the faith at the time of the second marriage already contracted, nevertheless must never be rescinded, but are valid and firm." But these things must at least hold if the marriage was not consummated after the baptism of one of the converts.

beta) Very probably, even if it has been consummated after the conversion of one of the converts. So authors now rather commonly. The reason seems to be that in this case matrimony - as not yet both elevated to a sacrament on the part of each party and consummated after the sacrament received by each party - does not perfectly represent the union of Christ with the Church, and therefore lacks full firmness.[22]

gamma) But not if it has been consummated after the conversion or baptism of both parties. This is deduced first from the fact that in this case there seems to be a ratified marriage (n. 713) and, as is supposed, a consummated one; next from the fact that the Church has never dissolved marriages of this kind. There is added the consensus of theologians and canonists.

Conclusion. The Supreme Pontiff, provided that at least one of the spouses is baptized, can by vicarious power and from a proportionate cause dissolve every marriage which was not consummated after the baptism of both parties.

In proving the things on which the aforesaid conclusion rests, we have relied only on divine documents, that is, Sacred Scripture, and ecclesiastical documents. But it is helpful to illustrate the intrinsic reason in these terms: the indissolubility of marriage arises from a twofold source, from natural law and from divine positive law: from natural law, insofar as both the good of offspring and the good of the contracting parties require indissolubility; from divine positive law, insofar as matrimony established by God was a foreshadowing of that divine and indissoluble union between Christ and the Church; and this foreshadowing or mystical signification is implanted not only in the sacrament of matrimony, but, as the Supreme Pontiffs[23] and theologians bear witness, in every marriage. Yet it is implanted more perfectly in the sacrament of matrimony than in a marriage which is not a sacrament, because the sacred element which is more present in the sacrament of matrimony is more apt to receive the character of representing that sacred union.[24] Furthermore, it is implanted more perfectly in a marriage which is not a sacrament when it has been consummated than when it has not been consummated; likewise more perfectly in sacramental matrimony when consummated than when not consummated,[25] because the bond which has been ratified by the real handing over of the flesh is more apt to receive the character of foreshadowing that perfect union of Christ with the Church; indeed sacramental matrimony, not yet consummated, according to authors represents the more dissoluble union of Christ with the soul. And these things seem sufficiently to exhibit the reason for the different degree of indissolubility.

[1] Mark 10:11; Luke 16:18; 1 Corinthians 7:10, 11.

[2] Session 24.

[3] Denzinger-Bannwart, n. 1767.

[4] *A.A.S.* 1930, pp. 550-556, 558, 572-576.

[5] Cf. De Smet, *De sponsalibus et matrimonio*, n. 358, 359.

[6] C. 2 (4) and 7, X, III, 32.

[7] C. 14, X, III, 32.

[8] Session 24, canon 6.

[9] Cf. De Smet, op. cit., nn. 336, 337.

[10] Understand, however, a vicarious ecclesiastical law, so to speak, because the Church cannot dissolve marriage except by vicarious power; see p. 548.

[11] St. Bellarmine (*De monachis*, book 2, ch. 38) and others judge that marriage is dissolved by solemn profession by force of natural law, that is, from the very nature of solemn profession.

[12] *De officiis religiosorum*, t. I, n. 1218.

[13] Session 24, canon 6.

[14] Session 24, canon 6.

[15] Aertnys-Damen, op. cit. II, n. 924; Gasparri, op. cit., n. 1082.

[16] Cf. De Smet, op. cit., n. 339.

[17] Cf. De Smet, op. cit., nn. 328, 332.

[18] Vlaming, op. cit., n. 606.

[19] In the Old Law there was divorce with regard to the bond. For: 1° a repudiated wife could marry another man; 2° when the other man had died, the former husband could not receive her as wife, but she was not prohibited from marrying another (Deuteronomy 24:1-4).

[20] Chapter 19:3 sq.

[21] January 25, 1585.

[22] Cf. encyclical of Pius XI *Casti connubii* (*A.A.S.* 1930, p. 552).

[23] Leo XIII, encyclical *Arcanum*; Pius XI, encyclical *Casti connubii* (*A.A.S.* 1930, p. 570).

[24] Ephesians 5:32.

[25] Encyclical of Pius XI *Casti connubii* (*A.A.S.* 1930, pp. 552, 570).

Scholion I. On the Pauline Privilege

721 A lawful marriage between non-baptized persons, even if consummated, is dissolved in favor of the faith from the Pauline privilege (canon 1120, § 1), or in the case of the Apostle, as it is called; about this one must deal more fully.

I. Summary notion of the privilege. The privilege consists in this, that a spouse who in infidelity entered marriage with another infidel can, after receiving Baptism, if the other party persists in infidelity and departs, pass to new nuptials. By the new nuptials the prior marriage, even if it was consummated, is dissolved.

II. The existence of the privilege is clear from these words of St. Paul: "If any brother has an unbelieving wife, and she consents to dwell with him, let him not put her away. And if any faithful

woman has an unbelieving husband, and he consents to dwell with her, let her not put away her husband. For the unbelieving husband is sanctified by the faithful woman, and the unbelieving woman is sanctified by the faithful husband; otherwise your children would be unclean, but now they are holy. But if the unbeliever departs, let him depart; for the brother or sister is not subject to servitude in such things; but God has called us in peace."[1]

It is disputed whether the Apostle merely promulgated a privilege established by God, or instituted it by force of a special faculty granted by Christ to the Apostles.

To the former opinion, which St. Alphonsus (VI, 955) and very many authors embrace, there are favorable the Sacred Congregation of Propaganda Fide[2] and the Holy Office, which several times taught the origin of the privilege "granted by Christ the Lord and promulgated through the Apostle Paul."[3]

III. Conditions of the privilege. In order that, by force of the Pauline privilege, it may be lawful to pass to new nuptials, it is required: 1° that the marriage have been contracted between two infidels; 2° that one of the spouses be converted to the Christian religion; 3° that the other spouse persist in infidelity up to the new nuptials; 4° that the other spouse, after the Baptism of the faithful party, depart from that party physically or morally; 5° that through an interpellation the departure be established, unless the Apostolic See has declared otherwise. It is said:

1. That the marriage have been contracted between two infidels (canon 1120, § 1).[4] Hence there is no place for the privilege: 1° if a baptized person in the Catholic Church, after obtaining a dispensation from the impediment of disparity of cult, has contracted with an infidel (canon 1120, § 2); 2° if a baptized non-Catholic has contracted nuptials with an infidel; and this holds even if the said non-Catholic is converted to the Catholic Church (cf. canon 1120, § 1). Some indeed judge that a baptized non-Catholic who embraces the Catholic religion can enjoy the privilege, because he is truly converted.[5] But this seems to have to be denied, because conversion has always been understood of Baptism.[6]

Objection 1. Canon 1120, § 2 declares: "This privilege does not obtain in marriage entered between a baptized party and a non-baptized party with a dispensation from the impediment of disparity of cult." Therefore it obtains in a marriage entered between a baptized party and a non-baptized party without a dispensation from the impediment of disparity of cult, as if a schismatic or heretical party contracts with a non-baptized party.

Response. From the fact that the former does not obtain, it is not necessarily deduced that the latter obtains; that this in fact cannot be deduced follows from those things by which it is proved that it is required that the marriage have been contracted between two infidels, that is, from Sacred Scripture,[7] from the responses of the Holy Office,[8] and from the obvious sense of canon 1120, § 1.

Objection 2. The Church has in fact dispensed in a marriage between a non-baptized party and a party baptized in schism or in heresy.

Response. Let that pass; for the question is not about a dispensation granted by the Church, but about the Pauline privilege.

2. That one of the spouses be converted to the Christian religion, that is, be baptized, and this either in the Catholic Church or in some Christian sect. It is said:

a) Be baptized; hence even catechumens before Baptism cannot enjoy the privilege.[9]

b) Either in the Catholic Church or in some Christian sect. A few deny this and judge that it is required that the infidel spouse be converted to the Catholic faith; and they rely both on the words of Paul "brother," "sister," "faithful," and on chapter 6 *De divortiis*, where it is said: If the other "is converted to the Catholic faith." But Tradition teaches that the foundation of the privilege is the sacrament of faith, or Baptism.[10] If the Baptism of the converted party is doubtful, for the most part the difficulty is removed by repeating Baptism conditionally; for in the case of doubtful Baptism there can be no place for the Pauline privilege.[11] If a doubt about Baptism or its validity arises after the new marriage has been contracted, recourse should be had to the Holy Office.

3. That the other spouse persist in infidelity up to the new nuptials, that is, not be baptized. As soon as the other spouse also is baptized, the new marriage can no longer be entered.[12]

4. That the other spouse, after the Baptism of the faithful party, depart from that party physically or morally. Therefore it does not suffice that the infidel party not be baptized, but departure is also required; and indeed departure after the Baptism of the faithful party; departure before Baptism does not suffice. Moreover, both physical and moral departure suffices.

a) One departs physically: 1° who for any cause whatever is unwilling to cohabit. This departure, however, does not suffice if the faithful party, after receiving Baptism, has furnished to the infidel party a just cause of departing (canon 1123).[13] I said after Baptism, because Baptism washes away all past things. One departs physically: 2° who indeed wishes to cohabit, but is physically impeded from it, provided he is not impeded because of a cause placed by the faithful party after Baptism. The case is present, for example, if the infidel party is detained in prison and there is no hope that he will soon be freed. This is denied by some, who require a malicious departure; but the response of the Holy Office is opposed to this opinion.[14]

b) One departs morally: 1° who is unwilling to cohabit without insult to the Creator, for example if the infidel party inflicts a formal injury on religion, or importunately excites the faithful party to sins of irreligion, lust, etc., or prevents the faithful party from fulfilling the precepts of religion, or refuses that the offspring be educated religiously. One departs morally: 2° who is unwilling to cohabit peacefully, for example if the infidel party treats the other spouse cruelly without just cause, or does not renounce concubinage, or - as it seems should be added - more often commits adultery, or by other continued vices reduces conjugal life to servitude (St. Alphonsus VI, 956).

The fact that the infidel spouse previously cohabited without insult to the Creator and peacefully does not prevent there being place for the privilege, if the infidel afterwards departs physically or morally; and this holds even if the faithful spouse after Baptism again consummated the marriage with the infidel party (canon 1124).

5. That the departure be established by interpellation, unless the Apostolic See has declared otherwise (canon 1121).

a) It is doubtful by what law interpellation is required;[15] likewise whether it is necessary for the validity of the new marriage. Favoring the affirmative opinion are these words of canon 1121, § 1: "Before the converted spouse validly contracts..., he must... interpellate the non-baptized party."[16] Furthermore, the interpellations must regularly be made after Baptism.[17] But the infidel party must be asked: 1° whether he or she also wishes to be converted and receive Baptism; 2° whether at least he or

she wishes to cohabit with the converted party peacefully, without insult to the Creator (canon 1121, § 1, 1° and 2°).

b) Interpellations should regularly be made, in at least summary and extrajudicial form, by authority of the Ordinary of the converted spouse. By that Ordinary there are also to be granted to the infidel spouse, if indeed he has requested them, delays for deliberating, yet with the warning that if the delays pass uselessly, the response will be presumed negative. Interpellations also made privately by the converted party himself are valid, indeed they are also licit, if the form prescribed above cannot be observed; nevertheless, in this case, for the external forum, these interpellations must be established by at least two witnesses or by another legitimate mode of proof (canon 1122). A single interpellation suffices, so that repetition is a matter of mere charity.[18] Indeed interpellation need not even then be repeated when the infidel spouse previously lived peacefully with the faithful spouse, but afterwards departs.

c) Interpellation must be made unless the Apostolic See has declared otherwise. Besides this, Bishops, Vicars, and Prefects Apostolic are commonly granted the faculty of dispensing in certain circumstances.

Note. Those things which regard matrimony in the constitutions of Paul III *Altitudo*, June 1, 1537; of St. Pius V *Romani Pontificis*, August 2, 1571; and of Gregory XIII *Populis*, January 25, 1585, and which were written for particular places, are extended also to other regions in the same circumstances (canon 1125). It is said to other regions, that is, everywhere on earth, in the same circumstances. Now:

1° Paul III decrees "that polygamists who before conversion had several wives according to their customs, and do not remember which one they first took, once converted to the faith, may take one of them whom they wish, so that they may contract matrimony with her by words concerning the present, as is the custom; but those who do remember which one they first took, having dismissed the others, are to retain her. And we grant to them that those joined even in the third degree both of consanguinity and of affinity are not excluded from contracting marriages." The same holds concerning a woman who lived in polyandry.

2° Pius V declares that the same persons, even if they remember which was the first wife, may remain, the others having been dismissed, with the wife who was baptized with them. Nevertheless the first wife, if she is known to some, seems first to have to be interpellated as to whether she wishes to be converted. The text of Pius V does not indeed expressly declare this, but it is counseled by formula n. 23 of the Sacred Congregation of Propaganda Fide, where in the same case the faculty of dispensing is granted to Ordinaries under this condition, that the lawful wife of the convert has expressly refused conversion. It suffices, however, to interpellate the former wife, if she is known, as to whether she wishes to be converted; the other interpellation concerning peaceful cohabitation can be omitted.

3° Gregory XIII grants to local Ordinaries, pastors, and confessors of the Society of Jesus[19] the faculty of dispensing with converted infidels, so that, the infidel spouse having been left, they may marry any one of the faithful, with the consent of the infidel in no way required or the response not waited for, "provided it is established, even summarily and extrajudicially, that the absent spouse, as was stated, cannot lawfully be admonished, or that, once admonished, he has not signified his will within the time fixed in that admonition." Many conclude from various responses of the Holy Office that these faculties can be extended to the case where it is established that interpellation will be useless.[20] The Supreme Pontiff adds: "and these marriages indeed, even if afterwards it should become known that the former infidel spouses could not declare their will because they were justly impeded, and had also been

converted to the faith at the time of the second marriage contracted, nevertheless we decree that they must never be rescinded, but are valid and firm, and that the offspring to be received from them will be legitimate."

IV. Use of the privilege. 1. If the infidel who has been interpellated denies either conversion and due cohabitation, or due cohabitation alone and not conversion; likewise if he responds that he indeed wishes to cohabit peacefully, but is impeded from carrying out his will, the faithful spouse can pass to new nuptials (canon 1123), provided nevertheless that, if the infidel spouse admits conversion, the faithful spouse enters the nuptials before the Baptism of that spouse. Besides, for liceity it is required that the Ordinary or his delegate have declared that one can proceed to the use of the privilege.

2. If the infidel responds nothing, it must be seen whether the interpellation reached him and whether he could easily respond, so that departure can be gathered from the denied response. If the matter remains doubtful, and no fruit is hoped from a repeated interpellation, a dispensation from interpellation should be obtained.

3. The faithful spouse can enter new nuptials with a Catholic person only (cf. canons 1123, 1124). Unless a dispensation is obtained, marriage with a heretical person will be illicit; with an infidel, because of disparity of cult, it will be invalid. Moreover note:

a) If the infidel admits both conversion and due cohabitation, the faithful spouse, as is clear, is bound to cohabit with him.

b) If the infidel admits due cohabitation, but not conversion, the faithful spouse indeed cannot contract a new marriage; nevertheless, equally as the faithful spouse whose other party has fallen into heresy, he can institute divorce from bed and cohabitation, after a warning has first been given and after he has awaited conversion for a reasonable time. This is the doctrine and practice of the Church.[21]

4. By the new nuptials the prior marriage is dissolved, so that the infidel party after those nuptials have been contracted, not before, can validly contract a new marriage (canon 1126; St. Alphonsus VI, 957).[22] That the prior marriage is dissolved through solemn profession which the faithful spouse may perhaps emit is denied rather commonly. Finally, the new nuptials are held by the Church as first nuptials, so that the faithful spouse is not judged a bigamist.

[1] 1 Corinthians 7:12-15.

[2] *Collectanea*, n. 1305 sq.

[3] For example, in the Instruction to the Vicar Apostolic of Natal, July 11, 1866 (*Collectanea*, n. 1295).

[4] Holy Office to the Bishop of Cochin, August 5, 1759, ad 4 (*Collectanea*, n. 421); in Nanking, March 5, 1852 (*Collectanea*, n. 1070).

[5] *Ami du Clerge*, 1921, p. 69 sq. and p. 234 sq.

[6] Cf. *Gregorianum*, 1923, p. 241 sq. and p. 329 sq.

[7] 1 Corinthians 7:12-15.

[8] August 5, 1759, ad 4 (*Collectanea*, n. 421); March 5, 1852 (*Collectanea*, n. 1070).

[9] Sacred Congregation of Propaganda Fide, January 16, 1803 (*Collectanea*, n. 665).

[10] C. *Gaudemus*, 8, *De Divortiis*.

[11] Holy Office, March 13, 1901; cf. *Gregorianum*, loc. cit.; Holy Office, March 8, 1911. Nevertheless the Supreme Pontiff can, the requisite conditions being fulfilled, by vicarious power dissolve the marriage previously entered (n. 722).

[12] Holy Office, August 5, 1759, ad 2 (*Collectanea*, n. 421); Sacred Congregation of Propaganda Fide, January 30, 1807 (*Collectanea*, n. 690).

[13] July 8, 1891 (*Collectanea*, n. 1760).

[14] Holy Office, December 14, 1848, ad 2 (*Collectanea*, n. 1036).

[15] Holy Office, August 5, 1759 (*Collectanea*, n. 924); July 4, 1855 (*Collectanea*, n. 950).

[16] Cf. Holy Office, September 16, 1824 (*Collectanea*, n. 784); June 12, 1850 (*Collectanea*, n. 1044).

[17] Cf. Sacred Congregation of Propaganda Fide, January 17, 1836, ad 1 (*Collectanea*, n. 845).

[18] Holy Office, April 13, 1859 (*Collectanea*, n. 1175); June 3, 1874 (*Collectanea*, n. 1415); Holy Office, June 12, 1850, ad 1 (*Collectanea*, n. 1044).

[19] "With canon 1125 considered, the faculty now seems to be extended to all confessors" (Aertnys-Damen, II, 922, question 1°).

[20] Cf. Vermeersch, *De casu Apostoli*, n. 77.

[21] Cf. Wernz-Vidal, n. 702.

[22] Constitution of Benedict XIV *Postremo mense*, February 28, 1747.

Scholion II. On the Privilege of Faith

722 The privilege of faith in a doubtful matter enjoys the favor of law (canon 1127). It is said:

I. The privilege of faith. Now the privilege of faith is the privilege which, by force of the Church's power of dissolving certain marriages, is granted to one converted to the faith, in relation to marriage.

II. In a doubtful matter, that is, in a matter doubtful after diligent examination has been undertaken; once this has been undertaken, the case is present:

1. If there is doubt about the fact or about the validity of a marriage entered before Baptism.
2. If there is doubt which was the first wife among several taken before Baptism.
3. If there is doubt whether the requisites are present so that the convert, by force of the Pauline privilege, can contract a new marriage with a Catholic person. If, however, the doubt regards the interpellations, and no fruit is hoped from their repetition, a dispensation from the interpellations must be obtained.
4. If there is doubt about the fact or about the validity of Baptism received by one party; but not if each party was baptized with doubtful validity. For the legislator, in declaring the principle established by canon 1127, does not distinguish between consummated and non-consummated marriages, so that, if in the latter hypothesis he does not regard consummated marriages, neither is he to be judged to regard the other species, in other words, no marriages. But in the latter hypothesis he does not regard consummated marriages, because these in that hypothesis are probably ratified and consummated, that is, entirely indissoluble. Therefore in the latter hypothesis he regards no marriages, or the principle cannot be applied.

III. It enjoys the favor of law, that is, in the cases set forth the converted party has the right of choosing what favors him in relation to marriage. Hence:

1. In doubt about the validity of a marriage contracted before Baptism, he can enter a new marriage.
2. In doubt which was the first wife, he can take whichever he prefers from the wives whom he assumed before Baptism.
3. In doubt about the requisites so that the convert can enter a new marriage with a Catholic party, he has the right of doing this.
4. In doubt about the fact or about the validity of Baptism received in the Catholic Church, he can contract a new marriage.

Note. Nevertheless, in each of the doubts set forth, recourse must be had to the Holy Office, so that it may examine the case (canon 247, § 3), or to another to whom that faculty may perhaps have been granted.

Scholion III. On the Favor of Law which Belongs to Matrimony

723 Matrimony enjoys the favor of law; therefore in doubt one must stand for the validity of matrimony until the contrary is proved, with due regard for the prescription of canon 1127 (canon 1014). It is said:

I. It enjoys the favor of law, that is, the favor which matrimony enjoys is a favor of law, not a favor of law and by law, so that demonstration of the contrary is admitted; but what a favor of law involves will now be explained.

II. Therefore in doubt one must stand for the validity of matrimony until the contrary is proved. Understand a doubt persisting after diligent examination. This being supposed:

1. In a doubt of law, that is, in doubt whether the marriage celebrated is valid, it is to be held as valid until nullity is proved.
2. In a doubt of fact, one must stand for the marriage entered when the bond between the parties enjoys the name and possession of marriage, in other words, is publicly held as a marriage.

The reason is that the good of offspring and the common good demand that marriages persist as long as they are not certainly null (St. Alphonsus VI, 903 sq.).

3. With due regard for the prescription of canon 1127; and, with that canon considered, if either of the infidel spouses is converted, and there is doubt about the validity of the marriage entered before Baptism, a new marriage can be permitted by the competent authority (n. 722).

Section V. On the Effects of Matrimony

724 I. Division of effects. The effects of matrimony are divided:

1. By reason of connection, into inseparable and separable effects. Inseparable effects are those which spontaneously and necessarily flow from valid matrimony. Such are, for example, that true spouses must be held as such; that there arises between the spouses a bond by its nature perpetual and exclusive (canon 1110); that each spouse from the very beginning of matrimony has an equal right and duty with regard to the acts proper to conjugal life (canon 1111), etc. Separable effects are those which accrue to matrimony accidentally or extrinsically; and they are called ecclesiastical or civil, according as they draw their origin from canon law or from civil law. Ecclesiastical effects are, for example, that, unless something else has been provided by special law, the wife becomes a

participant in the status of the husband with regard to canonical effects (canon 1112), the right of ecclesiastical patronage granted to the father of a family, etc. Civil effects are, for example, nobility coming to the other spouse or to offspring, the right of political suffrage belonging to the father of a family.

2. By reason of the participants, into effects common to each spouse, and effects proper to the husband, to the wife, or to the children.

II. The different effects of matrimony. 1. Effects common to each spouse are:

a) A bond by its nature perpetual and exclusive (canon 1110).

b) An equal right and duty with regard to the acts proper to conjugal life (canon 1111).

c) The obligation of caring according to one's powers for the education of offspring, both religious and moral and physical and civil, and also of providing for their temporal good (canon 1113).

2. Effects proper to the husband are: marital power over the wife, and the power of the father over the children.

3. Effects proper to the wife are: subjection to the husband; likewise participation in the status of the husband with regard to canonical effects, unless by special law something else has been provided (canon 1112), for example that she enjoys the domicile of her husband (canon 93, § 1), etc.

4. The effect especially proper to children is legitimacy; but concerning this and concerning matters akin to it, because they recur so often, we shall speak particularly in the scholion.

Scholion. On Legitimacy and Matters Akin to It

We shall speak of legitimacy, of legitimate children, of illegitimate children, and of legitimation.

725 I. Legitimacy is the quality of legitimate or legitimated offspring, which produces certain determinate effects to be set forth later.

726 II. Legitimate children. With natural law considered, legitimate children are those conceived from a valid marriage. But with canon law considered, legitimate children are, with the things to be excepted excepted:

1. Those conceived from a valid or putative marriage.[1] It is said from a marriage, that is, from a mother joined in marriage and from the man to whom she is joined in marriage (canon 1114).

2. Those born from a valid or putative marriage, even if the parents at the time of conception had not yet entered marriage.

3. Those carried in the womb while there is a marriage between the pregnant woman and the father of the offspring, even if conception had place before the marriage, and the father or mother dies before the birth of the offspring, so that the offspring was neither conceived nor born from marriage. The aforesaid are to be called legitimate because of parity of reason, or, if you prefer, because of the formal equality of this case with the case of offspring merely born from marriage; hence canon 1114 is judged to comprehend them also.

I said with the things to be excepted excepted, because those are illegitimate who were conceived or born from a valid or putative marriage of parents for whom, because of solemn profession or a sacred Order received, the use of a previously contracted marriage was prohibited at the time of conception

(canon 1114). Note: previously contracted; hence offspring born from a marriage entered between one bound by solemn vow and another, but with a dispensation, even if perhaps conceived before the marriage, is not illegitimate, because it is not a question of a marriage contracted before the vow. Moreover note:

a) Those conceived or born in marriage, that is, from a mother joined in marriage, are held to have been conceived or born from marriage, that is, from the mother and from the man to whom she is joined in marriage, and therefore are held as legitimate, unless the contrary is proved by evident arguments (canon 1115, § 1). This is proved, for example, by showing that intercourse did not have place during the time useful for conception, that is, from the 300th day to the 180th day before birth,[2] for example because of illness or because of absence. The declaration of the man or of the woman, even if confirmed by oath, does not suffice. I said: they are held as legitimate, but not of themselves from an ordinary presumption of law, since this is restricted only to some. Namely:

b) Those conceived or born in marriage are presumed to have been conceived or born from marriage, and consequently are presumed legitimate, if they were born at least after six months from the day the marriage was celebrated, or within ten months from the day conjugal life was dissolved (canon 1115, § 2). If a child is born within six months from the day conjugal life was dissolved, and the man at once denied that the offspring born was his, and other things also support the truth of the assertion, the presumption favors the man, and the burden of proving that he, that is, the man, is the father, rests on the other party.

c) In doubt whether offspring was conceived or born in marriage, for example exposed children, it seems that the offspring must be held legitimate; since it seems it must be held as conceived and born in marriage, and likewise from marriage, because a delict is not presumed; this being supposed, it must also be held legitimate unless the contrary is proved.

[1] An invalid marriage is called putative if it was celebrated in good faith by at least one party, until each party becomes certain of its nullity (canon 1015, § 4). It is disputed whether a marriage invalid because of defect of form can ever be held as putative.

[2] The useful time is computed in this way because birth commonly has place between 180 and 300 days after conception.

727 III. Illegitimate children. 1. Notion. Illegitimate children are: 1° those who were neither conceived nor born from a valid or putative marriage, nor carried in the womb while there was a marriage between the pregnant woman and the father of the offspring; 2° those conceived or born from a valid or putative marriage of parents for whom, because of solemn profession or because an Order had been received, the use of the previously contracted marriage was prohibited at the time of conception.

2. Division. Illegitimate children are distinguished into natural and spurious. Natural children are those who were procreated by parents who at the time either of conception or of birth or in the interval between the two could have been joined by valid marriage; moreover it suffices that they could have been so joined through a dispensation obtained.

Spurious children are those who were procreated by parents who, because of a diriment impediment not removed during the whole time from conception up to birth, could not have contracted valid marriage with each other.

Spurious children are subdivided into adulterine, sacrilegious, incestuous, nefarious, and simply spurious. Adulterine children are those born from adultery; sacrilegious, those born from a solemnly

professed man or woman, or from a cleric constituted in sacred orders; incestuous, those born from consanguineous or affinal relatives in the prohibited degrees; nefarious, those procreated from consanguineous persons in the direct line. The rest are called simply spurious.

3. The effects of illegitimacy are:

a) Illegitimate persons are irregular by defect (canon 984, 1°), and therefore can licitly receive neither orders, whether major or minor, nor tonsure, and they are prohibited from exercising orders received (canon 968); hence they also cannot be admitted by the Ordinary into the seminary (canon 1363, § 1).

b) Illegitimate persons are kept from the Cardinalate (canon 232, § 2, 1°), from the Episcopate (canon 331, § 1, 1°), from the office of Abbot or Prelate nullius (canon 320, § 2), or from the office of major Superior in religious institutes (canon 504; cf. canon 488, 8°).

c) Illegitimate persons destined for the priesthood, as being irregular, cannot be admitted to the novitiate (canon 542, 2°).

[1] Cf. Schmitz, *Die Stellung der unehelichen Kinder im geltenden kanonischen Recht*; Mulders in *Ned. Kath. Stemmen*, 1931, p. 15 sq. and p. 33 sq.

728 IV. Legitimation. 1. Modes of legitimating. Legitimation is made, or can be made, as follows:

a) Through the subsequent marriage of the parents, whether true or putative, whether newly contracted or convalidated, even if not consummated, offspring is made legitimate, provided the parents were able to contract marriage with each other at the time of conception, or of pregnancy, or of birth (canon 1116), in other words, natural offspring is made legitimate. Therefore observe that offspring is also legitimated if a parent, after another marriage, contracts nuptials with the other parent of the offspring. Nevertheless, it is required that each be a parent of the offspring; but the consent of the offspring is not demanded; indeed legitimation would have place even if the offspring itself opposed its legitimation.

b) Through a dispensation granted over a diriment impediment, whether from ordinary power or from delegated power through a general indult, simply spurious and incestuous offspring is legitimated by that very fact, if any has already been born or conceived; it is not legitimated through a dispensation granted from delegated power through a rescript in particular cases (canon 1051). It is said:

alpha) Through a dispensation granted either from ordinary power or from delegated power through a general indult. The case obtains if the Holy See dispenses in gracious form, that is, without an executor; likewise if the Ordinary dispenses by force of canon 1043 or canon 1045, or of quinquennial faculties; likewise if the pastor dispenses by force of canon 1044 or canon 1045, § 3; likewise if the Holy See indeed dispenses in commissorial form, but with a necessary executor required, because then the Holy See itself also dispenses (vol. I, n. 209). In the case, however, with the formulas which the Sacred Congregation of the Sacraments uses being considered, it is imposed on the executor that he "decree and declare the offspring legitimate."

beta) Simply spurious and incestuous offspring is legitimated. Adulterine and sacrilegious offspring are excepted; nefarious offspring is not legitimated, because in such a marriage a dispensation is not granted.

gamma) If any has already been born or conceived: understand, as is clear, offspring which is truly illegitimate. Hence by offspring already conceived is to be understood offspring already conceived, but

neither born nor carried in the womb after the marriage with dispensation was contracted or convalidated; for if it is born, or at least carried in the womb, after the marriage so contracted or convalidated, the offspring is legitimate, and therefore is not legitimated. But by dispensation there is legitimated offspring born before the dispensation; likewise offspring born after the dispensation but before marriage, whether this marriage is afterwards contracted, or is not contracted because of death, or, so others say, because of a cause independent of the will of the petitioners, or, so others say, for any cause whatever. The obvious sense of the law, which declares that offspring is legitimated by dispensation from the impediment, favors the last opinion.

delta) It is not legitimated through a dispensation granted from delegated power through a rescript in particular cases; this obtains, for example, if the Holy See dispenses in commissorial form with a voluntary executor required. For then the executor is delegated to dispense through a particular rescript.

Corollary I. If a diriment impediment to marriage is removed without dispensation, for example by the passage of time if the impediment of age was standing in the way, offspring is not legitimated by the very fact that the marriage is convalidated; rather there is need of a special rescript.[1]

Corollary II. Where marriage is sanated in the root, illegitimate offspring is legitimated by force of the sanated marriage, if it is a question of natural offspring; by force of the dispensation which sanation in the root carries with it, if there is question of simply spurious or incestuous offspring.

c) Through a special rescript of the Holy See any illegitimate offspring can be legitimated. A rescript of this kind is granted for the external forum by the Sacred Congregation of the Sacraments or, if one party is non-Catholic, by the Holy Office; for the internal forum, by the Sacred Penitentiary.

2. Effects of legitimation. a) Children legitimated through subsequent marriage, as regards canonical effects, are in all things equated with legitimate children, unless something else has been expressly provided (canon 1117). Now it has been expressly provided that children, even if they have been legitimated through subsequent marriage, are kept from the Cardinalate (canon 232, § 2, 1°), from the Episcopate, and from the dignity of Abbot or Prelate nullius (canons 331, § 1, 1°; 320, § 2).

b) Children legitimated through dispensation or through a special rescript of the Holy See seem to be equated in all things with legitimate children, unless something else has been provided by common law or in the grant of the dispensation or in the special rescript. Now by common law it has been provided that children legitimated through dispensation or through a special rescript are kept from the Cardinalate, from the Episcopate, and from the dignity of Abbot or Prelate nullius (canon 331, § 1, 1°; canon 320, § 2). This must be deduced from the fact that canon 331, § 1, 1° declares: "legitimated even through subsequent marriage"; hence *a fortiori* if a son has been legitimated in another way.

c) If an illegitimate person is legitimated through sanation in the root, all effects of illegitimacy are removed, unless something else has been provided in the written grant. For sanation in the root carries with it, by a fiction of law, that the marriage is judged to have been valid from the beginning, as regards canonical effects (canon 1138), one of which certainly is the legitimacy of offspring. Hence those legitimated in this way are not of themselves kept even from the Cardinalate, the Episcopate, and the dignity of Abbot or Prelate nullius.

Note 1. Particular effects of illegitimacy, for example irregularity in relation to receiving Orders, can also be removed through dispensation. Besides, some particular effects are also removed in another

way: thus, for example, irregularity for receiving Orders is also removed through solemn religious profession, but not inability, for example, for the office of major Superior (canon 504).

Note 2. It is very expedient that the legitimation of offspring and the mode by which this has been granted be noted by the pastor in the baptismal book, and therefore be signified to the respective pastor by the one who has obtained the legitimation.

[1] Pontifical Commission, December 6 (*A.A.S.* 1931, p. 25).

Part II. On Matrimony, Insofar as It Is a Sacrament, Particularly

We shall speak first of the sacrament of matrimony considered in itself, then of the ministration and form of celebration, finally of the reception of the sacrament of matrimony.

Section I. On the Sacrament of Matrimony Considered in Itself

One must treat of the existence, essence, and effects of the sacrament of matrimony.

Chapter I. On the Existence of the Sacrament of Matrimony

729 Matrimony is a true sacrament. This proposition is of faith, for example from the Council of Trent: "If anyone says that matrimony is not truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord, but invented by men in the Church, and that it does not confer grace, let him be anathema."[1]

Note 1. The time of the institution of this sacrament by Christ is uncertain. Some judge that it was instituted at the wedding at Cana;[2] others, when Christ established the indissolubility of Matrimony;[3] finally others, after the Resurrection, at the time when the Lord conversed with his disciples, speaking of the kingdom of God.[4]

Note 2. Matrimony in the Old Law not only was not an efficacious sign of grace, but does not seem to be counted among the sacraments of the Old Law, that is, among the signs of grace then existing. "But matrimony," says St. Thomas, "was indeed in the Old Law insofar as it was for the office of nature, but not insofar as it is the sacrament of the conjunction of Christ and the Church, which had not yet been made; hence also in the Old Law a bill of repudiation was given, which is contrary to the nature of a sacrament" (I-II, q. 102, a. 5, ad 3).

[1] Session 24, canon 1.

[2] John 2.

[3] Matthew 19:4.

[4] Acts 1:3.

Chapter II. On the Essence of the Sacrament of Matrimony

730 I. Contract and sacrament in Christian marriage cannot be separated, so that a matrimonial contract between Christians cannot exist without being a sacrament. So teach Pius VI in the letter to the Bishop of Motula;[1] Pius IX in the Apostolic letter to the king of Sardinia;[2] Leo XIII in the encyclical *Arcanum;*[3] and the same is gathered from the Council of Trent[4] and from canon 1012, § 2.

II. The matrimonial contract constitutes the whole nature of the sacrament, so that neither the blessing of the priest, nor indeed even his presence, belongs to its essence. This follows from canon 1012, § 1; likewise from the Council of Trent, which declared that clandestine marriages, that is, marriages not contracted before the pastor and witnesses, were ratified and true marriages as long as the Church had not made them invalid[5] (St. Thomas, In IV, dist. 26, q. 2, a. 1, ad 1; St. Alphonsus VI, 897, 898).

III. The matter and form of the sacrament of matrimony are:

1. The remote matter is the bodies of the contracting parties, or rather the mutual right over the body of the other. This right is called remote matter in the sense that it is the matter about which the matrimonial contract is concerned (St. Alphonsus VI, 880).

2. The proximate matter and form is the consent itself expressed by words or by another sign. Namely, here the proximate matter is consent insofar as it signifies mutual handing over, and the form is consent insofar as it expresses mutual acceptance. So Benedict XIV in the letter *Paucis abhinc* to the Archbishop of Goa.[6] And indeed, since the matrimonial contract itself, as has been proved, constitutes marriage, the matter, that is, the determinable part, and the form, that is, the determining part, must necessarily be found in the contract itself or in the expressed consent. Now in every contract the handing over of the thing, as being the beginning of the contract, is the determinable part or matter; but acceptance, as being the completion of the contract, is the determining part or form (St. Alphonsus VI, 880, 897).

Corollary. The nature of the sacrament is in matrimony *in fieri*, that is, in the contract which is now placed or obtains its effect. This follows from the things said. It is disputed whether the nature of the sacrament is also in matrimony *in facto esse*, that is, in the bond; in other words, whether matrimony, after the contract has been entered, persists in its being as a sacrament, after the likeness of the Holy Eucharist. Concerning this opinion Pius XI in the encyclical *Casti connubii*[7] says thus: "Therefore let them [the spouses] meditate on these words of St. Cardinal Robert Bellarmine, full indeed of solid consolation, who, with other theologians of great name, thus piously thinks and writes: 'The Sacrament of Marriage can be considered in two ways: in one way, while it is being made; in another way, while it remains after it has been made. For it is a sacrament similar to the Eucharist, which is a sacrament not only while it is being made, but also while it remains; for while the spouses live, their society is always the sacrament of Christ and the Church.'"

Question 1. Whether a marriage between two infidels, after Baptism has been received by each spouse, becomes a sacrament.

Response. Some simply deny it; others affirm it, but among these some require that the spouses elicit new consent, or approve the prior consent by words, nods, or marital intercourse; others think it suffices that the consent not be retracted; others abstract from the influence of consent, and judge that the marriage by the very fact that Baptism is received becomes a sacrament. Now it seems that it must be said that the said marriage truly becomes a sacrament; both because on the one hand it must be admitted that the married Ephesians to whom Paul directed his epistle truly received the sacrament of matrimony,[8] and on the other hand it cannot be admitted that they entered marriage only after receiving Baptism; and because marriages of infidels, consummated after Baptism has been received by each party, seem to be entirely indissoluble (p. 552), which also seems to have to be ascribed to their sacramentality (pp. 552 and 553). Moreover, the opinion is preferable which teaches that the reception of Baptism itself suffices for the marriage to become a sacrament, or for the sacrament, which was already present in potency, to pass into act (cf. St. Thomas, *Supplement*, q. 59, a. 2, ad 1; St. Alphonsus VI, 897).

Question 2. Whether the marriage of an infidel party who is baptized becomes a sacrament if the other party is not baptized; likewise whether a marriage which a faithful person validly contracts with an infidel is a sacrament.

Response. Concerning each case there is dispute. Some deny it, because just as the contract, so also the sacrament will be either in each party or in neither party. But it is not in the infidel party; therefore neither is it in the faithful party. Others probably affirm it, because their opinion is not repugnant: one and the same contract can be a sign conferring grace for the one who is capable of the sacrament, but only potentially for the one who because of a defect extrinsic to the contract is not yet capable of the sacrament.

[1] September 16, 1788.

[2] September 19, 1852.

[3] February 10, 1880.

[4] Decree on the reform of Matrimony, chapter 1.

[5] Session 24, Decree on the reform of Matrimony, chapter 1.

[6] March 19, 1758.

[7] *A.A.S.* 1930, p. 583.

[8] Ephesians 5.

Chapter III. On the Effects of the Sacrament of Matrimony

731 The effects of the sacrament of matrimony are:

I. Sanctifying grace, of itself second grace or an increase of grace, accidentally more probably first grace (n. 6). There is attached an increase of the virtues and of the gifts of the Holy Spirit.

II. Sacramental grace; namely, the grace which the sacrament of matrimony confers is unitive of souls and restraining of concupiscence, having annexed to it a claim to actual graces for the duties of matrimony to be duly fulfilled, notably for raising and educating offspring in honor of God.

Section II. On the Ministration of the Sacrament of Matrimony and the Form of its Celebration

732 I. Ministration of the sacrament. Concerning this, it suffices to have noted: the ministers of the sacrament are the contracting parties themselves. This is established from the Council of Florence, which says thus: "The efficient cause of matrimony regularly is mutual consent expressed by words concerning the present."[1] The reason is that contract and sacrament are identified. Hence those who effect the contract also effect the sacrament (St. Thomas, *Supplement*, q. 45, a. 1; St. Alphonsus VI, 897).

[1] Session 24, Decree on the reform of Matrimony, chapter 1.

733 II. Form of the celebration of the sacrament. The priest, although he is not the minister of the sacrament, is nevertheless called the minister of the celebration, insofar as he assists the marriage to be contracted as a qualified witness and performs other things necessary for validity.

The Holy Tridentine Synod had established the solemn form necessary for validity in the chapter *Tametsi* in these words: "Those who shall attempt to contract marriage otherwise than in the presence of the pastor, or another priest with the permission of that pastor or of the Ordinary, and of two or three witnesses, the Holy Synod renders entirely incapable of contracting in this way, and decrees that contracts of this kind are invalid and null."[1] This legislation remained until April 19, 1908,[2] on which

day the decree *Ne temere*, "On Betrothals and Matrimony," began to be in force, issued by the Sacred Congregation of the Council on August 2, 1907, by special mandate of Pius X. Then from May 19, 1918, the new Code of Canon Law has force, which left the Pian law untouched in most things, but changed it in certain things. But it is clear that marriages and betrothals contracted under the earlier legislation must be judged according to that legislation. Now, about to set forth the manner of celebrating marriage, we shall speak first of the juridic form, then of the liturgical form of celebrating marriage, with a scholion added on the form to be observed in celebrating marriage by a Catholic party with a non-Catholic party; then of the time and place of the celebration of marriage; and finally of the things to be observed after the celebration of marriage, that is, of the registration of the marriage celebrated.

[1] Session 24, Decree on the reform of Matrimony, chapter 1.

[2] For Chinese regions, until April 11, 1909 (Sacred Congregation of the Council, February 29, 1908).

Chapter I. On the Juridic Form

The juridic form is distinguished as twofold, ordinary and extraordinary. Hence we shall treat first of the ordinary juridic form, then of the extraordinary juridic form, and then of those who are subject to the aforesaid forms.

Article I. On the Ordinary Juridic Form

We shall hand down first a summary exposition, then a fuller exposition of the juridic form.

§ I. Summary Exposition

734 The ordinary juridic form, required for the validity of marriage, is that it be contracted before the pastor or local Ordinary or a priest delegated by either of them, and at least two witnesses (canon 1094). But the presence of those assisting must be simultaneous, physical, and moral. It is said:

I. That it be contracted before the pastor or local Ordinary or a priest delegated by either of them. Now:

1. Under the name of pastor here come:

a) The priest to whom a parish has been conferred as a title, with the care of souls to be exercised under the authority of the local Ordinary (canon 451, § 1).

b) The actual parochial vicar, who supplies the place of the moral person to whom habitual care belongs (cf. canon 471).

c) Quasi-pastors, who govern quasi-parishes.[1]

d) Chaplains of soldiers, whether major or minor, insofar as they are equated with pastors; this is gathered from the particular prescriptions of the Holy See (canon 451, § 3).

e) Chaplains or rectors of pious places of any kind exempt from parochial care, provided that full parochial power has been committed to them, are counted as pastors, but only for the persons entrusted to them and in the place over which they preside.[2] The power belongs exclusively to the rector if the place is entirely exempt; otherwise it is cumulative with the pastor of the place (cf. canon 464, § 2).

f) Parochial vicars who are furnished with full parochial power, namely:

alpha) A substituted vicar holding the place in all things of a pastor absent for more than a week, approved by the Ordinary (canon 465, §§ 4 and 5; canon 474). The substitute, if he is the vicar of a religious pastor, must also be approved by the religious Superior, but this is not required for the validity of assistance.[3]

beta) A supplying priest who takes the place in all things of a pastor departing for a sudden and grave cause for more than a week (canon 465, § 5; canon 474),[4] but not a supplying priest of a pastor departing for a shorter time.

gamma) A supplying priest designated by the Ordinary and exercising in all things the place of a pastor who, by sentence, is to be deprived of the benefice, but who has recourse to the Holy See (canon 474; canon 1923, § 2).

delta) A vicar administrator, namely one constituted when a parish is vacant, formerly called *deservitor* (canon 472, 1°).

epsilon) A vicar cooperator, the first or the older in office, or the nearer pastor; likewise the superior of the house who, before the appointment of an administrator, meanwhile assumes the governance of the parish, unless provision has been made otherwise (canon 472, § 2).

eta) An assistant vicar constituted by the local Ordinary who supplies in all things the place of a pastor unequal to duly carrying out his duties (canon 475).

Note 1. A vicar cooperator, of whom canon 476 speaks, of himself does not come under the name of pastor, although he enjoys general delegation. For, as is clear from the terms themselves, he is without the power proper to a pastor, that is, ordinary power, and has only delegated power.

Note 2. In mission regions where there are not quasi-parishes, all missionaries are cooperators of the Vicar or Prefect, and therefore with his delegation, whether general or particular, they can validly and licitly assist at marriage.[5]

Note 3. In mission regions where several missionaries divide some part of the territory among themselves into distinct stations, which they administer under one Superior of the central station, that superior is not held as quasi-pastor of the whole territory unless the care of souls of the whole district is truly and immediately committed to him.

2. Under the name of local Ordinary in law come, unless someone is expressly excepted, besides the Roman Pontiff, each for his own territory: the residential Bishop, Abbot or Prelate nullius and their Vicar General, Administrator, Vicar and Prefect Apostolic, and likewise those who, when the aforesaid are lacking, succeed meanwhile in governance by prescription of law or by approved constitutions (canon 198).

3. A priest delegated by either of them; concerning these, particular mention is made in n. 737 sq.

4. And at least two witnesses. Now:

a) As regards validity, persons of any kind can be taken as witnesses, provided they actually enjoy the use of reason and are capable of testifying. Nor does canon 1757, § 1 stand in the way, since it indeed excludes the impubescent, but speaks only of witnesses in judgment. Heretics, excommunicated persons, and infamous persons are not licitly employed. Particularly with regard to heretics, the Holy

Office[6] declared "that they are not to be employed; nevertheless they can be tolerated by the Ordinary for a grave cause, provided scandal is absent."

b) Neither for validity nor of itself for liceity is it required that the witnesses designated have been warned beforehand or asked about the marriage to be contracted. Practically, however, they should be determined and asked before the marriage, because after the nuptials have been entered their names must be recorded by the pastor. The fact that the witnesses are forced does not impair validity.

c) It does not seem to be required that witnesses be formally assumed, in other words, that the contracting parties employ them as such, or at least contract conscious of their presence; rather it suffices that the witnesses can testify to the marriage contracted. For this opinion is favored both by the text of the law, which requires only that the marriage be contracted before witnesses, and by its end, which is that witnesses can testify to the contract of marriage. This end is indeed obtained even through witnesses who have not been formally employed. There is added the response of the Sacred Congregation of Propaganda Fide.[7]

II. The presence of those assisting must be simultaneous, physical, and moral. It is said:

1. Simultaneous. For it is required that all be able to testify to one and the same act of marrying. Moreover, that a presence of this kind is required is sufficiently signified by the words: "Before the pastor... and at least two witnesses."
2. Physical or bodily. For it is established that the marriage must be contracted "before the pastor and at least two witnesses." But physical presence is not constituted by communication set up by means of telephone or telescope.
3. Moral, or such that at least from the circumstances they perceive that marriage is being contracted between these persons. This can be done even if someone lacks hearing or sight, but not if he is deprived of both sight and hearing.

[1] Parts of an apostolic vicariate and apostolic prefecture, if a particular rector has been assigned to them, are called quasi-parishes (canon 216, § 3). But the erection of a quasi-parish is made by decree of the Ordinary, in which the limits of the territory are clearly described; and once it has been constituted, the rights and obligations of the quasi-pastor immediately arise.

[2] Sacred Congregation of the Council, February 1, 1908, ad X.

[3] Cf. Pontifical Commission, July 14, 1922, V, ad 1-3 (*A.A.S.* 1922, p. 527).

[4] Cf. Pontifical Commission, July 14, 1922, V, ad 4 (*A.A.S.* 1922, p. 527).

[5] Sacred Congregation of Propaganda Fide, July 25, 1920.

[6] August 19, 1891.

[7] July 2, 1827, ad II (*Collectanea*, n. 794).

§ II. Fuller Exposition

We shall present the fuller exposition by speaking first of the requisites for a pastor or local Ordinary to assist validly at marriage, then of the requisites for them to assist licitly, and finally of the delegation of another priest to assist.

POINT I.

[1] Cf. encyclical *Casti connubii* (*A.A.S.* 1930, p. 554); cf. our little work *On the Form of the Promise and Celebration of Matrimony*, 5th ed.

Point I. On the Requisites for a Pastor or Local Ordinary to Assist Validly at Marriage

735 In order that a pastor or local Ordinary assist validly at marriage, it is required: 1° that they have obtained canonical possession of the benefice or have entered the office; 2° that they not be excommunicated, interdicted, or suspended from office by sentence, or declared such; 3° that they assist within the boundaries of their territory, in which nevertheless they validly take part in the marriages both of subjects and of non-subjects; 4° that, constrained neither by force nor by grave fear, they request and receive the consent of the contracting parties (canon 1095, § 1). It is said:

I. That they have obtained canonical possession of the benefice or have entered the office. Now:

1. Residential Bishops take canonical possession of the diocese as soon as, in the diocese itself, either personally or through a procurator, they have shown the apostolic letters to the Chapter of the cathedral church, in the presence of the secretary of the Chapter or the Chancellor of the Curia, who will record the matter in the acts (canon 334, § 3).
2. With regard to pastors, canon 1444, § 1 is to be attended to: "Induction into possession of a benefice is to be made according to the manner prescribed by particular law, or received by legitimate custom, unless for a just cause the Ordinary has expressly dispensed in writing from that manner or rite; in which case this dispensation takes the place of possession taken."

Note. Possession of a benefice can also be taken through a procurator having a special mandate (canon 1445).

3. One who does not have a benefice but only an office, as a Vicar General, enters his office by the very fact that he begins to exercise it.

II. That they not be excommunicated, interdicted, or suspended from office by sentence, or declared such. Therefore it does not suffice that someone has incurred one of the enumerated penalties, but it is required that either he has been condemned to it by a judge, or that he has been declared to have incurred it. With regard to suspension, note that the faculty is removed only by suspension from office, not by another suspension. Yet a suspension laid down generally also includes suspension from office, unless something else is established (canon 2278, § 2).

III. That they assist within the boundaries of their territory, in which nevertheless they validly take part in the marriages both of subjects and of non-subjects. Therefore the competence of the pastor and Ordinary, as regards valid assistance, is so annexed to territory that within the boundaries of their territory they validly take part in the marriage of all, even of non-subjects; outside those boundaries, in the marriage of no one, not even of subjects. Besides, observe:

1. The local Ordinary and pastor validly assist in houses and churches, even exempt ones, of religious which are situated in their territory, because the aforesaid houses and churches are exempt only by reason of persons.[1] For licit assistance the permission of the regular Prelate is required.
2. Pastors who have territory common with another pastor or with other pastors validly assist at the marriage of all within the territory which is common to them with others.[2]
3. Those who, in territory assigned to other pastors, have some persons or families, or persons of a determined rite, or a group of persons, for example soldiers, subject to themselves, can take part in

the marriages of subjects throughout the whole alien territory, but not in the marriages of others;[3] indeed they seem able to assist everywhere at the marriage of subjects. Whether other pastors also can do this within their territory is to be gathered from the statutes of the Holy See.

4. Chaplains or rectors of pious places of any kind exempt from parochial care, provided that full parochial power has been committed to them, are counted as pastors, but only for the persons entrusted to them and in the place over which they preside.[4] Whether the said faculty belongs to the rector exclusively or cumulatively with the pastor is to be deduced from the prescription of authority (cf. canon 464, § 2).

IV. That, constrained neither by force nor by grave fear, they request and receive the consent of the contracting parties; concerning which note:

1. Grave fear is understood as fear of grave harm, and one inflicted from without, that is, by a free cause. It does not matter whether it is inflicted by the parties themselves or by another. But there seems to be required fear inflicted for extorting assistance; yet it does not seem to matter whether it is inflicted justly or unjustly, because the law does not distinguish between just and unjust fear. Except, however, fear justly inflicted which is within the sphere or line of the law itself, and which is ordered to protecting the law itself. Hence assistance given is valid, whether because the Bishop compels an unwilling pastor by penalties to due assistance, or because those about to marry threaten that they will denounce to the Ordinary a pastor who unjustly denies assistance. For it cannot be admitted that fear of this kind is comprehended by the law according to the mind of the legislator.
2. That they request the consent of the contracting parties. Therefore it does not suffice that those about to marry emit matrimonial consent before the minister, but it is required that he previously and formally have requested the consent. Yet for validity it does not matter whether he does this personally or through an interpreter, by words or by writing, by nod or by another sign. Moreover, with regard to marriages here and now illicit, observe that the request for consent of itself does not involve an invitation to enter marriage, but a mere investigation whether those about to marry wish to contract marriage, so that only material cooperation is furnished.
3. And receive the consent of the contracting parties. This happens by the very fact that those about to marry, after the request has been made, emit consent, with the minister knowing that it is being emitted.

If marriage is celebrated by proxy, the pastor should request and receive consent from the proxy.

POINT II.

[1] Sacred Congregation of the Sacraments, March 12, 1910, ad VIII.

[2] Sacred Congregation of the Council, February 1, 1908, ad VIII.

[3] Sacred Congregation of the Council, February 1, 1908, ad IX.

[4] Sacred Congregation of the Council, February 1, 1908, ad X.

Point II. On the Requisites for a Pastor or Local Ordinary to Assist Licitly at Marriage

736 In order that a pastor or local Ordinary assist licitly, it is required: 1° that the free status of the contracting parties be established, and indeed according to the norm of law; 2° that there be

established the domicile or quasi-domicile, or monthly residence, or, if it is a question of a vagrant, the actual residence of either contracting party in the place of marriage.

If neither party has in the place of marriage, but each or either party about to contract has elsewhere, a domicile or quasi-domicile or monthly residence, the permission of the pastor or Ordinary of the domicile or quasi-domicile or monthly residence is needed. If neither has elsewhere a domicile or quasi-domicile or monthly residence, no one's permission is required; and this holds even if each or either has actual residence elsewhere.

In any case it is to be held as the rule that marriage be celebrated before the pastor of the bride, unless a just cause excuses; but the marriages of Catholics of mixed rite, unless something else has been provided by particular law, are to be celebrated in the rite of the man and before his pastor.

Finally, a pastor who assists at marriage without the permission required by law does not make the stole fees his own, and he is to remit them to the proper pastor of the contracting parties (canon 1097). It is said:

I. In order that a pastor or local Ordinary assist licitly, it is required: 1° that the free status of the contracting parties be established, and indeed according to the norm of law; concerning these things compare what was said in n. 682; it is required 2° that there be established the domicile or quasi-domicile, or monthly residence, or, if it is a question of a vagrant, the actual residence of either contracting party in the place of marriage. It is said:

1. Domicile or quasi-domicile. The notion, division, acquisition, and loss both of domicile and of quasi-domicile have been set forth in vol. I, n. 123. It is helpful here to add the following:

a) Someone can have two, indeed several, proper domiciles, namely by living equally in different places with the intention of acting thus perpetually. But whether someone lives equally in several places or not is to be judged more from the manner in which he has established himself here or there than from equality of time during which he stays in different parishes. It is certain that mathematically equal residence is not required.

b) Someone can have a proper domicile and a proper quasi-domicile, for example if, for a cause requiring at least six months, he goes elsewhere with the intention, once the business is finished, of returning to the place of perpetual habitation.

c) Someone can more probably have two proper quasi-domiciles; for example if a person goes to Rome in order to pursue studies there for four years, and meanwhile betakes himself to another place with the intention of remaining there for seven months and then returning to Rome. In the case he has a quasi-domicile in that other place, as is clear; likewise he retains the quasi-domicile at Rome, because it is not lost except by departure from the place with the intention of not returning.

d) A wife and a minor who has passed infancy can have legal domicile in one place and proper quasi-domicile in another.

e) A wife after the death of her husband and a minor who has become of age retain: the former, the domicile of the husband; the latter, the domicile of the one to whom he was subject. They retain, I say, that domicile, formerly legal, as voluntary, as long as they preserve the intention of remaining there.

2. Monthly residence; concerning which note:

a) The fact of monthly residence is required, but also suffices. The intention of extending residence through a month neither suffices nor is required; only the fact, and in no way the mind, is attended to, as is deduced both from the character of this legislation and from the words employed. Nor is habitation required, but residence suffices, whether in the manner of an inhabitant or in the manner of a guest, worker, etc. Besides this, residence must be taken according to common estimation. Now: 1° one who inhabits some place, for example in the paternal home, according to common estimation resides there, even if daily, either by day or by night, he spends time elsewhere, as if by day or by night he works in the factory of another municipality; 2° one who inhabits nowhere, but is accustomed to spend the day in one place and the night elsewhere, is rather said to reside where he is accustomed to spend the night. Finally, it is all the same whether someone resides in a place as a Catholic or as a non-Catholic.[1]

b) The time of monthly residence is to be computed thus. Since a starting term is assigned, a month is taken as it is in the calendar, for example from February 1 up to February 28 or 29. And because the starting term does not coincide, or at least is not judged by law to coincide, with the beginning of the day, the first day is not computed, and the time is ended when the last day of the same number has been completed, for example from March 25 up to April 25 completed. But if the month lacks a day of the same number, the time is ended when the last day of the month has been completed, for example from January 30 up to February 28 or 29 completed (canon 34, § 3, 1°, 3°, 4°).

c) Residence must be continuous, at least morally. Now absence of one or another day and night does not seem to stand in the way of continuity. And this holds rather probably even if someone has gone away with the intention of not returning; for intention, as was said above, seems in no way to have to be attended to. Besides this, if absence of one or another day does not stand in the way of continuation, neither must it be compensated by other days added.

d) Finally, it is clear that residence must be continued up to the contracting of marriage. Otherwise there is not monthly residence, but there was monthly residence.

3. Actual residence. By this is understood, as is clear from canon 1097, § 1, 3°, residence for a time of some moment, so that someone can be said to have somewhere a seat of residence. Now residence of this kind by either of the contracting parties suffices if it is a question of a vagrant, that is, of one who nowhere has domicile or quasi-domicile. But if it is a question of a vagrant, it suffices whether both parties or only one party is vagrant. Note, however, that in this case there is required for assisting the permission of the Bishop or his delegate, of which canon 1032 speaks (n. 695).

4. The place of marriage with respect to the pastor is the parish committed to him; with respect to the Bishop, Vicar, and Prefect Apostolic, it is both any parish of the diocese, or respectively quasi-parish of the vicariate or prefecture, and the diocese, vicariate, or prefecture as such.

II. If neither party has in the place of marriage, but each or either party about to contract has elsewhere, a domicile or quasi-domicile or monthly residence, the permission of the pastor or Ordinary of the domicile or quasi-domicile or monthly residence is needed. If neither has elsewhere a domicile or quasi-domicile or monthly residence, no one's permission is required, and this holds even if each or either has actual residence elsewhere. I said:

1. No one's permission is required; except, however, that permission of which canon 1032 speaks (n. 695).

2. And this holds even if each or either has actual residence elsewhere. For in the case there is not required the permission of the pastor or Ordinary of domicile, quasi-domicile, or monthly residence, because these are not had; nor the permission of the pastor or Ordinary of actual residence, because it is prescribed nowhere. Therefore the pastor of the place in which the vagrant is licitly assists, always with due regard for the permission of which canon 1032 speaks (n. 695). Moreover note:

a) The required permission can be granted as much orally as in writing, as much expressly as tacitly. Permission reasonably presumed also suffices, if it cannot conveniently be sought; in which case, however, it is fitting after the fact to warn the proper pastor. Finally, in a case of grave necessity no permission is required, for example if without grave inconvenience permission cannot be obtained in time. The reason is that the permission of which we speak is not delegation, which is necessary for validity.

b) Nothing prevents pastors of some city from conferring on one another, for the sake of convenience, a general permission of assisting.

III. In any case it is to be held as the rule that marriage be celebrated before the pastor of the bride, unless a just cause excuses; but the marriages of Catholics of mixed rite, unless something else has been provided by particular law, are to be celebrated in the rite of the man and before his pastor. Now the law of celebrating marriage before the pastor of the bride does not oblige under grave sin; indeed there are those who, unless particular law presses the matter more urgently, recognize no obligation strictly so called. But any just cause excuses; and if it is present, there is no obligation of seeking permission from the pastor of the bride, although it is fitting to warn him.

IV. Finally, a pastor who assists at marriage without the permission required by law does not make the stole fees his own, and he is to remit them to the proper pastor of the contracting parties.

Stole fees are understood as those things which are owed to the pastor as such from the celebration of marriage in that parish; to these do not belong the Mass stipend, gifts given by the contracting parties from friendship, etc.

This penalty of *latae sententiae*, which is incurred even before a declaratory sentence, regards only pastors, not delegated priests; nor is this penalty incurred by a pastor who took part in the marriage of vagrants without recourse to the Bishop; nor by a pastor who took part in marriage while the pastor of the bride was passed over without just cause.

If several proper pastors are had, the pastor of the bride seems to be preferred to the pastor of the bridegroom. If the bride has several pastors, the stole rights are to be divided among the different pastors (cf. canon 1236, § 2).

Finally, one who without just cause remitted the stole fees in part or whole is not bound to restitution. He is not bound by force of ecclesiastical law, which is not understood of fruits not received. Nor is he bound by force of natural law, since he did not impede another either from a good to which he already had a right, or by an unjust means from a good to which he did not yet have a right. Yet he must restore who "has defrauded to such a point that the stole fees which would be given by the contracting parties he has arranged to be presented to himself under another title, for example, of a Mass stipend, because thus he is deservedly judged virtually to have received the stole fees; and therefore he is bound to remit them to the proper pastor of the contracting parties."[2]

POINT III.

[1] Cf. response of the Sacred Congregation of the Sacraments, January 28, 1906, by which assistance given by a certain pastor is declared illicit, not because one party before conversion had resided in his parish, but because the residence was interrupted.

[2] Van de Burct-Schaepman, n. 241.

Point III. On the Delegation of Another Priest to Assist at Marriage

737 I. Notion of delegation. Delegation, or the granting of permission validly to assist at marriage, is the act by which an authorizable witness of marriage, that is, a witness who can furnish legal authority to the act at which he is present, substitutes another for himself. But just as assistance furnished by the substituting person himself is not truly an act of jurisdiction, so also the granting of permission to assist does not involve the communication or delegation of true jurisdiction. Yet it is commonly called delegation, because it is done according to the norm of delegation, and almost the same principles as those of true delegation are applied to it.

II. Who can delegate? The pastor and the local Ordinary who can themselves validly assist at marriage are able to delegate (canon 1095, § 2). It is said:

1. The pastor and the local Ordinary; who come under the name of pastor and local Ordinary, see n. 734. All those assigned there can delegate another.[1]
2. Who can themselves validly assist at marriage. Hence they cannot delegate another before they have obtained canonical possession of the benefice or have entered the office; nor can they do this if by sentence they have been excommunicated, interdicted, or suspended from office, or declared such. Besides, the pastor and local Ordinary are able only to grant to another the faculty to assist within the boundaries of their territory, since outside the aforesaid boundaries they themselves do not validly assist.

III. To what extent can a delegate subdelegate? It is doubtful whether the rules of delegation assigned in canon 199 can be applied here, because the cited canon treats of delegation of jurisdiction properly so called, whereas here the discussion is about a bare ministry. But these things are certain:

1. A vicar cooperator who has been delegated generally by the pastor or local Ordinary to assist at marriages can subdelegate another determined priest to assist at a determined marriage.[2]
2. A priest delegated to assist at a determined marriage can receive from the pastor or local Ordinary delegating him permission to subdelegate another determined priest to assist at the same marriage.[3]

IV. The person to be delegated or subdelegated. Delegation or subdelegation must be made to a determined priest for a determined marriage. A vicar cooperator, however, can be delegated generally for the parish to which he is attached (canon 1096, § 1). It is said:

1. To a priest, whether he is approved or is not approved for the care of souls, for preaching, or for hearing confessions.
2. Determined. Hence permission granted to an entirely indeterminate priest would be invalid, for example if the pastor were to establish: "I make the faculty of assisting at marriage to one of my vicars," with no vicar determined individually. Nor would permission given to the spouses of

choosing whichever priest they prefer be valid. Likewise a pastor would act invalidly who delegated, for example, one of the members of a community to be designated by the Superior,[4] or made the faculty for the spouses to contract before Peter and Paul, according as they would choose one or the other. Designation can be made either by designation of office, for example: "I make the faculty of assisting at this or that marriage to the Rector of the succursal church in N."; or by designation of name. Moreover:

a) It is not required that the one to be delegated be known to the delegating person, provided he is determined in himself.

b) Nothing prevents several priests from being designated; the legislator only intends to exclude delegation of an indeterminate person. Thus a pastor can delegate, for example, all his vicars or even all priests now having care in the deanery. Yet it is difficult to determine how far these can be extended; therefore one must beware lest the marriage be exposed to danger of nullity.

3. For a determined marriage. Hence permission given, for example, to assist at all marriages or at a certain category of marriages, or at those which perhaps will be contracted in this or that month, would be invalid. But delegation made for several determined marriages would be valid.

4. A vicar cooperator, however, can be delegated generally for the parish to which he is attached, for example to assist at all marriages or at a certain category of marriages. Note, however, that he is not delegated by common law itself.[5]

V. Things to be observed in delegation or subdelegation. 1. In order that delegation or subdelegation be valid, there is required an act truly placed, free, expressed, and known and accepted by the one to be delegated or subdelegated, as we shall explain. It is said:

a) Truly placed. Therefore a presumed or interpretative granting does not suffice, nor mere tolerance, since tolerance as such does not involve an act of granting.

b) Free, that is, deliberately placed. Note, however, that fear does not stand in the way of freedom, nor under the new law is delegation extorted by grave fear invalid. It is indeed true that assistance furnished by a pastor or delegate from grave fear is deprived of value; but from that it does not follow that delegation made from grave fear is invalid. Error then only impairs the value of delegation when it is substantial, that is, when it concerns the person to be delegated or the persons about to marry; and even then it does not impede validity if the delegating person has the will of granting the permission in some way. Moreover, error is not substantial if it regards only the name and not the person himself. Besides, it is commonly noted that error concerning the quality of the person to be delegated or of one about to marry, likewise concerning the cause of the granting, stands in the way of validity in the case in which the quality or cause was intended as a condition without which there would be no delegation; but in that hypothesis it is rather the defect of the condition than error which impairs validity.

c) Expressed (canon 1096, § 1), whether orally or in writing or by other equivalent positive signs. Therefore tacitly given permission no longer suffices.

d) Known and accepted by the one to be delegated, as follows: knowledge and acceptance are not required if delegation or subdelegation is granted by statute or law; nor, more probably, if the delegate or subdelegate is subject to the delegating or subdelegating person. Otherwise the matter is more doubtful. Some deny that knowledge and acceptance are required, because, with canon 37 considered, a rescript is valid before its acceptance, unless something else is established; but a grant made by one

who is not the Ordinary is not a rescript. Others affirm it, because delegation is like a donation, which must be accepted.

2. In order that delegation or subdelegation be licit, the pastor or local Ordinary should not grant permission unless all things which the law establishes for proving freedom of status have been fulfilled (canon 1096, § 2). Yet do not apply this to the general delegation which is made to a vicar cooperator.[6]

VI. Things to be observed by the delegate and subdelegate. 1. In order that the delegate or subdelegate validly take part in the nuptials, he should proceed in the same manner as the pastor. Therefore he must not be excommunicated, interdicted, or suspended from office by sentence, or declared such; he must assist at the marriage within the boundaries of the territory of the delegating person; and constrained neither by force nor by grave fear he must request and receive the consent of the contracting parties. It is sufficiently clear that these things must be observed, although the law does not expressly apply them to the delegate.

2. In order that he assist licitly, let him observe the things which the pastor or local Ordinary is bound to observe, insofar as they are committed to him.

Corollary. Although the faculty of assisting is not jurisdiction properly so called, nevertheless it is so akin to it that it is admitted in law that the things which have been said about supplied jurisdiction (vol. I, n. 103) are also to be applied to the aforesaid faculty.

[1] Pontifical Commission, May 20, 1923, ad V (*A.A.S.* 1924, p. 114).

[2] Pontifical Commission, December 28, 1927, ad IV (*A.A.S.* 1928, p. 61).

[3] Pontifical Commission, December 28, 1927, ad IV (*A.A.S.* 1928, p. 61).

[4] Cf. Sacred Congregation of the Discipline of the Sacraments, March 12, 1910, ad VI, b.

[5] Cf. Sacred Congregation of the Sacraments, March 12, 1910, ad VI, b and c.

[6] Cf. Sacred Congregation of the Sacraments, March 12, 1910, ad VI, c.

Article II. On the Extraordinary Juridic Form

With canon 1098 considered, marriage can be contracted before witnesses alone in a twofold case, namely: 1° if danger of death is present and a competent priest cannot be had or approached without grave inconvenience; 2° if a competent priest cannot be had or approached without grave inconvenience, and it is prudently foreseen that this condition of affairs will last for a month.

738 I. The former case is had if danger of death is present and a competent priest cannot be had or approached without grave inconvenience. Therefore there is required:

1. That danger of death be present. Grave danger suffices, or such danger as suffices for Viaticum to be administered. It is all the same whether the danger arises from illness or threatens from another cause, for example from shipwreck or from a dangerous operation to be undergone. Finally, it suffices that the danger threatens either party.

2. That a competent priest cannot be had or approached without grave inconvenience. It is said:

a) A competent priest, that is, the Ordinary or pastor of that territory, or a priest delegated by either of them.

b) Cannot be had or approached, that is, so that the competent priest can neither come nor be approached, or even if he comes or is approached, nevertheless cannot assist at the marriage without grave inconvenience.[1]

c) Without grave inconvenience, that is, it is required that the things said under b) be physically or morally impossible. Now:

alpha) Impossibility can arise from lack of a priest, from their scarcity, from distance, from persecution, from a law which threatens punishment to the assisting minister, from an epidemic, from negligence of the minister who refuses to make the customary visitations, or even refuses to come or to assist, from the reputation of a penitent to be preserved.[2]

beta) Personal impossibility suffices and is required. It suffices, so that common or local impossibility is not required; it is required, so that common or local impossibility does not suffice if personal impossibility is excluded.[3]

gamma) Besides this, the case would be present if, with the Ordinary, pastor, and delegated priest lacking, another priest could obtain the faculty of assisting only by a less customary means; and to means of this kind belong telegraph, telephone, and automobile. I said concerning the faculty of assisting to be obtained: for if a priest furnished with the faculty in such a place can easily be summoned,[4] this must be done, even if, for example, he could be summoned in time only by telephone.

delta) Finally note that the case has place even if the opportunity of having a competent priest has been culpably neglected, provided that here and now the opportunity has ceased.

Corollary. The case is present if danger of death is present and the competent priest, by assisting at the nuptials, would expose himself to punishment with civil law considered.

[1] Pontifical Commission, July 25, 1931 (*A.A.S.* 1931, p. 388); by this declaration the question is settled which, with the declarations of the Sacred Congregation of the Discipline of the Sacraments, January 31, 1916, and of the Pontifical Commission, March 10, 1928, considered, had not yet been decided.

[2] For example, a confessor in the confession of a penitent discovers that he is fostering perverse relations with a person from whom he cannot or does not wish to be separated, so that it is expedient for them to be joined in marriage. In the case the penitent is not bound to grant, nor is the confessor bound to seek from the penitent, permission for obtaining delegation, if the condition of the penitent is unknown and from the delegation obtained suspicion against the penitent could fall on the delegating person.

[3] Cf. Sacred Congregation of the Council, July 21, 1908, ad V; Sacred Congregation of the Sacraments, March 13, 1910, ad I and II.

[4] Sacred Congregation of the Council, July 27, 1908, ad V.

739 II. The latter case is had if a competent priest cannot be had or approached without grave inconvenience, and it is prudently foreseen that this condition of affairs will last for a month. It is said:

1. That a competent minister cannot be had or approached without grave inconvenience; these things have been set forth under I, 2.
2. That it is prudently foreseen, etc.; that is, moral certainty, at least broad, is had about the continuance of the same condition of affairs. The fact of the minister's absence does not suffice.[1]

3. That this condition of affairs will last for a month. Now, since in this case a starting term is assigned, a month is taken as it is in the calendar. And because the starting term does not coincide, or at least is not judged by law to coincide, with the beginning of the day, the first day is not computed, and the time is ended when the last day of the same number has been completed. But if the month lacks a day of the same number, the time is ended when the last day of the month has been completed. Hence if, for example, those about to marry began from March 25 to be in the required circumstances and foresaw that a missionary would arrive on April 25, they could not validly contract before witnesses alone (canon 34, § 3, 1°, 3°, 4°).

Corollary I. The case is again present if the competent minister, by assisting at the nuptials, would expose himself to punishment with civil law considered.

Corollary II. Even one who in fraud of the law betakes himself to a region where he cannot have or approach a competent minister can contract marriage before witnesses alone, provided that this condition of affairs is prudently foreseen to last for a month. Indeed, of itself he does not even seem to act illicitly, because it is permitted to place the cause by which one is exempted from the law.

[1] Pontifical Commission, November 10, 1925 (*A.A.S.* 1925, p. 582).

740 III. Things to be observed in each case. 1. For validity it is required that the presence of the witnesses be simultaneous, physical, and moral (n. 734).

2. In each case, if another priest is at hand who can be present, he must be called and assist at the marriage together with the witnesses, with due regard for the validity of the marriage before witnesses alone (canon 1098, 2°).

3. The spouses should emit matrimonial consent; but it is not necessary that the witnesses or priest request the consent.[1]

What if on the one hand necessity is urgent, but on the other hand not even the extraordinary form can be used?

Response 1. If danger of death is present, dispensation can be made in the form, as will be explained later.

Response 2. Outside danger of death, and also in danger of death if one who can dispense in the form is lacking, the circumstances can be such that marriage, by *epikeia*, can be celebrated even without witnesses; for example, if otherwise someone would have to abstain from entering marriage always or for a very long time, or would be exposed to danger of grave infamy, or, as many wish, would be in most grave danger of eternal damnation (St. Alphonsus VI, 613).

[1] Cf. Sacred Penitentiary, June 23, 1830 (*Collectanea*, n. 816).

Article III. On Those who Are Subject to the Juridic Forms

741 I. Subjects of the juridic forms. The following are subject to the juridic forms:

1. Those baptized in the Catholic Church, even if afterwards they have defected from her (canon 1099, § 1, 1°). Except those baptized in the Catholic Church but born of non-Catholics, who from infancy[1] grew up in heresy or schism or infidelity or without any religion (canon 1099, § 2). It is said:

a) Baptized in the Catholic Church. Now those are judged such who were baptized with the intention that they be ascribed to the Catholic Church. This is done if they are baptized in order to the Catholic Church, whether 1° from their own intention, or 2° from the intention, even merely interpretative, of both parents or of either parent or of another to whom the infant to be baptized is subject, even if perhaps the intention of the one baptizing is different; as if the infant of Catholic parents in a case of necessity were baptized by a heretical midwife. The same 3° seems to have to be said if the infant is baptized in order to the Catholic Church from the intention alone of one baptizing legitimately or licitly, even if those who have charge of the infant dissent; as if a Catholic maidservant baptized an infant of infidels placed in danger of death.

b) Born of non-Catholics. Now:

alpha) Under the name of non-Catholics here also come apostates.[2]

beta) It suffices that either parent be non-Catholic; and this holds even if the cautions according to the norm of canons 1061 and 1071 have been furnished. So from the declaration of the Pontifical Commission; and the same Pontifical Commission responded that this declaration is declarative, not extensive.[3]

2. Those baptized in a heretical or schismatic sect, but converted to the Catholic Church, even if afterwards they have defected from her (canon 1099, § 1, 1°). Those who were baptized in a heretical or schismatic sect but were educated in the Catholic faith from infancy by parents meanwhile converted, are bound by the law as soon as, having obtained the use of reason, they showed themselves Catholics. According to others, they are converted to the Catholic Church together with the parents.

Corollary. Those who are subject to the juridic forms are bound by them whether they contract with one another or contract with someone who of himself is immune from the aforesaid form. And this holds even if they enter nuptials with a non-Catholic after obtaining a dispensation from the impediment of mixed religion or disparity of cult (canon 1099).[4] Therefore the principle which commonly obtained before the Pian law no longer holds: the immune party communicates his immunity to the other party. But this principle holds: the bound party communicates his bond to the other party.

[1] That is, already before the completion of the seventh year (canon 88, § 3).

[2] Pontifical Commission, February 17, 1930 (*A.A.S.* 1930, p. 195).

[3] July 20, 1929 (*A.A.S.* 1929, p. 513); July 25, 1931 (*A.A.S.* 1931, p. 388).

[4] Cf. Sacred Congregation of the Council, March 28, 1908, ad I.

742 II. Those immune from the juridic forms. Immune from the juridic forms of themselves are:

1. Non-baptized persons.
2. Those baptized in a heretical or schismatic sect, even of Oriental rite, and not converted to the Catholic Church.
3. Those baptized in the Catholic Church, but born of non-Catholics, and from infancy educated in heresy or schism or infidelity or without any religion.
4. Catholics of Oriental rite.[1]

Corollary. Those who are immune from the juridic forms are not bound to the same forms only when they contract with someone who is likewise immune;[2] otherwise, if they contract with a person who is bound to the juridic forms, they are bound (canon 1099).

Here some ask whether a marriage is valid which, after a dispensation in disparity of cult has been obtained, is contracted with the form of civil law neglected, that law by that very fact invalidating a marriage entered without the form.

Most deny it, because the non-baptized party, as being subject to civil law, cannot contract validly without the form having been used. But in order that marriage be valid, it is required that each party be able validly to enter it. Yet the contrary opinion, although in no way certain, is not without probability. For since the marriage of a faithful person is entirely subject to the Church and can be fully governed by her, it is not improbably said that the impediment of civil law, insofar as it regards a marriage to be contracted by an infidel with a faithful person, does not have force, or at least can be removed by the Church. In a word: the power of the Church over the faithful person redounds to the infidel, insofar as the latter is about to contract with the faithful person.[3]

Note. The exemption from the law formerly in force for Germany and Hungary by force of the constitution *Provida* was abrogated from May 19, 1918, as a particular law contrary to canon 1099. So, with canon 6 considered.[4] There are added the responses of the President of the Pontifical Commission[5] and a similar one of the Pontifical Commission itself.[6]

[1] Canon 1; Sacred Congregation of the Council, February 1, 1908, ad I. The Ruthenians are excepted who belong to the dioceses of the Galician province, namely Lviv, Przemysl, and Stanislaviv; to them the Sacred Congregation of Propaganda Fide extended the decree *Ne temere* on May 5, 1911. Likewise, by decree of the Sacred Congregation of Propaganda Fide, August 18, 1913, Canadian Ruthenians are excepted, namely from the indicated day for ten years. Besides this, note that not all Catholics who live in the East are Catholics of Oriental rite.

[2] If, however, they contract with a person of this kind, they are always immune from the juridic forms. The law indeed declares that the following are not bound to the form of marriage: 1° non-Catholics, if they contract with one another; 2° those born of non-Catholics, even if baptized in the Catholic Church, who from infancy grew up in heresy or schism or infidelity or without any religion, whenever they contract with a non-Catholic party. But these things are not to be taken so literally that a marriage entered by the aforesaid, for example with a Catholic of Oriental rite, without the Catholic form, would be held invalid.

[3] This opinion is defended by Resemans, *De competentia civili in vinculo coniugali infidelium*, p. 2; Gasparri, n. 306.

[4] March 30, 1918.

[5] In Vlaming, op. cit., n. 226, note.

[6] The source gives only the abbreviated reference here.

Chapter II. On the Liturgical Form

The liturgical form is constituted both by the rite of celebration and by the rite of blessing, or the solemn blessing of nuptials, as it is called. Hence:

Article I. On the Rite of Celebration

743 Outside a case of necessity, in the celebration of marriage the rites prescribed in the ritual books approved by the Church, or received by laudable customs, are to be observed (canon 1100).[1] It is said:

I. Are to be observed; by these words a true obligation is understood, in conformity with the Council of Trent.[2] Moreover, the obligation is grave from its kind; concerning which St. Alphonsus notes that the omission of the words "I join you," etc., is rather probably light (VI, 899, 1094).

II. Rites... received. Now the rite from the Roman Ritual[3] to be observed here is this:

The pastor, vested in surplice and white stole,[4] should ask the man and woman about consent, each one individually in this way, in the vernacular speech: "N., do you wish to take N. here present as your lawful wife, according to the rite of Holy Mother Church?"[5] Let the bridegroom respond: "I do." Then let the priest ask the bride: "N., do you wish to take N. here present as your lawful husband, according to the rite of Holy Mother Church?" Let the bride respond: "I do."

Once the mutual consent has been understood, let the priest bid them join right hands with one another, saying: "I join you in matrimony. In the name of the Father, and of the Son, and of the Holy Spirit. Amen."[6] Afterwards let him sprinkle them with holy water.

Then let him bless the ring.[7] Next let the priest sprinkle the ring with holy water in the form of a cross; and the bridegroom, having received the ring from the hand of the priest, places it on the ring finger of the bride's left hand, with the priest saying: "In the name of the Father, and of the Son, and of the Holy Spirit. Amen." Then let him add the versicles and the prayer *Respice*.

When these things have been completed, if the nuptials are to be blessed, the pastor should celebrate the Mass for the Bridegroom and Bride, as in the Roman Missal, with all things prescribed there being observed.[8] The rite of the said blessing must now be discussed.

[1] Roman Ritual, title VII, chapter 2, n. 6.

[2] Session 7, canon 13, on the Sacraments in general.

[3] Title VII, chapter 2, nn. 1-3.

[4] If Mass immediately follows after the rite of celebration has been completed, the priest should put on the chasuble in addition to the alb and stole (Sacred Congregation of Rites, August 31, 1867, ad III, n. 3158).

[5] "Or he may use other words according to the received rite of each place" (Roman Ritual, loc. cit., n. 2). "When several are joined at the same time, after first receiving the consent of each and duly celebrating each Marriage, and after the pastor has said for each, 'I join you in matrimony,' etc., the blessings are made once in the plural number" (Roman Ritual, loc. cit., n. 5).

[6] See note 5.

[7] The blessing of the ring is not to be omitted in second nuptials (cf. Sacred Congregation of Rites, August 27, 1836, ad II, n. 2743), even if the same ring had already been used and blessed in order to another marriage. "When several are joined at the same time... nothing prevents the blessings of the rings and the remaining blessings from being made in common by general words" (Holy Office, September 1, 1841, 7, *Collectanea*, n. 938). If the nuptial ring is lost or broken, a new one can be blessed with the same form of the Roman Ritual. In not a few other dioceses, for example in Germany and in the East, a ring is blessed for each spouse.

[8] Roman Ritual, loc. cit., n. 4.

Article II. On the Rite of Blessing, or on the Solemn Blessing of Nuptials

744 I. Notion of the solemn blessing. The solemn blessing of nuptials, which is found in the Mass inscribed "Mass for Bridegroom and Bride," consists of three prayers, namely *Propitiare*, *Deus qui*

potestate, and *Deus Abraham*. The first two are said immediately after the *Pater noster*, the third before the prayer *Placeat tibi, Sancta Trinitas*.

II. Nuptials which can be blessed. All nuptials can be blessed, except: 1° marriages between a Catholic party and a non-Catholic party (canon 1102, § 2); 2° if it is a question of a woman to whom the solemn blessing has once been given (canon 1143); 3° if there is question of a man who has once received the solemn blessing, unless a contrary custom is in force, for this must be observed;[2] 4° if it is a question of marriage with one notoriously excommunicated.[3]

III. Obligation of the solemn blessing. For the faithful there seems to be an obligation of requesting the solemn blessing on the occasion of marriage or afterwards. But the obligation lies upon the pastor of taking care that the faithful receive it at the time of the nuptials or shortly after. Yet the obligation of each is only light; indeed, if the spouses have already lived for a long time in marriage, a true obligation seems to be absent.

1. The obligation of the faithful seems to be deduced from the response of the Holy Office which speaks of "the precept of the Church."[4]
2. The obligation of the pastor follows from canon 1101, § 1, from the Roman Ritual,[5] from several responses of the Sacred Congregations,[6] and from the obligation of the faithful.
3. That the obligation is only light is admitted rather commonly (St. Alphonsus VI, 984, 988). That the obligation is absent if the spouses have already lived for a long time in marriage seems to have to be deduced from these words of canon 1101, § 1: "which can be given to them even after they have lived for a long time in marriage." If, however, it is requested, the pastor is bound to grant it.[7]

IV. At what time can the solemn blessing be imparted? 1. The solemn blessing cannot be given except within Mass (canon 1101, § 1).[8]

2. It can be imparted on all days, except:

a) During the closed time (canon 1101, § 1), that is, from the first Sunday of Advent up to and including the day of the Nativity of the Lord, and from Ash Wednesday up to and including Easter Sunday (canon 1108, § 2). Yet local Ordinaries can, with due regard for liturgical laws, permit it even in the aforesaid times for a just cause, with the spouses warned that they abstain from excessive pomp (canon 1108, § 3).[9] If the nuptials are celebrated during the closed time, with the nuptial blessing not granted by the Ordinary, the Mass with its proper blessing is deferred to the day on which, outside the closed time, the Mass for Bridegroom and Bride or its commemoration is permitted.[10]

b) On the day of the Commemoration of All the Faithful Departed.[11]

c) If only one Mass is celebrated on a day on which a funeral Mass must be said which cannot be deferred.

d) During a general local interdict (canon 2271, 2°); likewise in a parish church, during a particular local interdict laid upon that church (canon 2272, § 3, 2°).[12]

V. Who can impart the solemn blessing? Only that priest, either himself or through another, can give the solemn blessing who can validly and licitly assist at the marriage (canon 1101, § 2). Moreover, it is not prohibited that one person take part in the marriage, and another celebrate the Mass and also impart the solemn blessing - not another, for example a deacon.

VI. Things to be noted. 1. On days on which the Mass "for Bridegroom and Bride" is permitted, this Mass must be said,[13] and it is illicit to add the nuptial blessing to the Mass of the office of the day; but when the said Mass is prohibited, the nuptial blessing is added to the Mass of the office of the day.

2. Within the same Mass several persons can receive the nuptial blessing, with the formulas of the blessing changed and pronounced only once.[14]

3. Although there is no obligation of communicating within the nuptial Mass, nevertheless the spouses are to be exhorted to communicate in the said Mass, or at least on that day.[15]

[1] We follow our little work *On the Form of the Promise and Celebration of Matrimony*.

[2] Roman Ritual, title VII, chapter 1, n. 18. The Holy See, however, sometimes permits that special prayers be recited over a widow already blessed; see the formula in the Roman Ritual, Appendix on Matrimony II.

[3] Roman Ritual, loc. cit.; rescript of Pius VI to Cardinal de Franckenberg, July 13, 1782; Sacred Penitentiary, December 10, 1860.

[4] July 6, 1817 (*Collectanea*, n. 725).

[5] Roman Ritual, loc. cit., n. 16.

[6] Sacred Congregation of Propaganda Fide, September 21, 1843, ad II (*Collectanea*, n. 971); Holy Office, August 31, 1881 (*Collectanea*, n. 1457).

[7] Holy Office, August 31, 1881 (*Collectanea*, n. 1457).

[8] Roman Ritual, title VII, chapter 1, n. 16; Sacred Congregation of Rites, June 23, 1853 (n. 1557); August 14, 1858 (n. 3079); Holy Office, August 31, 1881. The Holy See sometimes permits that, when Mass is not said, the nuptial blessing be granted outside Mass, according to the formula of the Roman Ritual, On Matrimony I.

[9] Sacred Congregation of Rites, September 25, 1875, ad I (n. 3380).

[10] Roman Missal, Additions and Variations II, n. 2.

[11] Roman Missal, Rubrics in the votive Mass for Bridegroom and Bride.

[12] Holy Office, September 3, 1817 (*Collectanea*, n. 726).

[13] Holy Office, September 1, 1841, 5° (*Collectanea*, n. 938).

[14] Sacred Congregation of Rites, June 23, 1853, ad I (n. 3016); June 30, 1896, ad VI (n. 3922).

[15] Sacred Congregation of Rites, March 21, 1874 (n. 3329); June 30, 1896, ad VI (n. 3922).

Scholion. On the Form to Be Observed in Marriage Between a Catholic Party and a Non-Catholic Party

745 I. Juridic form. Marriages between a Catholic party and a non-Catholic party are subject to the same juridic form as marriages between Catholics, not excluding the interrogation concerning consent (n. 735).

The disposition introduced by the Decree issued by the Holy Office on January 21, 1912, approved by Pius X on June 23, 1912, and promulgated in the *Acta Apostolicae Sedis* on July 1 of the same year - that disposition, I say, by force of which the request and reception of consent could sometimes be omitted by the assisting minister in some places - has been removed; and indeed by canon 1102 compared with canon 1095, § 1. So also a private response of the Holy Office[1] and the Pontifical Commission.[2]

[1] November 26, 1919 (in *Linzer Quartalschrift*, p. 249).

[2] March 10, 1928 (*A.A.S.* 1928, p. 120).

746 II. Liturgical form, or sacred rites, must be entirely omitted. Yet the Ordinary can, for forestalling graver evils, permit some one of the customary ecclesiastical ceremonies, always excluding the celebration of Mass (canon 1102, § 2). Therefore:

1. Among other things there are prohibited: 1° the use of sacred vesture, for example, surplice and stole, but not the cassock, silk cincture, and vestments customary for prelates; 2° a sermon, but not certain hortatory words in the manner of a mere address; 3° the blessing of the ring; 4° the blessing of the nuptials.

2. The Ordinary can permit some ceremony for avoiding graver evils, for example if otherwise it were to be feared that the spouses would go to a heretical minister, neglect the cautions, or that the Catholic party would pass over to a heretical sect.[1] But the celebration of Mass must always be excluded. Under the name of celebration of Mass comes not only the Mass "for Bridegroom and Bride" with its prayers and blessings, but also a private Mass which, after the marriage, is so celebrated before the spouses and their companions, even if no distinct seat is given to the spouses, that it must be held as a complement of the marriage ceremony.[2]

[1] Sacred Congregation of Propaganda Fide, December 4, 1862.

[2] Holy Office, January 17, 1872 (*Collectanea*, n. 1379); Pontifical Commission, November 10, 1925, ad VIII (*A.A.S.* 1925, p. 583).

Chapter III. On the Time and Place of the Celebration of Marriage

747 I. Time. Marriage can be contracted at any time of the year (canon 1108, § 1). But when the solemn blessing of nuptials is forbidden, see n. 744.

748 II. Place. 1. Marriage between Catholics should be celebrated in the parish church; but in another church or oratory, whether public or semi-public, it can be celebrated only with the permission of the local Ordinary or the pastor (canon 1109, § 1).

2. Local Ordinaries can permit marriage to be celebrated in private homes only in some extraordinary case and with a just and reasonable cause always present; but in churches or oratories either of a Seminary or of religious women, Ordinaries should not permit this unless necessity is urgent and suitable precautions have been employed (canon 1109, § 2).

3. But marriages between a Catholic party and a non-Catholic party are to be celebrated outside the church; but if the Ordinary prudently judges that this cannot be observed without graver evils arising, it is committed to his prudent judgment to dispense in this matter, with the prescription of canon 1102, § 2 nevertheless remaining firm[1] (canon 1109, § 3).

[1] The cited canon excludes the celebration of Mass.

Chapter IV. On the Things to Be Observed After the Celebration of Marriage, or on the Registration of a Celebrated Marriage

Registration must be made in both the book of marriages and the book of the baptized.

749 I. Registration in the book of marriages (canon 1103, § 1). The cited canon indicates who must register, when, and what must be registered.

1. The pastor or the one holding his place must register, and indeed the pastor of the place or parish in which the marriage was contracted. Therefore the obligation does not lie upon the Ordinary who assisted at the marriage, nor upon the proper pastor who took part in the nuptials of his subject in another's parish, nor upon another who was delegated to assist. But from the fact that the words "with his own hand"[1] are no longer found in the law, it seems to have to be deduced that these are to be held as a directive rather than a preceptive rule. Nevertheless, the rule is most strongly commended.[2]

2. Registration must be made as soon as possible,[3] that is, as that expression is usually understood, at least within three days. Yet it is preferable that it be made on the same day, indeed immediately after the celebration of marriage or the Mass which followed.

3. There must be registered the names and surnames of the spouses and witnesses, the place, parish, year, month, and day of the marriage, the name of the pastor or other one who assisted, and other things according to the formula assigned by the Roman Ritual[4] or by the proper Ordinary. It is also useful afterwards to note the convalidation or dissolution of the marriage, if perhaps they have had place. Finally, it is expedient to write the year and day not by arithmetical signs, but in complete words, as several civil codes establish. The registration must be made in the book of marriages, not on entirely separate sheets.

4. Finally, as regards the gravity of the obligation, the obligation of registering marriages, and indeed in the book, is grave, so that only physical or moral impossibility excuses from it; as if the pastor in a particular case cannot know the true name of the married person.[5] Hence a pastor also would sin gravely who exposed himself to grave danger of omitting the registration. The obligation of completing it as soon as possible is of itself light, so that, with the danger of omitting it excluded, even a longer delay would not seem to involve grave fault.

[1] Title VII, chapter 2, n. 7 has these words: "When the marriage has been celebrated, the pastor or the one who holds his place should record in the book of marriages the names of the spouses and of the witnesses, and other things according to the prescribed formula; and this even if another priest, delegated either by himself or by the Ordinary, celebrated the Marriage."

[2] Sacred Congregation of the Sacraments, March 12, 1910, ad IX, responded to the Bishop of Mangalore, who was asking the faculty of permitting a marriage to be recorded by the delegate: "For the favor, to the prudence and conscience of the Bishop"; these words certainly signify the importance of the directive rule.

[3] This word was substituted for the word *statim*, which occurred in the decree *Ne temere*.

[4] Title XII, chapter 4.

[5] Sacred Congregation of the Sacraments to the Bishop of Roseau, March 12, 1910, ad 9.

750 II. Registration in the book of the baptized (canon 1103, § 2). The end of this law is that marriages perhaps previously contracted by those about to marry, and the impediment of bond and affinity following from them, may more easily be detected. For with marriages noted in the books of the baptized, a person formerly married will not be able to bring a testimony of Baptism without at the same time bringing a testimony of his marriage formerly contracted, at least if an extract from the book of the baptized is brought which is of recent date (n. 682). But the registration in the book of the baptized is to be made thus:

1. If each or either spouse was baptized in the same parish in which the nuptials are entered, in the margin of the place where Baptism is noted let it be inserted that he or she contracted marriage in

this parish in such year, month, and day, with the names, surnames, and age of the other party with whom he or she entered the nuptials added - as others add - and likewise the names and surnames both of the parents of the other party and of the witnesses of the marriage. It would also suffice to add in the margin of the place where Baptism is noted: "He entered nuptials with N. N. Cf. the book of marriages." Those who judge that all the aforesaid things are to be added rely on the Instruction of the Sacred Congregation of the Sacraments of March 6, 1911,[1] which imposes on the pastor of the marriage the obligation of reporting all these things to the pastor of Baptism, for the purpose indeed that "the marriage be entered in the book of the baptized"; from this they deduce that all the things are to be inserted in the book of the baptized. Others think that all the enumerated things must be reported to the pastor of Baptism for the purpose that the marriage can be duly assigned in the book of the baptized; but that it be duly assigned does not require that all things reported be added.

2. If each or either spouse was baptized elsewhere:[2]

a) The pastor of the marriage, either personally or through the episcopal curia, his own or that of the pastor who baptized, will report the contracted marriage to the pastor or pastors both of the Baptism of the bridegroom and of the Baptism of the bride. But that report "should bring with it the written names and surnames of the spouses and of their parents, the age of the contracting parties, the place and day of the nuptials, the names and surnames of the witnesses who were present, and should have the subscribed name of the pastor with the parish seal added."[3] Besides this, the reporting pastor will laudably ask that he be made certain that the report was received. Finally, the report is to be transmitted through the chancery of the local Ordinary.[4]

b) The pastor of Baptism to whom the report has been transmitted should insert all things accurately in the book of the baptized, or at least duly note the marriage; and "if it should perhaps happen that... the pastor of Baptism, on receiving the report of the marriage, discovers that either contracting party is already bound by other nuptials, he will signify the matter as quickly as possible to the pastor of the attempted marriage."[5]

"Observe, if the marriage was mixed, that care must be taken only concerning the Catholic party that the marriage be registered in the book of the baptized.

"If the place of Baptism is unknown, let at least the diocese in which Baptism was conferred be investigated, whether it is learned or reasonably presumed from the birth or other circumstances. The Ordinary of that diocese, once made certain of the marriage, will then be able to complete the inquiry and to take care that the marriage be entered in the baptismal registers."

Moreover, the registration of marriages in the book of the baptized, likewise the law of taking care that the registration can be made by the pastor of Baptism, is not merely of counsel, but of precept and of grave precept, as is gathered both from the grave end of the law and from the cited Instruction.[6]

[1] March 6, 1911 (*A.A.S.* 1911, p. 102). That Instruction, which was issued "so that the things prescribed in n. IX, § 2 of the mentioned Decree (*Ne temere*) may be duly observed," is probably to be held as determinative of an existing law rather than as a new law. Hence we judge that it persists, with canons 6, 4° and 23 considered.

[2] "Or if the book of the baptized is kept by another pastor, for example by the pastor of the mother church on account of the dismemberment of the parish" (Van de Burct-Schaepmann, 237).

[3] Cited Instruction of the Sacred Congregation of the Sacraments.

[4] Instruction of the Sacred Congregation of the Sacraments, July 27, 1921 (*A.A.S.* 1921, p. 348).

[5] Instruction of the Sacred Congregation of the Sacraments, March 6, 1911.

[6] Vermeersch, op. cit., n. 8; the Instruction has these words: "Ordinaries should diligently watch that these prescriptions are religiously observed, and if they find any transgressors, they should take care to recall them to duty, canonical penalties also being employed where there is need."

751 III. Registration of marriage contracted in extraordinary form (canon 1103, § 3). Marriages contracted according to the norm of canon 1098 (n. 738 sq.) must likewise be noted in both the book of marriages and the book of the baptized. Now:

1. The priest, if he assisted at the marriage, is bound *in solidum* with the contracting parties to take care that the due registrations be made. In the same way the witnesses are bound with the contracting parties, if witnesses alone took part in the marriage.
2. In order that the obligation be satisfied, the marriage must be reported in the manner set forth above: 1° to the pastor of the place in which the marriage was contracted; according to others, to the pastor who regularly ought to have assisted in the ordinary case, that is, to the pastor of the domicile of each spouse or of the domicile of the bride;[1] 2° to the pastor of the Baptism of the spouses.

If the marriage is contracted in a place where there is no parish or quasi-parish, the report is to be made to the local Ordinary.[2]

Note. If the law of the sacramental seal prohibits the marriage from being noted in the public books of marriages and of the baptized, and the good of the legitimated offspring requires that the marriage be able to be proved in the external forum, with the consent of those whose interest it is, let it be registered as marriages of conscience, about which one must now speak.

[1] Choupin, n. 73, note 2.

[2] Vermeersch, n. 83.

Scholion. On Marriage of Conscience

752 Canons 1104-1107 pertain here, which present the law constituted in the Constitution of Benedict XIV *Satis vobis*,[1] and therefore are to be interpreted according to the norm of this Constitution. But since the matter concerns liceity, the conditions reported in the said Constitution are left rather as directive norms for the prudence of Ordinaries.

I. Notion. A marriage of conscience is one which is contracted with the announcements omitted and secretly (canon 1104). But it is contracted according to the ordinary or extraordinary juridic form, as the circumstances bear.

II. Liceity. A marriage of conscience cannot be permitted except by license of the local Ordinary and only from a most grave and most urgent cause. The Vicar General cannot give this license unless he has a special mandate (canon 1104). The reason is that from nuptials of this kind very grave inconveniences can follow, such as danger of polygamy or adultery, danger of scandal from public cohabitation, danger that the offspring may be held and treated as illegitimate.

A most grave and most urgent cause will be present if a man and woman living in concubinage are reputed true spouses; if a nobleman wishes to contract with a woman of non-noble condition, and

from a known marriage very grave inconveniences are imminent; if a man and woman cannot contract civilly and, if marriage is passed over, they are in grave danger of salvation, etc. If there is danger in delay, for instance if the case concerns a hidden concubinary who is dying, one can proceed without the license of the Ordinary.

III. Things to be observed. 1. The pastor of either contracting party ought to assist at the marriage; or, if for a grave cause another priest is to be deputed in his place, let one be chosen by the Bishop who is commended by probity, doctrine, and skill in fulfilling the office. Besides this, two or three faithful witnesses are to be chosen, lest any knowledge or rumor of the celebration arise.

2. The pastor or deputed priest, before he takes part in the marriage, is bound to admonish those about to marry concerning their obligations toward the offspring to be begotten, both as regards Baptism and the reporting of it, and as regards religious education and the enjoyment of temporal goods.

3. Once the marriage has been celebrated, he must without delay exhibit to the Bishop a written document of the marriage celebrated before himself, with the names of the contracting parties, the witnesses, the place, and the time.[2]

4. Permission for the celebration of a marriage of conscience carries with it the promise and grave obligation of keeping secrecy on the part of the assisting priest, the witnesses, the Ordinary and his successors, and also of one spouse if the other does not consent to disclosure (canon 1105). The obligation of this promise on the part of the Ordinary does not extend to the case in which either some scandal or grave injury against the sanctity of marriage is imminent from the observance of secrecy, or the parents do not take care that the children received from such a marriage be baptized, or take care that they be baptized with false names expressed, while meanwhile they do not furnish the Ordinary within thirty days with notice of the offspring received and baptized, with a sincere indication of the parents, or neglect the Christian education of the children (canon 1106).

5. The spouses are bound within thirty days from the birth, either personally or through another, for example through the pastor, to make the Ordinary certain concerning the offspring born and baptized. But the Ordinary must take care that in a secret book, distinct from the book of marriages, it be noted that such offspring, baptized on such a day and in such a place, is legitimate (Benedict XIV, *Satis vobis*; cited canon).

IV. Registration. A marriage of conscience is not to be noted in the customary book of marriages and of the baptized, but in a special book to be kept in the secret archive of the Curia (canon 1107).

[1] November 17, 1741.

[2] Constitution of Benedict XIV *Satis vobis*, November 17, 1741.

Section III. On the Reception of the Sacrament of Marriage

753 In order that the sacrament of marriage be validly and licitly received, besides the use of reason and sufficient knowledge of the matrimonial contract (p. 531 sq.), it is required that the one receiving it be in the state of grace and immune from impediments. Therefore "the pastor should not omit prudently to instruct the people concerning the sacrament of marriage and its impediments" (canon 1018).

I. State of grace. 1. That the state of grace is required is clear from the fact that marriage is a sacrament of the living, or is ordered to increasing grace, and therefore supposes grace (n. 43).[1]

2. The state of grace perhaps lost can be recovered either through confession or through an act of contrition (n. 43).

II. Immunity from impediments. Therefore it is useful first to note these things beforehand:

1. The validity of marriages is to be judged according to the law in force at the time when they were contracted.

2. Marriages invalid because of an impediment in force before the Code and abrogated by the Code were not convalidated by the promulgation of the Code itself, but according to the circumstances must be convalidated either by simple convalidation or by sanation in the root,[2] which will be explained later. Nevertheless, as is drawn from the nature of the matter, dispensation is not required if the question concerns an abrogated impediment.[3]

With these things noted, we shall speak first of impediments in general, then of impedient impediments in particular, then of diriment impediments in particular, and finally of the dispensation of impediments.

[1] In a proxy or interpreter the state of grace is not required, as is clear, because they do not receive the sacrament.

[2] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 346).

[3] Thus the response of the President of the Pontifical Commission (cf. *Periodica* IX, p. 154).

Chapter I. On Impediments in General

754 I. Notion. An impediment, taken in the broader sense, is a circumstance which prevents marriage from being able to be contracted licitly or even validly. In the strict sense, it is a circumstance which prevents this by law, not by mere precept. A particular precept or prohibition can indeed render someone's marriage illicit, but it is not called an impediment in Canon Law (cf. canon 1039, § 1 and 2).

755 II. Division. Impediments are divided:

1. By reason of cause, into impediments of divine law and of human law, and of the latter either ecclesiastical or civil.

2. By reason of extent, into absolute and relative, according as they prevent marriage with any person whatever or only with certain persons. Of the former kind are, for example, bond, age, etc.; of the latter kind are, for example, consanguinity, affinity, etc.

3. By reason of effect, into impedient and diriment. An impedient impediment contains a grave prohibition of contracting marriage; nevertheless the marriage is not rendered invalid if, notwithstanding the impediment, it is contracted (canon 1036, § 1). A diriment impediment both gravely prohibits a marriage to be contracted and prevents it from being contracted validly (canon 1036, § 2). Although the impediment is present only on one side, nevertheless it renders the marriage either illicit or invalid (canon 1036, § 3).

4. By reason of duration, into temporary and perpetual. The former are those which cease by the passage of time, such as age; or at least can cease without dispensation, such as mixed religion. The

latter are those which either cannot cease at all or cannot cease without dispensation, such as consanguinity.

5. By reason of demonstrability, into public and occult. An impediment is judged public if it can be proved in the external forum;[1] otherwise it is occult (canon 1037).

An impediment is called public by its nature insofar as it rests upon a fact which is public of itself; of this kind are, for example, the impediment of age, of legitimate consanguinity, etc. It is called public by fact insofar as the fact from which the impediment arises can be legitimately proved, or by prescription of law does not need proof. The word "fact" is used; but to the fact, if the discussion concerns a delict carrying an impediment with it, culpability also pertains; however, it is not required that it be known that an impediment arises from some fact.[2]

An impediment occult by its nature is an impediment which rests upon a fact occult of itself, of which kind are, for example, impotence, illegitimate consanguinity, etc. An impediment of this sort ought to be held as truly occult only when the fact cannot be legitimately proved.

6. By reason of the degree of knowledge, into certain and doubtful, according as prudent doubt is excluded or not excluded. A doubt can be a doubt of law only, or a doubt of fact only, or a doubt of law and fact. Besides this, a doubt of law can turn upon divine law, or human law, whether ecclesiastical or civil.

7. By reason of gravity, into impediments of the lesser degree and of the greater degree (canon 1042); of these we shall speak in their own place.

8. By reason of dispensation, into dispensable and indispensable, according as they are often or at least sometimes removed by the Church, or cannot be removed by her, or at least are scarcely ever taken away.

9. By reason of the forum in which dispensation is granted, at least of itself, into impediments of the external forum and of the internal forum. I said at least of itself, because in some circumstances impediments which pertain to the external forum can also be taken away in the internal forum, as will be explained in its own place.

[1] As regards proof, canon 1791 should be attended to: the deposition of one witness does not make full proof, unless he is a qualified witness who deposes concerning matters done by reason of office. If under the faith of an oath two or three persons, above every exception, firmly agreeing with one another, testify in court concerning some matter or fact from their own knowledge, sufficient proof is had; unless in some cause the judge, because of the very great gravity of the matter or because of indications which introduce some doubt concerning the truth of the matter asserted, judges fuller proof necessary (canon 1791).

[2] Pontifical Commission, June 25, 1932 (*A.A.S.* 1932, p. 284).

756 III. The subject to whom power concerning impediments belongs. 1. It belongs to the supreme ecclesiastical authority alone to declare authentically when divine law impedes or dirimently invalidates marriage (canon 1038, § 1).

2. The same supreme authority exclusively has the right to establish other impediments, impedient or diriment, for the baptized, by way of law, whether universal or particular (canon 1038, § 2).

Note. Local Ordinaries can forbid marriages in a particular case to all actually staying in their territory and to their subjects even outside the boundaries of their territory, but only for a time, from a just cause, and while that cause endures. Only the Apostolic See can add an invalidating clause to a

prohibition (canon 1039). It says "from a just cause"; but just causes are: a founded suspicion of a diriment or impedient impediment; a founded fear that the marriage will give occasion to enmities, scandal, or other inconveniences, etc. (St. Alphonsus VI, 982). A pastor cannot forbid a marriage even in a particular case; but if the marriage is illicit, he can and must abstain from assistance and meanwhile refer the matter to the Ordinary.

3. Except the Roman Pontiff, no one can abrogate impediments of ecclesiastical law, whether impedient or diriment, or derogate from them; likewise no one can dispense in them unless this power has been granted by common law or by a special indult from the Apostolic See (canon 1040).[1] To what extent the power of dispensing has been granted to Ordinaries and priests by common law will be stated later (cf. canons 15, 1313, 1043-1045, 81).

Note. A custom introducing a new impediment or contrary to existing impediments is reprobated (canon 1041). Therefore: 1° if at present a custom contrary to existing impediments is in force, it is to be corrected as a corruption of law, and must not be permitted to revive in the future (canon 5); 2° if in the future a custom arises introducing a new impediment or contrary to existing impediments, it is not reasonable (canon 27, § 2), and therefore cannot obtain the force of law or abrogate impediments or derogate from them.

[1] Constitution of Pius VI *Auctorem fidei*, August 28, 1794 (props. 59, 60); Pius IX, *Syllabus of Errors* (prop. 58).

757 IV. The passive subject of impediments. 1. All human beings are bound by impediments of divine law, whether natural or positive.

2. As regards impediments of ecclesiastical law, these things hold:

a) In general, all baptized persons are bound by impediments of ecclesiastical law, even non-Catholics, as is clear from the Constitution of Benedict XIV *Matrimonia* and *Singulari nobis*; likewise from the practice of the Church in revalidating marriages entered by heretics in heresy with an impediment; finally from the fact that exemption is clear from no source, nor is it suggested by the Code of Canon Law; and this presses all the more because the Code expressly exempts non-Catholics from the form of marriage.

b) Infidels after Baptism are bound not only by impediments whose cause was placed after Baptism, which is clear, but also by those impediments whose cause was placed before Baptism, if the foundation of the impediment is a natural bond, such as consanguinity. Otherwise one must speak if the foundation is to be placed in the mind of the Church, as in the impediment of spiritual relationship. If the foundation of the impediment is a certain civil bond, as in legal relationship, the matter seems doubtful.

c) Those certainly but doubtfully validly baptized seem to be held by ecclesiastical impediments; this is deduced from the argument proposed in vol. I, n. 130. There is added a response of the Holy Office[1] which in its obvious sense favors this opinion, although others understand it of the presumption by which a baptism doubtfully valid is presumed to have been conferred duly.[2] If the fact of Baptism is doubtful, the question is solved with more difficulty (vol. I, n. 130).

Corollary I. A marriage between a faithful person bound by an ecclesiastical impediment and an infidel is illicit or invalid according as the impediment is impedient or diriment, because it is sufficient for the effect of the impediment that it be present on one side only (canon 1036, § 3).

Corollary II. A marriage between an infidel bound by a civil diriment impediment and a faithful person, according to several authors, is invalid even after dispensation in disparity of cult; for since one party is incapable, the reason given above holds. Nevertheless, the contrary opinion is not without foundation, according to what was said in n. 742.

[1] February 4, 1891 (*Collectanea*, n. 1746).

[2] Cf. Holy Office, July 14, 1880 (*Collectanea*, n. 1536).

758 V. Causes excusing from a diriment impediment. 1. Ignorance, even invincible, does not exempt from a diriment impediment. For canon 16, § 1 declares: "No ignorance of invalidating or incapacitating laws excuses from them, unless something else is expressly stated."[1] There had been dispute about an impediment of crime unknown to the person; but since nothing else is stated, every doubt has been removed.

2. Nor does grave inconvenience or necessity excuse from a diriment impediment. The reason is that the common good requires that invalidating laws retain their force, even if the invalidation is unknown or the act cannot be avoided without grave inconvenience (St. Alphonsus VI, 1079). Nevertheless, it is not clear that in an altogether extraordinary case there is no place for epikeia, for instance if, while the impediment of disparity of cult presses, the faithful in some region could not enter marriage.[2]

Question. To what extent is it licit to enter marriage with a doubtful diriment impediment?

Response 1. It is not licit if the matter concerns an impediment of divine law, whether natural or positive, whether the doubt is of law or of fact.[3] The reason is that the matrimonial contract, since it is a sacred contract and, if it is entered by the faithful, is a sacrament, cannot be exposed to danger of nullity (St. Alphonsus VI, 902, q. 3). Therefore, for example, an infidel brother and sister, although they are not held by the impediment of consanguinity insofar as it is ecclesiastical, cannot enter marriage, because there is a doubt of law concerning the natural impediment; likewise even infidels are not permitted to enter nuptials in a doubt of fact, for example whether the parties are consanguineous in some degree of the direct line or in the first degree of the collateral line. There is added, as regards the faithful, that the said marriages are certainly opposed by a diriment impediment to marriage, from which dispensation is never given (canon 1076, § 3).[4]

The case of doubtful impotence is excepted, however, whether by doubt of law or by doubt of fact (canon 1068, § 2): by doubt of law, for example where organs are lacking which probably are required for a valid marriage; by doubt of fact, namely if it is not known whether copula between such persons is possible or not. The reason for the exception is that the theoretically probable right of marrying prevails over the reverence owed of itself to the matrimonial contract, or because the inconvenience of not marrying is so great that, in order to avoid it, it is licit to neglect the reverence owed of itself to the said contract (St. Alphonsus VI, 1102).

Response 2. If the matter concerns an impediment of ecclesiastical law, a distinction must be made.

1° In a doubt of law it is licit to contract: for "laws, even invalidating and incapacitating laws, do not oblige in a doubt of law" (canon 15). This certainly holds if there is common or fairly common doubt concerning the existence of the impediment. Whether the rule holds, "Whenever non-existence is probable, the impediment does not oblige," even though many deny the probability - whether that rule holds, I say, can seem doubtful to someone. The reason for doubting is taken from the fact that a rule

of this kind would give occasion to invalid marriages; for there is danger lest many regard as probable what is not truly probable, and thus, being disposed in mind, permit marriage to be contracted without dispensation.[5]

2° In a doubt of fact it is not licit to contract, but dispensation must be sought, at least for caution. Otherwise the marriage is exposed to danger of nullity. But the Church grants to Ordinaries the faculty of dispensing in doubts of this kind, if the matter concerns impediments in which the Roman Pontiff is accustomed to dispense (canon 15); these things also hold, as is clear, if the matter concerns convalidating a marriage already contracted. If, however, the doubt turns upon Baptism, what will be said concerning disparity of cult should be attended to.

[1] Holy Office, July 4, 1855 (*Collectanea*, n. 1114); December 9, 1874 (*Collectanea*, n. 1427); February 4, 1891 (*Collectanea*, n. 1746).

[2] Cf. Holy Office, June 4, 1851 (*Collectanea*, n. 1062).

[3] A doubt of law is one which regards the law itself of the impediment, for example whether this or that condition is required for inducing the impediment. A doubt of fact is one which regards the fact on which the rise of the impediment or its continuance depends.

[4] Cf. Holy Office, April 6, 1906. If infidels have entered such a marriage, the fact stands; nor after conversion can an obligation of separation of itself be imposed. The Holy See, however, can permit new nuptials, either, if only one has been converted, by declaring liberty from the prior bond in favor of the faith, or by dispensing for caution from the bond contracted in infidelity, provided the marriage has not been consummated after the Baptism of both.

[5] Thus, for example, some hold it as probable that the impediment of spiritual relationship between sponsor and baptized person does not arise from private Baptism. Thus many authors held as probable that the Constitution *Provida* persisted even after the Code of Canon Law; but it seems certain that marriages entered since the Code came into force according to the norm of the said Constitution are invalid.

Chapter II. On Impedient Impediments in Particular (canons 1058-1066)

Three impedient impediments are enumerated in Canon Law, namely simple vow, legal relationship, and mixed religion.

Article I. Simple Vow

759 A simple vow of virginity, of perfect chastity, of not marrying, of receiving sacred Orders, and of embracing the religious state impedes marriage. No simple vow invalidates marriage, unless invalidation has been established for some persons by a special prescription of the Apostolic See (canon 1058); as Gregory XIII[1] established, as regards contracting marriage, for simple vows emitted in the Society of Jesus. Therefore:

I. Five vows impede marriage, that is, render it gravely illicit, namely:

1. A vow of virginity strictly taken. One bound by a vow of this kind cannot enter marriage, because he exposes himself to the proximate danger of injuring the vow, indeed he renders its fulfillment practically impossible to himself.
2. A simple vow[2] of perfect chastity, whether emitted privately or in a Congregation or Order. This vow effects that every act, external as well as internal, contrary to chastity is opposed to religion. One who has emitted such a vow cannot contract nuptials, because equally with one bound by a

vow of virginity he exposes himself to the proximate danger of violating the vow, indeed renders its execution impossible.

3. A vow of not marrying or of celibacy, as is clear.

4. A vow of receiving sacred Orders; because marriage renders the execution of such a vow impossible, for married persons are kept from sacred Orders (canon 987, 2°).

5. A vow of embracing the religious state, whether in an Order or in a Congregation; for nuptials render the execution of the vow impossible, because married persons are invalidly admitted to the novitiate (canon 542, 1°).

Note. Vows of not marrying, of virginity, and of chastity are often confused by those vowing; so much so that those who have emitted one of these vows have for the most part understood a vow of chastity. In doubt, the one vowing should be asked what he intended. If the doubt persists, inquiry into the motive which moved him to vow can shed light. One who was impelled by the will to decline the burdens of marriage is presumed to have vowed celibacy; one by the desire of obtaining the aureole of virgins, virginity; one by love of purity, chastity.

II. If someone has contracted marriage without dispensation from an impedient vow:

1. Practically, it is preferable to obtain dispensation as soon as possible.

2. Theoretically, these things hold:

a) One who has vowed virginity cannot ask for the debt as long as virginity has been preserved; nevertheless he is bound at once to render it to the other party legitimately asking. Once the debt has been rendered, he can also ask; similarly, after the marriage has been dissolved after virginity has been lost, he can contract new nuptials. For in each case virginity is lost and the vow collapses.

b) One who has vowed perfect chastity cannot ask for the debt unless the other party is in danger of incontinence. He is bound to render the debt as long as the other party retains an unimpeded right over the spouse and licitly asks; he cannot render it if the other party has lost the unimpeded right over the spouse, whether by voluntary cessation or by adultery. If the other party asks illicitly, because that party itself is bound by a vow of chastity, he can, but is not bound to, render the debt (St. Alphonsus VI, 944). After the marriage is dissolved, he cannot enter new nuptials if the vow was perpetual and has not been totally taken away by dispensation.

c) One who has emitted a vow of not marrying can ask and render the debt, because fulfillment of the vow has become impossible. After the marriage is dissolved, the vow seems to revive.

d) One who has vowed reception of sacred Orders or entrance into the religious state is bound to execute the vow if the other party consents, or has been deprived in perpetuity of the right of asking, and execution of the vow is morally possible. Otherwise he can ask and render the debt.

[1] Constitution *Ascendente Domino,* May 25, 1584.

[2] A solemn vow of chastity - likewise a simple vow of chastity emitted in the Society of Jesus - constitutes a diriment impediment of marriage.

Article II. Legal Relationship

760 I. Notion. Legal relationship is a relationship of persons which comes from legitimate adoption, that is, adoption made according to the norm of civil law.

II. Existence of the impediment. In those regions where by civil law legal relationship arising from adoption renders nuptials illicit, by canon law also the marriage is illicit (canon 1059). But to know whether and between whom this impediment exists, one must have recourse to the civil laws of the country and decide according to their norm.

Where civil law either does not admit adoption or states nothing about the impediment, there is no impediment.

Corollary. No impediment exists in Holland, Austria, Lusitania, Denmark, Sweden, Norway, England, and in general in its colonies (including the Canadian dominion, Australia, India, Transvaal, etc.), in the Republic of Ecuador, Argentina, Costa Rica, Chile (as it seems), Mexico, Nicaragua, San Salvador, and Uruguay. A merely impedient impediment is had in Germany, Hungary, Switzerland, Venezuela; likewise, at least practically, in France, Belgium, Luxembourg, and Romania; if the matter is doubtful, practically the impediment is absent.[1]

[1] Cf. Aertnys-Damen, *Theologia Moralis* II, n. 703; De Smet, op. cit., n. 499; Wernz-Vidal, op. cit., n. 191; Gury-Ferreres, II, n. 1051.

Article III. Mixed Religion

761 I. Notion of the impediment. The impediment of mixed religion is understood as the impediment which exists between two baptized persons, of whom one is Catholic, while the other is enrolled in a heretical or schismatic sect (canon 1060). Marriages contracted between such persons are called mixed. It is said:

1. Between two baptized persons. If one was baptized in the Catholic Church and the other party is not baptized, there is the impediment of disparity of cult; if one party was baptized, but not in the Catholic Church, while the other is not baptized, no canonical impediment is had.
2. Of whom one party is Catholic, whether he or she was baptized in relation to the Catholic Church or was converted to it. Moreover, the person is still judged Catholic who has cast off the Catholic faith even externally, but has not been enrolled in a non-Catholic sect.
3. While the other is enrolled in a heretical or schismatic sect. It is not enough that the person be enrolled in a sect, for example, an atheistic one.

Corollary. One who has cast off the Catholic faith even externally, but has not been enrolled in a non-Catholic sect, is not held by the canonical impediment of mixed religion if he wishes to enter marriage with a Catholic; he is held by it if he wishes to contract with a party enrolled in a heretical or schismatic sect.[1]

[1] Ter Haar, op. cit., pp. 1-2.

762 II. Existence of the impediment. Mixed marriages are most severely prohibited by ecclesiastical law, and very often they are forbidden also by divine law itself (St. Alphonsus VI, 56, 1044; *Homo Apostolicus*, tract 14, n. 6).

1. They are most severely prohibited by ecclesiastical law; this is clear from innumerable ecclesiastical documents,[1] and is expressly declared by canon 1060.

2. Very often they are forbidden also by divine law itself, namely because: 1° they involve communion in sacred things with heretics; 2° everywhere they create danger to the religion of the Catholic party;[2] 3° everywhere they are an impediment to the good education of the children.[3] There is added that they favor indifferentism and obstruct the desired union of the spouses.[4]

[1] Cf. Apostolic Letter of Clement XIII, November 16, 1763 (*Collectanea*, n. 1421); Apostolic Letter of Pius VIII, March 25, 1830 (*Collectanea*, n. 1426); Apostolic Letter of Gregory XVI, April 30, 1841 (*Collectanea*, n. 1428); Constitution of Leo XIII *Arcanum* (§ 26), February 10, 1880; Encyclical of Pius XI *Casti connubii*, December 31, 1930 (*A.A.S.* 1930, p. 570), and others cited by Ter Haar, op. cit.

[2] Cited encyclical.

[3] Cited encyclical.

[4] Cited encyclical.

763 III. Cessation of the impediment. 1. The divine prohibition ceases when the proximate danger ceases which threatens, from the mixed marriage, the religion of the Catholic party and the education of the offspring, and when a cause occurs which renders honorable: 1° communion in sacred things with a heretic, which mixed marriage involves, insofar, namely, as both together confect and receive the sacrament;[1] 2° the petition of a sacrament from an unworthy person; and 3° the administration of it to an unworthy person.[2] The proximate danger of which we have spoken can be absent or can cease when, for example, the character of those about to marry is considered, or the particular circumstances which especially favor the religious condition of the Catholic party and the Catholic education of the offspring, or a cause for seeking such a marriage which effects that the danger is not approached rashly.

2. The ecclesiastical prohibition ceases through dispensation. But the power of dispensing of itself belongs to the Supreme Pontiff alone, not to Bishops, unless it has been specially granted to them (canon 1040).

[1] Many do not admit communion in sacred things. But Gregory XVI in his letter to the Bishops of Hungary, April 30, 1841, wrote: "It is sufficiently and more than sufficiently established what the Church has perpetually thought concerning marriages between Catholics and non-Catholics. Namely, she has always held nuptials of this kind to be entirely illicit and wholly pernicious, both on account of shameful communion in divine things, and..." etc. The reason is that the heretical party, even though he or she has furnished the cautions, is to be presumed to contract with an intention that is itself heretical.

[2] On the ministration of this sacrament to an unworthy person, see n. 769 sq.

764 IV. The requisites without which dispensation is not granted are set forth in canon 1061: the Church does not dispense from the impediment of mixed religion unless: 1° just and grave causes urge; 2° the non-Catholic spouse has furnished a caution concerning removing from the Catholic spouse the danger of perversion, and each spouse concerning all the offspring being baptized and educated only as Catholic; 3° moral certainty is had concerning the fulfillment of the cautions; 4° the cautions are regularly required in writing. Therefore three things are required absolutely, the fourth regularly. Therefore:

1. Just and grave causes must urge. Thus the cited canon and other ecclesiastical documents.[2] The reason is that, in order that the faithful be permitted to expose themselves to grave dangers of faith

and morals, even under opportune cautions, some grave inconvenience otherwise not avoidable must be imminent.[3]

The cause must be proportioned to this very grave law, with attention also to the common good, which from an entered mixed marriage will easily suffer detriment from the fact that occasion is thus furnished for other mixed marriages. Indeed Benedict XIV teaches that dispensation is not to be granted except "some grave and usually public cause intervening";[4] though this, as regards a public cause, has nowadays been mitigated. Practically one can speak thus:

a) "Causes which regard private advantages more, for example mature age, narrowness of place, insufficiency of dowry, the good of peace, betrothals contracted in good faith on account of which it would be feared that the bride would remain unmarried and defamed - according to the mind of the Holy See, these do not easily suffice of themselves";[5] nor, one can add, does a great affection toward the other party, or a higher social condition to be obtained through mixed marriage. Nevertheless, "from our practice account is taken of those same causes, provided other circumstances of things concur, by which weight is added to them."[6]

b) Among sufficient causes these are usually numbered: 1° if a non-Catholic prince, with the cautions used, wishes to marry a Catholic woman, and great advantages for the Catholic religion would be hoped for from this; 2° if there is probable hope that some non-Catholic family, inclining to the true faith, may through the mixed marriage return to the Church; 3° if the mixed marriage is the only remedy so that children already begotten from another mixed marriage may be educated in the Catholic religion; 4° if great scandals arising from the defamation of a girl already made pregnant by a heretic or in some other way cannot be avoided except through a mixed marriage; 5° if in some region Catholics are few, and at the same time safe and free to profess the faith, while the heterodox are very many; 6° if the heretical party is prepared to promise in writing or before witnesses, with the promise confirmed by oath, that after the nuptials have been entered he or she will embrace the Catholic faith; likewise if the heretical party is already accustomed to go to a teacher, male or female, who teaches him or her the Catholic faith, and seems to do this with a sincere desire of knowing the truth; 7° if the mixed marriage will put an end to the base concubinage of those wishing to marry; 8° if through the mixed marriage it can be obtained that offspring, whether already born or to be born from the fornication of the parties, be baptized and educated as Catholic; 9° if there is a prudent fear that the Catholic party may go over to the heretics, or contract a merely civil marriage or a marriage before a non-Catholic minister.[7] Nevertheless, in the last case moral certainty concerning the fulfillment of the cautions will not easily be had.

c) That one of the cited causes is present does not prevent the Ordinary from being able, or even being bound, to deny the dispensation if, from its concession, the common good will suffer detriment.[8] Nevertheless, the practice of never dispensing, whatever cause may be present, seems to be opposed to the mind of the Church.

Corollary I. A dispensation given by an Ordinary without grave cause is invalid according to canon 84, § 1: "From an ecclesiastical law one is not to dispense without a just and reasonable cause, with consideration had of the gravity of the law from which dispensation is made; otherwise a dispensation given by an inferior is illicit and invalid."

Corollary II. One who without grave cause wishes to enter a mixed marriage, even though he says that he does not wish to contract otherwise than with dispensation, at least objectively sins gravely. For

"the Church does not dispense from the impediment of mixed religion unless just and grave causes urge" (canon 1061, § 1, 1°). Hence the one of whom we speak wills a thing prohibited by the Church under grave obligation. There is added that in the case the grave danger which everywhere threatens the Catholic party and the offspring from a mixed marriage will scarcely cease, and therefore the divine prohibition also persists. The same must be said of one who wishes to enter a mixed marriage while the only grave cause on which the Church relies is the fear of a marriage being contracted without dispensation. The reason is that he illegitimately morally compels the Church to dispense in a matter so grave. Add that, especially in this hypothesis, proximate danger of spiritual harm both for the Catholic party and for the offspring will scarcely be lacking.

2. The prescribed cautions must be furnished. But the cautions to be furnished are: 1° that the non-Catholic party emit a promise of removing from the Catholic spouse the danger of perversion; 2° that each spouse promise that all the offspring will be baptized and educated only as Catholic. But the cautions are regularly to be required in writing. It is said:

a) The prescribed cautions must be furnished, and indeed in such a way that they are never omitted,[9] not even in the article of death (canon 1043).[10]

b) Each spouse must promise that all the offspring will be baptized and educated only as Catholic; this you should understand both of offspring to be born and of offspring previously born from these same persons. If the offspring already born was begotten either from a preceding marriage or from illegitimate intercourse with a third person, let action be taken according to the rescript of the Sacred Congregation of Propaganda Fide[11] to the Bishop of Haarlem: "Although care is to be taken according to one's powers that the children, if there are any born from a preceding marriage of the non-Catholic party, be instructed in the Catholic religion, nevertheless this is not to be absolutely required for granting the dispensation, unless the same children were born from another mixed marriage and the parent did not observe the prior conditions."

c) The cautions are regularly to be required in writing, as canon 1061, § 2 has it. Always "the presentation of the cautions should be notorious, or at least such that it can be notorious, in order to remove every scandal."[12]

The Holy Office,[13] to the question: "Whether the assertion of the Catholic party, given under oath, that the non-Catholic party had pledged faith to him or her concerning the conditions to be fulfilled, suffices" - responded: "Of itself and generally, in the negative, and according to the mind. The mind is: that if in some extraordinary case such circumstances concur that the Bishop can obtain moral certainty for himself both concerning the sincerity of cautions of this kind for the present and concerning their fulfillment for the future, and wholly special reasons are present which prevent the cautions from being furnished in the customary way, it is left to his conscience and prudence. Otherwise, notwithstanding the royal decree, the opportune cautions are to be furnished in writing, just as has been done up to now; nor is dispensation to be given unless the Bishop is morally certain that they will be fulfilled." Besides this, observe:

alpha) In those regions in which the cautions have force also in the civil forum, provided they are furnished in civil form, dispensation is not to be granted unless the cautions have been furnished in that form; otherwise a dispensation granted by those who dispense by indult is invalid.[14]

beta) The cautions are to be required before dispensation is sought.

gamma) A dispensation granted by an Ordinary without cautions is invalid. For canon 1061 declares: "The Church does not dispense unless..." etc.; once this is posited, it cannot be admitted that she has granted to an inferior the faculty of dispensing without cautions. Then the Holy Office[15] declares invalid a dispensation in disparity of cult granted without cautions; this you will rightly apply to a dispensation in mixed religion, all the more because canon 1071, as regards the requisites for dispensation in disparity of cult, refers to canon 1061, which speaks of the requisites for dispensing in mixed religion. There is added the decree of the Holy Office[16] just cited.

3. Moral certainty must be had concerning the fulfillment of the cautions. Thus the cited canon and other ecclesiastical documents.[17] But the required moral certainty is understood as broad moral certainty, or the state of one opining, so that doubt strictly so called does not suffice. The Church requires the certainty set forth because she does not remove her prohibition unless she judges that the divine prohibition has ceased. But she cannot so judge unless she is morally certain concerning the fulfillment of the cautions. Besides this, note:

a) The required certainty is obtained by considering, along with the promise, either the special character of those promising, or the circumstances which favor the fulfillment of the cautions, or both. But since the question concerns both a promise which, as one regarding almost the whole of life, will be fulfilled with great difficulty, and since, as sad experience teaches, a very great part of those promising do not stand by their promises, the promise taken nakedly, that is, abstraction being made from the character of those about to marry and from the circumstances, whether of the persons in question or of places, etc., cannot found moral certainty.

b) It can be disputed whether a dispensation granted by an Ordinary who is not morally certain concerning the fulfillment of the cautions is valid. For on the one hand, it is admitted with difficulty that the validity of a dispensation depends upon the state of mind of the one dispensing. On the other hand, to the grant of the faculty of dispensing to Ordinaries is added the clause: "provided that first, regularly, according to the prescription of the Code of Canon Law, canon 1061, § 2, provision has been wholly made for the conditions required by the Church, and the Right Reverend Ordinary himself is morally certain that they will be fulfilled." But the word "provided that" denotes that validity is regarded. Moreover, the fact that the dispensation would be invalid would not prevent the marriage from being contracted validly.

c) A pastor who himself is not morally certain concerning the fulfillment of the cautions cannot simply recommend the dispensation; but if he proceeds further, he is bound to propose his doubt to the Ordinary.

[1] Ter Haar, *De matrimoniis mixtis eorumque remediis*.

[2] Pius VII in letters to the Archbishop of Mainz, October 8, 1803; Pius VIII in letters to the Bishops of Rhenania and Westphalia, March 25, 1830; Sacred Congregation of Propaganda Fide, March 11, 1868 (*Collectanea*, n. 1324).

[3] Cf. Instruction of the Secretariat of State, March 27, 1830 (*Collectanea*, n. 811, note).

[4] *De Synodo Dioecesana*, book 9, chapter 3, n. 5.

[5] Bangen, *Praelectiones iuris matrimonialis* I, 217.

[6] Bangen, *Praelectiones iuris matrimonialis* I, loc. cit.

[7] Vlaming, *Praelectiones iuris matrimonialis*, I, n. 217.

[8] Cf. Instruction of the Secretariat of State, March 27, 1830 (*Collectanea*, n. 811, note).

[9] Secretariat of State, November 15, 1858 (*Collectanea*, n. 1169).

[10] Holy Office, March 18, 1891 (*Collectanea*, n. 1750; cf. June 21, 1912).

[11] March 20, 1899.

[12] Holy Office, July 29, 1880.

[13] December 10, 1902 (*Collectanea*, n. 2155).

[14] Holy Office, January 20, 1932 (*A.A.S.* 1932, p. 25). Regions of this kind are Bavaria and Hungary (Wernz-Vidal, op. cit., n. 170, note 33).

[15] June 21, 1912.

[16] January 20, 1932 (*A.A.S.* 1932, p. 25).

[17] Holy Office, February 17, 1875; June 6, 1879 (*Collectanea*, n. 1433); July 29, 1880; December 10, 1902.

765 V. Obligations of the parties. 1. The Catholic spouse is held by the obligation of prudently taking care of the conversion of the non-Catholic spouse (canon 1062), for instance by prayer and by the example of a truly religious life.

2. Even if dispensation has been obtained from the Church concerning the impediment of mixed religion, the spouses cannot, either before or after the marriage entered before the Church, also approach, whether personally or through a proxy, a non-Catholic minister as one assigned to sacred things, in order to give or renew matrimonial consent (canon 1063, § 1). Otherwise they commit not only the grave sin of sacrilege, namely on account of communion in sacred things with heretics, but the Catholic party also falls into excommunication reserved to the Ordinary.[1] Nevertheless, it is not disapproved that, when civil law commands it, the spouses present themselves also before a non-Catholic minister functioning only in the office of a civil official, and this only for completing the civil act, for the sake of civil effects (canon 1063, § 3).

Note. One who has been absolved in the internal forum from the excommunication of which we have spoken can use himself as such also in acts of the external forum; but unless the grant of absolution is proved, or at least legitimately presumed, in the external forum, the censure can be urged by the Superiors of the external forum, whom the guilty person must obey, until absolution has been had in the same forum (canon 2251). Therefore, if the delict has remained occult, absolution in the forum of conscience is certainly safe.

[1] It is not beside the point to add here the whole of canon 2319: "Catholics are subject to excommunication *latae sententiae* reserved to the Ordinary: 1° those who enter marriage before a non-Catholic minister against the prescription of canon 1063; 2° those who are united in marriage with an explicit or implicit pact that all or some offspring be educated outside the Catholic Church; 3° those who knowingly presume to offer their children to be baptized by non-Catholic ministers; 4° parents, or those holding the place of parents, who knowingly hand over their children to be educated or instructed in a non-Catholic religion. Those of whom § 1, nn. 2-4 speaks are besides suspected of heresy."

766 VI. Obligation of pastors of souls to forestall mixed marriages.

1. "Ordinaries and other pastors of souls should deter the faithful from mixed nuptials as much as they can" (canon 1064, 1°). But the means of deterring the faithful are:

a) Opportune instructions, both public and private: public, for example, instructions established on a determined Sunday or Sundays at each fixed Mass; admonitions added in the explanation of the Catechism, likewise in meetings of sodalities; sermons on mixed marriages in Missions and other spiritual exercises; private, for example, in the sacrament of Penance, in the visitation of the parish;

finally, if they know that someone is thinking of contracting nuptials of this kind, by warning him and diligently exhorting him not to carry it out.[1]

b) To turn Catholics away from too much familiarity with heretics; "otherwise it will more easily happen that heterodox friends, visiting Catholic friends at home, first touch even their sisters with some relationship, then pursue them with love, and finally desire to marry them. A similar thing must be said concerning heterodox female friends of daughters of families."[2]

c) The erection of purely Catholic social associations.

d) A series of instructions on the Catholic religion given to the non-Catholic bridegroom; this practice was begun in the United States of North America and is continued with great success.[3]

2. "If they are unable to prevent them," that is, mixed nuptials, "they should take care with every effort that they are not contracted against the laws of God and the Church" (canon 1064, 2°). Indeed, if the circumstances of the diocese or parish are such that, by denying dispensation or concurrence for obtaining it, mixed marriages can for the most part be prevented, this means also should be used, all the more because in such a case, with attention to the common good - which must be attended to, as natural law dictates - a sufficiently just and grave cause for dispensing is lacking.

Thus also Cardinals Gasparri and van Rossum;[3] namely, according to the aforesaid men, the sense of canon 1064, 2° is this: if pastors of souls are unable to prevent mixed nuptials either by particular means or by a severe practice, let them take care with every effort that they are not contracted against the laws of God and the Church. "At least it must be said," Ter Haar adds,[4] "that a stricter practice from epikeia and according to the mind of the legislator does not stand in the way of this canon. For the Church wills that superiors use the faculty of dispensing only prudently and for the common good."

[1] Provincial Council of Utrecht, p. 127.

[2] Vlaming, *Praelectiones iuris matrimonialis* I, 230.

[3] Cf. the booklet *Efficax antidotum ad matrimonia mixta praecavenda*, by M. V. Kelly and J. B. Geniesse; but especially Ter Haar, op. cit., nn. 91-117. The Vicar General of the Bishop of 's-Hertogenbosch asked His Eminence Cardinal van Rossum: "Whether the practice hitherto observed in our diocese should be abandoned, namely of never seeking dispensation in the impediment of mixed religion except in quite extraordinary cases?" To these things His Eminence responded: "That practice hitherto observed, by which mixed marriages are so strongly and with such happy success restrained, can also in the future be observed in Holland with a safe conscience. To abandon it would be the same as promoting those unhappy marriages. This is foreign to the sense of the said canon. In order to procure greater certainty for Your Reverence in this very grave point, I myself approached the President of the Commission appointed to interpret the Code, with whom I communicated your letter on this matter. His Eminence Cardinal Gasparri fully agreed with me, using this brief argument: Does that practice prevent mixed marriages? (I answered: Without doubt.) If it is so, the matter fits perfectly with the prescription of canon 1064, 2°: If they are unable to prevent them" (*Ned. Kath. Stemmen*, 1919, p. 13).

[4] Op. cit., n. 139.

767 VII. Obligation of the confessor. A confessor who knows that a penitent is seeking a mixed marriage should, everywhere and with every effort, dissuade that marriage. If the penitent refuses to comply with the counsel, one must proceed thus:

1. If some cause exists on the part of the penitent, and it is such as is acknowledged by the local Ordinary, the penitent, the things to be posited having been posited, is to be absolved and referred to the pastor. The same must be said if the confessor does not know whether the cause alleged by the penitent is acknowledged by the Ordinary or not.

2. If the cause which exists on the part of the penitent is not acknowledged by the local Ordinary, a distinction must be made:

a) If, once dispensation is denied, there is no fear of a civil marriage, the penitent is to be warned; and if he does not desist from the marriage, he is not to be absolved.

b) If, once dispensation is denied, there is fear of a civil marriage, one must speak thus:

alpha) If that cause is acknowledged by the Ordinary, the penitent is indeed of himself to be warned concerning the grave sin which he is about to commit (p. 605); but if no hope of fruit is hoped for, he should be left in good faith, the things to be posited having been posited, absolved, and referred to the pastor.

beta) If that cause is not acknowledged by the Ordinary, on account of the common good, the penitent is to be warned; and if he is willing to renounce the mixed marriage, the things to be posited having been posited, he is to be absolved. If he refuses, absolution cannot be granted.

We have repeatedly spoken of a cause acknowledged by the local Ordinary; for it belongs to him to judge what norm of acting, as regards causes, should seem to be followed in his diocese.

We have likewise repeatedly said that the penitent, the things to be posited having been posited, is of itself to be absolved and referred to the pastor. By these words we intend that absolution is not to be denied; for we freely admit that often absolution is better deferred until the penitent has arranged the matter with the pastor.

VIII. Assistance to be given at a mixed marriage. 1. If the pastor knows certainly that the parties have already contracted before a heretical minister as such, or as one assigned to sacred things, or that they are about to contract in that way, he should not assist at their marriage except for most grave causes, scandal having been removed, and the Ordinary having first been consulted (canon 1063, § 2). But if those about to marry neither manifest a depraved intention, nor are otherwise certainly foreseen to be about to contract before a heretical minister as such, nor question the pastor, he, if there is no hope of fruit, can be silent.[1]

2. Announcements must be omitted unless the local Ordinary, in his prudence and with scandal removed, has judged it opportune to permit them, provided Apostolic dispensation has preceded and mention of the religion of the non-Catholic party is omitted (canon 1026; p. 605).

[1] Instruction of the Holy Office, February 17, 1864 (*Collectanea*, n. 1247); December 12, 1888 (*Collectanea*, n. 1696).

768 IX. Obligations to be fulfilled after a mixed marriage has been contracted. "When mixed nuptials have been celebrated, whether in their own territory or in another, they should diligently watch that the spouses faithfully fulfill the promises made" (canon 1064, 3°). But if the Catholic party should perhaps object that he or she is prevented by a pact from taking care that all the offspring be baptized and educated as Catholic, let that person be taught that a pact of this kind is invalid. Besides this, these things are to be observed:

1. If the mixed marriage was contracted illicitly but validly - which could especially have had place before the decree *Ne temere* concerning the form of marriage:

a) The Catholic party is not to be admitted to the sacraments unless first he or she is sorry for the sin committed, and has been absolved from penalties perhaps contracted; there will be discussion of penalties later.

The Holy Office says thus: "As regards valid marriages, they can be admitted to receiving the sacraments without prior renewal of consent, but are to be kept from receiving them until they have given true signs of repentance, and have promised that they will take care with all their strength both of the conversion of the heretical party and of the education in the Catholic religion of all offspring born and perhaps to be born, and finally until they have obtained absolution from incurred censures together with salutary penances, in the case in which they contracted before a heretical minister."[1]

b) The pastor should take care that at least the Catholic party furnish the cautions in the external forum, and that these be sent to the Bishop.[2]

c) The Catholic father should use the paternal power which civil law grants to him over minor sons and daughters.[3]

d) The Catholic mother should likewise use paternal power if, with the circumstances considered, for instance because the father has been deprived of the said power, that power belongs to her.[3]

e) The Catholic spouse should use: 1° the right which perhaps a special agreement entered into gives to him or her; 2° the right, perhaps granted by law[3] or agreement, of appointing a Catholic person who, after the spouse's death, will carry out the guardianship of the children.

2. If the marriage was contracted invalidly - for example, because the juridic form was not observed - then, the things to be posited having been posited, it must be convalidated; but there will be discussion of convalidation later.

Corollary. The Catholic party who does not do what is necessary and morally possible so that all the offspring be educated as Catholic is unworthy of absolution, both because he or she gravely fails in duty and because he or she gives grave scandal.

[1] August 23, 1877 (*Collectanea*, n. 1478).

[2] Holy Office, March 12, 1881.

[3] Thus, for example, Dutch law.

Scholion. On Marriage with an Unworthy Person

It remains for us to treat the prohibitions which are not reckoned among impediments properly so called, but are committed to the judgment of the Ordinary and pastors.

769 I. Notion. By the name of unworthy persons here are understood those of whom canons 1065 and 1066 speak, that is: 1° those who have notoriously cast off the Catholic faith, even if they have not gone over to a non-Catholic sect; 2° those who have been enrolled in societies condemned by the Church; 3° public sinners; 4° those notoriously bound by a censure.

1. One casts off the Catholic faith who has wished his name to be erased from the registers of Catholics; who by repeated attacks professes that he rejects the dogmas of faith, etc.[1]

2. Societies condemned by the Church are Masonic sects or other associations of the same kind which plot against the Church or legitimate civil powers (canon 2335), but not societies which are merely prohibited or dangerous.

3. Who are included under the name of public sinners, see n. 28.

4. Those notoriously bound by a censure are the personally interdicted, and those notoriously excommunicated or suspended.

II. Marriage with an unworthy person. The faithful are also to be deterred from contracting marriage with those who notoriously have either cast off the Catholic faith, even if they have not gone over to a non-Catholic sect, or have been enrolled in societies condemned by the Church (canon 1065, § 1). These things are also to be applied to public sinners and to those notoriously bound by a censure, unless they are converted.

III. Assistance at the marriage of an unworthy person. 1. A pastor should not assist at the nuptials of those who have cast off the Catholic faith or have been enrolled in a condemned society unless the Ordinary has been consulted; and the Ordinary, after inspecting all the circumstances of the matter, will be able to permit him to take part in the marriage, provided a grave cause urges and, according to his prudent judgment, the Ordinary judges that sufficient provision has been made for the Catholic education of all the offspring and for the removal of the danger of perversion of the other spouse (canon 1065, § 2).

2. If a public sinner or one notoriously bound by a censure has first refused to approach sacramental confession or to be reconciled with the Church, the pastor should not assist at that person's marriage unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary (canon 1066). As regards public sinners, the Ordinary should everywhere grant license if only one or the other remains publicly in sin. If each is a public sinner and denies confession, the Ordinary should permit assistance when graver evils are to be feared from denial, such as concubinage to be begun or continued, merely civil marriage, etc.

[1] Vermeersch, *Epitome Iuris Canonici* II, n. 335.

Chapter III. On Diriment Impediments in Particular

Thirteen diriment impediments are established in Canon Law, namely: age, impotence, bond, disparity of cult, sacred Order, solemn vows and sometimes simple vows, abduction, crime, consanguinity, affinity, public propriety, spiritual relationship, legal relationship.

Article I. Age

770 I. By natural law a determinate age is not required for the validity of marriage, but it suffices that someone has arrived at the use of reason, knows the nature of marriage sufficiently, and will have the power of coeundi in due time (St. Alphonsus VI).

II. By canon law, "a man before the completion of the sixteenth year of age, and a woman likewise before the completion of the fourteenth, cannot enter a valid marriage" (canon 1067, § 1). Years are to be taken as they are in the calendar; and since the terminus *a quo* is judged by law not to coincide with the beginning of the day, the first day is not to be counted, and the time is ended when the last day of the same number has been completed (canon 34, § 3).

But the impediment was established by the Church because she presumes that before the indicated years of age there is lacking at least the more mature discretion with which it is fitting to enter nuptials.

Corollary I. One who has attained the assigned age contracts validly, even if he or she does not yet have actual power for copula; by natural law the power which will be present in due time suffices. But the use of marriage is prohibited until each party has obtained actual power of coeundi, or at least there is hope of coeundi duly (St. Alphonsus, loc. cit.).

Corollary II. In doubt concerning age - which easily occurs in Mission regions - recourse should be had to the Ordinary, who can dispense in a doubt of fact. Sometimes the missionaries themselves receive the faculty of dispensing.

Corollary III. Although a marriage contracted after the aforesaid age is valid, nevertheless pastors of souls should take care to turn youths away from it before the age at which, according to the received customs of the region, marriage is usually entered (canon 1067, § 2). Therefore in colder regions it is rarely expedient that a young man contract nuptials before the twentieth year of age, or a girl before the eighteenth; indeed it is preferable to wait for the age of mature nubility, everywhere between the twentieth and twenty-fourth year, because otherwise spouses can harm themselves and their offspring. Once mature nubility has been obtained, one must of itself abstain from excessive delay of nuptials.

Article II. Impotence

771 I. Notion. Impotence is the incapacity of completing copula, or copula of itself apt for generation. But copula of itself apt for generation consists in this: that the man, having entered the female vagina by natural force, that is, by an erect member and not artificially, there pours forth true semen. And so a man is impotent when he cannot naturally enter the female vagina and emit true semen into it; but a woman is impotent when she cannot receive semen in her vagina (St. Alphonsus VI, 1095).

Impotence differs from sterility, which is the incapacity of generating, or which leaves possible copula of itself apt for generation, but in fact necessarily infertile because of a physical defect. Sterile persons are: 1° men who can indeed produce and emit semen, but semen deprived of spermatozoids and therefore not procreative, as occurs among youths up to about the seventeenth or eighteenth year, among old men, and among men laboring under certain diseases; 2° women who can indeed receive male semen, but cannot retain any of the semen; likewise, commonly, women who have passed the critical age, as it is called, 45-50 years. But concerning others there is dispute whether they are impotent or sterile, as will be explained presently.

772 II. Division. Impotence is distinguished:

1. Into natural and accidental, according as it proceeds from a natural defect, as from a defect of the genitals, or from an extrinsic cause, as from malefice.
2. Into antecedent and supervening, according as it precedes marriage contracted, or supervenes upon it.
3. Into perpetual and temporary. Perpetual impotence is that which cannot be removed either without a miracle, or without sin, or without grave danger of death. Temporary impotence is that which will cease either by the passage of time, or can be removed by an honorable means and without grave danger of death.
4. Into absolute and relative, according as it excludes the capacity of coeundi with any woman whatever, or only with a determinate person or determinate persons (St. Alphonsus VI, 1095).

5. Into certain and doubtful; and doubtful impotence can be doubtful by a doubt of law or of fact (n. 758, note 1).[1]

[1] Cf. Eschbach, *Disputationes physiologico-theologicae*, disp. 1, cap. 7; Antonelli, *De conceptu impotentiae*.

773 III. Existence of the impediment. 1. Antecedent and perpetual impotence, whether on the part of the man or on the part of the woman, whether known to the other party or not, whether absolute or relative, diriments marriage by the very law of nature (canon 1068, § 1); and indeed absolutely, or with all persons, if it is absolute; if it is relative, with the determinate person or determinate persons. The reason is that such an impotent person cannot hand over to the other party the right essential to marriage, that is, the right to copula of itself apt for generation (St. Alphonsus VI, 1095).

2. Temporary impotence does not diriment marriage, because such an impotent person can hand over the right to copula with the obligation of admitting it when the impotence has ceased (St. Alphonsus, loc. cit.). Hence the marriages of the non-pubescent are not diriment by the law of nature, but only by ecclesiastical law. Hence a marriage entered, for example, by a woman who because of narrowness cannot have copula is valid if the woman can be rendered apt by incision or a non-dangerous operation, or by frequent use; otherwise, if this cannot be done without danger to life (St. Alphonsus VI, 1096).[1]

3. Sterility neither diriments nor impedes marriage (canon 1068, § 3). The reason is that it does not take away the object of the matrimonial contract, that is, the right to copula of itself apt for generation (St. Alphonsus VI, 1095).

[1] Suppose that the woman underwent a medical operation and became apt: does the marriage hold? Response 1. If that operation was truly dangerous, the marriage did not convalidate, but renewal of consent is necessary (St. Alphonsus VI, 1096). Response 2. If the operation was certainly light, the marriage was and remains valid. Response 3. If - something which can occur not rarely - it is doubtful whether danger was present or not, at least for caution let a private renewal of consent be made (Lehmkuhl, *Theol. Mor.*, II, n. 976).

774 IV. Cases of impotence. The following are impotent:

1. A man who lacks the male member.[1]

2. One who is deprived of both testicles.[2] For men of this sort, although at least sometimes they can penetrate the vagina and ejaculate some liquid, nevertheless cannot produce true semen. The same must be said of one who has testicles broken, bruised, or wholly atrophied or dried up, because he cannot elaborate semen.

3. One who is so frigid that he cannot erect the male member, or so ardent that he always pours forth the whole semen before he can penetrate the female vessel. But the aforementioned impotences are rarely perpetual, so that commonly they do not diriment marriage.

4. One who pours forth semen not at the extremity of the member but near its root, so that he can indeed enter into the female vessel, but cannot inject semen into it.

5. One who has undergone vasectomy.[3] For he is impotent who cannot posit an act of itself apt for generation, in other words, who cannot penetrate the vagina together with effusion of semen into it. But one who has undergone vasectomy cannot posit an act of this sort, as follows from its nature, described in the note.

6. A woman who lacks a vagina or has it closed at the very entrance. There is dispute concerning a woman who has a vagina closed in this way near the uterus. But she seems to be called impotent, because the vagina is like a flaccid canal open on both sides, so that a vagina closed near the uterus is substantially vitiated, and therefore in the stated case a properly so-called vagina seems to be lacking. The responses of the Sacred Congregation of the Council favor this in the Salernitana,[4] in the Verulana,[5] and in the Monasteriensis.[6] Namely, those responses declare null the marriage of a woman who lacked a uterus but had a short vagina closed near the uterus. But lack of a uterus does not seem to obstruct potency, as will be said under 9; therefore it remains that the closing of the vagina is the obstacle. For the rest, the stated impotences, if they can be cured without grave danger, are only temporary.

7. A woman who indeed has an open vagina but one so narrow that the male member cannot enter it. Some few, indeed, judge that in this case impotence is absent, or in other words, that it suffices that the man can deposit male semen at the exterior part of the vulva, or at least, the vulva having been penetrated, at the orifice or entrance of the vagina. But these opinions seem wholly to be rejected. For first, chapter 6, title 15, *de frigidis et maleficiatis*, declares that the impediment of impotence is had if a man cannot penetrate the woman's vagina. Next, for potency there is required aptitude for consummating marriage in that mode by which generation can follow of itself and not only by accident (cf. canon 1081, § 2). But from the deposition of semen either at the exterior part of the vulva or at the orifice of the vagina, generation does not seem to follow except by accident. Finally, this opinion is recommended by the fact that in the stated case there is lacking the faculty of consummating marriage according to the mode instituted by nature, that is, by penetrating the vagina. St. Thomas so thinks (In IV, dist. 41, q. un., a. 1, sol. 4, ad 2), and St. Alphonsus teaches the same at least implicitly (VI, 1075-1097). But the fact that the vagina can be penetrated only partially does not constitute impotence, or does not prevent there from being an act or copula of itself apt for generation. This is first deduced from the fact that copula which, as to substance, follows the mode indicated by nature, must be judged of itself apt for generation. But the copula of which we have spoken follows, as to substance, the mode indicated by nature; for it involves some penetration of the vagina, and more perfect and less perfect penetration differ only according to more and less, or are judged substantially similar to each other. Add that no theologian up to this point has taught that those who cannot coire more perfectly are impotent; indeed, the practice of the Roman Curia supposes that they are potent.

8. A woman who suffers from vaginismus, that is, hyperesthesia of the vaginal nerves, by which she cannot endure the contact of the man.

9. There is dispute whether a woman is impotent who lacks a uterus or ovaries, or who has the aforesaid organs wholly atrophied[7] or dried up. Now a woman of this sort seems to be potent, because for potency it suffices that one be capable of copula of itself apt for generation. But the copula of which the stated woman is capable is of itself apt for generation, or in other words, from itself or by its nature it is ordered to generation, although generation in fact cannot follow because of the defect of another organ required for it. Therefore all things are present which are required for generation insofar as generation depends on human action; once that action has been posited, the act of nature begins. This opinion is confirmed by the fact that, if the contrary opinion is admitted, or if capacity for generating is required for potency, it would also have to be admitted - something admitted with difficulty - that many men and many women, as being totally impotent

for generating, are incapable of marriage: for example, men who have semen irremediably vitiated, and women who have ovaries irremediably inert. That there are many such persons in advanced age cannot be denied, although which persons are such cannot be determined with certainty.[8]

This controversy cannot be decided by authority. "Since authors dispute," says the Sacred Congregation of the Council,[9] "whether a marriage entered with a woman lacking ovaries is valid or not, and since ecclesiastical authority has not yet defined this question, and indeed the Congregation of the Holy Office has several times declared in particular cases, when the matter concerned a marriage to be contracted, that this is not an impediment,[10] but when the matter concerned a marriage already contracted, that the spouses are not to be disturbed, now in practical reality it does not seem opportune to institute a process for declaring the nullity of marriage from defect of ovaries in a woman." The Sacred Congregation of the Sacraments[11] indeed permitted marriage to a woman for whom, after the matters set forth and the express attestation of a surgeon were considered, the ovaries had certainly and completely been excised; but it can be said that, while the theoretical doubt stands, the marriage was declared licit for practice, without the theoretical question thereby being settled.

What has been said concerning a woman deprived of ovaries, you should also apply to a woman who has undergone oophorectomy, that is, resection or division of the canal by which male semen is carried to the ovaries, and ova to the womb.

10. Finally it is evident that a woman is impotent who cannot be fertilized except artificially, supposing artificial fertilization properly so called.[12]

11. It belongs to physicians to decide whether hermaphrodites[13] or androgynes can contract, and according to which sex (St. Alphonsus VI, 1095).

[1] He is called an ectomus if his male member has been cut off.

[2] Constitution of Sixtus V, *Cum frequenter*, June 22, 1587. From those deprived of both testicles must be distinguished those apparently such, or cryptorchids, who carry their testicles in the groins and can produce true semen, although infertile.

[3] Vasectomy consists in this: after an incision has been made through the scrotum, the organ carrying the semen elaborated by the testicles is resected, so that the path to ejaculation is broken off for the semen. One who has undergone vasectomy can indeed produce semen, but cannot pour it into the vagina, nor secrete it internally, since it is absorbed by the body (cf. De Smet, *De spons. et Matrim.*, n. 550). Moreover he can preserve the erectibility of the male member and penetrate the vagina, indeed even ejaculate a certain liquid; but this liquid is not, as follows from what has been said, true semen, but some watery humor secreted by the prostate gland (cf. De Smet, op. cit., n. 550).

[4] March 21, 1863.

[5] January 24 and June 22, 1871.

[6] December 16, 1899.

[7] Note that complete atrophy can scarcely be established; hence, even in the opinion of those who hold perfect atrophy of the ovaries to be a cause of impotence, scarcely anyone can be barred from nuptials.

[8] Cf. *Collectanea Brugenses*, 1910, p. 701.

[9] December 16, 1905.

[10] Holy Office, February 3, 1887; July 23, 1890 (*Collectanea*, n. 1733); July 31, 1895 (*Collectanea*, n. 1007).

[11] April 2, 1907.

[12] It consists in this: that the physician receives in a little vessel male semen poured forth by the man solitarily or onanistically, and by means of a syringe pours it into the woman's genitals. In this case copula is lacking, so that a woman who cannot be fertilized except in such a way is incapable of copula and therefore impotent.

[13] That is, those who, besides the perfect organs of one sex, display some essential thing of the other, or who are endowed incompletely and monstrously with the organs of both sexes. But more commonly it happens that persons are born apparently hermaphrodites: namely boys who, since they still have testicles hidden in the abdomen, imitate in part the female sex; or girls who, having obtained a more extended clitoris, seem to be endowed with a male member (cf. Eschbach, op. cit., p. 53).

775 V. Effects of impotence. The discussion concerns perpetual impotence, since it alone diriments marriage. But a distinction must be made between certain impotence and doubtful impotence.

1. The effects of certain perpetual impotence are:

a) Before marriage has been entered. If impotence is certain, marriage must be abstained from, since it is certainly null.

b) After marriage has been entered. If perpetual and certain impotence certainly preexisted the marriage, the marriage is certainly null. In the case, of itself, separation from bed must be instituted at once; but it can be preferable that the parties be left in good faith. Separation from cohabitation cannot be instituted by private authority, and therefore the case must be submitted to the ecclesiastical judge, unless it can be permitted - which, when danger of sin is absent, can be permitted - that they cohabit as brother and sister (St. Alphonsus VI, 1101). Once the case has been brought to the judge, one proceeds according to the norm of canons 1975-1981; if the impotence is certainly established, the nullity of the marriage is pronounced; if it is not wholly established, but the non-consummation of the marriage is established, the Holy See is accustomed, with the requisite things having been placed, to dissolve for caution a ratified and non-consummated marriage.

2. The effects of doubtful perpetual impotence are:

a) Before marriage has been entered. In a doubt either of law or of fact, marriage is permitted (canon 1068, § 2). In a doubt of fact, that is, in a doubt concerning the fact which, if established, would certainly mean that impotence was present, the truth, if it can conveniently be done, must be investigated, for example by consulting experts. If the doubt persists, it is lawful to enter nuptials, after warning the other party, however, concerning the probable impotence (cited canon), but only under condition (St. Alphonsus VI, 1102; n. 758).

b) After marriage has been entered. In a doubt of law the use of marriage can be continued. In a doubt of fact not yet investigated, the truth must of itself be investigated, namely if there is hope of finding it; although commonly it is preferable to keep silence about the obligation. Practically, with respect to a spouse who complains of the impossibility of performing copula duly, these things hold: it is lawful for him to make trial as long as there is hope of coeundi duly, with emission of semen outside the vessel permitted if it is going to take place.[1] Meanwhile let him be advised to consult a physician. When hope of coeundi duly is wholly lacking, the case, with the things to be observed being observed, should be referred to the Ordinary, if it is known that the spouses wish for separation and for a declaration of the nullity of the marriage. If the spouses do not wish separation and are in good faith, it will often be preferable to leave them in good faith; if they are not in good faith, and danger of sin is absent or can be removed, it can be permitted that they live as brother and sister[2] (St. Alphonsus VI, 1101).

Corollary. The confessor should not inquire into impotence unless a founded doubt has arisen; but questions should be put very moderately and prudently, lest he disturb prematurely the good faith of the penitent regarding the validity and use of marriage.

[1] Cf. chapter 5, *de frigidis et maleficiatis*.

[2] Cf. chapter 5, *de frigidis et maleficiatis*; Sacred Congregation of the Council, December 15, 1877.

Article III. Bond

776 I. Notion. By the impediment of bond is understood the bond of a valid marriage; while that bond endures, another marriage cannot validly be contracted.

II. Existence of the impediment. The bond diriments marriage by divine law, both natural and positive; this follows from what was said concerning the unity and indissolubility of marriage (St. Thomas, *Supplement*, q. 65, a. 1; St. Alphonsus VI, 1060). The impediment is confirmed by ecclesiastical law (canon 1069).

III. Cessation of the impediment. The impediment ceases through the dissolution of the matrimonial bond. In what ways this can happen, apart from the death of the other party, see n. 720 and following.

777 IV. Requisites in order that it be lawful to pass to new nuptials. Although the prior marriage is invalid or dissolved for any cause whatever, it is not therefore lawful to contract another before the nullity or dissolution of the prior marriage is legitimately and certainly established (canon 1069, § 2). Therefore it is required that concerning the nullity or dissolution of the prior marriage: 1° it be certainly established; 2° it be legitimately established. It must be certainly established, because it is not lawful to expose oneself either to the danger of inflicting injury upon the prior or possessing marriage, or to the danger of contracting the new marriage invalidly (St. Alphonsus VI, 981, 1060). It must be legitimately established because, since the matter concerns the external forum, private certainty does not suffice. Now:

1. In the case of nullity of marriage there is required a sentence of the competent ecclesiastical judge, rendered and announced with the order of law being observed. But spouses have the right of contracting new nuptials after ten days have elapsed from the announcement of the second sentence (canon 1987).

"When from a certain and authentic document, which is subject to no contradiction or exception, the existence of an impediment of disparity of cult, order, solemn vow of chastity, ligamen, consanguinity, affinity, or spiritual relationship has been established, and at the same time it has appeared with like certainty that a dispensation upon these impediments has not been given, in these cases, with the solemnities so far enumerated being omitted, the Ordinary, the parties having been cited, can declare the nullity of the marriage, but with the intervention of the defender of the bond" (canon 1990; cf. also canons 1991 and 1992). Indeed, if the union does not even have the appearance of marriage, as a merely civil marriage entered by persons subject to the ecclesiastical juridic form, the Ordinary, or even the pastor after consulting the Ordinary, can permit new nuptials, with every juridic formality being omitted and without intervention of the defender of the bond.[1] Finally, if in the judgment of the Ordinary the first marriage is certainly null, and in the place is unknown to all, we judge that for the internal forum the spouses are not to be disturbed in a second marriage contracted in good faith.[2]

Note. The Holy Office responded to the Bishops of Tonkin:[3] "But if, after suitable investigations have been made, it is established that infidels entered marriage without observing those things which by the law or custom of the kingdom are required for validity, and one or the other of them comes to baptism and wishes to enter nuptials with a faithful person, those nuptials are not to be permitted unless license has been obtained from the Sacred Congregation of the Holy Office, or unless an interpellation made of the prior spouse has fallen to no effect."

2. In the case of dissolution of marriage by Pontifical dispensation or by religious profession, there is required an authentic document of the dispensation granted or of the profession made; if there is question of religious profession, the non-consummation of the marriage must also legitimately be evident.

3. In the case of dissolution of marriage by the death of the other party, the required certainty is first obtained through evidence of a public fact. But how it is to be acquired in a case in which the said evidence is lacking is set forth by the Instruction of the Holy Office.[4] In view of it, first note that merely negative proofs, such as absence alone, however long continued, do not suffice,[5] unlike what holds in civil law for several nations. Therefore positive proofs are required. Now:

a) Before others, "an authentic document must by all means be sought with diligent care: namely, one drawn from the registers of the parish or hospital or military service, or even, if it cannot be had from ecclesiastical authority, from the civil government of the place in which, as is supposed, the person died" (cited Instruction, n. 2; cf. canon 1813, § 1, 4°).

b) If the document is lacking, it must be seen whether two witnesses can be had who are trustworthy, sworn, and who depose concerning their own fact, knew the deceased, and agree with each other concerning the place and cause of death and the other substantial circumstances (cited Instruction, n. 3; cf. canons 1791 and 1828).

c) In default of two witnesses, even one witness is admitted, "provided that that witness is endowed with the conditions enumerated in n. 3, is subject to no exception, and moreover his deposition is supported by other grave aids, and at least nothing is found in his testimony which is not congruous and wholly probable" (cited Instruction, n. 4).

d) In default of any witness, "proof of death from conjectures, indications, and circumstances of any kind must certainly be procured by a careful and very cautious investigation, namely so that, with several things collected from here and there and their nature weighed..., the judgment of a prudent man can be moved to affirm death by the greatest probability, or moral certainty" (cited Instruction, n. 6).

e) Report also, aided by other supports, constitutes an argument concerning death, under these conditions, namely: that it be proved by at least two trustworthy and sworn witnesses, who depose concerning the reasonable cause of the report itself, whether they received it from the greater and sounder part of the people, and whether they themselves think rightly concerning the same report; nor must there be doubt that it was stirred up by those for whose benefit inquiry is being made (cited Instruction, n. 8).

If the matter remains doubtful, and if there is hope of success, let the Ordinary have recourse to the Holy See.

Corollary I. If someone, after waiting in vain for the return of the other party for several years, in bad faith marries another, the spouses must be separated.[6]

Corollary II. If persons, after waiting in vain for the return of the other party, judged that party to be dead, and in good faith entered new nuptials, the spouses should be left in good faith until news is had of the life of the other party.[7]

Corollary III. If the death of the prior spouse is legitimately and certainly established, the pastor can assist at the new nuptials without recourse to the Ordinary, unless there is question of vagi. If some doubt remains, the Ordinary should be consulted; and this must regularly be done if death cannot be proved except in the way set forth under d or e.

[1] Pontifical Commission, October 16, 1919, ad XVII (*A.A.S.* 1919, p. 476).

[2] Gasparri, I, n. 633.

[3] September 24, 1915.

[4] May 13, 1868.

[5] Rescript of Pius VI to the Archbishop of Prague, July 11, 1788; cf. Sacred Congregation of Propaganda Fide, March 22, 1865, ad 1 (*Collectanea*, n. 1272).

[6] Holy Office, March 22, 1865 (*Collectanea*, n. 1272, ad 1).

[7] Holy Office, March 22, 1865 (*Collectanea*, n. 1272, ad 1).

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4. Permission, made by the Holy See, to pass to other nuptials because of the presumed death of the spouse always carries with it dispensation from the impediment arising from adultery with promise or attempted marriage, if any such dispensation is needed, but by no means dispensation from the impediment of which canon 1075, nn. 2, 3 treats (canon 1053).[1]

[1] Canon 1075, nn. 2, 3 treats of adultery with murder of a spouse and of murder of a spouse alone.

779 V. Penalty against bigamists. Bigamists, that is, those who, notwithstanding the conjugal bond, have attempted another marriage, even one merely civil, as they say, are infamous by the fact itself; and if, after the Ordinary's warning has been spurned, they persist in the illicit concubinage, they are to be excommunicated or punished with personal interdict according to the different gravity of guilt (canon 2356). Moreover, from infamy there arises irregularity (canon 984, 5°); if copula has followed, there arises the impediment of crime (canon 1075); the children are adulterine or, after the legitimate other party has died, illegitimate. The bigamists themselves - if the crime is public - are public sinners, and therefore, unless they repent, are to be barred from the sacraments (canon 855), from the office of sponsor (canon 765), and from ecclesiastical burial (canon 1240); besides this, the woman delivered of a child is to lack the blessing after childbirth.

Article IV. Disparity of Cult

780 I. Notion. By disparity of cult is understood the diversity of religion which exists between a party baptized in the Catholic Church, or converted to it from heresy or schism, and a non-baptized party. It does not matter whether the non-baptized party is pagan, Jewish, Mohammedan, or even a catechumen (cf. canon 1070, § 1). What is understood by the words "baptized in the Catholic Church," see n. 741.

II. Existence of the impediment. 1. By divine law, marriages between a baptized and a non-baptized party are prohibited for the same reasons as mixed marriages (n. 762; St. Thomas, *Supplement*, q. 59, a. 1).

2. By ecclesiastical law, a marriage contracted by a non-baptized person with a person baptized in the Catholic Church or converted to it from heresy or schism is null (canon 1070, § 1). Therefore, from the new Code in force, that is, from the day May 19, 1918, the impediment does not exist between a party who has been baptized, but not in the Catholic Church and not converted to it from heresy or schism, and a non-baptized party;[1] and this holds even if the non-baptized party is Catholic, or rather is regarded as Catholic.

Corollary I. Those baptized in the Catholic Church are subject to the impediment even if they were born of non-Catholics and educated non-Catholically. For the Code indeed exempts such persons from the juridic form of marriage (n. 742), but from this it does not follow that they are also exempt from the impediment of disparity of cult. There is added a response of the Holy Office - published in the letters of the Sacred Congregation of Propaganda Fide dated April 1, 1922[2] - which favors the opinion defended.

Corollary II. The divine natural prohibition extends itself further than the ecclesiastical diriment impediment; the former regards all baptized persons, the latter only those baptized in the Catholic Church or converted to it from heresy or schism. I said "divine-natural prohibition," since it is disputed whether divine positive law prohibits marriages of the faithful with infidels (cf. St. Thomas, *Supplement*, q. 59, a. 1, ad 1).

Corollary III. The diriment impediment of disparity of cult is in force everywhere, even in regions recently converted to the Catholic faith.[3]

III. Cessation of the impediment. The divine prohibition ceases almost as was said concerning mixed religion (n. 763). The ecclesiastical diriment impediment ceases through dispensation. But the power of dispensing outside mission places is rarely granted to Bishops.

IV. The requisites in order that a dispensation be granted are the same as those which are required for dispensation in mixed religion (canon 1071; n. 764). When marriage is to be contracted with a Hebrew party, the Holy Office adds to the dispensation the clause: "And provided that neither before nor after the marriage entered before the Catholic pastor do the parties go to a rabbi to celebrate marriage by the Jewish rite."

Note 1. The Holy Office, June 21, 1912, declared: 1° that dispensation upon the impediment of disparity of cult is never granted unless all the conditions "or cautions" have been expressed; 2° that a dispensation upon the impediment of disparity of cult imparted by one having power from the Holy See, without the prescribed cautions having been required, or with them repudiated, is invalid; 3° that the nullity of the marriage can be declared by the Ordinary himself when it is evident that the dispensation was thus invalidly granted.

Note 2. The Church, in dispensing upon the impediment of disparity of cult, is no longer understood, as before,[4] to dispense from the impediments from which the non-Catholic party is exempt;[5] indeed, it seems that already from the new Code these things held.[6]

Note 3. With regard to the declaration of nullity of marriage because of disparity of cult, what was said concerning the impediment of ligamen holds (p. 619; canon 1990).[7]

V. Obligations of those about to marry, etc. With regard to the obligations of those about to marry, of pastors of souls in forestalling marriages of this sort, of the confessor with respect to a penitent seeking such a marriage, likewise with regard to assistance to be given to marriages of this sort, and with regard to the obligation respecting a marriage contracted, the same things are to be observed as if there is question of a mixed marriage (canon 1071; n. 765 and following).

[1] From this it is also clear how this rather frequent case is to be resolved: Caius and Titia, non-Catholic spouses, are separated from each other by civil divorce. Titia, so that she may marry Sempronius, a Catholic, again, herself also desires to be joined to the Catholic Church. To set aside the impediment of bond by which she still seems bound to Caius, she proves in the forum of the Church that she certainly was not baptized in her sect, or certainly was baptized invalidly, while Caius was baptized. In such a case can the ecclesiastical judge decide that the prior marriage was invalid because of disparity of cult between Caius and Titia? I respond: if their marriage was celebrated before the day May 19, 1918, affirmatively; but if afterward, negatively (Vlaming, op. cit., I, n. 289).

[2] Cf. *Archiv fur katholisches Kirchenrecht*, 1927, p. 180.

[3] Constitution of Benedict XIV, *Singulari nobis*, February 9, 1749.

[4] Holy Office, September 16, 1824 (*Collectanea*, n. 1235).

[5] Sacred Congregation of Propaganda Fide, May 20, 1931 (in *Periodica de re morali*, etc., 1932, p. 16).

[6] Cf. the cited response of the Sacred Congregation of Propaganda Fide.

[7] Cf. Pontifical Commission, October 16, 1919, ad 17 (*A.A.S.* 1919, p. 476 sq.).

781 VI. Cases of doubtful baptism. There is question either of a marriage to be contracted, or not yet contracted, or of a marriage already contracted.

1. When marriage has not yet been contracted, one must proceed in this way:

a) If there is question of a marriage to be contracted by a Catholic doubtfully validly baptized with a non-baptized person, the Catholic, with the things to be observed being observed, should be rebaptized under condition, and a dispensation in the impediment of disparity of cult should be requested. If because of the circumstances one cannot proceed to the repetition, under condition, of baptism, there is had a doubtful impediment by a doubt of fact, in which the Ordinary can dispense (canon 15).

b) If there is question of a marriage to be contracted by a Catholic with a non-Catholic person doubtfully baptized or doubtfully validly baptized, one must act thus:

If the non-Catholic wishes to be converted, with the things to be observed being observed, let him be rebaptized under condition; once this has been done, the impediment no longer subsists.

If the non-Catholic does not wish to be converted, it is not lawful to rebaptize him under condition,[1] and so to remove the impediment which perhaps exists. What therefore must be done? In the case there are present two impediments doubtful by a doubt of fact - namely of mixed religion and of disparity of cult - in which the Ordinary can dispense (canon 15). But, with approved practice considered, it is not lawful to put an end to the case in this way. In circumstances of this sort the truth must first be inquired into, so that it may be known whether there is need of a dispensation from mixed religion or from disparity of cult. If the doubt is not sufficiently solved, let a dispensation from mixed religion and, for caution, from disparity of cult be requested; indeed, it suffices to request a dispensation from mixed religion, because the Holy See joins to a dispensation from that impediment a dispensation for caution from the impediment of disparity of cult.

In inquiring into the truth, first let it be seen whether the matter can be proved directly, namely by documents or by witnesses.[2] If direct arguments are lacking or do not make full faith, recourse should be had to indirect proof taken from presumptions; in carrying out this business, the norms which follow hold:

a) In doubt concerning the fact of baptism, from a response of the Holy Office:[3]

1° Baptism should not be presumed if the non-Catholic party had parents belonging to a sect which rejects Baptism, or in which Baptism is conferred only on adults; likewise if he had parents who professed that they wished to belong to no sect, and that they honored the Supreme Being rather by upright morals, as they say, than by any special cult.

2° Baptism should be presumed if the parents belonged to a sect which holds Baptism necessary, or in which at least ordinarily it is conferred on children, and the same parents were zealous in their sect; likewise, if only one of the parents, who had the chief role in education, was zealous in his sect, which holds Baptism as necessary, provided that the other spouse is not then known to have been positively opposed to the conferral of Baptism.

3° But if each parent was negligent in the sect, or belonged to a sect which indeed retains Baptism but does not hold it as necessary; likewise if, after inquiry has been made, it is unknown or not sufficiently established whether that one parent had the chief role in education who, in his sect holding Baptism necessary, was zealous, in these cases recourse must be had to the Holy See.

b) In doubt concerning the validity of baptism, from a response of the Holy Office:[4]

1° With regard to heretics whose Rituals prescribe the conferral of Baptism without the necessary use of essential matter and form, the particular case must be examined.

2° With regard to others, who baptize validly according to their Rituals, Baptism must be judged valid. But if the doubt persists even in the first case, Baptism must be judged valid in order to the validity of marriage.

3° But if it is certainly known that there is no Baptism according to the actual custom of that sect, the marriage is null.

2. When marriage has been contracted, because of the favor of law one must stand for the value of the marriage until it is certainly proved that one party was baptized and the other was not baptized (canon 1070, § 2, compared also with canon 1014); understand: that one party was baptized in the Catholic Church, or was converted to it from heresy or schism. Hence a marriage is to be presumed valid:

a) Between a party certainly baptized Catholicly and a party doubtfully baptized.

b) Between two parties doubtfully baptized Catholicly.

c) Between a party doubtfully baptized Catholicly and a party certainly not baptized.

Objection. If one party was doubtfully baptized Catholicly, and the other certainly was not baptized, one cannot stand for the value of the marriage. For doubtful baptism in order to marriage is presumed valid.[5]

Response. The assertion concerning doubtful baptism, insofar as there is question of a contracted marriage, seems unable to be reconciled with the clear text of canon 1070, § 2 and canon 1014, and

therefore no longer holds.

[1] Holy Office, April 3, 1878.

[2] To prove that baptism was conferred, if prejudice is done to no one, one witness above every exception is sufficient, or the oath of the baptized person himself, if he received baptism at adult age (canon 779).

[3] August 1, 1883 (*Collectanea*, n. 662).

[4] November 17, 1830 (*Collectanea*, n. 649).

[5] Holy Office, September 9, 1868; July 7, 1880; August 1, 1883, etc.

Article V. Sacred Order

782 I. Major or sacred Orders, that is, the Episcopate, Presbyterate, Diaconate, and Subdiaconate, diriment marriage (canon 1072, compared with canons 949 and 950).[1] There is dispute concerning those who received sacred Order without sufficient knowledge of the obligation of celibacy, or compelled by grave fear. For the rest, canon 214, § 1 states: "A cleric who, compelled by grave fear, received a sacred Order and afterwards, once the fear was removed, did not ratify the same ordination at least tacitly through exercise of the Order, while nevertheless wishing by such an act to subject himself to clerical obligations, is to be reduced to the lay state by sentence of a judge, once the coercion and defect of ratification have been legitimately proved, without any obligations of celibacy and of the canonical hours."

Minor clerics can indeed enter nuptials, but, unless the marriage was null by reason of force or fear inflicted upon them, they fall by the law itself from the clerical state (canon 132, § 2).

II. Sacred Order as such does not diriment marriage by divine law, whether natural[2] or positive, but merely by ecclesiastical law. Not by divine natural law, that is, by force of the nature of sacred Order. For this is not absolutely incompatible with obligations essential to sacred Order, as is evident from approved practice in the Eastern Church and from dispensations granted by the Church; and those dispensations furnish a new argument, because the Church cannot dispense in divine natural law. Nor by divine positive law, that is, law founded in a special disposition of Christ. This is likewise deduced from approved practice and dispensations, of which there has just been discussion. It remains therefore, as we shall say, that sacred Order as such diriments marriage by ecclesiastical law alone. I said as such; for there is dispute whether the solemn vow of chastity, which according to many is attached to sacred Order, diriments marriage by divine law. Concerning this, see below (n. 784), where we adhere to the opinion which derives the invalidating force of a solemn vow from ecclesiastical law alone.

III. The Church established the diriment impediment by reason of the Order itself; in other words, she annexed the impediment to the Order itself. Whether she also annexed it to the vow is disputed. By reason of the Order itself, as is evident from the fact that canon 1072 constitutes those placed in sacred Order absolutely incapable, so that even those who excluded the vow would be held by the impediment. It is disputed whether the Church also annexed the impediment to the vow, if it is emitted. Now it seems that this must be affirmed, if one considers both the things which Boniface VIII established in the single chapter *de voto et voti redemptione*, III, 15, in the Sext; and the authority of other Pontiffs in the single chapter, title 6, *de voto*, in the Extravagants of John XXII; and the Constitution

Inter praeteritos of Benedict XIV, § 41, December 5, 1749, with proposition 72[3] proscribed in the Syllabus of Pius IX also being compared. I said "if it is emitted" (St. Alphonsus VI, 808, 809). For:

It is disputed, first, whether there has existed a law of emitting a vow in the reception of sacred Order. Now Wernz-Vidal, in order to prove its existence, speaks thus: "Certainly from the ancient tradition of the Western Church, from Gregory the Great onward, men were not admitted to major Orders unless they previously professed chastity. This profession according to the obvious meaning contains a true vow of perfect chastity. But by no solid argument can that fact, already in itself rather unbelievable, be demonstrated: that the Latin Church, having abandoned her ancient and more perfect practice of exacting celibacy also from a vow of perfect chastity, adopted the less perfect discipline of the Greeks, who impose upon a celibate cleric approaching major Orders the obligation of chastity by ecclesiastical law alone. Nor can adversaries assign by some probable reason the time when at last that wondrous change of ancient discipline was made. Therefore the singular prerogative and dignity of the secular clergy of the Latin Church, by which it follows the evangelical counsel of chastity in the more perfect form and mode of a vow, is to be retained with all force and constancy."[4]

It is disputed, secondly, whether the law of emitting a vow in the reception of sacred Order continued to be in force after the new Code. This may seem doubtful to someone, because the stated law is with difficulty drawn out of the Code, and therefore, with canon 6, 6° considered, seems to have been abolished.

Nevertheless the law seems to persist: both because canon 6, 6° does not seem applicable to the stated law, as introduced by custom;[5] and because the word sacrilege occurring in canon 132, § 1 can regard also the vow annexed and to be annexed to the Order; and once this is admitted, the law is contained at least implicitly in the Code; and because at least because of doubt one must not depart from the old law (canon 6, 4°).

IV. The penalties established against major clerics attempting marriage are:

1. Excommunication *latae sententiae*, simply reserved to the Apostolic See; clerics moreover, if after having been warned during the time determined beforehand by the Ordinary according to the diversity of circumstances, they have not repented, are to be degraded (canon 2388, § 1).
2. Irregularity (canon 985, 3°).
3. Loss of office (canon 188, 5°).

Note. The penalties set forth have been established also against those who contract merely civilly, although an act of this sort lacks even the appearance of marriage (cited canon).

V. The Church never dispenses in the impediment of Order with Bishops, scarcely ever with presbyters, and not easily with deacons and subdeacons.

But whenever a dispensation is granted, it is enjoined upon the cleric that, reduced to the lay state, he in no way exercise the Orders received. By this injunction the fundamental principle of the Latin Church is preserved, namely, that clerics "cannot attend at the same time to pleasures and carnal desires and to ecclesiastical services." So chapter 3, *de conversione coniugatorum* (III, 32). But the obligation of reciting the Divine Office is commuted into other works of piety.[6]

[1] Council of Trent, session 24, canon 9.

[2] That is, by reason of the character of the Order itself.

[3] "Boniface VIII was the first to assert that a vow of chastity emitted in ordination renders nuptials null."

[4] Op. cit., n. 284.

[5] Cf. Sacred Congregation of the Council, January 10, 1920.

[6] Vlaming, I, n. 301.

Scholion. On Sacred Order in the Eastern Churches

783 I. Sacred or major Order also in the Eastern Churches constitutes an impediment of marriage; in other words, major clerics after ordination cannot enter marriage, neither a first marriage nor, after the death of the first wife, a second.[1] Except, with regard to Maronites and Syrians, the Subdiaconate, since they do not reckon it among the major Orders.

II. Sacred Order constitutes a diriment impediment: 1° for Italo-Greeks;[2] 2° for Ruthenians, at least with regard to presbyters;[3] 3° for Maronites and Syrians with regard to deacons and presbyters;[4] 4° for Romanians;[5] 5° most probably, not to say certainly, for the other churches. For first, Benedict XIV adheres to this opinion in the Constitution *Eo quamvis*.[6] Next, the style of the Roman Curia embraces this opinion; namely, as Benedict XIV admits in the Constitution *Anno vertente* of June 19, 1750,[7] this opinion was already received in his time among the Roman tribunals and is in force now. Then, in the Instruction of the Sacred Congregation of Propaganda Fide to the Bishop of the province of Alba Iulia,[8] marriage after Subdiaconate is said to be attempted, that is, contracted invalidly. Finally, there is added the consensus of the Orientals themselves, both Catholic and schismatic. But the fact that Benedict XIV in the Constitution *Anno vertente* pronounces that this controversy has not yet been defined by any apostolic decree does not prevent the opinion defended from being called almost certain.[9]

[1] Nevertheless married men can receive the sacred Orders of Subdiaconate, Diaconate, and Presbyterate, and, once these have been received, use the marriage entered before ordination. But married men cannot be admitted to the Episcopate without dispensation, nor can they, once made Bishops, use a marriage perhaps contracted previously (canon 13 of the Trullan Council; Benedict XIV, Constitution *Etsi pastoralis*).

[2] Canon 6 of the Trullan Council (692).

[3] Synod of the Ruthenians, 1720.

[4] Synod of Lebanon (1736); Synod of Sciarf (1888).

[5] Provincial Synod of the Romanians, 1883.

[6] May 4, 1745.

[7] June 19, 1750.

[8] March 24, 1858.

[9] Wernz-Vidal, op. cit., n. 286.

Article VI. Religion

784 I. Religious who have professed solemn vows,[1] or simple vows to which, by special prescription of the Apostolic See, the force of invalidating nuptials has been added, invalidly attempt marriage (canon 1073). Force of this sort has been added to simple vows emitted by scholastics in the Society of Jesus, as is evident from the Constitutions of Gregory XIII *Quanto fructuosius*[2] and *Ascendente Domino*.[3] Insofar as in the reception of the Subdiaconate a solemn vow of chastity is emitted which diriments marriage, see n. 782.

It is disputed whether a solemn vow diriments marriage by divine law, whether natural, that is, by its own force, or positive, or by ecclesiastical law. Now it seems to diriment marriage by ecclesiastical law alone: both because the former opinion is proved by no argument, although such force of a solemn vow is not to be asserted without an argument; and because Leo XIII,[4] by reckoning the impediment of religion among ecclesiastical impediments, in the obvious sense excludes divine law; and because a solemn and a simple vow do not seem to differ in nature or substance (vol. I, n. 1218). Once this is posited, it is admitted with difficulty that invalidating force regarding marriage belongs to the former, since the same cannot be affirmed of the latter.

II. The penalties established against religious attempting marriage are:

1. Excommunication. "Regulars or nuns after a solemn vow of chastity, and likewise all presuming to contract marriage, even only civilly, with one of the aforesaid persons, incur excommunication *latae sententiae* simply reserved to the Apostolic See... But if they are professed of perpetual simple vows, whether in Orders or in religious Congregations, all, as above, are held by excommunication *latae sententiae* reserved to the Ordinary" (canon 2388).
2. Irregularity for those who are bound by religious vows, even simple and temporary vows (canon 985, 3°).
3. Dismissal from religion. Religious are to be held by that very fact as legitimately dismissed if they attempt or contract marriage or even a civil bond, as they say (canon 646, § 1, 3°).
4. If religious have been constituted in sacred Orders, they are moreover held by loss of office (canon 188, 5°), and if, after they have been warned during the time determined beforehand by the Ordinary according to the diversity of circumstances, they have not repented, they are to be degraded (canon 2388, § 1).

Note. The penalties set forth have been established also against those who contract merely civilly (cited canon).

III. Today the Church dispenses in solemn religious profession not only for a cause which concerns the public good, but also for a very grave cause regarding private good. Nevertheless a solemn vow of chastity is commonly not totally removed by the Holy See, but in such a way that the dispensed person, outside the licit use of marriage, also sins against the vow, and the faculty of marrying is restricted to one marriage.

IV. Things to be noted. 1. One who, having obtained an indult of secularization, leaves religion remains freed from vows, while the burdens annexed to major Order stand firm if he was in sacred Orders (canon 640, § 1, 2°); therefore the aforesaid indult does not remove the diriment impediment of sacred Order.

2. The solemnity of vows is extinguished by that very fact in one who legitimately pronounces simple vows in another religious Congregation, unless something else is expressly provided in the apostolic indult (canon 636); and by the fact that the solemnity of vows is extinguished, the force of invalidating marriage also ceases.

[1] A vow is solemn if it has been recognized as such by the Church; otherwise it is simple (canon 1308, § 2). But the Church recognizes as solemn the perpetual vows emitted in some religious Order, whether by regulars or by nuns. Nevertheless, although the vows of nuns are solemn by institute, for some places by prescription of the Apostolic See they are simple (canon 488, 2° and 7°).

[2] February 1, 1583.

[3] May 25, 1584.

[4] Letters of the Holy Office, February 20, 1888 (*Collectanea*, n. 1685).

Article VII. Raptus

785 With canon 1074 considered, a twofold raptus can be distinguished, properly so called and less properly so called; each diriments marriage.

I. Notion of raptus properly so called. Raptus properly so called as an impediment is: the violent abduction of a woman, with marriage in view, and her retention under the power of the abductor.

II. Existence of the impediment. Between a male abductor and a woman abducted with marriage in view, as long as she has remained in the power of the abductor, no marriage can stand (canon 1074, § 1).

III. The required conditions are evident from the notion handed down. Namely, there is required:

1. Abduction, that is, from place to place; for example, from city to city, from street into house, from one house into another (St. Alphonsus VI, 1107), or even from one room into another, if the house is very large and is the domicile of several families.

2. Violent abduction. Unjust moral force, or unjust fear inflicted upon the woman, suffices. Therefore there is required the abduction of a woman unwilling or resisting. Nevertheless the impediment seems also to be present if a woman, deceived by fraud or circumvented by deceitful solicitations, indeed follows the man, but does not know and does not will that she is being abducted for the purpose of entering marriage.[1] The impediment is not present if the woman consents to the abduction so that she may freely enter nuptials with the abductor; and this holds even if she is still subject to parents or tutors and they are unwilling (St. Alphonsus VI, 1107).

Here, however, it can be asked whether fear inflicted for the purpose that the woman be abducted for marriage is always unjust, namely even if there is question of a betrothed woman who without just cause refuses to enter marriage. Several affirm this, because the aforesaid manner of acting is unjust at least as to mode, namely insofar as no one by private authority can coerce a betrothed woman to nuptials in such a way. But this cannot be said universally; or it can happen that this is done without injustice, for example, if a betrothed man by fear of an evil which it is lawful to inflict abducts a betrothed woman unjustly refusing, so that at last he may arrive at the marriage owed to him.

3. Of a woman, whether honorable or corrupted, whether virgin or widow. But the impediment is not had if a woman abducts a man (St. Alphonsus VI, 1107).

4. For the sake of contracting marriage. Therefore the impediment of raptus is not had if a woman is abducted, for example, for the sake of acquiring money or solely for satisfying lust (canon 1074, § 1).

5. And her detention under the power of the abductor; namely, the impediment lasts as long as the woman remains in the power of the abductor, even if now she freely consents to the nuptials themselves.

IV. Cessation of the impediment. But if the abducted woman, separated from the abductor and established in a safe and free place, has consented to have him as husband, the impediment ceases (canon 1074, § 2).[2]

V. Notion of raptus less properly so called. Raptus less properly so called as an impediment is: the violent retention of a woman in the place where she stays or to which she has freely gone, with marriage in view.

VI. Existence of the impediment. "With regard to the nullity of marriage, violent retention of the woman is held equivalent to raptus, namely when a man violently detains a woman with marriage in view in the place where she stays or to which she has freely gone" (canon 1074, § 3).

VII. The required conditions, after what has been said, scarcely need any exposition. Namely, there is required: 1° violent retention, that is, either by physical force or by moral force, namely unjust fear; 2° of a woman, as was said concerning raptus properly so called; 3° in the place where she stays or to which she has freely gone. If she is retained in a place to which she has been led violently, the impediment of raptus properly so called subsists; 4° with marriage in view.

VIII. Cessation of the impediment takes place in the same way as cessation of the impediment of raptus properly so called.

Note 1. It makes no difference whether one violently abducts or detains the woman by himself or through another.

Note 2. The impediment of raptus, both properly and less properly so called, although directly it touches only the faithful party, nevertheless indirectly also affects the infidel party. And so it exists even between an infidel and a faithful person, and this whether the abducted woman is faithful or infidel.

IX. The penalties established are: One who, with marriage in view or for the sake of satisfying lust, has abducted by force or deceit an unwilling woman, or a consenting woman of minor age but with the parents or tutors unaware or contradicting, is by the law itself to be held excluded from legitimate ecclesiastical acts, and moreover is to be punished with other penalties according to the gravity of the fault (canon 2353). Note especially that the penalty does not touch raptus less properly so called, but it does touch several who have not contracted the impediment of raptus properly so called.

X. Dispensation. Although the impediment of raptus and quasi-raptus is of ecclesiastical law, nevertheless the Church dispenses in it only very rarely, namely by permitting the abductor or quasi-abductor to enter nuptials with the abducted or quasi-abducted woman not yet established in a safe place. Furthermore, if the impediment has ceased, according to the common opinion it is not lawful for the pastor to assist at the marriage except by license of the Ordinary, to whom it belongs to judge concerning the cessation of the impediment.

[1] Cf. Sacred Congregation of the Council, June 25 and August 27, 1864.

[2] Sacred Congregation of the Council, August 20, 1769; March 14, 1772; Council of Trent, session 24, *de reformatione matrimonii*, chapter 6.

Article VIII. Crime

786 The impediment of crime arises from two crimes, namely adultery and spouse-murder, and indeed, with certain conditions fulfilled, in four cases. But the cases according to canon 1075 are: 1° adultery with a mutual promise of marriage; 2° adultery with attempted marriage; 3° adultery with spouse-murder; 4° spouse-murder alone.

§ I. Adultery with a Promise of Marriage

787 Canon 1075, 1° states: "They cannot validly contract marriage who, while the same legitimate marriage endures, have consummated adultery between themselves and have mutually given faith to each other concerning marriage to be entered." Therefore two things must concur: adultery and the promise of marriage, and indeed they must concur or be joined while the same legitimate marriage endures.

I. The adultery must be:

1. True. Hence it is required that at least one or the other spouse be joined in a valid marriage. For the rest, it does not matter whether the marriage is consummated or only ratified.
2. Consummated, namely by copula of itself apt for generation.
3. Formal on each side, and this in such a way that by both, at least one and the same marriage has had injury inflicted upon it. Hence it is required that each party know at least the matrimonial state of one and the same person; but it is not required that each know the marriage of the other; nor is it sufficient that each know himself or herself to be joined in marriage.

Let there be cases: Peter, unmarried, has relations with Anna, a married woman, while ignorant of her marriage. There is not adultery formal on both sides. Paul, married, has copula with Rose, married; but neither knew the other's marriage. Injury is not inflicted upon one and the same marriage. Henry, married, and Bertha, married, commit adultery. Henry knows Bertha's marriage, but Bertha is ignorant of Henry's marriage. Each party inflicts injury upon the same marriage (St. Alphonsus VI, 1036). But the reason why injury must be inflicted upon the same marriage by both spouses is this: that the impediment was established lest hope of marriage lead to plotting the death of a spouse by the common design of each.

II. The promise must be:

1. True. Therefore desire does not suffice, nor, as is more commonly taught, a fictitious promise. For "faith given" is required; moreover, since we are dealing with odious things, the law must be interpreted strictly, and therefore concerning a promise properly so called (St. Alphonsus VI, 1039).
2. Duly intimated and accepted. For thus a promise is perfected or completed. Hence the silence of the other party does not suffice of itself (St. Alphonsus VI, 1037).
3. Absolute, or, if it is not absolute, conditional, as follows: If the promise was made under a condition concerning the present or concerning the past, it is required that the condition exist. If it was made under a suspensive condition concerning the future, the condition must be fulfilled, and indeed, as is more commonly taught, before the death of the innocent spouse. The reason why the condition must exist or be fulfilled is this: because otherwise there is not simply a promise; yet such a promise is judged to be required, since we are dealing with odious things (St. Alphonsus VI,

1040). But the suspensive condition must be fulfilled before the death of the innocent spouse, because otherwise there is not simply a promise which gives occasion for plotting the death of the spouse.

4. Mutual; for canon 1075, 1° declares: "and they have mutually given faith to each other."

5. It is required, with sufficient probability, that it be a promise concerning marriage to be entered after the death of the spouse. For the cited canon speaks of marriage to be entered. But a promise about marrying while the prior spouse is living is rather a promise about attempting marriage. Hence we judge that the impediment does not subsist if, for example, Peter promises Anna, a married woman, that he will enter marriage after she has obtained a civil divorce.

6. Finally, it is required with sufficient probability either that each, while promising, knew that one or the other was married, or that the promise, after that knowledge was received, was expressly or tacitly[1] confirmed. The reason is that both the promise and the adultery must give occasion for seeking the death of the innocent spouse.

III. Joining of adultery and promise. Adultery and promise must have place while the same legitimate marriage endures; therefore they must have existed together, and this while the same legitimate marriage persisted. But it does not matter whether the promise precedes the adultery or the reverse.

1. They must have existed together. Hence if the promise preceded the adultery, it is required that it was not revoked before the adultery. But that it is revoked after the adultery has been committed effects nothing, because they already existed together.

2. They must have existed together while the same spouse was living. Hence the impediment does not arise if, for example, Peter, while his prior marriage stands, had copula with Anna, unmarried, and promises marriage to her during the time of his second marriage.

[1] For example, Peter promises marriage to Anna while ignorant of her marriage. Afterwards, once Anna's marriage has become known, moved by the promise made, he commits adultery with her.

§ II. Adultery with Attempted Marriage

788 Canon 1075, 1° states: "They cannot validly contract marriage who, while the same legitimate marriage endures, have consummated adultery between themselves and... have attempted that marriage itself, even by a merely civil act." Therefore there are required:

I. Adultery, and of the sort set forth in n. 787.

II. Attempted marriage. By this is understood here an act by which two persons, knowing that because of the impediment of ligamen they cannot enter another valid marriage, truly offer conjugal consent to each other. It is required that each be conscious of the impediment, because each must attempt marriage. For the rest, with regard to the consent to be offered, it is the same whether it is offered in the form required by law or without it, even if it is done merely civilly. Mere concubinage as such does not involve matrimonial consent, although it can give occasion for offering it, or even, with the custom of the place considered, carry it with itself.[1]

III. The joining between adultery and attempted marriage must be the same as between adultery and the promise of marriage (n. 787).

Corollary. All those who, after a validly contracted marriage, seek and obtain a civil divorce, and then contract and consummate another civil marriage, incur this impediment; and therefore, although the prior marriage has been dissolved, they cannot enter marriage without a dispensation.[2]

[1] Sacred Congregation of Propaganda Fide, January 14, 1844.

[2] Vlaming, I, n. 318.

§ III. Adultery with Spouse-Murder

789 Canon 1075, 2° states: "They cannot validly contract who, likewise while the same legitimate marriage endures, have consummated adultery between themselves and one of them has perpetrated spouse-murder." Therefore there are required:

I. Adultery. But this must not only be, as was set forth in n. 787, true, consummated, formal on both sides, and formally injurious to the same spouse; it must also be such with respect to precisely that spouse who is killed. In other words, here it does not suffice that the matrimonial state of one or the other be known to each, but moreover it is required that the matrimonial state of that one whose spouse is killed be known to each. For, with the end of the law considered,[1] it seems to be required that adultery, and indeed the adultery of each party, influence the killing of the spouse. But this does not have place if one or the other party is ignorant of the matrimonial state of the spouse killed. There is added that the ancient law speaks of adultery injurious with respect to the spouse killed (St. Alphonsus, *Homo Apostolicus*, tract 18, n. 63, where he requires "that each adulterer be conscious of the prior marriage," that is, of the marriage which was dissolved by the killing of one spouse).

II. Spouse-murder; concerning which it must be observed:

1. Plotting of death perpetrated by one or the other accomplice in adultery suffices, whether physically or morally.
2. Death must truly have followed, and from that plotting.
3. The plotting must have proceeded from the intention of marrying the accomplice in adultery. "Hence it is inferred that if a man kills his wife so that he may enjoy the adulteress more freely, or for another cause, even if that woman consented to the homicide but without intention of marriage, the impediment is not contracted" (St. Alphonsus VI, 1036). For the rest, here it is certainly not necessary that that intention be present in both adulterers, since the plotting of both is not required. But it is disputed whether the stated intention must be manifested to the accomplice in adultery. Now this seems to be denied, because in this case the law does not require mutual conspiracy. Nevertheless the intention seems to have to be externalized, as they say, because the Church cannot, or at least is not accustomed to, make laws concerning merely internal acts (St. Alphonsus VI, 1034).

III. Joining between adultery and spouse-murder. 1. Adultery and spouse-murder must be committed while the same legitimate marriage stands.

2. It is disputed whether adultery must have preceded not only the death of the spouse, but also the physical plotting of death, for example the administering of poison or the infliction of a wound. Now this is affirmed with sufficient probability, because, with the end of the law considered, the impediment seems to have been established lest the adultery of each should influence the killing of the innocent spouse (p. 634). Once this is posited, it is necessary that the adultery precede the

physical plotting of death itself (St. Alphonsus VI, 1036, 2°). I said, however, "physical plotting," because the impediment arises even if the adultery follows the moral plotting, provided that it precedes the physical.

[1] The end of the law is lest adultery give occasion for preparing the death of the innocent spouse.

§ IV. Spouse-Murder Alone

790 Canon 1075, 3° states: "They cannot validly contract marriage who by mutual physical or moral cooperation, even without adultery, have brought death upon a spouse." Therefore there are required:

I. Cooperation or plotting of the spouse's death, and that mutual. It is the same whether each party has influenced the death physically or morally, or one physically and the other morally. Therefore command, persuasion, and approval also suffice, but not approval of spouse-murder already perpetrated. There are also those who judge that simple consent to spouse-murder to be perpetrated does not suffice, because the word moral cooperation is not sufficiently verified;[1] others, however, think otherwise for the contrary reason.

II. Cooperation or plotting done from the intention of marrying, and indeed marrying the accomplice. For although the aforesaid condition is not expressed in the law, nevertheless it is gathered from the end of the law, namely lest one come to spouse-murder through hope of marriage with the accomplice (St. Alphonsus VI, 1033). But:

It is disputed, first, whether the aforesaid intention must be in each of those plotting. Most deny this, because the end of the law consists in this: that the occasion of plotting against the life of the legitimate spouse be removed. That occasion is sufficiently taken if even one of those plotting had, in the plotting, the intention of marrying the accomplice. The Austrian Instruction, § 37, openly favors this opinion. A few affirm it, because just as each must cooperate in the spouse-murder, so almost consequently it seems required that each come to the crime through hope of marriage. The pastoral Instruction of Eichstatt seems to favor this opinion.

It is disputed, secondly, whether the intention of marrying must be manifested to the other party before the spouse-murder. Now this is affirmed with sufficient probability, because otherwise that intention would not influence the fact that the mutual plotting was done through hope of marriage. But the manifestation can be made both by words and by gifts, familiarities, and similar things (St. Alphonsus VI, 1034).

III. Death must have followed, and indeed from the plotting set forth. It does not suffice that death, although attempted, followed, for example, from the negligence of the wounded person, or from the inexperience or lack of care of the surgeon.

Question 1. How is the impediment of crime multiplied?

Response. It is multiplied: 1° if one of the species of the impediment is verified with regard to several marriages;[2] 2° if several species of the impediment are verified with regard to one marriage,[3] although some judge that in the case in which promise and attempted marriage concur with adultery, there is added only a circumstance to be expressed, but the impediment is not multiplied; 3° if several species of the impediment are verified with regard to several marriages;[4] 4° if, with adultery concurring to constitute the impediment, each party is married,[5] although some again judge that in this case there is added only a circumstance to be expressed, but the impediment is not multiplied.

Question 2. To what extent are infidels bound by the impediment of crime?

Response 1. If each accomplice is an infidel, the impediment does not arise, even if they are afterwards converted.[6]

Response 2. If one accomplice is a faithful person and the other an infidel, the impediment arises if the faithful person also posited those things which are required for the impediment. Therefore the first species of the impediment arises if the faithful person, marriage having been promised, commits adultery with the infidel; the second species, if the faithful person commits adultery and attempts marriage with the infidel; the third species, if the faithful person perpetrates the killing; the fourth species, if the faithful person was a participant in the plotting (St. Alphonsus VI, 1037).

Response 3. If one of the requisites for the impediment had place in infidelity, and the other after Baptism, the impediment does not arise. Except if the promise or attempted marriage happened in infidelity, but the parties after Baptism persevere in it and commit adultery.

Question 3. To what extent can a dispensation be obtained in the impediment of crime?

Response. A dispensation, when a proportionate cause is present, is granted. Nevertheless, if the impediment arises from public spouse-murder, whether one or both plotted, outside danger of death dispensation can scarcely be hoped for.[7]

Note. A dispensation given by the Holy See upon a ratified and non-consummated marriage, or permission made for passage to other nuptials because of the presumed death of a spouse, always carries with it dispensation from the impediment arising from adultery with promise or attempted marriage, if any such is needed, but by no means dispensation from the impediment of which canon 1075, nn. 2, 3 treats, that is, from the impediment of crime of the third and fourth species (canon 1053).

Warning. "Suspicion of an impediment contracted can sometimes be moved by those who during the prior marriage committed adulteries; who a little after the death of the prior spouse fly to second nuptials, especially if the prior spouse was sick for a long time before death; a male servant who is about to enter marriage with his recently widowed mistress; or a recently widowed man who is about to contract marriage with his female servant or with his wife's sister, etc.

With regard to the manner of inquiring, one must proceed cautiously. Concerning occult adultery, it can be asked, for example, whether he already had familiarity with that person while the prior spouse was living; whether he ever indulged too much familiarity with her. If adultery had place with her, let him be asked further whether already then there was speech between them about a future marriage, etc. Concerning occult spouse-murder, it can be asked whether he at any time desired the death of the prior spouse; whether he gave any cause for that person's death. From the responses a prudent confessor will easily detect guilt or innocence."[8]

[1] So, for example, d'Annibale, III, § 447.

[2] For example, Peter first, while his marriage with Anna stands, promises marriage to Titia and commits adultery with her; then, while his marriage with Bertha stands, he again promises marriage to Titia and commits adultery with her.

[3] For example, Peter, while his marriage with Anna stands, promises marriage to Titia and commits adultery with her; then he kills Anna.

[4] For example, Peter, while his marriage with Anna stands, promises marriage to Titia and commits adultery with her; then he kills Anna. The same Peter, while his marriage with Bertha stands, again promises marriage to Titia and commits

adultery with her; then he kills Bertha.

[5] For example, Peter and Titia, being married, mutually promise marriage to each other and commit adultery.

[6] Sacred Congregation of Propaganda Fide, August 23, 1852, ad 5 (*Collectanea*, n. 1079).

[7] Benedict XIV, Constitution *Pastor Bonus*, April 13, 1744.

[8] Aertnys-Damen, II, n. 745.

Article IX. Consanguinity

We shall speak first about consanguinity according to itself, then about consanguinity insofar as it is an impediment of marriage.

§ I. On Consanguinity according to Itself

791 I. Notion. Consanguinity is nearness between persons arising from this: that by carnal generation they descend either one from the other or jointly from the same proximate stock. It is called "proximate"; for remotely all human beings descend from one Adam or Noah, and yet for that reason they are not called consanguineous. Consanguinity is computed by lines and degrees (canon 96, § 1). Therefore, so that the definition handed down may be more fully developed, three things must be attended to in consanguinity: namely stock, line, and degree.

1. Stock is that person from whom others proceed as from a common proximate root. Commonly the stock consists of two persons, namely parents; sometimes of one person alone, namely if someone begot offspring from several persons.

2. Line is a series of persons descending from the same proximate stock. A twofold line is distinguished: direct and oblique.

The direct line is a series of persons of whom one proceeds from another, either immediately or mediately. It is called descending or ascending according as the series is numbered by descending from those begetting to those begotten, or by ascending from those begotten to those begetting.

The oblique line, transverse or collateral, is a series of persons who proceed from a common proximate stock, but not one from another, as brother and sister, maternal uncle and niece. It is distinguished into equal and unequal, according as two persons are distant from the common proximate stock by an equal degree or distance, as brother and sister, or by an unequal one, as maternal uncle and niece.

3. Degree is the measure of distance of one person from another. But degrees are computed thus:

a) In the direct line there are as many degrees as generations, or as many persons with the stock removed (canon 96, § 2). Thus, for example, a son is distant from his father by one degree, from his grandfather by two degrees. And both civil law and ecclesiastical law follow this mode of computing degrees in the direct line. Otherwise one must speak in the collateral line.

b) In the equal collateral line there are as many degrees as generations in one tract of the line, or there are as many degrees as persons in one tract, with the stock removed. Hence, for example, two brothers are consanguineous in the first degree, two first cousins in the second degree of the equal collateral line.

c) In the unequal collateral line there are as many degrees as generations in the longer tract, or as many degrees as persons in the longer tract, with the stock removed. Thus, for example, a maternal

uncle and niece are consanguineous in the second degree of the unequal collateral line.[1] Degrees are computed according to the longer series because the reason of nearness and distance of collateral blood-relatives is taken from the fact that they are united in the common proximate stock. Hence they cannot be more united among themselves than they are united with the stock. But this would occur if the computation had to be made according to the shorter series.

But so that consanguinity may be perfectly exhibited, both the nearer and the more remote degree must be indicated. This is done, for example, if there is question of a maternal uncle and niece, by saying: they are consanguineous in the second degree mixed with the first, or touching the first.

Note. Civil laws which for the direct line follow the same mode of computing as ecclesiastical law, in the collateral line compute the generations of each tract, or the persons of each tract, with the stock removed. Hence, for example, two brothers are consanguineous in the second degree, two first cousins in the fourth, a maternal uncle and niece in the third degree. This mode of computing must be attended to when there is question of civil matter, for example, of the civil effects of marriage, as of hereditary succession.

II. Division. Consanguinity is divided:

1. Into legitimate and illegitimate, according as it arises from conjugal copula or from illicit intercourse. But since in each case there is a natural communion of blood, this division is not attended to in order to contracting marriage.
2. Into full and less full. The former exists among those who have father and mother as common stock; the latter among those who have only father or mother as common stock. The former are called full siblings; the latter consanguineous or uterine, according as father alone or mother alone is their common stock. But neither is this distinction attended to with regard to the impediment.
3. Into agnation and cognation, according as the communion of blood is transmitted through the masculine or feminine line. Those joined in the former way are called agnates; those joined in the latter way cognates.
4. Into simple and multiple. The former is had when two persons have only one common stock and ascend to the stock by only one way. The latter exists when each party has a double or multiple common stock, or each or one of the parties ascends to the same stock by a double or multiple way.
5. Into consanguinity of the direct line and of the oblique line, as was set forth on p. 637.

III. Mode of finding the degrees. The degree of consanguinity is found by making a genealogical tree. This is done thus: if the common stock is known, write that person's name on paper, then below him here and there the names of those descending from him through each line, until you arrive at the persons whose degree of consanguinity is being sought.

If the stock is unknown, first write the names of those whose consanguinity must be detected, then above the name of each put the names of the ascendants, until you arrive at the common stock. Let the schema be:

Benedict

1 Henry Mary 1 2 Robert Rose 2 3 Peter Jacoba 3

Peter and Jacoba are consanguineous in the third degree of the equal collateral line. Peter and Rose are in the third degree of the unequal collateral line, or - so that the consanguinity may be determined in every respect - in the third degree mixed with the second, or in the third degree touching the second.

[1] An unequal degree in the collateral line is called a mixed degree.

792 IV. Multiplication of consanguinity can occur in two ways: 1° by reason of the double or multiple way by which one or the other, or each, of the blood-relatives descends from one common stock; 2° by reason of a double or multiple common stock.

Three causes of multiplication are assigned:

1. The first cause of multiple consanguinity between two persons is that someone among their ascendants has offspring from a person consanguineous to himself. From this cause, indeed, multiple consanguinity can follow both in the first and in the second way: in the second, namely, insofar as besides the nearer common stock there is also another, more remote, common stock, to which one ascends without each line passing through the nearer common stock.[1]

Let the schema for double consanguinity with one common stock be:

Peter

1
2 Luke

1 Rose 1 1 (1) Mark 1 1 (2) Andrew ..... X ..... Clara 2

3 Mary

(3) Lucius 3

1, 1 Nilus

It is asked in what degree, by how manifold a consanguinity, and by what mode of multiplication Lucius and Mary are joined. From this schema it is evident that Andrew and Clara, that is, the father and mother of Lucius, were joined to each other in the second equal degree from the common stock Peter. But hence it happens that their son Lucius is bound with Mary in the third equal degree, not by a single consanguinity, but by a double one, yet not by a consanguinity of double stock but only of one common stock.

For double consanguinity with a double common stock from the same cause, let the schema be:

Mark

1 Luke

2 Mary

Jacob 1

..... X ..... | 3 Peter (2)

2 Paul (1)

(1) Vincent 2 | (2) Flavia 3

It is asked in what degree, by how manifold a consanguinity, and by what mode of multiplication Peter and Flavia are joined. From this schema it is evident that Paul and Mary, namely the father and mother of Peter, were joined to each other in the second equal degree from the common stock Mark. Hence it happens that their son Peter is bound with Flavia in the third equal degree, insofar as Peter descends from the common stock Mark through Mary and Luke, while Flavia descends from him through Vincent and Jacob. Yet the same persons are at the same time joined in the second equal degree from the common stock Jacob, insofar as Peter descends from the common stock Jacob through his father Paul, while Flavia descends from him through Vincent. But since Peter ascends to the more remote stock Mark not only through the nearer common stock Jacob, but also by another way, through Mary and Luke, which does not pass through that nearer stock Jacob, therefore between Peter and Flavia there is a consanguinity of double stock.

The following causes always carry with them multiplication of consanguinity by reason of double or multiple stock.

2. The second cause is that persons consanguineous among themselves have begotten offspring from persons consanguineous among themselves. For example:

Anthony Charles

1 Lucretia ... X ... Paul 1 1 Peter ... X ... Mary 1

2 Jacob (2) (2) Flavia 2

3 Robert (3) (3) Magdalene 3

In this schema there are two brothers, Peter and Paul, who respectively contracted marriage with Mary and Lucretia, two sisters. Hence it happens that the descendants of each of those marriages are mutually doubly consanguineous, by reason of a double common stock: namely, by reason both of Anthony, who is their grandfather or great-grandfather on the father's or grandfather's side, and of Charles, who is their grandfather or great-grandfather on the mother's or grandmother's side. And thus Jacob and Flavia are consanguineous in a double second equal degree; Robert and Magdalene in a double third equal degree.

3. The third cause is that someone successively had offspring from several persons consanguineous among themselves. For example:

John

1 Mary ... X ... Peter ... X ... Anna 1 | | 2 Andrew (1) (1) Robert 2 | | 3 Rosalia (2) (2) Aloysius 3

In this schema John is the father of the sisters Mary and Anna, whom Peter successively knows, and from there the others descend. Therefore Rosalia and Aloysius are doubly consanguineous: first indeed in the second equal degree of the collateral line from the common stock Peter, and then also in the third equal degree of the collateral line from the common stock John.

V. The mode of detecting every consanguinity which exists between two persons is this: let a genealogy of each be made through all ascendants, both fathers and mothers, up to the third degree inclusive. Then apply these things:

1. Persons who occur in each genealogy constitute, individually, the common stock of those whose consanguinity is being sought. Note, however, that a common father and mother constitute one

stock.

2. As often as the same person recurs in the same genealogy, so often is consanguinity multiplied, because by so many ways one ascends to that stock.

[1] Cf. Holy Office, March 11, 1896, and February 24, 1899 (*Collectanea Brugenses*, I, p. 376, and IV, p. 422 sq.).

Scholion. Names of Blood-Relatives

793 There are:

I. In the direct ascending line.

1. Father (*vader, padre, pere, father, Vater*) and Mother (*moeder, madre, mere, mother, Mutter*).
2. Grandfather (*grootvader, nonno* or *avolo, aieul* or *grand-pere, grandfather, Grossvater*) and Grandmother (*grootmoeder, nonna* or *avola, aieule* or *grand-mere, grandmother, Grossmutter*).
3. Great-grandfather (*overgrootvader, bisnonno* or *bisavolo, bisaieul, great-grandfather, Urgrossvater*) and Great-grandmother (*overgrootmoeder, bisnonna* or *bisavola, bisaieule, great-grandmother, Urgrossmutter*).
4. Great-great-grandfather (*bet-overgrootvader, trisnonno* or *trisavolo, trisaieul, grand great-grandfather, Ururgrossvater*) and Great-great-grandmother (*bet-overgrootmoeder, trisnonna* or *trisavola, trisaieule, grand great-grandmother, Ururgrossmutter*).

II. In the direct descending line.

1. Son (*zoon, figlio, fils, son, Sohn*) and Daughter (*dochter, figlia, fille, daughter, Tochter*).
2. Grandson (*kleinzoon, nepote, petit-fils, grandson, Enkel*) and Granddaughter (*kleindochter, nepote, petite-fille, granddaughter, Enkelin*).
3. Great-grandson (*achterkleinzoon, pronepote, arriere petit-fils, great-grandson, Urenkel*) and Great-granddaughter (*achterkleindochter, pronepote, arriere petite-fille, great-granddaughter, Urenkelin*).
4. Great-great-grandson[1] (*abnepote, bisarriere petit-fils, grand great-grandson, Ururenkel*) and Great-great-granddaughter[1] (*abnepote, bisarriere petite-fille, grand great-granddaughter, Ururenkelin*).

III. In the equal collateral line.

1. Brother and sister.[2]
2. *Patrueles* = children of brothers (*volle neven en nichten, cugini carnali, cousins germains, first cousins, Geschwisterkinder* or *Vettern* or *Basen*).

Consobrini = children of sisters, as above.

3. *Sobrini* (*achterneef, nipote in secondo grado, arriere neveu* or *petit-neveu, great-nephew, Urneffe*) and *Sobrinae* (*achternicht, nipote in secondo grado, arriere-niece* or *petite-niece, great-niece, Urnichte*).

IV. In the unequal collateral line.

1. In the second degree touching the first there are:

a) On one side, namely in the first degree:

a) Paternal uncle (*patruus*) = father's brother (*oom van vaderszijde, zio paterno, oncle paternel, paternal uncle, Onkel*).

b) Paternal aunt (*amita*) = father's sister (*tante van vaderszijde, zia paterna, tante paternelle, paternal aunt, Tante*).

c) Maternal uncle (*avunculus*) = mother's brother (*oom van moederszijde, zio materno, oncle maternel, maternal uncle, Oheim*).

d) Maternal aunt (*matertera*) = mother's sister (*tante van moederszijde, zia materna, tante maternelle, maternal aunt, Muhme*).

b) On the other side, namely in the second degree:

a) Nephew (*nepos*) = son of a brother or sister (*neef, nipote, neveu, nephew, Neffe*).

b) Niece (*neptis*) = daughter of a brother or sister (*nicht, nipote, niece, niece, Nichte*).

2. In the third degree touching the first there are:

a) On one side, namely in the first degree:

a) Great paternal uncle (*patruus magnus*) = grandfather's brother (*oud-oom van vaderszijde, fratello dell'avolo, grand-oncle paternel, great uncle, Grossonkel*).

b) Great paternal aunt (*amita magna*) = grandfather's sister (*oud-tante van vaderszijde, sorella dell'avolo, grand-tante paternelle, great aunt, Grosstante*).

c) Great maternal uncle (*avunculus magnus*) = grandmother's brother (*oud-oom van moederszijde, fratello dell'avola, grand-oncle maternel, grandmother's brother, Grossoheim*).

d) Great maternal aunt (*matertera magna*) = grandmother's sister (*oud-tante van moederszijde, sorella dell'avola, grand-tante maternelle, grandmother's sister, Grossmuhme*).

b) On the other side, namely in the third degree:

a) Great-nephew (*pronepos*) = son of a nephew (*achterneef, nipote in secondo grado, arriere neveu* or *petit-neveu, great-nephew, Urneffe*).

b) Great-niece (*proneptis*) = daughter of a nephew (*achternicht, nipote in secondo grado, arriere niece* or *petite-niece, great-niece, Urnichte*).

[1] In Dutch it is indicated by circumlocution.

[2] Brothers and sisters are called: 1° full siblings, if they were born from the same father and from the same mother; 2° consanguineous, if from the same father but from a different mother; 3° uterine, if from the same mother but from a different father.

§ II. On Consanguinity Insofar as It Is an Impediment of Marriage

794 I. The reasons for the established impediment are:

1. Reverence owed to blood-relatives. "Naturally a man owes a certain honor to parents, and consequently to those blood-relatives who draw their origin from the same parents from nearby... But it is manifest according to the things said above (q. 142, art. 4, and q. 151, art. 4) that in venereal acts there especially consists a certain baseness contrary to honor; whence men are ashamed concerning these things; and therefore it is unfitting that such venereal commingling should take place between such persons mutually" (St. Thomas, II-II, q. 154, a. 9).

2. The danger of lust to be forestalled. "Persons joined by blood must live together mutually; whence if men were not kept away from venereal commingling, too much opportunity of venereal commingling would be given to human beings, and thus the souls of human beings would be made too soft by lust" (St. Thomas, loc. cit.).

3. Friendship to be promoted. "For while a man takes a wife from outside, all the blood-relatives of the wife are joined to him by a certain special friendship, as if they were his own blood-relatives" (St. Thomas, loc. cit.).

4. Physical harms to be averted from offspring. Now some judge that consanguinity by itself alone produces harmful effects;[1] others deny this,[2] but concede that morbid qualities, which are found in families after the manner of a certain inheritance, are transmitted more easily and in a more intense degree through marriages between blood-relatives.[3]

[1] According to Dr. Rillet the effects of marriages of this sort are: sterility, abortion, monstrosity, epilepsy, imbecility, deaf-mutism, paralysis, etc. According to Dr. Boudin, in the city of Berlin, out of 10,000 Catholics there are found 3 deaf-mutes, out of the same number of Protestants 6, out of the same number of Jews 27. But among the latter blood-relatives are more joined in marriage, and Protestants more than Catholics, as all know (Eschbach, op. cit., p. 100; cf. Garnier, *Le Mariage*, p. 81; Devey, *Des dangers des mariages consanguins*; *De Katholiek*, 1884, p. 30, 173 sq.).

[2] So Dr. Surbled, who for the sake of argument relates these things: "The very precise observations collected on the island of Batz, isolated off Roscoff in Brittany, whose inhabitants, almost all relatives, truly form only one same family under the same bell-tower, demonstrate without reply that consanguineous unions give a strong, robust race, remarkably fruitful and endowed with longevity" (*La morale dans ses rapports avec la medecine de l'hygiene*, vol. I, chap. XVI).

[3] Dr. Garnier: "Consanguinity must not... be confused with heredity or the transmission of diseases, affections, and constitutional defects, apparent or hidden... This danger exists for all unions tainted by any hereditary defect, for parents transmit to their children, by generation, the morbid predispositions with which they are affected, as they do their qualities and their defects, their physical and moral resemblance. But notable differences are observed in this regard in the results. In unions between unrelated persons, the reaction of contrary, opposed elements tends to neutralize and annihilate morbid germs; all great physicians have observed this, in effect, that chronic, hereditary affections, the deformities of a family, are extinguished and disappear in successive generations through well-made crossings." (*Le Mariage*, article "Mariages consanguins"). Dr. Surbled: "Performed between diathetic or degenerate persons, a consanguineous union is indubitably pernicious, deplorable, and can give only bad fruits; it unites weakened, sick, deviated constitutions... The grave diseases of ancestors, constitutional diatheses, as is known, have only too manifest a tendency to be transmitted in families. Now morbid consanguinity comes to strengthen this tendency and to accumulate elements of destruction in the generations which succeed one another" (loc. cit.).

795 II. The existence and scope of the impediment are established by these things:

1. In the direct line of consanguinity, marriage is invalid between all ascendants and descendants, both legitimate and natural (canon 1076, § 1). With regard to natural law, consanguinity certainly diriments marriage in the first degree of the direct line, and more probably in every degree. For marriage, which introduces a certain equality, is opposed to the relation of superiority and inferiority which exists between ascendants and descendants.

2. In the collateral line marriage is invalid up to the third degree inclusive (canon 1076, § 2).

With regard to natural law, consanguinity beyond the first degree does not diriment marriage.[1] Concerning the first degree itself, brother and sister, there is dispute. Several judge that such marriages are invalid, apart from the necessity of propagating the human race through the sons and daughters of Adam.[2] But they judge thus both because such marriages obstruct the primary end of marriage, since depraved offspring are accustomed to arise from them; and because admitted validity would give

occasion for lust among persons living in the same house. Others admit the contrary, or at least call the matter into doubt, and respond that the integrity of offspring pertains only accidentally to the good of the species, to which marriage is ordered; and that the other reason does not seem so urgent that from it one may conclude to defect of validity.

As to positive law, there are those who judge that marriage between brother and sister is diriment by divine positive law. Others, however, rather deny this, because the Mosaic law has been abrogated, and the evangelical law says nothing concerning it.

Corollary. Marriage between infidels who are blood-relatives, whether in the first degree of the collateral line or in a further degree than the first degree of the direct line, is doubtfully valid. Hence if each, or one or the other, is converted to the faith, the Holy See must be approached.

3. The impediment of consanguinity was restricted by Leo XIII[3] for Indians and Negroes[4] in Latin America and in the Philippine Islands to the second degree of the collateral line. From the declaration of August 16, 1898, this also holds for all the Antilles and the other islands of the Caribbean Sea. We judge that, from the intention of the Legislator, the aforesaid disposition is governed by the law of privilege rather than by the law of a particular law, and therefore, although it is contrary to the general law, it persists.

III. Multiplication of the impediment. Before the current Code, the impediment was multiplied as often as consanguinity itself; but now the matrimonial impediment is multiplied only as often as the common stock is multiplied, or there are as many impediments as there are common stocks (canon 1076, § 2).

IV. Dispensation. The Church cannot dispense in the first degree of the direct line, since it constitutes an impediment of natural law. It is doubtful whether she can dispense in the other degrees of the direct line and in the first degree of the collateral line. In practice, she never dispenses in the aforesaid degrees. Hence canon 1076, § 3: "Marriage is never to be permitted if there is any doubt whether the parties are consanguineous in some degree of the direct line or in the first degree of the collateral line." From this it follows: 1° it can never be permitted to anyone, for example Peter, to marry either a person with whose mother he had copula at such a time before the daughter's birth that every danger of marrying his own daughter is not excluded; or a person with whose mother his father, that is, Peter's father, had copula at such a time before the daughter's birth that every danger of marrying his own sister is not excluded.[5] 2° A Bishop or priest who can dispense in ecclesiastical impediments in danger of death or if all things are ready for nuptials cannot dispense from these impediments. In the other degrees of the collateral line the Church dispenses if a proportionately grave cause is present.

[1] Chapter 8, *de divortiis*.

[2] In this case there is not a dispensation in the law of nature, because due order requires that the good of an inferior order yield to the good of a superior order.

[3] Constitution *Trans oceanum*, April 18, 1897.

[4] Who come under the name of Indians and Negroes is taught by the Sacred Congregation for Extraordinary Ecclesiastical Affairs, May 24, 1898: "Under the name of Indians and Negroes, besides the Indians and Negroes themselves, are also included those who were begotten from an Indian or Negro man and a European woman, or a woman of European blood, and likewise those who were begotten from a European man and an Indian or Negro woman, and therefore are called Mixed, Mestizos, or Mulattoes, and have an absolute half of European blood. But those are not included who draw origin from Indians or Negroes only through a great-grandfather or grandmother, and who are called

Quarterones, as having only a fourth part of Indian or Negro blood; and much less those who draw origin from Indians or Negroes only through a great-great-grandfather or great-great-grandmother and are commonly called Puchueles or Pucueles. Moreover, by the name of Indians and Negroes are also understood Africans, Asians, and Oceanians, provided they are not of European blood and are staying in Latin America, although they were not born there."

[5] Pontifical Commission, June 2-3, 1918, ad 5 (*A.A.S.* 1918, p. 346).

Article X. Affinity

796 I. Notion. Affinity is the relationship which arises from a valid marriage, whether ratified only or ratified and consummated, between the man and the blood-relatives of the woman, and likewise between the woman and the blood-relatives of the husband (canon 97, § 1 and § 2). It is said:

1. From a valid marriage. Therefore affinity does not arise from a marriage invalid in any way. Nevertheless affinity is presumed to be present for the external forum if the invalidity of the marriage is not proved (cf. canons 1086, § 1; 1972).
2. Whether ratified only or ratified and consummated. Therefore, in order that affinity arise, it is required and sufficient that the marriage be ratified.

Corollary I. Affinity canonically taken does not arise from a legitimate marriage, i.e., a marriage of infidels, because, with canon 1015, § 1 considered, it is not a ratified marriage. That infidels are not bound by the impediment of affinity is clear, because they are not subject to the Church.

Corollary II. Affinity canonically taken does not seem to arise either from a marriage between a faithful party and an infidel party, or from a marriage contracted between two infidel parties, of whom only one or the other is baptized. The reason is that the aforesaid marriages do not seem to come under the name of a ratified marriage (n. 713); at least there is a doubt of law concerning the existence of the impediment.

Corollary III. Affinity canonically taken arises from a marriage contracted between two infidel parties and, after the baptism of both, persisting, because it comes under the name of a ratified marriage (n. 713).

3. Between the man and the blood-relatives of the wife, and likewise between the woman and the blood-relatives of the husband. Therefore: 1° those who have entered marriage are not affines between themselves. 2° The blood-relatives of the man and the blood-relatives of the woman are not affines between themselves; this is usually expressed in these words: Affinity does not go out beyond those who are joined. 3° The man becomes affine only toward the blood-relatives, and therefore not toward the affines, of the woman; likewise the woman becomes affine toward the blood-relatives of the man, but not toward his affines; this is usually expressed in these words: Affinity does not beget affinity (St. Alphonsus VI, 1069). Moreover, given a marriage either ratified only or ratified and consummated, affinity also exists with respect to the infidel blood-relatives of the other party. Hence, for example, a widower from a ratified marriage cannot, without dispensation, enter nuptials with an infidel who is blood-related within the determined degrees to his deceased Catholic wife.

II. Line and degree of affinity. Affinity is computed in such a way that those who are blood-relatives of the man are, in the same line and degree, affines of the woman, and vice versa (canon 97, § 3). Hence, for example, one who has entered a valid marriage with Anna, the mother of Rosa, becomes affine to

Rosa in the first degree of the direct line, because Rosa is related by blood to Anna in the same line and the same degree; one who contracted with Titia, the paternal aunt of Clara, is affine to Clara in the second degree touching the first in the collateral line, because Clara is related by blood to Titia in the same line and the same degree.[1]

Corollary. From what has been said it follows that two persons can be at once blood-relatives and affines. Thus, for example, one who entered marriage with Bertha, his blood-relative, is both a blood-relative and an affine to Bertha's sister.

III. Existence and scope of the impediment. Affinity in the direct line diriments marriage in any degree; in the collateral line up to the second degree inclusive (canon 1077, § 1). Hence today a widower is not bound by this impediment in the collateral line except with regard to the sisters of his deceased wife (degree 1), paternal aunts, maternal aunts, daughters of a brother or sister (degrees 1 and 2), paternal cousins, paternal-aunt's daughters, and maternal cousins (degree 2); similarly a widow is bound only with regard to the brothers of her deceased husband (degree 1), paternal uncles, maternal uncles, sons of a brother or sister (degrees 1 and 2), paternal cousins, paternal-uncle's sons, and maternal cousins (degree 2).[2] But note that the more remote degree draws the nearer to itself; wherefore affinity is not contracted by one party with the other party's blood-relatives in the third degree, even if this degree perhaps is mixed with the second or first.

Corollary I. "Two brothers can marry two sisters; father and son can marry mother and daughter. A stepson can marry the mother, daughter, or sister of his stepmother; and conversely a stepdaughter can marry the father, son, or brother of her stepfather. The surviving spouses of a deceased brother and sister can contract marriage between themselves. The son of the husband and the daughter of the wife, begotten from prior marriages, can enter marriage between themselves. Someone can successively marry two widows whose deceased husbands were full brothers" (St. Alphonsus VI, 1069).[3]

Corollary II. The impediment of affinity persists even if the marriage is dissolved by death or by another cause.

[1] Before the Code of Canon Law, affinity arose not from marriage as such, but from perfect copula, whether free or violent, whether licit or conjugal, or illicit, as fornication or adultery.

[2] Vlaming, n. 349.

[3] Aertnys-Damen, II, n. 763.

797 IV. Multiplication of the impediment of affinity. The impediment is multiplied: 1° as often as the impediment of consanguinity from which it proceeds is multiplied; 2° by repeated successive marriage with a blood-relative of the deceased spouse (canon 1077, § 2). It is said:

1. As often as the impediment of consanguinity from which it proceeds is multiplied; understand this as often as, or when, some person was multiply related by blood to the prior spouse because of a multiple common stock. The case occurs, for example, when the deceased wife of a man was at once the maternal aunt and paternal aunt, or maternal aunt and niece, of that person with whom the man intends to enter nuptials.
2. By repeated successive marriage with a blood-relative of the deceased spouse; for example, Peter successively and validly married Mary and Anna, sisters of Rosa; now he is doubly affine to Rosa in the first degree of the collateral line.

Before the Code of Canon Law, affinity from matrimonial copula dirimented marriage up to the fourth degree inclusive of each line; from fornicatory copula, up to the second degree inclusive of each line.

V. The law by which affinity diriments marriage. Affinity diriments marriage by ecclesiastical law alone; and this, which previously was called into doubt by some, holds even concerning affinity in the first degree of the direct line, indeed even if consummation of the marriage has occurred. It is proved: 1° from canon 1043, which enumerates the aforesaid affinity among impediments of ecclesiastical law; 2° from the fact that the Holy Office[1] absolutely declared: Affinity which is naturally contracted in infidelity from copula, whether licit or illicit, is not an impediment for marriages which are entered in infidelity; 3° from the fact that the Church has already dispensed even in the aforesaid affinity.

VI. Dispensation in affinity of the collateral line is granted for proportionate causes to be assigned later. But in affinity of the direct line, at least in the first degree, it is ordinarily not granted. We have mentioned above the fact of a dispensation granted, though after the marriage had been contracted.[2]

[1] August 26, 1891 (*Collectanea*, n. 1766); cf. Holy Office, September 4, 1743; February 20, 1888 (*Collectanea*, n. 1685).

[2] Rescript of the Sacred Penitentiary, December 2, 1911 (*Nouvelle Revue Theologique* 1912, p. 528).

Scholion. Names of Affines

798 I. In the direct line:

1. *Socer* = father of the husband or wife (schoonvader, suocero, beau-pere, father-in-law, Schwiegervater).

Socrus = mother of the husband or wife (schoonmoeder, suocera, belle-mere, mother-in-law, Schwiegermutter).

2. *Gener* = husband of a daughter (schoonzoon, genero, gendre, son-in-law, Schwiegersohn).

Nurus = wife of a son (schoondochter, nuora, belle-fille, daughter-in-law, Schwiegertochter).

3. *Vitricus* = husband of the mother (stiefvader, padrigno, beau-pere, stepfather, Stiefvater).

Noverca = wife of the father (stiefmoeder, matrigna, belle-mere [maratre], stepmother, Stiefmutter).

4. *Privignus* = son from a prior marriage of the other party (stiefzoon, figliastro, beau-fils, stepson, Stiefsohn).

Privigna = daughter from a prior marriage of the other party (stiefdochter, figliastra, belle-fille, stepdaughter, Stieftochter).

II. In the collateral line:

1. *Levir* = brother of the other party (zwager or schoonbroeder, cognato, beau-frere, brother-in-law, Schwager).

Glos = sister of the other party (zwagerin or schoonzuster or snaar, cognata, belle-soeur, sister-in-law, Schwagerin).

2. *Sororius* = husband of a sister (as was said of *levir*).

Fratria = wife of a brother (as was said of *glos*).

Article XI. Public Honesty

799 I. Notion. Public honesty is a certain relationship arising from an invalid marriage, whether consummated or not, and from public or notorious concubinage, between the man and the blood-relatives of the woman, and likewise between the woman and the blood-relatives of the man (canon 1078).[1] It is said:

1. From an invalid marriage, i.e., invalid in any way whatever, whether from a diriment impediment, from defect of legitimate form, or, as it seems, from defect of consent. The reason is that the canon does not distinguish. I said, however, "as it seems" with regard to defect of consent, because the old legislation, according to which a marriage invalid because of defect of consent did not introduce the impediment, gives some persons a reason for doubting.

A merely civil marriage, independently of cohabitation, does not suffice,[2] because in the mind of the Church it lacks even the appearance of marriage.[3] If cohabitation is added, the impediment arises insofar as public or notorious concubinage is added. To what extent this is added will be clear from what must now be said.

2. From public or notorious concubinage. Merely presumed concubinage (cf. canon 133, § 4) does not suffice; nor does occult concubinage. Moreover, note:

a) Concubinage is understood as a relation after the manner of marriage between a man and a woman. Moreover, for concubinage there are required:

Alpha) A permanent or stable relation. For this it certainly suffices if they cohabit; likewise if the woman lives at the man's expense and in a place where he can easily approach her; likewise between two persons between whom intercourse is so frequent and exclusive that it is equivalent to the case just assigned. It does not suffice if the intercourse, however frequent, is not exclusive on the woman's part (a prostitute); nor does carnal intercourse suffice if it is indeed protracted for a long time, but is exercised only from time to time.

Beta) A relation bearing the appearance of a conjugal relation; such a relation exists, for example, in those who have entered what is called a friendly marriage.

Gamma) It is disputed whether carnal intercourse is required or not. But the negative opinion seems to be admitted, and to be drawn from analogy with an invalid marriage, in which abstraction is also made from copula; likewise from comparison with the impediment of affinity, which arises from true marriage as such.[4]

b) Concubinage is public if it has been divulged, or if it has happened or exists in such circumstances that it can and ought prudently to be judged that it will easily be divulged (canon 2197, 1°).

c) Concubinage is notorious by notoriety of law after the sentence of a competent judge which has passed into a thing adjudged, or if the guilty party has confessed it in writing or orally before a competent judge, whether spontaneously or when questioned by the judge (canon 2197, 2°). Concubinage is notorious by notoriety of fact if it is publicly known and was committed in such circumstances that it can be concealed by no tergiversation and excused by no support of law.

Note. This impediment is called that of public honesty because it accords with public honesty; indeed, it is less decent for a man to contract nuptials with the blood-relatives of the other party with whom he contracted a marriage, even though invalid, or lived in public concubinage.

II. Line and degree of public honesty. That relationship is computed in such a way that those who are blood-relatives of the man are, in the same line and degree, relatives of the woman, and vice versa.

III. Existence and scope of the impediment. Public honesty diriments nuptials in the first and second degree of the direct line between the man and the blood-relatives of the woman, and vice versa (canon 1078). Thus, for example, a man cannot contract with the mother or grandmother, nor with the daughter or granddaughter, of a woman with whom he lived in an invalid marriage or in public concubinage.

IV. Multiplication of the impediment. Although the Code is silent concerning the multiplication of this impediment, just as it is silent concerning the multiplication of the impediment of crime, nevertheless it seems that multiplication must be admitted when the titles are multiplied, i.e., marriage or concubinage. Suppose, for example, that Peter lived successively in public concubinage with Anna and Mary, daughters of Christina; the impediment of public honesty between Peter and Christina is multiplied.

V. Dispensation of the impediment. Public honesty in the second degree is an impediment of lesser degree; otherwise it is of greater degree, and therefore dispensation from the impediment is more difficult.

Corollary I. The impediment persists even if the invalid marriage or public or notorious concubinage has ceased.[5]

Corollary II. When an invalid marriage has been convalidated, and likewise when concubinage has been turned into marriage, the impediment of affinity is added, while the impediment of public honesty also, more probably, persists;[6] nevertheless in practice, since it is inferior to affinity, it is to be less attended to.[7]

[1] Before the Code of Canon Law, public honesty arose from betrothals and from ratified marriage. Having arisen from betrothals, it dirimented marriage in the first degree of each line; from ratified marriage, up to the fourth degree inclusive of each line.

[2] Pontifical Commission, March 12, 1929, ad 2 (*A.A.S.* 1929, p. 170).

[3] Cf. Sacred Congregation of the Council, March 13, 1879 (*A.S.S.* XII, p. 147; XIII, p. 126).

[4] Cf. Mulders in *Nederlandsche Katholieke Stemmen* 1927, p. 181.

[5] Sacred Congregation of the Council, July 6, 1658; December 3, 1667; February 28, 1885.

[6] Sacred Congregation of the Council in the Brixiensis case, December 3, 1667.

[7] Cf. Mulders, in *Nederlandsche Katholieke Stemmen*, 1927, p. 183.

800 Corollary III. Insofar as the impediment of public honesty arises from an invalid marriage or concubinage of infidels, it is determined by the following:

1° The impediment does not arise from the marriage or concubinage of two non-baptized persons, because "those who have not received baptism are not bound by merely ecclesiastical laws" (canon 12). But it does arise if the invalid marriage or concubinage endures after the baptism of each party. It is disputed among authors whether the impediment arises if each is baptized after the invalid marriage or concubinage has ceased.[1] But while a public doubt stands, at least by force of canon 15 the impediment can be held as not having arisen.

2° The impediment arises from the marriage or concubinage of a party baptized either from the beginning of the union, or while the union still endures, with a non-baptized party. Thus authors teach almost commonly, relying on this principle: that a disposition directly affecting the baptized party also indirectly affects the non-baptized party, unless the contrary is expressly established. There is added the fact that the Sacred Congregation of Propaganda so declared concerning the impediment of crime.[2]

Note that in order that a marriage to be contracted be dirimented in fact, it is required that at least one of those who enter the marriage be subject to the Church through Baptism. Hence it is rightly established: the impediment of public honesty:

a) Directly diriments the marriage of a baptized party with a person blood-related in the first or second degree of the direct line to the other non-baptized party, whether that blood-related person is baptized or is not baptized.

b) Indirectly diriments the marriage of a non-baptized party with a baptized person blood-related to the other baptized party.

c) It does not diriment the marriage of a non-baptized party with a non-baptized person blood-related to the other baptized party; for in that case neither of the contracting parties is subject to the Church.[3]

[1] Cf. Mulders, loc. cit.

[2] August 23, 1852 (*Collectanea*, n. 1079).

[3] Mulders, loc. cit.

Article XII. Spiritual Relationship

801 I. Notion. Spiritual relationship is a certain relationship which comes from the ministration and reception of Baptism and Confirmation. Namely, since a human being is spiritually begotten in Baptism and spiritually perfected in Confirmation, therefore spiritual paternity is contracted by those who concur in these sacraments, i.e., by the minister of Baptism and by the sponsors in each sacrament, with respect to the baptized or confirmed person (canons 768, 769, 797).

II. Existence and scope of the impediment. Only spiritual relationship from Baptism diriments marriage, and indeed: 1° between the one baptizing and the baptized person; 2° between the sponsor of baptism and the baptized person (canon 1079). One who performs the office of sponsor through a procurator contracts the impediment himself alone, not the procurator. Therefore the impediment does not exist between the one baptizing and the sponsors, nor between the sponsors among themselves. Moreover, it is in force by ecclesiastical law alone.[1]

III. The required conditions are:

1. On the part of baptism it is required that it be truly and validly conferred. Therefore it does not arise from ceremonies supplied later (canon 762, § 2), nor from Baptism invalidly conferred.

Question 1. Whether the impediment arises from private baptism.

Response. With regard to the one baptizing, all affirm. But there is dispute, or at least there was dispute, with regard to sponsors. Yet it seems that it must likewise be affirmed entirely. For: 1° the law does not distinguish between private and solemn baptism (canon 768). 2° The cited canon has these words: "From baptism only the baptizer and the sponsor contract spiritual relationship with the

baptized person." But the words "from baptism," with respect to the baptizer, must be understood of both solemn and private baptism; therefore the same must be said with respect to the sponsor. 3° Canon 762, § 2 says thus: "Even in private baptism a sponsor, if he can easily be had, is to be employed; if he was not present, he is to be employed when the ceremonies of baptism are supplied, but in this case he contracts no spiritual relationship." Therefore, in the prior case, i.e., if the sponsor was present at private baptism, he contracts spiritual relationship. 4° Spiritual regeneration, which is the foundation of the impediment, also arises from private Baptism. The responses of the Sacred Congregation of the Council also concur.[2]

Question 2. Whether the impediment arises from baptism conferred doubtfully or doubtfully validly.

Response. With regard to the sponsor, it must be denied, unless, when baptism is repeated under condition, the same sponsor was employed in each baptism. Outside this case neither the sponsor who was present at the former baptism, nor the one who was present at the later, contracts spiritual relationship (canon 763, § 2); and this holds even if afterward the nullity of one baptism and the validity of the other are established. The same, by analogy, seems to be said of the one baptizing, although the cited canon speaks only of the sponsor.

2. On the part of the one baptizing it is required that he himself be baptized; otherwise the ecclesiastical impediment does not affect him, nor does it seem to affect the other party. For since spiritual relationship is situated in a mutual relation, it seems to affect either each party or neither. Nor does the impediment arise if someone not yet baptized conferred Baptism on someone and afterward himself receives Baptism (n. 757).
3. On the part of the sponsors there are required those things which are necessary for the validity of sponsorship according to what was explained in n. 84.

IV. Multiplication of the impediment can arise only from the fact that someone both baptizes the same person and receives him as sponsor through a procurator.

V. Dispensation of the impediment. It suffices to note that the impediment of spiritual relationship is numbered among impediments of lesser degree (canon 1042).

Note. Spiritual relationship contracted before Pentecost of the year 1918 beyond the limits now defined by the new Code in canon 768 does not cease ipso facto from the aforesaid day of Pentecost with regard to all effects, but only ceases to be an impediment to marriage[3] (cf. n. 86).

[1] Before the Code of Canon Law, the impediment was in force: 1° between the one baptizing or confirming and the baptized or confirmed person and the latter's parents; 2° between the sponsor of Baptism or Confirmation and the baptized or confirmed person and the latter's parents.

[2] April 17, 1603; May 28, 1677; March 5, 1678. The Council of Trent indeed speaks of those who receive from the sacred font; by this it seemed to some that only solemn Baptism was signified. But nothing prevents Baptism as such from being understood by that word, especially because the Council in the preceding words had spoken of those who receive from Baptism. But if you deny this, I would say that the adversaries insisted too much on the letter of the law, against the mind of the legislator, sufficiently clear from the arguments already adduced before the Code of Canon Law.

[3] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918).

Article XIII. Legal Relationship

802 I. The notion was explained in n. 760.

II. Existence of the impediment. Those who by civil law are held incapable of entering nuptials between themselves because of legal relationship arising from adoption cannot, by force of canon law, validly contract marriage between themselves (canon 1080). In order to know whether and between whom this impediment exists, recourse must be had to the civil laws of the country, and the matter must be decided according to their norm.

The diriment impediment is in force in Italy, Spain, Brazil, Bolivia, Colombia, Guatemala, and Peru.[1]

[1] Wernz-Vidal, op. cit., n. 191; Aertnys-Damen, op. cit., II, n. 771.

Chapter IV. On Dispensation from Impediments

We shall speak first of the power, then of the causes of dispensing, then of the petition, and finally of the execution of the dispensation.

Article I. On the Power of Dispensing

§ I. On the Power of the Supreme Pontiff

803 I. The Supreme Pontiff can dispense in all impediments of ecclesiastical law; indeed, since he himself is the legislator, he can validly dispense in them even without a cause. He cannot dispense in impediments of absolute divine law, whether natural or positive, for example in the impediment of impotence. Nevertheless, by vicarious power he can remove certain impediments of conditioned divine law, i.e., those arising from a human will, for example in vows, betrothals, and ratified marriage (St. Alphonsus VI, nn. 1118-1120).

II. In fact the Supreme Pontiff dispenses: 1° never in impediments concerning which it is doubted whether they are of divine law, namely lest he probably strike against a higher law. But the aforesaid impediments are: consanguinity in the direct line beyond the first degree (p. 645), and consanguinity in the first degree of the collateral line (p. 645). Moreover, the Church never dispenses in the impediment of the episcopate; scarcely ever in the impediments of the presbyterate, raptus, and public spouse-murder. In the others she dispenses more or less with difficulty according to the nature of the impediment, as will be explained later.

III. The Supreme Pontiff dispenses through different organs for different impediments, namely:

1. The Congregation of the Holy Office dispenses in the impediments of disparity of cult and mixed religion (canons 247, § 3; 249, § 1), and likewise in those things which perhaps concur with the aforesaid impediments.[2] Moreover, it alone takes cognizance of those matters which, whether directly or indirectly, in law or in fact, turn upon the Pauline privilege (canon 247, § 3).
2. The Congregation of the Discipline of the Sacraments dispenses, for the external forum, in public impediments which are not occult in fact; likewise in public impediments which are occult in fact but exposed to danger of manifestation; likewise, according to the circumstances, in public impediments which are occult in fact and not exposed to danger of manifestation.
3. The Sacred Penitentiary dispenses for the internal forum in occult impediments; likewise, according to the circumstances, in public impediments which are occult in fact and not exposed to danger of manifestation;[3] likewise it convalidates a dispensation granted by the Sacred Congregation of the Discipline of the Sacraments, but invalidly, because of a concealed circumstance which had

necessarily to be manifested and which still remains occult. In addition, the Sacred Penitentiary is also the competent tribunal for the faithful of the oriental rites.[4] Finally, recourse can also be had to the Sacred Penitentiary in the case in which the dispensation exceeds the ordinary faculties of the Major Penitentiary; for he can obtain extraordinary power from the Holy See.[5]

4. The Sacred Congregation of Propaganda Fide procures dispensations for each forum for places subject to it (cf. canon 252), although even in these places recourse can be had to the Sacred Penitentiary for the internal forum.

5. The Sacred Congregation for the Oriental Church "enjoys all the faculties which the other Congregations possess for Churches of the Latin rite, while nevertheless the right of the Congregation of the Holy Office remains intact according to the norm of canon 247" (canon 257, § 4).

6. In the case in which a twofold impediment, one public and one occult, stands in the way of marriage, or an occult circumstance which must necessarily be manifested, a twofold supplication is to be drawn up: one for the public impediment to the Congregation of the Discipline of the Sacraments, the other to the Sacred Penitentiary, as will be explained later.

[1] Although an Ecumenical Council also enjoys the power of dispensing, no discussion is undertaken concerning it, because in fact it is not exercised by a Council.

[2] Sacred Congregation of the Consistory, January 21, 1910 (*A.A.S.* 1910, p. 56).

[3] Cf. *Archiv fur katholisches Kirchenrecht*, 1922, p. 1 sq.

[4] Sacred Congregation for the Oriental Church, June 26, 1930 (*A.A.S.* 1930, p. 394).

[5] Aertnys-Damen, II, n. 787.

§ II. On the Power of Local Ordinaries

Preliminary note. Besides the Roman Pontiff, no one can abrogate impediments of ecclesiastical law, whether impeding or diriment, or derogate from them; likewise no one can dispense in the same impediments, unless this power has been granted by common law or by a special indult from the Apostolic See (canon 1040). Moreover:

804 I. By force of common law, local Ordinaries can dispense as follows:

1. The Ordinary of the place can dispense in impediments which are doubtful by doubt of fact, if there is question of impediments in which the Roman Pontiff is accustomed to dispense (canon 15). He can use this faculty with regard to subjects by reason of domicile or quasi-domicile wherever they are staying, and likewise with regard to vagi actually staying in his territory (canons 201 and 94).

2. When danger of death urges, local Ordinaries can dispense, for providing for conscience and, if the case warrants, for the legitimation of offspring: 1° concerning the form to be observed in the celebration of marriage; 2° concerning all impediments of ecclesiastical law, except the impediments of sacred presbyterate and of affinity in the direct line when the marriage has been consummated. They can dispense their own subjects dwelling anywhere and all actually staying in their own territory. Nevertheless it is required that scandal be removed, and, if the dispensation is granted concerning disparity of cult or mixed religion, that the customary cautions be furnished before the dispensation (canon 1043). It is said:

a) When danger of death urges. The article of death, or a most grave danger of it, is not required; but a grave danger suffices, i.e., such as is required for administering Viaticum. Nor does it matter whether the danger arises from disease or threatens from another cause, for example from shipwreck or from a dangerous operation to be undergone. Finally, it suffices that the danger threaten one or the other contracting party, whether the one who is bound by the impediment or the other.[1] It is no longer required, as formerly, that approaching the Holy See be impossible, since that limitation is no longer added.

b) They can dispense, and indeed both for contracting and for convalidating marriage; but they cannot, by force of common law, sanate a marriage in the root (canon 1141).

c) For providing for conscience and, if the case warrants, for the legitimation of offspring. Therefore it is required that provision be able to be made either for conscience or for the legitimation of offspring, or for both. Either cause taken separately suffices, as is already clear from the words of the canon: "and, if the case warrants, for the legitimation of offspring." I said:

Alpha) Either provision can be made for conscience, namely of both parties or of one or the other party. Moreover, this reason will occur for the most part if the parties about to marry are joined in a merely civil marriage or at least are living in concubinage. It is likewise present if, granted that they neither live in concubinage nor are joined merely civilly, nevertheless such bad relations exist between them that separation has become impossible or difficult. Nor, however, should it be deduced from this that in such a case only sins of the flesh are to be attended to; for the reason of providing for conscience can also arise from another source, for example if it is hoped that the dying person, once marriage has been contracted, will lay aside hatred against the other party or against the other party's blood-relatives, etc.[2] Indeed it is rightly said that the case is present as often as an obligation of marrying has been contracted in itself, for example by contracting betrothals or by seducing the other party under promise of marriage, even if accidentally the obligation should be absent. The Sacred Congregation of the Sacraments[3] declared that the faculty which it had granted on May 14, 1909 was valid not only concerning concubinarii, but also if another cause is present for providing for conscience.

Beta) Or provision can be made for the legitimation of offspring. For legitimation, whether in the ecclesiastical forum or, a few add, in the civil forum alone. Of offspring, i.e., either already born or only conceived. Provision can be made; now from the marriage to be contracted, offspring already conceived and not yet born is born legitimate (canon 1116); by dispensation from the impediment, provision is made for offspring already born, except adulterine or sacrilegious offspring (canon 1031). Yet there are those who in the case do not exclude even adulterine or sacrilegious offspring from legitimation.

d) Concerning the form and concerning all impediments of ecclesiastical law, both diriment and merely impedient, both public and occult, and also multiple, except the impediments of sacred presbyterate and of affinity in the direct line when the marriage has been consummated. Likewise they cannot dispense in impediments concerning which it is doubted whether they are of divine law or not, i.e., in consanguinity in the direct line beyond the first degree, and in consanguinity in the first degree of the collateral line (p. 645). In addition:

Alpha) The power conferred regards each forum, or the dispensation granted is valid for each forum (canon 203, § 3).

Beta) The power also extends itself to vows, for example of not marrying, of virginity, of perfect chastity, etc., although these too are impediments of divine law, yet founded on a human act. The reason is that the Church herself has power over vows, and is judged to have conferred it in these circumstances. A solemn vow, as diriment, is of merely ecclesiastical law.[4]

Gamma) Finally, the power also extends itself to betrothals, because in these circumstances the Church is not undeservedly presumed to have provided for the dying person insofar as she can prudently provide for him; once this is posited, it is reasonably affirmed that the power which the Church has over betrothals has also been conferred. Moreover, betrothals in the posited hypothesis commonly do not bind, because for the most part the other party can be presumed to yield his or her right.

e) Their own subjects dwelling anywhere, i.e., subjects by reason either of domicile or of quasi-domicile.

f) And all actually staying in their own territory, whether vagi or peregrini.

If the parties about to marry are of different dioceses, and there is question of an impediment common to each, such as consanguinity, it suffices that one or the other party be subject to the one dispensing by reason of domicile or quasi-domicile, or be staying in the territory of the one dispensing (St. Alphonsus VI, 1142).[5]

g) That scandal be removed. These words involve only a circumstance of granting the dispensation, and therefore are not judged to be required for validity.

h) That the customary cautions be furnished before the dispensation, if the dispensation is granted concerning disparity of cult or mixed religion. But the cautions are required for the validity of the dispensation (p. 606).

What if the non-Catholic party refuses to furnish the cautions?

Response. Dispensation from the impediment seems excluded, when, besides the tenor of canon 1043, those things which we noted on p. 605 are considered; but recourse to epikeia is not excluded. Once this is admitted, if the Catholic party promises that he or she will provide according to his or her powers for the whole offspring to be educated in a Catholic manner, it is permitted, the cautions of the non-Catholic party being passed over, to proceed to marriage. Thus, saving a better judgment.

[1] Holy Office, July 1, 1891 (*Collectanea de Propaganda Fide*, n. 1758).

[2] Cf. Sacred Congregation of the Discipline of the Sacraments, May 14, 1909 (*A.A.S.* 1909, p. 468†) and August 16, 1909 (*A.A.S.* 1909, p. 656).

[3] August 16, 1909 (*A.A.S.* 1909, p. 656).

[4] We note these things more by reason of the pastor, the priest assisting according to the norm of canon 1098, n. 2, and the confessor, concerning whom there will soon be discussion, than by reason of the local Ordinary, who even in ordinary circumstances can dispense in most vows.

[5] Sacred Congregation of Propaganda Fide, September 9, 1861 (*Collectanea*, n. 1222).

805

3. As often as an impediment is detected when all things are already prepared for the nuptials, local Ordinaries can dispense, the things that must be posited being posited, concerning all impediments

of which in canon 1043, the same persons and under the same clauses of which in the cited canon (canon 1045, § 1). It is said:

a) As often as an impediment is detected when all things are already prepared for the nuptials. Ecclesiastical nuptials are understood, to be celebrated according to the norm of ecclesiastical law, with publications, examination of the betrothed, etc., having first been made; not civil nuptials or nuptials to be entered before a non-Catholic minister. Moreover, it is not required that the impediment had previously been altogether unknown; it suffices that then for the first time it has been brought to the knowledge of the pastor or Ordinary. Nor is the power of dispensing absent in the case in which the parties about to marry in bad faith concealed the impediment, even in order to obtain a dispensation more easily at the last moment. For the end of the law is not only the good of the parties about to marry, but also the avoidance of grave public evil.

b) They can dispense, and indeed both for contracting and, as canon 1045, § 2 establishes, for convalidating marriage.

c) The things that must be posited being posited; namely, it is required that the marriage cannot be deferred without probable danger of grave evil until a dispensation is obtained from the Holy See. It is said:

Alpha) Of grave evil; but an evil of any kind is understood: infamy, scandal of a merely civil marriage, impossibility of obtaining separation if there is question of concubinarii, etc.

Beta) Until a dispensation is obtained from the Holy See. Therefore recall that there is no obligation of recurring by telegraph or telephone,[1] or of using an automobile or airplane; but that a suitable time can be held to be about fifteen days for Italy, twenty to thirty for other regions of Europe, and forty to fifty days for overseas regions.[2]

d) Concerning all impediments of which in canon 1043 (p. 657). It is disputed whether they can dispense also concerning the form. Some deny this, both because clandestinity is not numbered among the impediments by the Code, and because the preceding canons (1043 and 1044) distinguish the form from impediments. Others affirm it; first because clandestinity was formerly counted among impediments; then because canon 1045 seems to be nothing other than an application of canon 81, by force of which an Ordinary can dispense from all ecclesiastical laws where recourse to the Holy See is difficult and at the same time there is danger of grave harm in delay, provided there is question of a dispensation which the Holy See is accustomed to grant. This opinion is sufficiently probable, and therefore the Church at least supplies.

e) The same persons of whom in canon 1043, i.e., both their own subjects dwelling anywhere and all actually staying in their own territory. With regard to the latter, there is indeed dispute concerning peregrini; but it is affirmed sufficiently probably, because the power seems to regard all whose marriage the Ordinary validly assists, all the more because, in the posited hypothesis, the nuptials are imminent. But he validly assists at the marriage of peregrini.

f) Under the same clauses of which in canon 1043, i.e., it is required that scandal be removed and that cautions be furnished if the dispensation is granted concerning disparity of cult or mixed religion (p. 658).

4. In ordinary circumstances, the Ordinary of the place by force of common law:

a) Can dispense in the impediment of a non-reserved vow, provided the dispensation does not injure a right acquired by others (canon 1313). Now the non-reserved vows impeding marriage are: the vow of virginity, of not marrying, of receiving sacred orders, and of embracing the religious state (canon 1058, § 1); likewise the private vow of perfect chastity and the vow of entering a religion of solemn vows which were not emitted both absolutely and after the completed eighteenth year of age (canon 1309). But the local Ordinary can use this faculty with regard to subjects dwelling anywhere, and with regard to peregrini and vagi actually staying in his territory (canon 1313, n. 1, compared with 94, § 2 and 201, § 3).

b) He can dispense by a certain epikeia, but only insofar as it is necessary, in private reserved vows, "if there is not easy access to the Pope, and in delay there is danger of grave harm; either spiritual, as of violation of the vow, scandal, quarrels, or another sin; or danger of temporal harm, one's own or another's, namely grave infamy of the woman, and similar things" (St. Alphonsus III, 258; cf. canon 81). We said insofar as it is necessary; hence, "if one bound by a vow of chastity is dispensed so that he may marry a certain woman in order to repair her honor, he cannot marry another" (St. Alphonsus, loc. cit.). But the private vows reserved to the Apostolic See are only the vow of perfect and perpetual chastity, and the vow of entering a religion of solemn vows, which were emitted absolutely and after the completed eighteenth year of age (canon 1309). But the power extends itself to the same persons whom we designated under a).

[1] Pontifical Commission, March 1, 1921 (*A.A.S.* 1921, p. 178).

[2] Secretariat of State, December 16, 1891; Holy Office, August 14, 1892; Pontifical Commission, November 12, 1922 (*A.A.S.* 1922, p. 662).

806 II. What local Ordinaries can do by force of special indults must be drawn from the tenor of the indults themselves, whether general or particular. General indults are granted for the internal forum by the schedule of the Sacred Penitentiary, which generally are for five years; for the external forum, by the Holy Office for mixed religion, disparity of cult, and sanation in the root; for other impediments, by the Sacred Consistorial Congregation, or through the Sacred Congregation of Propaganda Fide for those subject to it.

Question. Whether the Ordinary of the place can delegate faculties to another, whether in whole or in part, whether habitually or for an act.

Response 1. Certainly he can delegate faculties granted by special indults, whether general or particular, unless the industry of the person has been chosen or subdelegation prohibited (canon 199, § 2).

Response 2. There is dispute with regard to faculties of common law. Some deny it, because the aforesaid faculties, as not emanating from the nature of the office, are not formally annexed to the office, and therefore are not ordinary but delegated by law. But it seems that it must be affirmed, because, with canon 197, § 1 considered, it suffices that the faculty be annexed to the office by the law itself, whether it is said to emanate or is said not to emanate from the nature of the office. But the faculties concerning which there is question are annexed to the office by the law itself. At least the Church supplies.

§ III. On the Power of the Pastor and of the Priest Assisting at Marriage according to the Norm of Canon 1098, N. 2

807 I. When danger of death urges, both the pastor and the priest who assists at marriage according to the norm of canon 1098, n. 2, can dispense, the things that must be posited being posited, concerning the form and all impediments of which in canon 1043. They can dispense, I say: the pastor his own subjects dwelling anywhere and all actually staying in his own territory; the assisting priest those whose marriage he assists; nevertheless, by both, the things to be observed being observed (canon 1044). It is said:

1. They can dispense, and indeed both for contracting and for convalidating marriage.
2. The things that must be posited being posited; namely, it is required that not even the local Ordinary can be approached. If the Vicar General can be approached, this must be done, because he comes under the name of the local Ordinary. If another delegated by the Ordinary, who can dispense, is present or can be approached, they are not bound to have recourse to him, because he is not the Ordinary of the place.
3. Nevertheless, by both, the things to be observed being observed, i.e., they can dispense with scandal removed and cautions furnished, if the dispensation is granted concerning disparity of cult or mixed religion (p. 658).

Note. The pastor or assisting priest dispenses for both the external and internal forum.

If the impediment is public, the dispensation is to be granted publicly, i.e., at least before witnesses, unless it is granted concerning the form; and then the pastor or assisting priest is immediately to inform the local Ordinary about the dispensation granted, and it is to be noted in the marriage book (canon 1046).

If the impediment is occult, the pastor or assisting priest dispenses in the non-sacramental internal forum; and the dispensation granted is to be noted in the secret book of marriages, preserved in the episcopal curia, nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public (canon 1047).

II. As often as an impediment is detected when all things are already prepared for the nuptials, the pastor, and likewise the priest assisting at marriage according to the norm of canon 1098, n. 2, can dispense, the things that must be posited being posited, concerning all impediments of which in canon 1043, but only for occult cases. They can dispense, I say, the same persons of whom in canon 1044, nevertheless by both, the things to be observed being observed (canon 1045, § 3, compared with 1045, §§ 1 and 2).

1. They can dispense both for contracting and for convalidating marriage (canon 1045, § 3, compared with 1045, § 2).
2. The things that must be posited being posited; namely, it is required that the marriage cannot be deferred without probable danger of grave evil, and that the local Ordinary either cannot be approached, or cannot be approached without danger of violation of secrecy.
3. Concerning all impediments of which in canon 1043; likewise, sufficiently probably, concerning the form (p. 657).

4. But only for occult cases. By occult cases are understood cases in which the impediment, of whatever nature it may be, is at least occult in fact.[2]
5. Nevertheless, by both, the things to be observed being observed, i.e., they can dispense with scandal removed and cautions furnished, if the dispensation is granted concerning disparity of cult or mixed religion (p. 658).

Note. The pastor or assisting priest dispenses for both the external and internal forum. But since there is question of occult cases, the dispensation is to be granted in the non-sacramental internal forum; and the dispensation granted is to be noted in the secret book of marriages, preserved in the episcopal curia, nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public (canon 1047).

Question 1. Whether a priest delegated by the pastor to assist at marriage has the same faculty of dispensing as the pastor himself.

Response. Some affirm, because the delegate as it were puts on the person of the one delegating, and therefore in these circumstances the same power is presumed to have been granted to him. Others better deny it, because canons 1044 and 1045 are silent concerning him, indeed implicitly exclude him by determining to whom the faculty of dispensing is granted. In practice, when delegating someone to assist, the pastor should grant him the faculty of dispensing as a precaution.

Question 2. Whether the pastor can delegate his faculty to another.

Response. Some deny it, because the aforesaid faculty does not emanate from the office itself, and therefore is not formally annexed to it, but is delegated by law. But it seems that it must be affirmed, because, with canon 197, § 1 considered, for ordinary power it suffices that the faculty be annexed to the office by the law itself, whether it emanates from it or does not emanate from it. At least the Church supplies.

Question 3. Whether the priest assisting according to the norm of canon 1098, n. 2 can delegate his faculty to another.

Response. It must be denied, because as such he lacks an office, and therefore has only delegated power; and because he is delegated by law, he cannot subdelegate. Moreover, a faculty of delegating of this sort would not come into use for him, because another priest assisting in this way also receives the faculty from law; these things also hold concerning the confessor.

[1] There is discussion of the cases in which marriage can be contracted before witnesses alone (n. 738 sq.).

[2] Pontifical Commission, December 28, 1927, ad III (*A.A.S.* 1928, p. 61).

§ IV. On the Power of the Confessor

808 The confessor sufficiently probably enjoys the same power of dispensing as the pastor and the priest assisting at marriage according to the norm of canon 1098, n. 2. The reason is taken from the fact that canon 1044 declares: "The same faculty of dispensing is possessed both by the pastor and by the priest who assists at marriage according to the norm of canon 1098, n. 2, and by the confessor." And canon 1045, § 3: "In the same circumstances of things, all of whom in canon 1044 enjoy the same faculty." According to this opinion, therefore, this one distinction is held between the confessor and the pastor and assisting priest: that the confessor can dispense in the internal forum alone, and that

sacramental (canon 1044). This opinion, because of the reason adduced, is at least probable with probability of law, and therefore, the Church supplying, safe in practice. Nevertheless observe:

1. A dispensation granted in the sacramental internal forum is not valid for the external forum, even if perhaps the impediment becomes public. Hence:
2. If the impediment is public in fact, and likewise if it is public by nature but occult in fact, yet disclosure is feared, the confessor should see to it that the penitent seeks a dispensation for the external forum, and therefore has recourse to the pastor or his delegate, unless the confessor himself can arrange the whole matter in some way, for example by asking for the manifestation of the impediment outside confession; once this has been done, he will be able to dispense him either as pastor, or, delegation having been requested, as one delegated by the pastor, or, according to the circumstances, as the priest assisting according to the norm of canon 1098, n. 2.
3. If the impediment is occult in fact and disclosure is not feared, the confessor should at least bring it about that the penitent permits the informing of the Ordinary and the notation of the marriage in the secret book preserved in the episcopal curia. But it is better to arrange the whole matter as was said under 2.
4. Finally, the confessor cannot delegate his faculty to another, because as such he lacks a canonical office and therefore ordinary power, as was said of the priest assisting according to the norm of canon 1098, n. 2.

Scholion. Things to Be Noted Regarding the Power of Dispensing

809 I. Regarding the interpretation of power.

1. Ordinary power of dispensing and power delegated for the whole range of affairs is to be interpreted broadly; any other power strictly (canons 50; 66, § 1; 200, § 1).
2. To one to whom power has been delegated are also understood to have been granted those things without which the same power could not be exercised (canon 200, § 1); wherefore in the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation (canon 66, § 3). Nevertheless, when a declaratory or condemnatory sentence has been issued, one excommunicated, personally interdicted, or suspended cannot validly obtain any pontifical favor unless mention of the excommunication is made in the pontifical rescript (canons 2265, § 2; 2275, 3°; 2283).
3. In marriages either contracted or to be contracted, one who enjoys a general indult of dispensing concerning some certain impediment can, unless something else is expressly prescribed in the indult itself, dispense concerning it even if the same impediment is multiple (canon 1049, § 1).
4. One who has a general indult of dispensing concerning several impediments of diverse species, whether diriment or impedient, can dispense concerning the same impediments, even public ones, occurring in one and the same case (canon 1049, § 2).

II. Regarding the use of power.

1. Power conferred for the internal forum can also be exercised in the extra-sacramental internal forum, unless the sacramental forum is required (canon 202, § 2).

2. If the forum for which the power was given has not been expressed, the power is understood to have been granted for each forum, unless from the nature of the matter itself something else is clear (canon 202, § 3).
3. If at any time, with an impediment or public impediments concerning which someone can dispense from an indult, another impediment concurs concerning which he cannot dispense, the Apostolic See must be approached for all; if, however, the impediment or impediments concerning which he can dispense are discovered after the dispensation has been obtained from the Holy See, he will be able to use his faculties (canon 1050).
4. If a petition for dispensation has been sent to the Holy See, local Ordinaries are not to use their faculties, if they have any (canon 1048), unless from a grave and urgent cause; and in this case they should immediately warn the Superior about the matter (canon 204, § 2).
5. If an Ordinary dispenses from an Apostolic indult, he should observe all the rules which the Roman Curia is accustomed to observe.[1]
6. Those who grant a dispensation from power delegated by the Apostolic See should make express mention in the same dispensation of the pontifical indult (canon 1051).
7. Unless the rescript of the Sacred Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum concerning an occult impediment is to be noted in a book to be preserved diligently in the secret archive of the Curia of which in canon 379 (canon 1047).

III. Regarding the forum for which the dispensation is valid. A dispensation granted for the external forum is valid also for the internal forum, but not conversely (cf. canon 202, § 1). Nevertheless canon 1047, after the words just cited, "Unless the rescript of the Sacred Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum concerning an occult impediment is to be noted in a book to be preserved diligently in the secret archive of the Curia of which in canon 379"; after these words, I say, continues thus: "nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public; but it is necessary if the dispensation had been granted only in the sacramental internal forum."

IV. Regarding cessation of power. Unless in their grant the industry of the person has been chosen, or something else has been expressly provided, habitual faculties granted by the Apostolic See to a Bishop or to others of whom in canon 198, § 1 do not vanish when the right of the Ordinary to whom they were granted has been resolved, even if he himself had begun to execute them, but pass to the Ordinaries who succeed him in governance (canon 66, § 2). The cited canon adds: Likewise those granted to a Bishop also belong to the Vicar General.

[1] Sacred Penitentiary, June 1, 1858.

Article II. On the Causes of Dispensing

810 I. Notion. A cause of dispensing, taken generally, is the reason which moves the superior to dispense. But a canonical cause is one which is recognized by law itself, whether written or customary.

II. Necessity of a cause. A dispensation granted without a just cause, even by the legislator himself, is always illicit; and if it is granted by an inferior, it is also invalid (canon 84, § 1).

III. Division of causes. Causes are divided:

1. Into canonical and non-canonical, according as they are legitimately recognized as true causes, or are not recognized, although perhaps they can impel one to dispense.
2. Into final and impulsive. Final causes are those which suffice of themselves, or which efficaciously move the superior, and without which the dispensation would either not be granted at all, or would be granted in another form or under certain conditions and limitations. Impulsive causes are those which do not suffice of themselves, and without which nevertheless the dispensation would be granted, and indeed in the same form.
3. Into honest and infamous, according as they do not rest, or do rest, upon a delict or at least upon the defamation of the parties about to marry.

811 IV. The enumeration and exposition of causes are chiefly contained in the Instruction of the Sacred Congregation of Propaganda Fide.[1] The principal ones are:

1. "Narrowness of place, whether absolute or relative, only by reason of the female petitioner, namely when in the place of origin or even of domicile the kinship of the woman has been so propagated that she cannot find another of equal condition whom she may marry, unless he is a blood-relative or affine, while it would be hard for her to leave her homeland."

Moreover:

a) The place of the female petitioner must be narrow. Hence this cause cannot be alleged simply if it exists only on the part of the man. Besides, the female petitioner must be honorable, even if perhaps she is poor or of lower condition.

b) By place is not understood a parish or civil community, but any aggregation of inhabitants, such as a city, suburb, town, village, or hamlet, sufficiently distinct from other neighboring aggregations, so that one place can contain several parishes, and one parish several places. But if the aggregation is distinct from its neighbors in name and in fact, it does not harm the cause that it is a short distance from the others. Otherwise, as if there is question of a suburb, it is required that it be about twenty minutes distant from the city or village.[2] In addition, in computing distance, account must also be taken of the difficulty of the roads.

c) A place is judged narrow when it does not contain more than 1,500 Catholic inhabitants.[3] Namely, infidels, heretics, and schismatics are not counted; but impious and unbelieving Catholics must be counted. But if the place is larger, yet the woman because of higher qualities cannot easily obtain a man of equal condition, narrowness of place is not indeed alleged simply, but that higher quality itself should be expressed, with the approximate number added of men of the same quality living in the place.

d) It suffices that the place of origin or of domicile be narrow. If one differs from the other and each is narrow, likewise if the place of the bridegroom is the same as the place of the bride or at least narrow, this is usefully expressed. It does not suffice if the place of quasi-domicile is narrow and the female petitioner at the same time has a domicile elsewhere. But when she has no domicile elsewhere, or, having a domicile elsewhere, does not live in it, it can suffice if residence in the place of quasi-domicile is notable and sufficiently firm. Therefore this narrowness of the place of quasi-domicile should be expressed in the supplication, with mention made of the domicile.

e) It is required that the woman be unable to find in the place, whether of origin or domicile, another man of equal condition. It is said: 1° in the place, so that the cause remains even if a man can be had from another place; 2° another of equal condition, which is to be understood broadly, concerning state, age, wealth, religious mind, morals, etc.; 3° be unable to find. It suffices that now she is asked by no one of equal condition, even if previously she had been asked. But if only one or another of equal condition offers himself, the Holy See will easily dispense, although the cause does not exist simply.

2. "The over-adult age of the woman, if, namely, having already passed the twenty-fourth year of age, she has thus far not found a man of equal condition whom she can marry. But this cause does not favor a widow who desires to pass to other nuptials."

a) The female petitioner must not be a widow (cf. nevertheless cause 5).

b) It is required that at the time when the dispensation is granted she has completed the twenty-fourth year. If she has only reached it, the cause as such does not subsist; but the Holy See can nevertheless dispense from benignity. If she notably exceeds the required age, this should be expressed so that the dispensation may be granted more easily. Yet some judge that age beyond the fortieth year does not constitute a cause which suffices of itself.

c) That the female petitioner could have found another man of equal condition no longer prevents the cause from being alleged.[4]

3. "Deficiency or insufficiency of dowry; if namely the woman does not actually have so great a dowry that she can marry an outsider of equal condition, who is neither a blood-relative nor an affine, in her own place in which she stays. This cause urges more if the woman exists as altogether undowered, and a blood-relative or affine is prepared to take her as wife or even suitably to endow her fully."

4. "Lawsuits already arisen concerning succession to goods, or grave and imminent danger of the same. If a woman sustains a grave lawsuit concerning succession to goods of great importance, and no one is present who would take a lawsuit of this kind upon himself and prosecute it at his own expense, except him who desires to take her as wife, a dispensation is customarily granted; for it is in the interest of the republic that lawsuits be extinguished. Closely connected with this is another cause, namely, dowry involved in lawsuits, when the woman is destitute of another man by whose help she may be able to recover her goods. But a cause of this kind suffices only for more remote degrees."

5. "The poverty of a widow who is burdened with numerous offspring, and a man promises to support her. But sometimes help is given to a widow by the remedy of dispensation for this cause alone, that she is younger and is in danger of incontinence."

a) If the children are several and younger, it is better to express the number and age so that the dispensation may be obtained more easily. If the widow is sickly, younger, deprived of parents, etc., these things should be opened up for the same reason.

b) When the widow is not burdened with numerous offspring, this cause does not exist. Nevertheless, if she is younger, about thirty years old, or indeed more advanced in age but in danger of incontinence, hope of obtaining a dispensation is not lacking. Nor is it lacking if there is question of a widower, even one having only a single offspring.

6. "The good of peace; under this name come not only treaties between kingdoms and princes, but also the extinction of grave enmities, quarrels, and civil hatreds. This cause is adduced either for extinguishing grave enmities which have arisen between the blood-relatives or affines of the contracting parties and which would be altogether composed by the celebration of the marriage; or when grave enmities have been in force between the blood-relatives or affines of the contracting parties, and, although peace has already been entered between them, nevertheless the celebration of the marriage would conduce greatly to the confirmation of that peace."

a) Under the name of enmities, more serious lawsuits can also be comprehended.

b) Enmities and lawsuits are understood which arose from elsewhere than from the cause of the intended marriage. Nevertheless, the avoidance of enmities or lawsuits foreseen and to be forestalled by marriage can also be alleged.

7. "Excessive, suspect, dangerous familiarity, and also cohabitation under the same roof, which cannot easily be impeded."

These things do not seem to be understood in such a way that dangerous familiarity or cohabitation which is not suspect is not judged to be a cause for seeking a dispensation; all the more because otherwise this seventh cause is not sufficiently distinguished from the ninth cause. The former seems chiefly to rest upon danger of sinning, the latter upon infamy.

8. "Copula previously had with a blood-relative or affine or another person laboring under an impediment, and pregnancy and therefore legitimation of offspring, so that provision may be made for the good of the offspring itself and for the honor of the woman, who otherwise would remain unmarried. This indeed is one of the more urgent causes."

a) These things are commonly understood of public copula or copula soon to be divulged. Nevertheless even occult copula can be alleged, if it is in the woman's interest to marry the man with whom she had copula, for example because of further dangers of incontinence or quarrels between the families of the petitioners to be forestalled.

b) It is said, "who otherwise would remain unmarried"; there can be added: or would not obtain a man of equal condition.

9. "Infamy of the woman arising from suspicion that she, being too familiar with her blood-relative or affine, has been known by the same, although the suspicion is false; namely when, unless marriage is contracted, the woman would remain gravely defamed or unmarried, or would have to marry a man of unequal condition, or grave harms would arise."

10. "Revalidation of a marriage which was contracted in good faith and publicly, with the form observed...; because its dissolution can scarcely take place without public scandal and grave harm, especially to the woman. But if the betrothed entered nuptials in bad faith, they in no way deserve the grace of dispensation, as the Council of Trent disposes."

a) It is said in good faith, namely at least on the part of one or the other.

b) Today in a case of bad faith a dispensation is granted more easily than formerly.

11. "Danger of mixed marriage, or of marriage to be celebrated before a non-Catholic minister. When there is danger that those wishing to contract marriage in some degree, even one of the greater

degrees, because of denial of the dispensation, may approach a non-Catholic minister for celebrating the nuptials, with the authority of the Church spurned, a just cause of dispensing is found, because there is present not only the gravest scandal of the faithful, but also fear of perversion and defection from the faith of those acting in this way and despising matrimonial impediments, especially in regions where heresies run riot with impunity." Likewise a dispensation can be granted "to those Catholics who put forward no other motive than mad love, and at the same time it is foreseen that, if the dispensation is denied, they will enter marriage before an infidel judge... The same must be said of the danger that the Catholic party might dare to celebrate marriage with a non-Catholic."

There is question of a particular danger, for example with the character of the parties about to marry considered, not only of a common danger which arises from the fact that somewhere there are many heretics and many mixed marriages have already been contracted. Nevertheless a common danger can be an impulsive cause. It should be indicated whence the existence of the danger is deduced.

12. "Danger of incestuous concubinage. From the above-mentioned Instruction of the year 1822 it is clear that the remedy of dispensation is to be applied lest someone be defiled in concubinage with public scandal and evident danger to eternal salvation."

13. "Danger of civil marriage. From what has been said it follows that the probable danger that those who seek a dispensation, if it is not obtained, are going to celebrate only a civil marriage, as they say, is a legitimate cause of dispensing."

14. "Removal of grave scandals"; under this name are comprehended not only sins of lust, but also other sins, such as hatreds, etc.

15. "Cessation of public concubinage."

16. "Excellence of merits, when someone has deserved very well of religion either by fighting against the enemies of the Catholic faith, or by liberality toward the Church, or by learning, virtue, or in some other way."

a) Great merits are understood, the species of which is to be indicated. To the doubt whether, in defect of other causes, the offering of some alms in favor of the poor and of the church can be held as a legitimate and sufficient cause, the Sacred Congregation of Propaganda Fide, April 1, 1816, responded: Negative. Moreover, the merits of ancestors can also be alleged; indeed, even strangers can bring forward their merits in order to obtain a dispensation for a client.

b) To this can be referred the case in which noble petitioners, or at least petitioners of a very honorable family, being unable or unwilling to allege any canonical cause, simply allege their state and the quality of their family, asking that they be dispensed "from certain reasonable causes moving their mind." When a dispensation of this kind, which because of defect of some expressed cause is called "without cause," is granted to petitioners of this kind, a certain greater pecuniary composition is imposed on them, to be expended by the Supreme Pontiff for pious uses. Nevertheless, a dispensation cannot be sought in this way from the Sacred Penitentiary, nor from the Bishop, although the latter may be equipped with delegated faculties.[5]

The cited Instruction concludes with these words: "These are the more common and more important causes which are customarily adduced for obtaining matrimonial dispensations; concerning them theologians and interpreters of the sacred canons treat copiously." Therefore there are also other

causes, of which some are less common, while others are indeed less powerful, but nevertheless are judged impulsive; indeed, taken together they can suffice.

Less common causes are, for example, royal dignity; princely prerogative; conservation of an illustrious family in the same blood; conservation of goods in the same illustrious family. For it is in the interest of the public good that an illustrious family not perish or fall from its state.[6]

Less powerful causes, but nevertheless impulsive, are, for example, conservation of goods in a non-illustrious family; orphanhood of a girl, i.e., a girl deprived of one or both parents; a girl who, by contracting with a blood-relative, could assist poor or sickly parents; a girl who, because of deformity, physical infirmity, illegitimate birth, or the infamy of her family, would scarcely find a husband not joined to her; the condition of a ward, i.e., of a girl whose interest it is to marry a man joined to her; narrowness of place or insufficiency of patrimony with regard to the man; over-adult age with regard to a widow; notable improvement of fortune with regard to a girl otherwise sufficiently endowed; parents of the petitioners burdened, besides the male or female petitioner, with several other children; mixture of goods, or the inconveniences which would follow the division of goods hitherto mixed; contiguous goods of the petitioners; vehement desire of the parents; special equality of condition between the petitioners; nuptials already prepared in ignorance of the impediment.[7]

[1] May 9, 1877 (*Collectanea*, n. 1470); the praised Instruction enumerates 16 causes; but 28 causes are listed by the catalogue contained in the document inscribed: *Formulae Apostolicae Datariae pro matrimoniis iussu Em. Card. Caietani Aloisi Masella reformatae*.

[2] Sacred Dataria to the Sacred Congregation of the Council, March 8, 1884; cf. Sacred Congregation of the Council, July 8, 1876.

[3] Sacred Dataria, August 30, 1847; March 8, 1884.

[4] Sacred Penitentiary, April 5, 1902.

[5] Vlaming, II, n. 438.

[6] Pompen, n. 50.

[7] Vlaming, II, n. 439.

812 V. Cause required for dispensation. Generally, dispensation is granted more easily in affinity than in consanguinity, more easily in public honesty than in affinity. Moreover:

1. A most grave cause or several grave causes are required by: age required by ecclesiastical law; crime when each party or one or the other is plotting; a degree of consanguinity with which the first is mixed; the first degree of affinity in the transverse line.[1]
2. Less grave causes, indeed any of the canonical causes, suffice for impediments of lesser degree, which are: 1° consanguinity in the third degree of the collateral line; 2° affinity in the second degree of the collateral line; 3° public honesty in the second degree; 4° spiritual relationship; 5° crime from adultery with promise of marriage or attempted marriage, even by a merely civil act (canon 1042, § 1).

All impediments not listed here are of greater degree, both diriment and merely impedient; and since no impedient impediment is numbered among impediments of lesser degree, all are of greater degree (cf. canon 1042, § 3).

Several authors indeed judge that the distinction between impediments of greater degree and lesser degree is to be applied only to diriment impediments. But this is little approved, since the whole chapter to which canon 1042 belongs treats of impediments in general.

3. The other impediments require a grave cause.

Note. It should be advised that one who seeks a dispensation set forth all the causes which militate for granting the dispensation.

[1] Vlaming, II, n. 440.

Article III. On the Petition for a Dispensation

§ I. On the Person Petitioning

813 Although petitioners can recur immediately to the Superior, nevertheless in ordinary practice the dispensation is petitioned in their name by the pastor or by the confessor: by the pastor, if the dispensation must be sought for the external forum; by the confessor, if it must be sought for the internal forum. Hence the confessor who detects an impediment whose dispensation must be sought for the external forum should send the penitent back to the pastor. I said:

I. The pastor should petition for a dispensation which must be sought for the external forum; when, however, a dispensation must be sought for the external forum has been explained on p. 655. In the case in which the petitioners belong to different parishes, whether of the same or of different dioceses, the dispensation is to be petitioned:

1. If the impediment is proper to one or to both parties, for instance if one or both are bound by a public vow, through the respective pastor. But if the petitioners belong to different dioceses, he should recur to their respective Bishop.
2. If the impediment is common or correlative, as when there is question of consanguinity, affinity, etc., by common usage the pastor of the bride is accustomed to petition for the dispensation; nevertheless he should not omit to ask the pastor of the bridegroom whether he thinks anything should be noted. But if the petitioners are of different dioceses, the dispensation of one Bishop suffices, because when the impediment is removed on the part of one, the other party also becomes free.[1] Finally, if one party is non-Catholic, the dispensation should be petitioned by the pastor of the Catholic party, and recourse should be had to this party's Bishop.

II. The confessor should petition for a dispensation which must be sought for the internal forum. When, however, a dispensation must be sought for the internal forum has been explained on p. 655. Besides:

1. If the impediment is proper to one or to both parties, for instance if one or both are bound by a private vow, the dispensation should be petitioned through the respective confessor, and therefore by the same confessor if both petitioners approach the same confessor.
2. If the impediment is common, as when there is question of the impediment of crime, the dispensation should be petitioned by the confessor who has detected the impediment, unless the confessor of the other party has already undertaken that matter.

III. The pastor or confessor should petition for the dispensation in the name of those about to marry, and indeed: 1° if the impediment is proper to one party, in the name of this one alone; 2° if it is proper to both parties, in the name of the bridegroom and in the name of the bride individually; 3° if it is common or correlative, in the name of both parties together. If, however, only one party is Catholic, it should be petitioned in this one's name alone.

Finally, a dispensation can also be petitioned with the parties unaware; nevertheless it should not be petitioned in this way unless it is better that the impediment not be made manifest to them except together with the dispensation obtained (St. Alphonsus VI, 1145).

[1] Cf. Sacred Penitentiary, September 4, 1839.

§ II. On the Person to Be Approached for the Petition

814 I. If there is question of a dispensation to be granted for the public forum, and it can be granted by the Ordinary, it should be sought from him. If it cannot be granted by the Ordinary, the petition should nevertheless be sent to the Ordinary, who is to transmit it to the Holy See.

II. If the matter is of a dispensation to be granted for the internal forum, and it can be given by the Ordinary, it should likewise be obtained from him. Except the case in which the infamy of the petitioners or the sacramental seal stands in the way, and the consent of those whose interest is involved is lacking (n. 817); in that case recourse should be had to the Sacred Penitentiary.

III. If a dispensation must be sought for both forums, one should proceed as is explained in n. 817.

Note. A petition to be directed to the Congregation of the Discipline of the Sacraments or to the Congregation of Propaganda Fide should begin: "Most Blessed Father"; one to be directed to the Sacred Penitentiary: "Most Blessed Father," or "Most Eminent and Most Reverend Lord," or also "Most Eminent Prince." The outside address should be: for letters to the Congregation of the Discipline of the Sacraments: To the Most Eminent and Most Reverend Lord Cardinal N., Prefect of the Congregation of the Discipline of the Sacraments, Rome (these things are to be expressed in a living language); for letters to the Congregation of Propaganda Fide: To the Most Eminent and Most Reverend Lord Cardinal N., Prefect of the Congregation of Propaganda Fide, Rome (these likewise in a living language); for letters to the Sacred Penitentiary: To the Most Eminent and Most Reverend Lord N., Cardinal Major Penitentiary, Rome (again in a living language). Finally, the letters are to be transmitted after the postal expenses have been paid.

§ III. On Drafting the Petition

815 Letters to be directed to the Sacred Congregations can be composed in Latin, Italian, French, German, Spanish, English, and Portuguese; letters to the Sacred Penitentiary can be composed in any language. Nevertheless it is better to use the Latin language.

With these points noted, we will speak specifically of those things which, with the style of the Curia considered, that is, with the will and practice of the Congregation to which the petition is directed considered, must be expressed, and which are contained especially in the Instruction of the Sacred Congregation of Propaganda Fide dated May 9, 1877. First, however, we will speak of the petition by which a dispensation is sought for the external forum; then of the petition by which a dispensation is obtained for the internal forum; finally of the petition which regards a marriage invalidly contracted.

Point I. On the Petition by which a Dispensation Is Sought for the External Forum

The things to be expressed regard: 1° the persons of the petitioners; 2° the impediments; 3° various circumstances; 4° the cause or causes for dispensing; 5° the state of fortune of the petitioners.

816 I. The persons of the petitioners. There should be expressed:

1. The name and surname of the petitioners, each to be written distinctly and clearly and without any abbreviation of letters.

2. The diocese of origin or of actual domicile of the petitioners.

817 II. The impediments. There should be expressed:

1. "The species, even the lowest species, of the impediment; whether it is consanguinity or affinity; in the impediment of public honesty, whether it took its origin from an invalid marriage or from public or notorious concubinage; in the impediment of crime, whether it came from spouse-killing with a promise of marriage, or from spouse-killing with adultery, or from adultery alone with a promise or attempted marriage; in spiritual relationship, whether it is between the sponsor and the baptized person or between the baptizer and the baptized person."[1]

2. The degree of consanguinity or affinity or public honesty, and whether it is simple or mixed, not only the more remote degree but also the nearer one, as also the line, whether it is direct or transverse, and likewise whether the petitioners are joined by a double bond of consanguinity, both on the father's side and on the mother's side.[2]

3. The number of impediments, for example if there is double or multiple consanguinity or affinity, or any other impediment whatever, whether diriment or impedient. Therefore if several impediments concur, ordinarily all must be expressed in one and the same petition.[3] The reason is that the more numerous the impediments are, the more difficultly a dispensation is granted; wherefore all must be opened at least to one dispenser (St. Alphonsus VI, 1139). Conformably to this doctrine:

a) If even one of the impediments can be relaxed by the Holy See alone, ordinarily the Holy See must be approached for all (canon 1050). I said "ordinarily"; for, with the cited canon considered: 1° If with an impediment from which the Holy See alone can dispense there concurs either a public impediment from which the Ordinary can dispense by ordinary power, or an occult impediment from which he can dispense in any way whatsoever, then the Ordinary can dispense separately in the impediment of his competence, recourse having been made to the Holy See for the other impediment. 2° If the impediments over which the Ordinary can dispense are discovered after the dispensation has been obtained from the Holy See, the Ordinary will always be able to use his faculties, that is, even if with the impediment to be relaxed by the Holy See there concurs a public impediment in which the Ordinary can dispense by indult. It is said "after the dispensation has been obtained," that is, after the rescript of dispensation has been received, whether in gracious form or, as it seems should be added, in commissory form, because even in this case the dispensation seems able to be said to have been obtained from the Holy See.

b) If a public impediment and an occult impediment which cannot be opened without infamy or injury of the seal stand in the way of marriage, a twofold petition is needed, one for the external forum, the other for the internal forum, unless the petitioners permit all things to be manifested for the external forum. In that hypothesis, in the petition for the external forum only the public impediments should

be expressed; in the petition for the internal forum both the public and the occult impediments should be expressed, adding that a dispensation from the public impediments has been or will be sought for the external forum.

If both petitions cannot be sent to the same Ordinary without infamy of the petitioners or injury of the seal, either consent should be sought for expressing all things in the petition for the external forum, in which case there should be added that this is done by consent given;[4] or the petition for the internal forum should be sent directly to the Sacred Penitentiary.[5]

[1] Cited Instruction.

[2] Cited Instruction.

[3] Cf. Sacred Penitentiary, April 15, 1853, and canon 1050.

[4] Vlaming notes: "That practice, namely, of making mention of the occult impediment in the supplication for the external forum, pleases me especially little because I do not see how it will not happen that mention of the occult impediment will then occur also in the rescript; but rescripts of the external forum are customarily preserved in the parochial archive or elsewhere; thus therefore the occult impediment, for the most part arising from sin (crime) or at least pertaining to the forum of conscience (a private vow), is in a certain way handed down to posterity" (II, n. 447).

[5] According to what was said under a), public impediments in which the Ordinary can dispense by ordinary power are not necessarily expressed in the petition; indeed, it is even disputed whether this is ever required for validity.

818 III. Circumstances. 1. Circumstances of age and condition are not to be expressed except insofar as they are alleged as a cause for dispensing.

2. The same must be said concerning copula perhaps admitted; and by force of the decree of the Holy Office of June 25, 1885 this also holds concerning incestuous copula, which formerly had to be expressed even if it was not alleged as a cause. From the same decree, the hope or malicious intention of obtaining a dispensation more easily by copula or some other crime must now not be expressed, at least if copula is alleged as a mere circumstance; if it is alleged as a cause, it is disputed whether the malicious intention must be expressed. Some affirm this, because the Decree of the year 1885 explicitly speaks only of copula and malicious intention as mere circumstances, but not of the case in which copula is alleged as a cause of dispensation. Others deny it, with both the benign mind of the Holy See and the formulas of dispensations considered, in which there is no mention of malicious intention, even if copula has been alleged as a cause. Whatever the case, by force of the decree of the Holy Office of March 18, 1891, "matrimonial dispensations over any impediment whatever, whether there is question of marriages invalidly contracted or to be contracted, are valid, even if copula or the plan and intention of obtaining the grace more easily through it have been kept silent."

3. The circumstance of offspring, whether already born or conceived, must be expressed only insofar as this is necessary for legitimating the offspring; that is, it must be expressed: 1° if there is offspring already born or to be born before the subsequent marriage, and there is question of adulterine or sacrilegious offspring, because it is legitimated neither by subsequent marriage (canon 1116) nor by dispensation (canon 1031); 2° if there is offspring already born or to be born before the dispensation has been fulminated, and there is question of a dispensation to be granted by rescript in a particular case, because even in this case the offspring is legitimated neither by subsequent marriage nor by dispensation (the cited canons).

4. The circumstance of a marriage to be contracted or already contracted invalidly. If it has already been contracted, several things must be added, as is explained in n. 822.

819 IV. The causes for dispensing should be set forth clearly and briefly.

820 V. The state of fortune must sometimes be expressed, for instance so that the Congregation may be able to judge in what form it should dispense: in the form of the poor or in the form of the rich, or, setting aside form, altogether gratis. If it is granted in the form of the poor, a minimal tax or composition[1] is required, which is determined with the nature and degree of the impediment considered, together with an agency fee proportioned to the tax. If it is granted in the form of the rich, a tax is required which is determined with the nature and degree of the impediment and the fortune of the petitioners considered, together with an agency fee proportioned to the tax. If the petitioners are "miserable," as it is said, nothing at all is required. Moreover, the tax or composition is imposed both by way of a fine to recompense the wound inflicted on the law by the dispensation, and so that the Holy See may be able to pay the stipends of officials or promote other good works. Therefore:

1. The state of fortune must be expressed in obtaining dispensations from the Congregation of the Discipline of the Sacraments, which observes the distinction between rescripts in the form of the rich and in the form of the poor. It should be set forth how much the male petitioner and the female petitioner possess in reality, and what they hope for from the succession of ascendants, debts, however, being deducted; nevertheless one must not proceed scrupulously. In addition, a dispensation granted in the form of the poor is valid even if the petitioners are not poor;[2] nevertheless they are bound to pay or supply the rights defrauded.

Note. In practice the state of fortune is rather often expressed in letters directed to the Ordinary, through whom the dispensation is obtained from the Holy See.

2. The state of fortune is not expressed for dispensations to be obtained from the Sacred Congregation of Propaganda Fide or from the Sacred Penitentiary; these Congregations do not impose a tax or composition.[3] Only postal expenses must be paid and, unless the rescript is obtained through a person residing at Rome and conducting the business of the Bishop, the rights of the Agent. Nor must the state of fortune be expressed for dispensations to be sought from the Holy Office, which requires a fixed tax and also grants reduction for circumstances. Moreover, although in the cases explained the state of fortune need not be expressed, and even poverty erroneously or falsely alleged does not obstruct the value of the dispensation, nevertheless the petitioners, as we noted above, must pay or supply the rights defrauded.
3. Nor must the state of fortune be expressed if the dispensation is obtained from the Bishop; namely, "except for some modest payment by title of chancery expenses in dispensations for non-poor persons, local Ordinaries or their officials, any contrary custom being reprobated, cannot, on the occasion of a dispensation granted, exact any emolument, unless this faculty has been expressly given to them by the Holy See; and if they have exacted it, they are bound to restitution" (canon 1056).[4]

[1] The distinction between tax and composition has practically been removed; likewise the distinction between the truly poor and the almost poor.

[2] Sacred Congregation of the Council, September 9, 1679; Sacred Penitentiary, August 7 and December 3, 1852; *Ordo servandus*, part 1, chapter XI, 3°.

[3] *Ordo servandus*, part 1, chapter XI, 150; the other part, chapter VIII, article 1, 3°.

[4] A privilege perhaps conceded in this matter perseveres even after the Code has been introduced (canon 4).

Point II. On the Petition by which a Dispensation Is Sought for the Internal Forum

821 The same things are to be expressed as in the petition for the external forum, with these exceptions. The petitioners are designated by fictitious names, for example Titius and Bertha. The diocese of the petitioners and the state of fortune are omitted; but the place to which the rescript is to be sent should be accurately indicated.

For convenience there follow:

Forms Of Petitions.

I.

For The External Forum.

(Your Most Reverend Excellency).[1]

Peter N., of the diocese of N., and Anna N., my parishioner, desire to enter marriage; but they are bound by the impediment of consanguinity in the second degree touching the first. They humbly petition that a dispensation be granted to them. (If offspring has been born or conceived, let there be added: They also obtain the legitimation of the offspring.)

The causes are:

And God...

N. N., pastor at... Diocese...

II.

For The Internal Forum.

Most Eminent and Most Reverend Lord.

Caius and Caia desire to enter marriage; but they are bound by the impediment of consanguinity in the second degree touching the first, a dispensation from which impediment is being sought in another petition for the external forum. Besides, they are held by an occult impediment contracted from adultery and from a promise of future marriage made mutually to each other during the marriage by which one or the other, or both, parties were formerly bound. They humbly petition that a dispensation be granted to them.

The impediment is altogether occult.

The causes are:

May Your Eminence deign to direct the response to me, the undersigned confessor.

[1] If the Ordinary is able to dispense.

Point III. On the Petition which Regards a Marriage Invalidly Contracted

822 I. First, these things hold: If a dispensation is sought for the external forum, those things must be expressed which we said must be expressed in the petition for the external forum; if a dispensation is

sought for the internal forum, those things must be indicated which we noted must be indicated in the petition for the internal forum.

II. Then, concerning the marriage itself, various things must be expressed according as there is question of simple convalidation or of sanation in the root (n. 830 sq. and 833).

1. If there is question of simple convalidation, there must be opened whether the petitioners, or one or the other, contracted the marriage in good or bad faith; whether, with the banns having been published, or if omitted, whether with the banns duly dispensed, they contracted according to juridical form; finally whether both, or one or the other, consummated the marriage in good or bad faith.[1]

2. If there is question of sanation in the root, besides those things to be indicated for obtaining simple convalidation, it should be indicated whether the conditions required for acquiring sanation in the root are present (n. 833).

[1] Cited Instruction, p. 673.

Scholion. On Healing Defects of a Dispensation

823 I. A dispensation can be vitiated, that is, rendered void, either by subreption or concealment of the truth, or by obreption or exposition of what is false.

II. A dispensation is in fact rendered void or is not rendered void as follows:

1. No dispensation is rendered void because of an error in the name of the person to whom or by whom it is granted, or of the place in which that person remains, or of the thing of which there is question, provided that, in the judgment of the Ordinary, there is no doubt about the person or the thing itself (canon 47).

2. A dispensation granted from a lesser impediment (n. 812) is rendered void by no defect either of obreption or of subreption; and this holds even if the sole final cause set forth in the prayers was false (canon 1054). Likewise and *a fortiori* the dispensation is valid even if the sole final cause set forth in the prayers ceased before the concession or fulmination of the dispensation. In addition, since no obreption or subreption obstructs validity, a dispensation from a lesser impediment is valid even when another impediment, whether of the same or of another species, has been kept silent; hence in the case only a supplementary dispensation is required for that other impediment.

3. A dispensation from the impediment of consanguinity or affinity, granted in some degree of impediment, is valid, although an error about the degree crept into the petition or the concession, provided the degree really existing is lower, or although another impediment of the same species in an equal or lower degree has been kept silent (canon 1052).

Corollary. If the dispensation was given in an impediment of a greater degree and an impediment, whether of another species or of the same species in a higher degree, has been kept silent, the dispensation is invalid, and a new dispensation of all the impediments is required.

4. Even if there is question of an impediment of greater degree, concealment of the truth or subreption does not obstruct the validity of the dispensation, provided those things have been expressed which, according to the style of the Curia, must be expressed for validity; nor does exposition of what is false or obreption obstruct it, provided either the sole cause proposed or at

least one motivating cause from among several proposed causes is true (canon 42). In doubt whether a cause falsely alleged is motivating or impulsive, and likewise whether a motivating cause is true or false, one must stand for the validity of the dispensation (St. Alphonsus VI, 1133). Finally, as was said under 2, a dispensation from a lesser impediment is valid even if the sole motivating cause set forth in the prayers is false.

5. A dispensation in an occult impediment is void if the impediment is not occult, except in a dispensation in an impediment of lesser degree.

Note. For a dispensation to be valid, it suffices that those things which must be expressed for validity be present: in rescripts without an executor, at the time when the rescript is given; in other rescripts, at the time of execution (canon 41).

824 III. When a defect of the dispensation has been detected, letters *Perinde valere*, that is, letters by which the defect is healed and it is declared that the letters of dispensation are valid just as if they had been valid from the beginning, should be petitioned if they can be obtained. I said, "if they can be obtained"; wherefore note that letters of this kind are not granted if a final cause has been falsely alleged, unless both the false cause and the one which truly exists tend to the same end. Otherwise a simply new dispensation is required. Besides, concerning the petitioning of letters *Perinde valere*, observe:

1. In the petition: 1° the prior petition is repeated substantially or integrally, with the substance of the prior grace also added; 2° the cause of nullity is indicated, adding whether perchance a marriage has been entered in the meantime; 3° convalidation of the dispensation is to be obtained, and a new dispensation if another impediment has been added.

2. The petition must be made for the external forum or for the internal forum or for both forums, as follows:

a) Even if the prior dispensation was sought for the external forum alone, but the defect pertains to the internal forum, convalidation should be sought in the internal forum, and indeed in the way in which the petition is made if a public and an occult impediment stand in the way of marriage (n. 817).

b) If the prior dispensation was sought for the internal forum alone: 1° if the defect pertains to the same forum, convalidation should be sought for the same internal forum; 2° if the defect pertains to the external forum, a dispensation should be sought for this same forum, but convalidation of the dispensation obtained should be sought for the internal forum.

c) If the prior dispensation was sought for both forums, a public defect must be healed for both forums, an occult one for the internal forum alone.

3. The Bishop cannot grant letters *Perinde valere* for convalidating a dispensation granted by the Holy See, even if he himself could have granted the dispensation (cf. canon 1050). Except: 1° when and insofar as he has received a special indult; 2° the case of urgent necessity, so that recourse cannot be had to the Holy See (cf. canon 1045, § 1; canon 81).

IV. If the letters *Perinde valere* are invalid, letters *Perinde valere* upon another *perinde valere* must be petitioned.

Warning.

The Council of Trent says thus: "In contracting marriages, either no dispensation at all is to be given, or rarely, and that from a cause and gratis."[1] Moreover, although this practice has been mitigated, dispensations are nevertheless wounds inflicted on ecclesiastical discipline.[2] Hence pastors and confessors should observe these words of the Provincial Council of Utrecht: "Let them beware especially lest they themselves furnish the occasion for marriages among the impeded, by too easily suggesting the counsel of petitioning for a dispensation and the hope of obtaining it."[3]

[1] Session 24, *De reformatione matrimonii*, chapter 5.

[2] Cf. rescript of Pius VII to the Bishops of France, February 19, 1809.

[3] P. 179.

Article IV. On the Execution of a Dispensation

825 Dispensations can be granted either in gracious form or in commissory form. It is said to be granted in gracious form when the Superior to whom the petition is directed himself grants the dispensation or applies it to the petitioners; hence a concession of this kind is made without an executor, and has effect from the moment when the letters were given (canon 38). A dispensation is said to be granted in commissory form when the Superior commits the execution of the dispensation to another. The person to whom the execution is committed is called the executor; the whole business to be fulfilled by him is called execution; the part of the business which consists in applying the dispensation is called fulmination. Concerning execution, the following hold:

I. The executor of a dispensation performs his office invalidly before he has received the letters and recognized their authenticity and integrity, unless previous knowledge of them has been transmitted to him by the authority of the rescriptor (canon 53). Besides, note:

1. The executor of dispensations can substitute another for himself according to his prudent judgment, unless substitution has been prohibited or the person of the substitute has been predefined (canon 57, § 1).
2. Any dispensations whatever can be committed to execution also by the successor of the executor in dignity or office, unless the industry of the person has been chosen (canon 58).
3. Through the vacancy of the Apostolic See or of the diocese, no dispensation of the same Apostolic See or of the Ordinary perishes (canon 61).
4. The Ordinary of the petitioners, to whom a dispensation over a public impediment has been committed, should execute the dispensation even if the betrothed have departed into another diocese before the execution of the dispensation, and are not going to return, provided the Ordinary of the place in which they desire to contract marriage is advised (canon 1055).

II. If in the rescript of dispensation the mere ministry of execution is committed, the execution of the rescript cannot be denied unless either it is manifestly clear that the rescript is null by a defect of subreption or obreption, or conditions are placed in the rescript which the executor knows have not been fulfilled, or the one who obtained the rescript seems, in the judgment of the executor, so unworthy that the concession of the grace will be an offense to others; and if this last thing happens, the executor, the execution having been interrupted, should immediately make the rescriptor more certain about the matter (canon 54, § 1). But if in the rescript of dispensation the concession of the

grace is committed to the executor, it belongs to him, according to his prudent judgment and conscience, to grant or deny the grace (canon 54, § 2).

826 III. The execution of a dispensation includes verification of the prayers, fulfillment of clauses, and certain other things to be observed.

1. Verification of the prayers. This consists in the executor's investigating whether or not the things contained in the rescript of dispensation agree with the case as it stands at the time of execution (canon 38), and indeed agree insofar as that is required for the validity of the rescript. To what extent this is required for the validity of the rescript is clear from what was said in n. 823. In a word: for validity, the truth of those things suffices which had to be expressed for validity. Besides, note:

a) Verification is required only for liceity; indeed it does not press if, as happens, it has already taken place before, and the executor is certain that the matters have not changed. In the case it suffices to investigate whether the tenor of the rescript corresponds to the things set forth in the petition.[1]

b) Verification is instituted: for the external forum, for example by questioning the petitioners and witnesses, consulting the parochial books, etc.; for the internal forum, by questioning the penitent. Verification for the external forum can also be instituted through another.

2. Clauses to be fulfilled; moreover, the principal clauses are:[2]

a) In rescripts of the Holy Office, if it dispenses in the impediment of disparity of worship or mixed religion, there is added the clause: provided first that regularly, according to the prescription of canon 1061, § 2, sufficient provision has altogether been made for the conditions required by the Church, and the Ordinary himself is morally certain that these conditions will be fulfilled, namely on the part of the non-Catholic spouse concerning removing from the Catholic party the danger of perversion, and on the part of both persons about to marry concerning all offspring of each sex being altogether baptized and educated in the sanctity of the Catholic religion. This clause is essential. The clause concerning the obligation of warning those about to marry that they also cannot approach a non-Catholic minister to give or renew matrimonial consent is now not essential, but only preceptive.

b) In rescripts of the Congregation of the Discipline of the Sacraments:

a) If the things set forth are true. This clause is essential insofar as the truth of those things which had to be expressed for validity is required (n. 823).

b) The canonical prescriptions being observed. This clause is essential or merely preceptive according as the prescriptions themselves are essential or preceptive, according to what has been said and what remains to be said.

c) Provided that no scandal intervenes. The clause does not seem to be essential. Moreover, a continuous occasion should be removed by separation if it is voluntary; if it is necessary, it should be rendered remote.[3]

d) A salutary penance having been imposed on the petitioners. The clause is merely preceptive.

e) Provided that no doubt underlies the matter that the spouse could be offspring generated by the other of the contracting parties. This clause is essential, and in a dispensation in the impediment of public honesty is understood if it is not expressed (cf. canon 1076, § 3).[4]

c) In rescripts of the Sacred Penitentiary:

a) His or her confession having first been heard, or only in sacramental confession. This clause imports that, for validity, it is required that sacramental confession be instituted and that the dispensation be fulminated in confession. Nevertheless the dispensation is not invalid because the confession is sacrilegious or invalid; nor is absolution required[5] (St. Alphonsus, 1143).

b) Provided that the impediment is occult. The clause is essential.

c) Provided that letters of dispensation over the public impediment have been obtained and the nullity coming from the foregoing remains occult, namely until the nuptials. The clause is essential and is added when a public impediment concurs with an occult one.

d) A grave, or long, or perpetual salutary penance having been enjoined. The clause is merely preceptive; moreover, a penance distinct from the sacramental penance is understood. A long penance is, for example, a penance of one year; a perpetual penance regards the whole life (St. Alphonsus VI, 1143).

"In predefining the quality, gravity, duration, etc., of the penance, let him exceed neither the limits of severity nor those of humanity, and let him take account of the condition, age, infirmity, office, sex, etc., of those on whom the penalty is to be imposed."[6] If the penitent does not accept the penance, commutation should be obtained; and if this is foreseen, it should be manifested in the petition.

e) Other things having been enjoined which must be enjoined by law, that is, according to the principles of moral theology, for example scandal to be removed, restitution to be made, etc. This clause is likewise merely preceptive.

3. And certain other things to be observed. a) Previous absolution from censures is not required for the validity of the dispensation, unless someone has been censured by a declaratory or condemnatory sentence brought against him (canon 36, § 2); nor is it clear that it is required for liceity. If a sentence has intervened, the censured person cannot validly receive a dispensation unless mention of the censure is made in the pontifical rescript (canon 2265, § 2; 2275, 3°; 2283). Besides, in the case in which absolution from censure has place, the customary form of absolving from censures and sins suffices, that is, the one which is used in sacramental judgment. If absolution from sins cannot be given, for instance because the penitent is indisposed, the absolution from sins being omitted, only absolution from censures is first given.

Note. In the faculty of dispensing is also included the power of absolving from ecclesiastical penalties if any perchance stand in the way, but only for the effect of obtaining the dispensation (canon 66, § 3; n. 809).

b) The executor must accomplish the fulmination itself for the external forum in writing (canon 56); likewise it is better that he accomplish it in this way if the fulmination is made in the non-sacramental internal forum. In the sacramental internal forum it is to be made by living voice and to a person present. It is made to one person only if the impediment affects only one party, for example a vow; if the impediment is common to both parties, it is to be made to both parties, whether the same or a different confessor is chosen by the petitioners.[7] If a different confessor is chosen, "the prior confessor, after the dispensation has been granted to one according to the form of the letters, must hand over the letters of the Sacred Penitentiary, closed, to the penitent, so that through him they may be handed over to the other party, who likewise should have the same letters executed with him or her through

another confessor, whose duty it will be in a case of this kind, when the business has been completed, to tear up the letters."[8] Nevertheless, even in this hypothesis the fulmination upon the other party is required only for liceity, and for a grave cause, for instance because the other party refuses to confess, it can be omitted.

A determinate form by which the fulmination is made is not required. If, however, someone grants a dispensation by power delegated from the Apostolic See, he should make express mention of the pontifical indult (canon 1057).

c) After the dispensation has been fulminated, if mention is made in the document concerning legitimation, legitimation of the offspring follows; this can be made in any form. Fittingly one of these forms, taken from Benedict XIV, is used for fulmination and legitimation.[9]

For a marriage to be contracted: After the customary form of absolution, the confessor can proceed thus: "And besides, by Apostolic Authority, or by the authority of the Most Reverend Bishop N., specially delegated to me, I dispense with you over the impediment, which he here expresses, for example, of the second degree of affinity, so that, notwithstanding the aforesaid impediment, you may licitly be able to contract marriage publicly with the woman whom you intend to marry, the ecclesiastical form having been observed, to consummate it, and to remain in it; and by the same Apostolic Authority I declare the offspring already received, if there is any, and to be received from this union legitimate. In the name of the Father and of the Son and of the Holy Spirit. Amen."

For convalidating a marriage already contracted (n. 829 sq.): "Besides, by Apostolic Authority, or by the authority of the Most Reverend Bishop N., specially delegated to me, I dispense with you over the impediment... by which, being bound, you contracted marriage nullly, so that, notwithstanding the aforesaid impediment, you may licitly be able to contract marriage anew with your putative spouse, consent being renewed, to consummate it, and to remain in it; and I declare the offspring already received and to be received from this union legitimate. In the name," etc.

For a marriage to be healed in the root (n. 833): "Besides, by Apostolic Authority, etc.... I heal in its root the marriage contracted by you with N., and I declare the offspring already received and to be received from this union legitimate. In the name," etc.

d) After the fulmination has been completed, these things are to be observed:

a) Rescripts of dispensations granted for the external forum should be deposited in the diocesan archive (cf. canon 375, § 1), and the executory letters in the parochial archive.

b) Unless the rescript of the Sacred Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum over an occult impediment should be noted in the book to be carefully kept in the secret archive of the Curia, of which canon 379 treats; nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public; but it is necessary if the dispensation had been granted only in the sacramental internal forum (canon 1047).

c) Rescripts by which a dispensation has been granted for the sacramental internal forum are to be torn up or burned, and this according to the rescripts of the Sacred Penitentiary "under latae sententiae excommunication." The obligation must be fulfilled at least within three days after the execution of the dispensation (St. Alphonsus VI, 1143). Nevertheless, the confessor is not prohibited from retaining a transcribed text; in that case he should omit the day and year.

[1] Cf. Sacred Penitentiary, April 27, 1886; Holy Office, August 28, 1895.

[2] Cf. Aertnys-Damen II, n. 802 sq.

[3] Sacred Penitentiary, April 27, 1886.

[4] Cf. Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 346).

[5] Sacred Congregation of Propaganda Fide, January 6, 1797 (collection, n. 633); December 18, 1878; Sacred Penitentiary, May 19, 1834; January 4, 1839.

[6] Sacred Penitentiary, April 8, 1890.

[7] Sacred Penitentiary, November 15, 1778.

[8] Response of the Sacred Penitentiary cited.

[9] Benedict XIV, *Institutiones ecclesiasticae* 87, n. 81.

Appendix I. On Invalid Marriage

827 If any marriage is found to be invalid, the case must be provided for in different ways according to the circumstances: namely, either by leaving the parties in good faith, or by permitting them to live as brother and sister, or by declaring the nullity of the marriage, or by convalidating the marriage. Which mode ought to be chosen will be clear from what is to be said. Ordinarily, however, one must recur either to a declaration of the nullity of the marriage, or, and especially indeed, to convalidation of the marriage. Hence:

Part I. On the Declaration of the Nullity of an Invalid Marriage

828 I. One must regularly proceed to the declaration of the nullity of an invalid marriage: 1° if convalidation cannot have place, because the impediment cannot be removed; 2° if, all things considered, it is better for the parties to be separated.

II. The competent judge in this cause is the judge of the place in which the marriage was celebrated, or in which the respondent party, or, if one is non-Catholic, the Catholic party, has a domicile or quasi-domicile (canon 1964). Nevertheless, recourse can also be had to the Holy See.

1. The tribunal to be constituted by the Ordinary consists of three judges (canon 1576, § 1), to whom are added the "defender of the bond," as it is called, and an actuary.
2. The tribunal must proceed collegially and render sentence by the greater part of the votes (canon 1577, § 1).
3. If sentence is rendered for the nullity of the marriage, appeal should be made to a higher tribunal, different according to the circumstances (canon 1986; compare canon 1594, §§ 1 and 2).[1]
4. After the second sentence, which has confirmed the nullity of the marriage, if the defender of the bond in the grade of appeal has not believed according to his conscience that appeal should be made, the spouses have the right, ten days having elapsed from the notification of the sentence, of contracting new nuptials (canon 1987).
5. Canon 1990 establishes when the solemnities enumerated can be omitted: "When from a certain and authentic document, which is subject to no contradiction or exception, there has been established the existence of an impediment of disparity of worship, order, solemn vow of chastity, bond, consanguinity, affinity, or spiritual relationship, and at the same time with equal certainty it has appeared that a dispensation over these impediments was not given, in these cases, the solemnities enumerated up to this point having been passed over, the Ordinary, the parties having been cited, will be able to declare the nullity of the marriage, with the intervention, however, of the defender of the bond." Nevertheless, canons 1991 and 1992 should be consulted.
6. A marriage between two Catholics or between a Catholic party and a non-Catholic party, contracted either merely civilly or by a non-Catholic rite, can be declared null by the Ordinary, or by the pastor after the Ordinary has been consulted, after only the investigation of which canon 1019 sq. treats has first been made.[2]

[1] Appeal can also be made to the Sacred Rota (canon 1599, § 1, 1°).

[2] Pontifical Commission, October 16, 1919, to 17 (*A.A.S.* 1919, p. 479); March 23, 1919 (*Archiv fuer katholisches Kirchenrecht* 1919, p. 64).

Part II. On the Convalidation of an Invalid Marriage

829 The convalidation of an invalid marriage can take place in two ways: by simple convalidation and by sanation in the root, as it is called.[1] These differ especially in this, that simple convalidation, contrary to sanation in the root, requires renewal of consent, to be furnished at least by one party, as will be clear from what is to be said.

[1] Note that marriages, if any are null by reason of impediments abrogated by the new Code, were in no way convalidated by the promulgation itself of the Code. Thus Pontifical Commission, June 2-3, 1918, IV, 7 (*A.A.S.* 1918, p. 346).

Section I. Simple Convalidation

Three cases of convalidation can be distinguished according to the threefold cause of the nullity of the marriage, namely, on account of a diriment impediment, on account of a defect of consent, and on account of a defect of juridical form.

Chapter I. On the Convalidation of a Marriage Invalid on Account of a Diriment Impediment

830 I. Requisites for convalidation. From canon 1133, § 1, for convalidating a marriage void on account of a diriment impediment, there is required:

1. That the impediment cease, or be removed by dispensation.[1]

2. That at least the party conscious of the impediment renew consent. Moreover:

a) Renewal of consent is required by ecclesiastical law for validity, even if at the beginning each party furnished consent and did not afterward revoke it (canon 1133, § 2).

b) Renewal of consent is required only by ecclesiastical law, but not by natural law. This is clear both from the practice of the Church sometimes remitting renewal of consent and from the fact that matrimonial consent furnished and enduring ought of itself, by the very fact that the impediment or obstacle is removed, to become efficacious.

Some except a marriage or matrimonial consent to which an impediment of natural or divine law stood opposed, and judge that a marriage of this kind cannot be convalidated except by the new consent of each party. But first, every intrinsic reason for admitting the aforesaid exception is lacking. Then the Sacred Penitentiary, in the Paris case, April 25, 1895, sanated in the root a marriage to which an impediment of natural law had stood opposed after the cessation of the impediment. Nevertheless, a difficulty arises from the fact that the Holy Office, March 2, 1904, declared: "A marriage contracted with an impediment of natural or divine law cannot be sanated in the root." But one can answer that, according to the mind of the Holy Office, that cannot be done insofar as the Church cannot remove an impediment of this kind; and this removal is the condition without which sanation cannot have place. Besides, *de facto*, if a marriage has been contracted with an impediment of natural or divine law, even if afterward the impediment has ceased, the Church does not remit renewal of consent, not even from the moment of the cessation of the impediment (canon 1139, § 2).

c) Renewal of consent must be a new act of the will toward a marriage which is known to have been null from the beginning (canon 1134). Therefore a new act of the will is required, and one independent

of the prior consent, that is, not merely confirmatory of the prior consent, but posited with knowledge of the nullity of the marriage.

II. Form to be observed. 1. If the impediment is public, consent must be renewed by both parties in the form prescribed by law (canon 1135, § 1). If one party refuses renewal in the prescribed form, a dispensation from form should be sought; if one party refuses the very renewal of consent, either it should be petitioned that only one party must renew consent, or that sanation in the root be granted. Nevertheless, in individual cases scandal should be removed by making known the convalidation of the marriage.

2. If it is occult and known to both parties, it is enough that consent be renewed by both parties privately and secretly (canon 1135, § 2). If one party refuses renewal of consent, either it should be petitioned that only one party must renew consent, or that sanation in the root be granted.

3. If it is occult and unknown to one party, it is enough that the party conscious of the impediment alone renew consent privately and secretly, provided the other perseveres in the consent furnished (canon 1135, § 3). Moreover, as canon 1093 has it, although a marriage has been entered invalidly by reason of an impediment, the consent furnished is presumed to persevere until its revocation has been established.

[1] The impediments of age, abduction, bond, and disparity of worship can cease.

Chapter II. On the Convalidation of a Marriage Invalid on Account of Defect of Consent

831 Preliminary note. Here belong marriages null on account of defect of discretion, error, fear, fiction, or a condition repugnant to the substance of marriage.

I. Requisites for convalidation. A marriage void on account of defect of consent is convalidated if the party who had not consented now consents, provided the consent furnished by the other party perseveres (canon 1136, § 1). In the case it is not required that the party who had consented renew consent, because for a contract it suffices that the consent of both parties morally coexist. This obtains if the consent of one perseveres until the other furnishes consent (St. Thomas, Supplement, q. 47, a. 4, ad 2; St. Alphonsus VI, 1114).

II. Form to be observed. From canon 1136, §§ 2 and 3:

1. If the defect of consent was merely internal, it is enough that the party who had not consented consent interiorly.

2. If it was also external, it is necessary also to manifest consent externally, and indeed in this way:

a) If the defect was secret, it suffices to manifest consent privately and secretly, that is, between the parties alone.

b) If the defect was public, consent must be manifested in the form prescribed by law. If in the case the party who did not consent refuses to manifest consent in the form prescribed by law, a dispensation from form should be sought, and scandal should be removed by making known the convalidation of the marriage.

Chapter III. On the Convalidation of a Marriage Invalid on Account of Defect of Form

832 Preliminary note. Here belong, for example, marriages entered merely civilly by those who are bound to ecclesiastical form. Moreover:

A marriage null on account of defect of form, in order that it become valid, must be contracted anew in legitimate form (canon 1137); and indeed, as regards liceity, publicly or occultly, according as the nullity is public or occult.

If the nullity is public, and both parties or one or the other refuses publicly or in the face of the Church to renew consent, it can be permitted by the Ordinary that the marriage be contracted, for example, in the house of the pastor before only the pastor and witnesses. Scandal, however, should be removed by making known the convalidation of the marriage.

If one party refuses to renew consent in legitimate form, a dispensation from form should be sought.

If one party refuses to renew consent, sanation in the root should be sought. In every case, however, scandal, if it is present, should be removed by making known the convalidation of the marriage.

If both parties refuse to renew consent or to renew it in legitimate form, the Church does not grant sanation in the root.

Note. Concerning the drafting of a petition for convalidation of a marriage, see n. 822. For convenience there follow:

Forms Of Petitions.

I.

For The External Forum.

Most Blessed Father.

(Your Most Reverend Excellency).[1]

Peter N., of the diocese of N., and Anna N., my parishioner, entered marriage in the form prescribed by law. Afterward the public impediment of affinity in the second degree of the collateral line became known. They humbly ask for a dispensation, so that the invalidly contracted marriage may be convalidated. (If offspring has been born or conceived, let there be added: They also obtain the legitimation of the offspring.)

And God...

N. N., pastor at... Diocese...

II.

For The Internal Forum.

Most Eminent and Most Reverend Lord.

Caius and Caia in good faith entered marriage in the form prescribed by law. Afterward, however, in the internal forum an occult impediment became known, contracted from adultery and from a promise of future marriage mutually made to each other during the marriage by which one or the other, or both, parties were formerly bound.

That the marriage, whose nullity is known to both, or to one or the other, party, may be convalidated, the confessor humbly asks that the impediment be removed.

May Your Eminence deign to direct the response to me, the undersigned confessor.

[1] If the Ordinary is able to dispense.

Section II. Sanation in the Root

833 I. Notion. "Sanation in the root of a marriage is the convalidation of the same marriage, carrying with it, besides the dispensation or cessation of the impediment, dispensation from the law concerning renewal of consent, and retrotraction by fiction of law, concerning canonical effects, into the past" (canon 1138, § 1). Therefore sanation in the root involves three things:

1. It removes the impediment, unless it has already ceased.
2. It dispenses from the law of renewing consent, or permits the marriage to be convalidated by force of the prior consent, that is, although neither party renews consent.[1] The convalidation, however, takes place from the moment of the concession of the grace (canon 1138, § 2).
3. It effects that the canonical effects, especially the legitimacy of offspring, belong to the sanated marriage not only now, but by fiction of law are so attributed to it as if the marriage had already been valid in the past; indeed, the retrotraction is understood to have been made to the beginning of the marriage, unless something else is expressly provided (canon 1138, § 2).

Therefore sanation in the root differs from simple convalidation: 1° because the former requires renewal of consent from neither party, while the latter requires that consent be renewed at least by one party; 2° the former so attributes canonical effects to the sanated marriage as if they had already previously been annexed to it, while the latter lacks this efficacy.

Note. Dispensation from the law concerning renewal of consent can also be granted with only one party or with both parties unaware (canon 1138, § 3).

II. Possibility of sanation in the root. Any marriage entered with the naturally sufficient consent of both parties, but juridically inefficacious on account of a diriment impediment of ecclesiastical law or on account of defect of legitimate form, can be sanated in the root, provided consent perseveres (canon 1139, § 1). The same must be said of a marriage invalid on account of a diriment impediment of natural or divine law (n. 830). But a marriage contracted with an impediment of natural or divine law, even if afterward the impediment has ceased, the Church does not sanate in the root, not even from the moment of the cessation of the impediment (canon 1138, § 2).

III. Requisites that a marriage can be sanated in the root. For validity it is required:

1. That each party furnished consent and that it was truly matrimonial consent (canon 1140, § 1). Therefore merely fornicary consent does not suffice, nor civil marriage if it was entered as a mere civil ceremony, but not as marriage. But if consent indeed was lacking from the beginning, but afterward was furnished, sanation can be granted from the moment of the consent furnished (canon 1140, § 2).
2. That each party persevere in consent, or that neither party has revoked it (canon 1140, § 1). But that one or both parties would revoke consent if they knew the nullity of the marriage is not yet revocation; indeed, not even separation from bed and board necessarily involves revocation.[2]

IV. Subject of the power of sanating in the root. Sanation in the root can be granted only by the Apostolic See (canon 1141). The Apostolic See, however, grants it through the Holy Office, or the Congregation of the Discipline of the Sacraments, or through the Sacred Penitentiary, according as the case bears (n. 803). Nevertheless special indults also are customarily granted to others;[3] but the power of dispensing in some impediment does not import the power of sanating in the root.

V. Petition for sanation in the root. It is to be sought if, on the one hand, it seems that the convalidation of some marriage must altogether be provided for, but on the other hand one must abstain from simple convalidation. Therefore it should be sought: 1° if in some place many marriages have been entered invalidly, so that renewal of consent would be liable to many inconveniences; 2° if the things required for simple convalidation are foreseen to be lacking, for instance if the party who, according to the laws of simple convalidation, is bound to renew consent or to renew it in legitimate form refuses to perform this, provided the other party is well disposed.

If each party is in good faith, and neither can be warned without inconvenience, the petition for sanation can be omitted and the parties can be left in good faith; although, if the nullity of the marriage came from the fault of others, for example of the pastor or Ordinary, the Church easily grants sanation, so that then it is expedient to seek it (cf. canon 1138, § 3).

Note. Concerning the drafting of a petition for sanation in the root, see n. 822. For convenience there follow:

Forms Of Petitions.

I.

For The External Forum.

Most Blessed Father.

Peter N., of the diocese of N., and Anna N., my parishioner, in good faith entered marriage in the form prescribed by law. Afterward the public impediment of consanguinity in the third degree of the collateral line was detected and became known to both parties. The consent of each endures. But since the man refuses to renew consent in the form prescribed by law, the woman humbly requests sanation in the root. (If offspring has been born or conceived, let there be added: and the legitimation of the offspring received.)

And God...

N. N., pastor at... Diocese...

II.

For The Internal Forum.

Most Blessed Father.

Caius and Caia had contracted marriage in good faith in the form prescribed by law. Afterward, however, in the internal forum an occult impediment became known, contracted from adultery and from a promise of future marriage mutually made to each other during the marriage by which one or the other, or both, parties were formerly bound. Caia fears that Caius, who is ignorant of the impediment, would refuse to renew consent even privately and secretly. Hence she humbly petitions that Your Holiness would wish to grant sanation in the root of the present marriage and to direct the

response to me, the undersigned confessor. (If offspring has been born or conceived, let there be added after the word "marriage": and the legitimation of the offspring received.)

And God...

[1] Therefore it heals the root, that is, consent vitiated from the beginning or inefficacious because of an impediment.

[2] Some ask whether consent given by one in possession of reason perseveres after the consenting person has fallen into perpetual insanity. Moreover, it seems it must be denied, because consent seems to fail in a person of this kind, as in a dead person (cf. canon 1089, § 3).

[3] Cf. Form II, minor faculties of the Sacred Congregation of Propaganda Fide, n. 15 (Vermeersch, *Commentarius*, n. 93).

Scholion I. On the Convalidation of an Invalid Marriage Between a Catholic Party and a Non-Catholic Party

834 We suppose that the marriage is invalid either on account of disparity of worship and defect of form, or on account of defect of form alone. Now, so that a marriage of this kind may be convalidated:

I. First, the things to be posited having been posited, a dispensation should be sought either from the diriment impediment of disparity of worship or from the impedient impediment of mixed religion. Then the marriage should be contracted in legitimate form, and indeed, as regards liceity, publicly or occultly, according as the nullity is public or occult.

If the nullity is public and the non-Catholic party refuses publicly to renew consent, the Ordinary can permit the marriage to be contracted before only the pastor and witnesses.

If the non-Catholic party refuses to renew consent in legitimate form, a dispensation from form should be sought.

If the non-Catholic party refuses to renew consent, sanation in the root should be sought if there is hope of obtaining it, according to what is soon to be said.

II. I said that, the things to be posited having been posited, a dispensation from the impediment of disparity of worship or mixed religion is to be sought. For in order that the said dispensation can be obtained, both the cautions must be furnished and moral certainty must be had concerning the fulfillment of the cautions.

But what if either the non-Catholic party refuses to furnish the cautions, or moral certainty is not had concerning the fulfillment of the cautions?

Response. In the case an ordinary dispensation is excluded; and it seems excluded even in danger of death;[1] hence one must recur to sanation in the root if there is hope of obtaining it, that is, if it is morally certain that the non-Catholic party will not impede the Catholic education of all offspring, both born and to be born. For although sanation in the root can be expected even if the non-Catholic party refuses to furnish the cautions,[2] nevertheless, if the aforesaid moral certainty is lacking, sanation in the root cannot be expected.[3]

What, therefore, if even that moral certainty is lacking?

Response 1. Outside danger of death, the cause is hopeless.

Response 2. In danger of death, dispensation and sanation in the root alike seem excluded,[4] but not recourse to *epikeia*; namely, if the Catholic party promises that he or she will provide according to his or

her strength for the Catholic education of all offspring, one should proceed to the convalidation of the marriage, the consent of at least the Catholic party having been renewed (cf. St. Alphonsus VI, 613).

[1] Cf. canons 1043, 1061; likewise the things which we noted on p. 605.

[2] Holy Office, April 12, 1899 (collection, n. 2042); December 22, 1916 (*A.A.S.* 1917, p. 13).

[3] Holy Office, July 1, 1930 (in *Nederlandsche Katholieke Stemmen*, 1931, p. 168; 1932, p. 68). Moreover, this is clear from the fact that to the faculties of the Congregation of Propaganda Fide concerning sanation in the root of mixed marriage there is now added the clause: "provided it is morally certain that the non-Catholic party will not impede the Catholic education of all offspring, both born and to be born."

[4] Besides, concerning sanation in the root, which even in danger of death cannot be granted without a special indult, the opportunity of receiving a timely response will easily be lacking.

Scholion II. On the Inscription of a Convalidated Marriage

835 The inscription of a convalidated marriage should be made in this way:

I. Convalidation in the external forum should be noted in the customary register of marriages and in the book of the baptized. If the prior marriage has already been inscribed in the usual way, it can either be noted anew with reference to the prior marriage, or all things can be noted in the margin of the prior inscription.

II. Convalidation in the internal forum should be noted in the secret register of the episcopal Chancery, unless the sacramental seal stands in the way. If that stands in the way and the good of the offspring requires inscription, with the license of the penitent or penitents the notation should have place.

Scholion III. On the Mode of Handling a Case of Convalidation

836 If the pastor or confessor detects that some marriage is certainly invalid, one should proceed thus:

I. If both are unaware of the nullity, ordinarily on account of the danger of incontinence or of some other inconvenience they should be left in good faith for a time. Meanwhile, if the impediment has ceased or is dispensable, simple convalidation or sanation in the root should be procured according to the circumstances.

II. If each party is conscious of the nullity, one should proceed thus:

1. If the nullity is occult to others, the spouses must immediately be separated from bed. Meanwhile, if the impediment has ceased or is dispensable, convalidation should be procured as soon as possible. If the impediment is indispensable, recourse should be had to the Ordinary, who should judge what kind of separation seems to be procured.
2. If the nullity is public, the spouses must at once be separated even from cohabitation. Meanwhile, recourse should be had to the Ordinary either for convalidation or for a declaration of nullity, if it is impossible or not expedient to procure convalidation. That the spouses do not wish to be separated for a time does not prevent convalidation from being able to be obtained.

III. If only one party is conscious of the nullity, the other party, if it can be done without grave inconvenience, must be warned, and the spouses must be separated at least from bed; then convalidation should be procured as soon as possible. If the other party cannot be warned without grave inconvenience, the warning can be omitted, but the rendering of the debt must be avoided until

convalidation has been procured, for instance by undertaking a journey, by excusing oneself under some pretext.

But what if only the wife knows the nullity, and on the one hand convalidation cannot be obtained in time, even with canon 1045 considered, while on the other hand copula cannot be avoided without very grave inconvenience?

Response. In the case, according to several authors, by *epikeia* it can be judged that the ecclesiastical impediment has ceased, so that the spouse, by renewing consent either explicitly or by conduct, through copula, can convalidate the marriage and render the debt. Nevertheless, for greater caution, recourse should be had as soon as possible to the competent power (St. Alphonsus VI, 613).

Appendix II. On the Separation of Spouses

837 Separation of spouses or divorce is distinguished as threefold: namely, dissolution of the bond itself or full divorce; separation from bed and copula; and separation from bed, board, and cohabitation. The latter is called semi-full divorce.

Part I. On Full Divorce

To what extent the matrimonial bond itself can be dissolved we said in n. 720 sq. But the two cases explained theoretically in that place we will make clearer for the sake of practice. Namely, from a just cause the Church can dissolve: 1° marriage between baptized persons which has not been consummated; 2° marriage between a baptized party and a non-baptized party, for instance if the baptized party, heresy or schism having been rejected, or the non-baptized party through baptism, is converted to the Catholic Church.

Section I. On the Dissolution of Marriage Between Baptized Persons, Not Consummated

838 I. Reasons for petitioning the dissolution of marriage between baptized persons, not consummated, are, for example: doubtful impotence, or impotence doubtfully antecedent or doubtfully perpetual and difficultly curable; supervening impotence; infirmity impeding the use of marriage; grave error concerning a quality of the person, detected after marriage; grave and continual discords between the parties; an infamous delict perpetrated by one party, especially if a sentence of a judge followed; danger of perversion; civil divorce, especially with celebration of a new civil marriage; probable nullity of the marriage, but which cannot be sufficiently proved, for instance on account of fear applied, on account of a condition added to the consent; malicious departure.[1]

II. The mode of obtaining dissolution is presented summarily in these points:[2]

1. Only the spouses have the right of petitioning for a dispensation over a ratified and non-consummated marriage (canon 1973).
2. The petition to be directed to the Supreme Pontiff should be transmitted to the Congregation of the Discipline of the Sacraments; moreover, it should be directed through one's own Ordinary.
3. The Ordinary cannot instruct the process unless the Apostolic See has given him the faculty (canon 1963, § 1).
4. The Ordinary will take care to constitute the tribunal as soon as he can, employing for this purpose the ministers constituted in his Curia, or also others. A collegiate tribunal of three judges is not required; however, an instructing judge, a defender of the bond, and an actuary are required.
5. The tribunal should especially inquire: 1° into the legitimate causes of dispensation; 2° into the non-consummation of the marriage.
6. When the process has been finished, all the acts together with the vote of the Bishop and of the defender of the bond are to be transmitted to the Congregation, and the sentence of the Supreme Pontiff himself is to be awaited.

[1] De Smet, op. cit., n. 330; Vlaming, op. cit., II, n. 606.

[2] The Decree of the Congregation of the Discipline of the Sacraments, May 7, 1923, established the rules to be observed (*A.A.S.* 1923, pp. 389-436).

Section II. On the Dissolution of Marriage Between a Baptized Party and a Non-Baptized Party

839 I. The petition to be directed to the Supreme Pontiff should be transmitted to the Holy Office, to which this cause is committed.

II. The conditions required so that a marriage between a baptized party and a non-baptized party may be dissolved are:

1. If the non-baptized party desires to be converted to the Catholic Church, he or she should first be baptized, so as to be subjected to the jurisdiction of the Church. Besides, it is required that after receiving baptism he or she has not had copula with the spouse; otherwise there would be a marriage consummated after the baptism of both parties, which cannot be dissolved by the Church. In addition, juridical proof is demanded by which it is proved that baptism had in no way previously been conferred, or had been conferred invalidly.
2. If the baptized party wishes to be converted to the Church, he or she must first in fact be converted to it.
3. Finally, other things are to be inserted into the petition; these indeed will be investigated and inserted by the one to whom this matter is committed.

Part II. On Semi-Full Divorce

The following words of canon 1128 teach that semi-full divorce or separation from bed, board, and cohabitation is of itself illicit, but licit from a just cause: "Spouses must preserve the communion of conjugal life, unless a just cause excuses them." Among the just causes on account of which it is licit to institute or petition semi-full divorce, some confer the right of perpetual separation, others of themselves confer the right only of temporary separation. We will examine the individual causes of each species.

840 I. The causes of perpetual separation are adultery and the mutual consent of the spouses for conversion to a more perfect state.

1. Adultery furnishes to the innocent spouse the right of perpetual separation. This is clear from Sacred Scripture,[1] which, while excluding dissolution of the bond (n. 720), indicates perpetual separation. It is further clear from Tradition,[2] and from the fact that someone vainly demands that faith be kept with him by one to whom he refuses to keep the faith furnished by himself.[3] Hence canon 1129, § 1: "Because of the adultery of a spouse, the other spouse, the bond remaining, has the right of dissolving, even in perpetuity, the communion of life, unless he consented to the crime, or gave cause for it, or expressly or tacitly condoned it, or also himself committed the same crime" (St. Thomas, Supplement, q. 62, a. 1; St. Alphonsus VI, 960). Moreover, adultery must be: consummated, formal, morally certain, not approved, not compensated, not condoned. It is said:

a) Consummated through copula of itself apt for generation, not merely begun through kisses, touches, embraces, etc.; nor, since here carnal union with a third person is considered, does mere lying together or union of bodies, or onanistic copula, suffice.

b) Formal, not committed by oppression or in good faith (St. Thomas, Supplement, q. 62, a. 1; St. Alphonsus VI, 960; *Homo Apostolicus*, tract 18, n. 95).

c) Morally certain. Certainty of this kind can also arise from indications, conjectures, and vehement presumptions (St. Alphonsus VI, 961; *Homo Apostolicus*, tract 18, n. 93).

d) Not approved, that is, it is required that the other did not consent to the adultery nor directly give cause for it; not, however, that he or she did not furnish an indirect cause for it, for instance by denying the debt, by treating the spouse badly (St. Thomas, Supplement, q. 62, a. 1; St. Alphonsus VI, 966).

e) Not compensated by adultery committed by the other party before the sentence of divorce was issued by the ecclesiastical judge. It does not matter that one committed adultery more often than the other, or that the crime of one is occult and that of the other public. But if, after adultery has been committed by both, one comes to his senses while the other continues in adultery, the one who is amended can with sufficient probability institute divorce (St. Alphonsus, loc. cit.).

f) Not condoned either expressly or tacitly. "Tacit condonation is had if the innocent spouse, after he has been made more certain concerning the crime of adultery, has freely associated with the other spouse with marital affection; moreover it is presumed unless within six months he has expelled or left the adulterous spouse, or has made a legitimate accusation" (canon 1129, § 2).

Sodomy with a third person and bestiality are equated with adultery, because what is considered here is present, namely carnal union with a third person. Otherwise one must speak concerning sodomy

perpetrated with the spouse (St. Thomas, Supplement, q. 62, a. 1, ad 4; St. Alphonsus VI, 962, question 2°).

Corollary I. The innocent spouse is not bound of himself to institute divorce; incidentally he can be bound either on account of hope of amending the guilty one, or on account of avoiding scandal arising from the fact that someone would seem to consent to the continued adulteries of the spouse. Practically, however, an obligation will scarcely be present, with the inconveniences also about to follow considered (St. Thomas, Supplement, q. 62, a. 2; St. Alphonsus VI, 963, 964).

Corollary II. The innocent party, whether he or she has departed by sentence of a judge or by his or her own authority, is never bound to receive the adulterer, however amended, or to return to him or her (canon 1130), unless the innocent party commits adultery before the sentence of divorce has been issued by the ecclesiastical judge. After this sentence has been issued, the obligation is sufficiently probably lacking according to that maxim, "What has once been well decided... ought not to be reconsidered by any repetition" (St. Alphonsus VI, 965; 967, doubt 2; *Homo Apostolicus*, tract 18, n. 96). Nevertheless it is always laudable to receive the penitent one back into favor.

Corollary III. The innocent spouse can admit or recall the adulterous party, unless with the innocent spouse's consent the latter has taken up a state contrary to marriage (canon 1130), namely sacred Orders or Religion. If, however, the adulterous wife prudently fears cruelties, she is not bound to return (St. Alphonsus VI, 976).

2. Mutual consent confers the right of perpetual separation in a twofold case:

a) If one or both parties emit perpetual religious profession, with the other party consenting; but in order that religious profession be valid, a dispensation of the Holy See is required (canon 542, 1°). Once religious profession has been emitted in this way, neither ever has the right of returning to the other or summoning the other.

b) If the husband receives sacred Orders, with the wife consenting; but in order that the reception be licit, a dispensation of the Holy See is required (canon 987, 2°). The reception of Order without the consent of the spouse is likewise illicit, indeed in such a way that the husband can be compelled to return and to abstain from all acts of Order.

In occurring cases, the Holy See can establish conditions for the other party who does not enter Religion, or for the wife whose husband receives sacred Orders; common law now prescribes nothing.

[1] Matthew 5:32; 19:9; Mark 10:11; Luke 16:18; 1 Corinthians 7:11-12.

[2] The Dogmatic theologians should be consulted.

[3] Rule of Law 75 in VI.

841 II. Causes of temporary separation. 1. Causes of this kind are comprehended by canon 1131, § 1: If one spouse has given his name to a non-Catholic sect; if he has educated the offspring non-Catholically; if he leads a criminal and ignominious life; if he causes grave danger, whether of soul or of body, to the other; if by cruelties he renders common life too difficult: these and other things of this kind are for the other spouse so many legitimate causes of departing. It is said:

a) If he has given his name to a non-Catholic sect. Therefore it is required that he be formally joined to a sect, whether of infidels, or heretical, or schismatic, and that after the marriage has been entered.

b) If he has educated the offspring non-Catholically.

c) If he leads a criminal and ignominious life, as if he joins himself to a band of robbers.

d) If he causes grave danger, whether of soul or of body, to the other. Danger of soul, for example if he solicits to heresy, poisoning, etc. Add if the husband introduces others into the house with danger that they may tempt to adultery. Or if he wishes to exercise sodomy with the wife, even if she refused to consent (St. Alphonsus VI, 973). Danger of body, to which belongs, for example, a contagious disease of the spouse, unless, which today more easily has place, the danger can be removed in another way (St. Alphonsus VI, 973).

e) If by cruelties he renders common life too difficult, for example by treating the consort cruelly. Mere beating, however, unless it is grave and happens several times, is ordinarily not judged among common people to be a just cause for withdrawing. Besides, it suffices that a grave evil be prudently feared (St. Alphonsus VI, 970, 971, question 3°). To this can also be referred insanity from which danger is imminent to the spouse; likewise very troublesome cohabitation, namely on account of grave and frequent insults or quarrels, especially if they bring in a just fear of a greater evil. Here, however, as was likewise said concerning cruelty, the condition of the persons is considered (St. Alphonsus VI, 971, question 3°).

f) And other things of this kind, for example malicious desertion by the spouse.

2. All these causes of themselves furnish only the right of temporary separation. Wherefore canon 1131, § 2 says: In all these cases, when the cause of separation ceases, the custom of life must be restored; but if the separation was pronounced by the Ordinary for a definite or indefinite time, the innocent spouse is not bound to this except by decree of the Ordinary or when the time has been completed.

842 III. The authority by which separation is to be instituted. 1. Adultery, provided it is certain, confers the right of instituting separation by one's own authority (cf. canons 1129, § 1; 1130). Nevertheless, for the sake of avoiding scandal, ordinarily the authority of the ecclesiastical judge must be invoked, unless the adultery is notorious by law or by fact, although even then ordinarily it is expedient to seek the intervention of the ecclesiastical judge. And this is to be advised all the more because, when adultery is neither notorious nor legitimately proved, the judge can compel the spouses to cohabitation; but one must obey the judge, yet not render the debt to the adulterous spouse (St. Alphonsus VI, 968).

2. Mutual consent requires the intervention of Ecclesiastical Authority, as was said in n. 840.

3. Other causes require the authority of the local Ordinary, unless they are certainly established and there is danger in delay; in that case separation can be instituted by one's own authority (canon 1131, § 1).

Finally, separation from bed alone can take place either by mutual consent, according to these words of the Apostle: "Do not defraud one another, except perhaps by consent and for a time, that you may give yourselves to prayer,"[1] or, if a just cause exists, for example a contagious disease, by the authority of one spouse. The same must be said of a separation not of long duration from bed and cohabitation, for instance to undertake a journey.

Note 1. The ecclesiastical judge in causes of separation of which canon 1131, § 1 treats can proceed without a judicial process, even in the second grade or instance.[2]

Note 2. In several dioceses the faculty has been granted to vicars forane of granting separation from bed and cohabitation for a time.

Note 3. Those who improperly instituted separation by their own authority can be left in good faith and admitted to the sacraments, if hope of fruit is absent and scandal is not feared. Besides, note that a wife illegitimately expelled by her husband is not numbered among those who are separated by their own authority.

[1] 1 Corinthians 7:5.

[2] Pontifical Commission, July 25, 1932 (*A.A.S.* 1932, p. 284).

843 IV. Consequences of separation legitimately instituted. 1. When separation has been instituted, the children must be educated with the innocent spouse; and if one of the spouses is non-Catholic, with the Catholic spouse, unless in either case the Ordinary, for the good of the children themselves, their Catholic education always preserved, has decreed otherwise (canon 1132).

2. The innocent spouse, perpetual separation having been legitimately instituted, can with a dispensation of the Holy See enter Religion or receive sacred Orders; the guilty one cannot do this unless the other either has already changed state by professing Religion or receiving sacred Orders, or consents expressly, or tacitly, for instance by refusing reconciliation repeatedly demanded (St. Alphonsus VI, 969).

3. Separated spouses can restore common life by private authority, and this holds even if the sentence of separation was issued by an ecclesiastical judge.

844 Question 1. Whether it is ever licit to petition for civil divorce.[1]

Response 1. If the marriage is invalid from any cause whatever and has been declared such by competent ecclesiastical authority, it is licit, by petitioning, to intend and obtain civil liberty.[2]

Response 2. If the marriage is valid, the things to be posited having been posited, it is likewise licit if the law in force does not intend the dissolution of the bond. If it intends the dissolution of the bond, it is disputed; but a sufficiently probable opinion affirms it, because the petitioner can abstract from the intention of the legislator, and as a Catholic, for we are speaking of such a person, must be judged to abstract from it. This being posited, the petitioner, as we will immediately say, does not seek something which cannot be furnished by the judge without sin. I said "the things to be posited having been posited," that is, with the approval of the competent ecclesiastical authority first had, insofar as this is required according to what was said in n. 842. I said "can abstract from the intention of the legislator," just as he can and must abstract if there is question of an invalid marriage.

Question 2. Whether a judge can ever render a sentence of divorce if there is question of a valid marriage.

Response 1. If the law intends the dissolution of the bond, it is disputed; but a sufficiently probable opinion affirms it. For the judge can abstract from the intention of the legislator and, as a Catholic, for we are speaking of such a person, he is judged to abstract from it. This being posited, his action is not evil in itself; nor does it involve approval, and therefore neither formal cooperation, of the action of the petitioners, who perhaps do not abstract from the intention of the legislator or who intend the dissolution of the bond. I said "can abstract from the intention of the legislator," just as he can and must abstract if there is question of an invalid marriage. Besides, a just cause for admitting material

cooperation is already had from the fact that otherwise good men would have to abstain almost entirely from an office of such great importance.

The controversy does not seem able to be settled by authority. Some favorers of the more benign opinion appeal to the response given by the Holy Office to the Apostolic Nuncio of Belgium, September 14, 1866. But if you admit that by Belgian law the dissolution of the bond was originally regarded, the sense of the law already for a long time seems to have been so changed by usage that the law rather permits one to act as if the bond were dissolved than itself intends to dissolve the bond. Favorers of the stricter opinion chiefly allege responses of the Holy Office, June 25, 1885 and May 27, 1886; but the adversaries respond that these were probably given by reason of peculiar circumstances.[3]

Corollary I. Advocates of themselves speak licitly for divorce only insofar as the spouses licitly petition for it. If they petition illicitly, the advocate is not excused except on account of a most grave cause.

Corollary II. Where separation from bed and cohabitation suffices for the intended end, divorce of itself cannot be petitioned. Nevertheless it is licit on account of a very grave cause; for instance if, when divorce is petitioned, the whole offspring will be entrusted to the religious spouse, but if it is not petitioned, a part of the children certainly or probably will be entrusted to the irreligious spouse.

Corollary III. Pastors and confessors should for the most part endeavor to turn the faithful away from the plan of obtaining divorce, and to exhort the separated to restore common life, namely on account of the danger of incontinence which rather often is imminent to each party. There is added the fact that the education of the offspring easily suffers detriment; indeed the fear that the offspring, wholly or in part, may be adjudged to a pernicious spouse can be a reason on account of which one must abstain from divorce or from a lesser separation.

[1] Cf. Duynstee, *Burgerlijk Recht en zielzorg*, n. 76.

[2] Holy Office, September 9, 1824.

[3] De Smet, op. cit., n. 399.

Appendix III. On Civil Marriage

845 I. Notion. Civil marriage strictly taken is a true marriage contracted or attempted according to civil law before a civil official. Broadly taken it is the formality performed before a civil official, or notification made to a civil official of a marriage already contracted, made in order to acquire civil effects for the marriage.

II. Morality. We are speaking of the marriage of Christians; for as regards the marriage of infidels, which is subject to the civil power, there is no difficulty.

1. The law of civil marriage is dishonorable insofar as, according to the mind of the legislator, it commands Christians to emit true consent before an official of the State, and to place civil marriage before ecclesiastical marriage. For the Church prescribes, and indeed for validity, that Christians furnish consent before their own minister; for liceity she commands that they contract before their own minister before they contract before the magistrate.[1] Nevertheless, practically:
2. Those about to marry can posit the civil act and place it before the ecclesiastical act, provided they intend nothing other than to perform the civil ceremony; indeed, ordinarily there is an obligation of acting in this way, namely so that they may provide for themselves, for the other spouse, and for the offspring[2] (St. Alphonsus II, 16).

3. Officials and witnesses licitly assist at the civil act as follows:

a) This is commonly affirmed if the legislator does not intend to touch the bond.

b) It is likewise licit, provided a proportionate cause underlies it, even if the legislator intends to touch the bond. And this holds even if those about to marry, who are held by a dispensable impediment, are foreseen not to be going afterward to contract true marriage.[3] Indeed, the same is sufficiently probably affirmed even if those about to marry cannot even contract a valid marriage on account of an indispensable impediment, for instance that of bond, which stands in the way. The reason is that the official and witnesses can abstract from the intention of the legislator, and therefore not assist with the intention of assisting true consent; this is not evil in itself. And since they can abstract, and therefore, as Catholics, for we are now speaking of them, truly do abstract and must be judged to abstract, their action does not involve approval, and therefore not formal cooperation, of the action of those about to marry, who perhaps do not abstract from the intention of the legislator or who intend true consent. I said that they can abstract from the intention of the legislator, just as those about to marry themselves can and must abstract from it.

This question, if an indispensable impediment stands in the way of the marriage, especially bond, is sharply disputed; moreover, it does not seem able to be settled by authority. Defenders of the stricter opinion appeal to the Sacred Penitentiary (November 28, 1883) and to the Holy Office (December 11, 1830 and May 27, 1886). But the Congregations "do not mark that assistance as intrinsically evil, which could be tolerated in no case. Besides, the first treats of missionaries, not of laypersons; the second was given for France soon after the law of divorce had been introduced; and the Sacred Penitentiary responded to a Bishop of Italy, where divorce in the civil forum is not yet in force, and a new marriage was evidently contracted after the religious marriage had been legitimately celebrated."[4] In a word: the Sacred Congregations perhaps responded in this way because they judged that, on account of special circumstances, no proportionate cause was given by which material cooperation would be made honorable.

One who admits the stricter opinion should leave officials in good faith, and should send those asking questions, on account of the importance of the matter, to the Ordinary.

[1] Cf. Letter of Leo XIII to the Bishop of Verona, February 8, 1893.

[2] Constitution of Benedict XIV *Redditae sunt nobis*, September 17, 1746; Instruction of the Sacred Penitentiary, January 15, 1866; Encyclical of Leo XIII *Arcanum*; Sacred Congregation of the Sacraments, July 1, 1917.

[3] Cf. Instruction of the Sacred Penitentiary, January 15, 1866, which in the case responded that "Officials are to be directed according to the rules handed down by approved authors, and especially by St. Alphonsus de Liguori, concerning cooperators"; Instruction, March 29, 1885.

[4] Wernz-Vidal, op. cit., n. 591.

Book IV. On the Sanction of Christian Life, or on Ecclesiastical Penalties

(St. Alphonsus, *Theologia Moralis*, book VII, nn. 1-340; *Homo Apostolicus*, tract 19, nn. 1-71).[1]

After in special moral theology we have treated of the due cultivation of virtues and of the principal means of obtaining the graces necessary for exercising this cultivation, there remains to be explained in what way the Church strives to sanction the observance of virtues and of means, or to coerce transgressions of precepts by established penalties. First and by way of preliminary, however, we will speak of those things which the Church punishes, or of delicts; then of the penalties by which she punishes delicts.

[1] Wernz, *Ius Decretalium*, VI; Hollweck, *Die kirchlichen Strafgesetze*; Chelodi, *Ius poenale*; Sole, *De delictis et poenis*; Lega, *De delictis et poenis*; Noldin-Schoenegger, *De poenis ecclesiasticis*; Vermeersch-Creusen, *Epitome Iuris Canonici*, III, n. 382 sq.

Treatise I. On Delicts

We will treat first of delict considered in itself; then of the juridic effects of delict; to these we will add a scholion on attempted delict.

Dissertation I. On Delict Considered in Itself

Part I. Summary Exposition

846 I. Nature. By the name of delict in ecclesiastical law is understood an external and morally imputable violation of law to which there has been added at least an indeterminate canonical sanction (canon 2195, § 1). By these words are indicated the three constitutive parts of a delict, namely: 1° violation of a canonically sanctioned law (the legal part); 2° external violation (the objective or social part); 3° morally imputable violation (the formal or subjective part).

1. Violation of law, that is, of a natural law or divine-positive law or ecclesiastical law. To the external and morally imputable violation of a canonically sanctioned precept the same things are applied which are said of delicts, unless something else appears from the circumstances (ibid., § 2). Moreover, violation of a canonically sanctioned law is required, because otherwise the Law does not speak of delict, but of mere transgression (cf. canon 2222, § 1).
2. External; for only an external sin violates, by reason of damage, as it is said, that is, either scandal or material damage, the social order of the Church, which alone merely ecclesiastical legislation regards. That an external but occult act, such as the secret utterance of heresy, is not perceived in the social order and therefore perhaps inflicts no damage on society, is incidental.
3. Morally imputable. What moral imputability is, see volume I, n. 58. By this property canonical delict differs from civil delict, which admits merely juridic fault. When and to what extent a delict is imputable will be said in Part II.

II. Quality and quantity. The quality of a delict is to be taken from the object of the law (canon 2196). Laws differ specifically according to the diverse formal motives from which they were issued; wherefore delicts differ specifically according to the diverse formal motive of the penal laws violated (cf. *Theologia Fundamentalis*, p. 299). The quantity of a delict must be measured not only from the diverse gravity of the law injured, but also from the greater or lesser imputability or damage inflicted (canon 2196), that is, from the three constitutive parts of the delict (cf. p. 703).

III. Division. From canon 2197 a delict is:

1. Public, if it has already been divulged, or happened or exists in such circumstances that it can and must prudently be judged that it will easily be divulged; that is, if it is such that it is about to become known, at least as an external fact, even if not as imputable, with the character and purpose of the persons who know the delict considered.
2. Notorious by notoriety of law, after the sentence of a competent judge which has passed into a judged matter,[1] or after the confession of the delinquent made in court according to the norm of canon 1750.[2]
3. Notorious by notoriety of fact, if it is publicly known and committed in such circumstances that it can be concealed by no tergiversation and excused by no suffrage of law.
4. Occult, which is not public; materially occult, if the delict itself is hidden; formally occult, if its imputability is hidden.

Note. A delict which injures only the law of the Church, by its nature only ecclesiastical authority prosecutes, with the help of the secular arm sometimes being required where the same authority has judged this necessary or opportune; a delict which injures only the law of civil society, by proper right

and with the prescription of canon 120 preserved, civil authority punishes, although the Church is also competent over it by reason of sin; a delict which injures the law of both societies can be punished by each power (canon 2198). But in delicts of mixed forum Ordinaries should regularly not proceed when the guilty person is a layman and the civil magistrate, taking action against the guilty person, provides sufficiently for the public good (canon 1933, § 3).

[1] From canon 1902, a matter is considered judged: 1° by a double conforming sentence; 2° by a sentence not appealed within the useful time, or which, although appealed before the judge *a quo*, was deserted before the judge *ad quem*; 3° by a single definitive sentence from which no appeal is given according to the norm of canon 1880.

[2] Canon 1750 declares: The assertion concerning some fact, in writing or orally, made by one party against himself and for the adversary before a judge, either spontaneously or when the judge interrogates, is called a judicial confession.

Part II. Fuller Exposition

A fuller exposition of delict consists in a fuller explanation of the principal element by which delict is constituted, namely, imputability.

847 I. The formal causes of imputability are: 1° the malice of the delinquent; 2° the fault of the delinquent, whether in ignorance of the law or in omission of the diligence required so that the law may be observed (canon 2199).

1. Malice here is the deliberate will of violating the law; to it is opposed, on the part of the intellect, defect of knowledge, and on the part of the will, defect of liberty. Once the external violation of law has been posited, malice is presumed in the external forum until the contrary is proved (canon 2200).

Corollary I. Those who actually lack the use of reason are incapable of delict (canon 2201, § 1). The reason is that deliberation is absent.

Corollary II. Those habitually insane, although at times they have lucid intervals or seem sane in certain reasonings or acts, are nevertheless presumed incapable of delict (canon 2201, § 2). The reason is that deliberation in them is presumed to be absent until it is proved to be present.

Corollary III. A delict committed in voluntary drunkenness does not lack some imputability (canon 2201, § 3). This is clear if drunkenness does not wholly take away the use of reason; but if it wholly takes it away, the delict is imputed if it was foreseen at least in some measure (vol. I, n. 60). Besides, the imputability of a delict committed in voluntary drunkenness is less than when the same delict is committed by one who is fully master of himself, unless, however, drunkenness was sought precisely for perpetrating or excusing the delict. But when law is violated in involuntary drunkenness, imputability is wholly absent if drunkenness wholly takes away the use of reason; it is diminished if it takes it away only in part. The same should be said of other similar disturbances of mind (canon 2201, § 3), for example from morphine.

Corollary IV. Weakness of mind diminishes the imputability of a delict, but does not wholly remove it (canon 2201, § 4).

2. Ignorance of the violated law influences the imputability of the transgression in this way:

a) Inculpable ignorance removes the imputability of the transgression and consequently the delict (canon 2201, § 1).

b) Culpable ignorance diminishes imputability more or less according to the culpability of the ignorance itself (cited canon). Nevertheless, concerning affected ignorance it is disputed whether it increases or diminishes imputability (vol. I, n. 32).

Note 1. Ignorance of the penalty alone does not remove the imputability of the delict, but diminishes it somewhat (canon 2202, § 2).

Note 2. Those things which are established concerning ignorance, whether of the law or of the penalty, also hold concerning inadvertence[1] and concerning error[2] (canon 2202, § 3); likewise concerning ignorance of fact, for instance if someone strikes a cleric whom he certainly or probably holds to be a layman.

Note 3. Ignorance, or inadvertence or error concerning law or penalty or fact, is generally not presumed (canon 16, § 2).

3. Omission of due diligence. If someone has violated the law from omission of due diligence, the imputability is diminished in the manner to be determined from the circumstances by a prudent judge; but if he foresaw the matter and nevertheless omitted the cautions for avoiding it which any diligent person would have used, the fault is proximate to malice (canon 2203, § 1). Moreover, a fortuitous case which cannot be foreseen, or which when foreseen cannot be met, exempts from any imputability (canon 2203, § 2).

[1] It is actual ignorance in one who enjoys habitual knowledge.

[2] It is positive ignorance, or ignorance joined with the admission of what is false.

848 II. The causes modifying imputability are enumerated by the Code:

1. Minority. Minor age, unless something else is established, diminishes the imputability of a delict, and the more so the closer it approaches infancy (canon 2204). Moreover, moral persons (canon 100, §§ 1 and 2) are equated with minors also as regards imputability (cited canon, § 3).
2. Physical force which takes away every faculty of acting altogether excludes delict (canon 2205, § 1).
3. Grave fear, even only relatively grave, necessity, and even grave inconvenience, usually wholly remove delict if there is question of merely ecclesiastical laws. The said causes indeed diminish the imputability of the delict but do not remove it if the act is intrinsically evil or tends toward contempt of the faith or ecclesiastical authority or toward damage of souls (canon 2205, §§ 2 and 3).
4. Just defense. The cause of legitimate defense against an unjust aggressor, if due moderation is observed, wholly removes delict; otherwise it only diminishes imputability, as also does the cause of provocation (canon 2205, § 4), namely, one who provokes the aggressor also exceeds the moderation of defense. Besides, in excess of defense, not so rarely all fault is lacking.
5. Passion, if it has been voluntarily and deliberately excited or nourished, rather increases imputability; otherwise it diminishes it more or less according to the diverse heat of passion; and it wholly removes imputability if it precedes and impedes every deliberation of mind and consent of will (canon 2206).
6. Besides other aggravating circumstances,[1] a delict is increased: 1° according to the greater dignity of the person who commits the delict or who is offended by the delict; 2° from abuse of authority or office for perpetrating the delict (canon 2207).
7. Falling again into delict. A recidivist in the sense of the law is one who, after condemnation, again commits a delict of the same kind and in such circumstances of matters and especially of time that his pertinacity in evil will can prudently be conjectured (canon 2208, § 1). Moreover, one who has offended several times, even in a different kind, increases his culpability (canon 2208, § 2).

[1] Therefore the enumeration is not taxative.

849 III. Imputability of cooperators. In order that cooperation be canonically imputed, some malice or fault and some external influence upon the external fact of the delict are required. Concerning malice and fault, let the things said above be applied; concerning external influence, it must be noted that this

is physical or moral, necessary or non-necessary, principal or accessory, positive or negative. Moreover, according to the varying influence upon the delict, the imputability of cooperators is varied as follows:

1. Those who with a common plan of delinquency physically concur together in a delict are all held guilty in the same way, unless the circumstances increase or diminish the culpability of someone (canon 2209, § 1).
2. In a delict which by its nature demands an accomplice, as for example a duel, each party is culpable in the same way, unless something else appears from the circumstances (canon 2209, § 2).
3. Of themselves, both the one mandating, who is the principal author of the delict, and others who induce to the consummation of the delict by persuading, consenting, or morally influencing in some other way, or who concur in this in any way whatever, for instance by physically cooperating, contract imputability not less than the executor of the delict, if the delict would not have been committed without their work (canon 2209, § 3), that is, if their influence was necessary.
4. If the influence of the aforesaid persons was not necessary but only rendered the delict easier, as one which would have been committed even without their concurrence, it carries with it lesser imputability (canon 2209, § 4).
5. One who has fully withdrawn his influence in perpetrating the delict by an opportune retraction is freed from all imputability, even if the executor nevertheless perpetrated the delict for other causes proper to himself; if he has not withdrawn it fully, retraction diminishes culpability but does not remove it (canon 2209, § 5). It is said "by an opportune retraction," namely one which is made at an opportune time and in an efficacious way. It is disputed whether retraction reinforced by arguments sufficiently destroys the influence of clothed counsel. It is probably affirmed (vol. I, n. 1000); wherefore in the case the executor must be judged to offend for causes proper to himself. But if the influence cannot be withdrawn unexpectedly, nevertheless an inculpably inefficacious retraction removes culpable participation in the consummated delict and consequently the imputability of this; but the culpable attempt of the delict remains (cf. n. 851), and, if the case bears it, some imputability for the damage and scandal which followed (canons 2213, § 3; 2235).
6. One who concurs in a delict only by neglecting his office is held by imputability proportioned to the obligation by which he was bound to impede the delict by his office (canon 2209, § 6).
7. Praise of a perpetrated delict, participation in its fruits, concealment and harboring of the delinquent, or other acts following upon a delict already fully completed: 1° can constitute new delicts, if namely they are punished by a penalty in law; besides, 2° they carry with them the imputability of the perpetrated delict if agreement had been made with the delinquent concerning those acts before the delict (canon 2209, § 7).

Dissertation II. On the Juridic Effects of Delict

850 I. From delict, with canon 2210 considered, there arises:

1. A penal action for declaring or inflicting a penalty and for seeking satisfaction.
2. A civil action for repairing damages, if the delict has inflicted damage on anyone. The canonists treat of these matters more broadly according to canons 1552-1959, on trials; only let canon 2210, § 2 be noted: The same judge in a criminal trial can at the instance of the injured party call the civil action to examination and define it.

II. All who concur in a delict according to the norm of canon 2209, §§ 1-3 (n. 849, 1, 2, 3), are held by obligation in solidum of repairing the expenses and damages which have befallen any persons whatever from the delict, although they have been condemned by the judge pro rata (canon 2211).

Scholion. On Attempted Delict

851 I. Notion. Whoever posits or omits acts which by their nature lead to the execution of a delict, but does not consummate the delict, commits an attempt of delict, whether because he deserted his plan or because he could not complete the delict on account of insufficiency or ineptitude of the means (canon 2212, § 1). It is said "acts which by their nature lead"; wherefore merely preparatory acts, such as buying poison or removing impediments, are not an attempt of delict. For this, namely, there is required the execution of the delict itself begun, as is said in canon 2213, § 3. If, all acts having been posited or omitted which by their nature lead to the execution of the delict and suffice for completing the delict, the effect has not followed from another cause, apart from the will of the agent, the attempt of delict is called by its proper name a frustrated delict (canon 2212, § 2). Finally, to the attempt of delict there approaches, and is juridically equated, the action of one who has tried to induce another to commit a delict, but ineffectively (canon 2212, § 3). Moreover, an attempted delict is not always a delict, but only if the attempt of delict is fined by a particular penalty in the law (ibid., § 4). Nevertheless, even a simple attempt of delict and a frustrated delict can be punished by force of canon 2235, as will be said below.

II. The imputability of attempt is less than that of the delict; however, it grows the more it approaches consummation (canon 2213, § 1). Likewise, a frustrated delict is more culpable than a simple attempt of delict (canon 2213, § 2). But one who spontaneously desists from the execution of the delict begun is freed from all imputability, if no damage or scandal has arisen from the attempt (canon 2213, § 3); otherwise this is imputed to him. Likewise, the execution of the delict begun, which by force of the legal sanction is a delict, is imputed also as such (canon 2212, § 4); wherefore, notwithstanding cessation from executing the deed, a penalty *latae sententiae* has already been contracted.

Treatise II. On the Penalties of Delict

We will treat first of penalties in general; then of penalties in species; then of penalties established for individual delicts.

Dissertation I. On Penalties in General

852 I. To the Church belongs the right, and that native and proper, and independent of any human authority, of coercing delinquents subject to her by penalties, both spiritual and even temporal (canon 2214, § 1). This is drawn from Sacred Scripture;[1] from the practice of the Apostles[2] and of the Church, even as regards temporal penalties;[3] from the Council of Trent;[4] from the nature of the Church, which is a perfect society and therefore enjoys legislative power. But legislative power carries with it coercive power, or the power of sanctioning laws, since without it legislative power would be unsuitable for securely attaining the end.

II. In the use of coercive power, the warning of the Council of Trent should be kept before one's eyes:[5]

"Let Bishops and other Ordinaries remember that they are pastors, not beaters, and that they ought so to preside over those subject to them that they do not dominate over them, but love them as sons and brothers, and labor by exhorting and warning to deter them from illicit things, lest, when they have offended, they be forced to coerce them with due penalties. Nevertheless, if it should happen that they sin in something through human frailty, that precept of the Apostle is to be observed by them, that they reprove, entreat, and rebuke them in all goodness and patience, since often benevolence does more toward correcting than austerity, exhortation more than threat, charity more than power. But if, on account of the gravity of the delict, the rod will be necessary, then rigor is to be used with meekness, judgment with mercy, severity with gentleness, so that discipline, salutary and necessary for the peoples, may be preserved without harshness, and those who have been corrected may be amended, or, if they are unwilling to come to their senses, others may be deterred from vices by the salutary example of action taken against them" (canon 2214, § 2).

With these things noted beforehand, we will speak first of the notion, division, imposition, and interpretation of penalties; then of the Superior having the power of punishing; then of the subject liable to the power of punishing; finally of the remission of penalties.

[1] Matthew 18:17-18.

[2] 1 Corinthians 5:3-5; 2 Thessalonians 3:14, etc.

[3] Whether the Church can punish certain most grave delicts with death or mutilation is disputed. More commonly it is denied, nor in her own forum has she ever used this power.

[4] Session 7, canon 14; session 14, canon 4; session 25, chapter 14, etc.

[5] Session 13, chapter 1.

Part I. On the Notion, Division, Imposition, and Interpretation of Penalties

853 I. Notion. An ecclesiastical penalty is the privation of some good, inflicted by legitimate authority for the correction of the delinquent and the punishment of the delict (canon 2215). It is said:

1. Of some good, that is, either spiritual or temporal or mixed, as a benefice is.
2. For the correction of the delinquent and the punishment of the delict. The amendment of the delinquent is not always the primary end of an ecclesiastical penalty, although the Church always ultimately intends the salvation of souls, and consequently also the amendment of delinquents. But proximately, besides amendment, she intends: to repair the injured order by taking vengeance concerning the delict; to render the delinquent incapable of further damage; to effect that others may have fear.

II. Division. Penalties are distinguished:

1. By reason of the primary end, into medicinal penalties or censures, vindicative penalties, and penal remedies and penances (canon 2216). Medicinal penalties or censures primarily intend the amendment of the delinquent. Vindicative penalties primarily regard vengeance concerning the delict. Penal remedies intend to forestall true delicts or further delicts; hence they either suppose only a transgression which nevertheless does not reach the nature of a delict, or regard a delict perhaps to be perpetrated, but not one already perpetrated. Especially under this head they are not penalties in the proper sense.
2. By reason of determination, a penalty is called determinate if it is established taxatively in the law itself or precept; indeterminate if it is left to the prudent judgment of the judge or Superior, whether by preceptive or facultative words (canon 2217, § 1, 1°).
3. By reason of the mode by which it is inflicted, a penalty is called *latae sententiae* if a determinate penalty has been added to the law or precept in such a way that it is incurred by the very fact of the delict committed, that is, without a condemnatory sentence or a new precept of infliction; nevertheless, a declaratory sentence is sometimes added, as will be said below. It is *ferendae sententiae* if it must be inflicted by a judge or Superior (canon 2217, § 1, 2°), namely through a condemnatory sentence or in the manner of a particular precept. It is clear that an indeterminate penalty is always *ferendae sententiae*.
4. By reason of the author, a penalty is called *a iure*, by law, if a determinate penalty is established in the law itself, whether it is *latae sententiae* or *ferendae*; *ab homine*, by man, if it is issued in the manner of a particular precept or by a condemnatory judicial sentence, even if established in the law. Wherefore a determinate penalty *ferendae sententiae*, added to a law, before the condemnatory sentence is only *a iure*; afterward it is at once *a iure* and *ab homine*, but is considered as *ab homine* (canon 2217, § 1, 3°). On this consideration depends the competence of remitting the penalty, as will be explained. A penalty *latae sententiae* to which a declaratory sentence has been added remains *a iure*.

The question whether a penalty established neither by law nor in the manner of a particular precept, but by a general precept, is *a iure* or *ab homine* is not solved by the Code. The more common opinion

holds that it is *a iure*; and this is therefore also preferable, because it is the more benign interpretation (cf. canon 2219, § 1).

Note. A penalty is always understood as *ferendae sententiae*, unless it is expressly said that it is *latae sententiae* or contracted *ipso facto* or *ipso iure*, or unless other similar words are used (canon 2217, § 2).

III. Imposition of penalty. 1. In decreeing penalties, an equitable proportion with the delict is to be observed, with account taken of imputability, scandal, and damage; wherefore there must be considered not only the object and gravity of the law, but also the age, knowledge, training, sex, condition, state of mind of the delinquent, the dignity of the person who is offended by the delict or who commits the delict, the intended end, the place and time in which the delict was committed, whether the delinquent acted from an impulse of passion or on account of grave fear, whether he repented of the delict and himself strove to avoid its evil effects, and other similar things (canon 2218, § 1).

2. Not only those things which excuse from all imputability, but also those which excuse from grave imputability, likewise excuse from any penalty, both *latae* and *ferendae sententiae*, even in the external forum, if the excuse is established for the external forum (canon 2218, § 2), that is, proved.

3. A penalty should not be inflicted in the case of equal mutual injury; for, as canon 2218, § 3 has it: Mutual injury is compensated, unless one party must be condemned on account of the greater gravity of the injury inflicted by the same party, with the penalty diminished if the case bears it.

IV. Interpretation of penalty. In penalties the more benign interpretation is to be made (canon 2219, § 1). And canon 19 says: Laws which establish a penalty are subject to strict interpretation. Hence:

1. In a doubt of law concerning the existence of a penalty, namely, whether a certain penal law regards the fact perpetrated here and now, that penalty, if it is *latae sententiae*, is not incurred; if *ferendae*, it should not be inflicted. In a doubt of law concerning the quality of the penalty, namely, whether the law contains a penalty *latae* or *ferendae sententiae*, the penalty should be understood as *ferendae sententiae*; whether it is *a iure* or *ab homine*, it should be understood as *a iure*.[1] In a doubt of law concerning the quantity of one penalty, namely, whether the law prescribes a graver or a lighter penalty, the milder one should rather be decreed. In a doubt of law concerning the number of penalties, namely, whether one penalty or several penalties are to be applied, only one penalty is to be applied. But if it is doubted whether a penalty inflicted by a competent Superior is just or not, the penalty must be observed in each forum, except in the case of an appeal in suspensive. But a manifestly unjust penalty, as regards substance, and therefore manifestly invalid, is to be sustained in neither forum. On a doubt of fact, see n. 858.

[1] A doubt of law in this matter exists concerning a general penal precept, as was said above.

Part II. On the Superior Having the Power of Punishing

854 Ecclesiastical penal law treats only of a Superior who enjoys jurisdiction to be exercised in the external forum of the Church.[1] Moreover, insofar as this jurisdiction regards penalties, it is distinguished as twofold: non-judicial or voluntary, and judicial or necessary. The former in Penal Law confers the power of establishing penalties and applying them outside trial; the latter furnishes the power of applying, according to the norm of Law and indeed in trial, legitimately established penalties (cf. canon 2220, § 1).[2] With these things noted, we will speak first of the Superior having non-judicial jurisdiction, then of the Superior having judicial jurisdiction.

[1] In the internal forum the Church judges by a power not proper, but vicarious.

[2] Nevertheless you should not understand these things as if one who enjoys non-judicial jurisdiction of himself lacks judicial jurisdiction.

Section I. On the Superior Having Non-Judicial Jurisdiction

855 I. Superiors enjoying non-judicial jurisdiction are all and only those who possess the power of issuing laws or imposing precepts (canon 2220, § 1). Of this kind is, for example, the Ordinary of the place; but not the Vicar General without a special mandate. Whether or not a religious Superior also enjoys non-judicial jurisdiction depends on the question whether or not he can impose precepts by power of jurisdiction;[1] concerning this compare vol. I, n. 108.

II. Scope of non-judicial jurisdiction. 1. A Superior enjoying non-judicial jurisdiction can attach penalties to a law or precept issued by himself or by his predecessors (canon 2220, § 1). Besides, those who enjoy legislative power can furthermore, within the limits of their jurisdiction and on account of peculiar circumstances, fortify with a fitting penalty both divine law and ecclesiastical law issued by a higher power and in force in the territory, or aggravate the penalty established by law (canon 2221).

2. Even if no penalty has been annexed to a law, nevertheless a legitimate Superior enjoying non-judicial jurisdiction can, even without previous threat of a penalty, punish transgressions of the law with some just penalty if scandal perhaps given or the special gravity of the transgression bears this; otherwise the guilty person cannot be punished unless he has first been warned with the threat of a penalty *latae* or *ferendae sententiae* in the case of transgression and nevertheless, with grave fault according to canon 2218, § 2, has violated the law (canon 2222, § 1). The same must be said concerning inflicting a penalty graver than that indicated by statute or threat; namely, it cannot be inflicted except in a case of scandal or special gravity.

3. Even if it is only probable that a delict has been committed, or if the penal action for a certainly committed delict is prescribed (cf. canon 1703), nevertheless the same legitimate Superior has not only the right but also the office of not promoting a cleric concerning whose suitability there is no certainty, and, for avoiding scandal, of prohibiting the cleric the exercise of the sacred ministry or even of removing the same from office according to the norm of law. All these things in the case do not have the character of penalty (canon 2222, § 2). Otherwise, in the case of a merely probable delict (canon 2233, § 1) or of a prescribed penal action (canon 1703), he cannot inflict a penalty.

4. Finally, the same legitimate Superior can apply a penalty: either 1° outside trial by precept according to these words of canon 1933, § 4: Penance, penal remedy, excommunication, suspension, and interdict, provided the delict is certain, can also be inflicted in the manner of a

precept outside trial; or 2° in trial by judicial sentence. Moreover, in order that a delict fall under criminal trial, it must be public (canon 1933, § 1); but when one must proceed against clerics according to canons 2168-2194, this is to be done outside trial, although the delicts are public (canon 2225).

Note. If a penalty *latae* or *ferendae sententiae* has been inflicted in the manner of a particular precept, it should ordinarily be declared or imposed in writing or before two witnesses, with the causes of the penalty indicated, preserving the prescription of canon 2193 (canon 2225), that is, unless "suspension from informed conscience" is inflicted (cf. n. 888).

[1] He can do this without doubt by dominative power; to this power also belongs coercive or punitive power. But this power of punishing is not touched upon in ecclesiastical Penal Law.

Section II. On the Superior Having Judicial Jurisdiction

856 First recall that judicial jurisdiction must be exercised in trial. Moreover:

I. In applying penalties, the judge cannot increase a determinate penalty unless extraordinary aggravating circumstances demand this (canon 2223, § 1). Thus the general rule. More specifically:

II. If the penalty is *ferendae sententiae*, these things are to be observed:

1. If the law in establishing a penalty *ferendae sententiae* uses facultative words, it is committed to the prudence and conscience of the judge to inflict it or, if the penalty was determinate, to temper it (canon 2223, § 2).

2. But if the law uses preceptive words, ordinarily the penalty must be inflicted; but it is committed to the conscience and prudence of the judge or Superior: 1° to defer the application of the penalty to a more opportune time, if greater evils are foreseen to be going to come from too hasty punishment of the guilty person; 2° to abstain from inflicting the penalty if the guilty person has been perfectly amended and has repaired the scandal, or has been sufficiently punished or is foreseen to be going to be punished by penalties sanctioned by civil authority; 3° to temper the determinate penalty, or in its place to employ some penal remedy or enjoin some penance, if a circumstance is given which notably diminishes imputability, or if indeed amendment of the guilty person is had or chastisement has been inflicted by civil authority, but the judge or Superior besides judges some milder punishment opportune (canon 2223, § 3; cf. canon 2309, § 4).[1]

Note. When a determinate vindicative penalty has been inflicted by condemnatory sentence, the judge can sometimes suspend its execution according to the norm of canon 2288 (n. 889). Hence in canon law the institution of "conditional condemnation" is assumed.

III. If the penalty is *latae sententiae*, it is indeed contracted at once; but sometimes there is given a sentence which is called declaratory, by which it is authoritatively declared that the delict has been perpetrated and consequently that the penalty has been contracted.[2] Moreover, to declare a penalty *latae sententiae* is generally committed to the prudence of the Superior; but whether at the instance of the party whose interest it is, or when the common good so requires, a declaratory sentence must be given (canon 2223, § 4).

IV. Concerning the number of penalties the Code establishes:

1. Ordinarily there are as many penalties as delicts (canon 2224, § 1). Moreover, even with ecclesiastical Penal Law considered, one commits a multiple delict: 1° who violates diverse penal

laws, whether by one act or by several; but not one who once violates a law issued by several Superiors; 2° who violates a penal law through morally distinct acts (vol. I, n. 253 sq.).

It is disputed: 1° concerning him who violates a penal law through one morally single act, physically multiple, toward diverse persons, for example, one who from the same purpose steals successively but without moral interruption from several persons; 2° concerning him who violates a penal law through one morally single act, physically multiple, several times perfectly consummating the delict itself, for example, one who from the same impulse of passion several times commits carnal sacrilege by copula with the same person;[3] 3° concerning him who violates a penal law through one single physical act toward diverse persons, for example, one who by one physical act kills several clerics. But since, where there is question of penalties, the more benign side prevails, in disputed cases penalties are not to be multiplied.

2. If, however, on account of the number of delicts, there would be an excessive accumulation of penalties to be inflicted, it is left to the prudent judgment of the judge either to inflict the gravest penalty of all, with some penance or penal remedy added if the matter bears it, or to moderate the penalties within equitable bounds, with account taken of the number and gravity of the delicts (canon 2224, § 2).

3. Finally, if a penalty has been constituted both for an attempt of delict and for the consummated delict, when the latter has been admitted, only the penalty established for the consummated delict must be inflicted (canon 2224, § 3). It is said "inflicted"; for when, on account of the attempt, a penalty has already been contracted, and after a moral interruption the delict is consummated, the penalty established for this delict is also contracted. Otherwise, however, if the attempt and consummation coalesce into one.

Note. If a penalty is declared or inflicted by judicial sentence, the prescriptions of the canons concerning the pronouncing of a judicial sentence are to be observed; but if, as was already noted on p. 714, a penalty *latae* or *ferendae sententiae* has been inflicted in the manner of a particular precept, it should ordinarily be declared or imposed in writing or before two witnesses, with the causes of the penalty indicated, preserving the prescription of canon 2193 (canon 2225).

[1] If the delinquent did not commit grave sin, procedure can be taken against him only through a penal remedy so that true delicts may be forestalled, or some penance can be imposed on him.

[2] The usefulness of this is well demonstrated by the illustrious Wernz (op. cit., n. 62): "First, in certain penalties an obligation is induced in others toward the guilty person," for example, not receiving the Sacraments from him, "or at least the guilty person is deprived of certain rights which have reference to others. This obligation toward the guilty person cannot be urged, nor must the exercise of his rights be denied or impeded, unless the penalty incurred by him is certainly established" in the external forum; besides, because it would not be equitable that an occult delinquent should have to betray himself by observance of the penalty, the obligation of observing this penalty often does not press without a declaratory sentence.

[3] Sometimes one delict consists in a continuous stretch, for example concubinage, bigamy.

Part III. On the Subject Liable to the Power of Punishing

We shall see first who are subject to a penal law or precept, and to what extent; then what is required for someone actually to contract a penalty *latae sententiae*; next, what is required for someone to be able to be punished here and now with a penalty *ferendae sententiae*; finally, what, of what kind, and how great is the obligation of observing a penalty.

857 I. Subjects of a penal law or precept. One who is bound by a law or precept is liable to the penalty annexed to the law or precept, unless he is expressly exempted (canon 2226, § 1). To what extent someone is bound by a law or precept, especially a traveler and a vagrant, see vol. I, n. 126 sq. Nevertheless:

1. If after the perpetrated delict the penal law is changed, the law more favorable to the guilty person must be applied (ibid., § 2).
2. If after the perpetrated delict either the violated law or the attached penalty ceases through a later law, even a penalty inflicted or incurred ceases immediately; but a censure already contracted is excepted (ibid., § 3), because otherwise the end of the censure would not be attained.
3. A penalty, whether contracted or inflicted, binds the guilty person everywhere in the world, even when the right of the Superior has been resolved, unless something else is expressly provided (ibid., § 4); yet a penalty does not always extend itself to all places (cf. canons 2281, 2282). If, however, when the right of the Superior has been resolved, his precept also ceases, to which a penalty had been added, the penalty also must be said to cease, unless it is a censure already contracted.
4. Finally, certain persons are not wholly subject to penal law; namely, although they have committed a delict, a penalty can be inflicted or declared against those mentioned in canon 1557, § 1, only by the Roman Pontiff (canon 2227, § 1), that is:

a) "Against those who hold the supreme sovereignty of peoples and their sons and daughters, or those who have the right of immediately succeeding to the sovereignty." Physical persons are understood: monarchs, presidents of a republic, or others who exercise true sovereignty, and their spouses; not, however, moral persons, even though they have legislative power, nor Ministers of State.[1] Therefore the former do indeed contract a penalty *latae sententiae* of common law, as established by the Roman Pontiff, but against them it cannot be declared except by the Roman Pontiff.[2]

b) Against Cardinals; who furthermore, unless they are expressly named, are not comprehended under a penal law (canon 2227, § 2).

c) Against Legates of the Apostolic See, concerning whom what was said under a) is valid.

d) Against Bishops, even titular ones, who furthermore are excepted from penalties *latae sententiae* of suspension and interdict, unless they are expressly named. Therefore they do indeed contract an excommunication *latae sententiae* of common law, but the same applies as under a).

Note 1. Exempt religious are not bound by diocesan penal statutes unless, while illegitimately living outside the house, they have offended against a particular law of the diocese (canon 616, § 1); if they have offended while legitimately living outside the house, even if they have returned, they can nevertheless be punished by the local Ordinary (canon 616, § 2); finally, they are subject to the

coercive power of the local Ordinary in all things in which religious are subject to him (cf. canon 619 and canon 2269, § 2), unless special privileges stand in the way.

Note 2. By force of canon 1, this Penal Law does not regard the Oriental Church; judicial controversies to be handled in judicial order which concern it are, by force of canon 257, § 3, remitted by the Congregation for the Oriental Church to a tribunal assigned by that Congregation, unless there is question of delicts reserved to the Congregation of the Holy Office (canon 247, § 2).

[1] Cf. Noval, op. cit., p. 37.

[2] Nor do penalties *latae sententiae* of particular law bind them, because "to be inflicted" is also said of a penalty *latae sententiae* inflicted in the manner of a precept (cf. canon 2225).

858 II. Requisites for someone actually to contract a penalty *latae sententiae*.

1. Requisites on the part of the delict. A penalty established by law is not incurred unless the delict has been perfect in its own kind according to the property of the words of the law (canon 2228). This condition regards the external part of the delict (n. 846); when the attempt of a delict is punished in law, consummation in the genus of attempt is required. Finally it must be observed that the property of the words requires strict interpretation; for example, the delict of homicide, which is punished by law, is not present unless death has followed. In doubt, whether of the external fact or of imputability, the penalty is not incurred, because from a doubtful cause no one is deprived by a certain right (cf. canon 2232, § 1: "who is conscious to himself of the delict").
2. Requisites on the part of the delinquent regard the formal part of the delict, or imputability. Therefore first recall that grave imputability is required[1] (canon 2218, § 2), but does not always suffice, for someone to be liable to a penalty. With these things attended to, certain things are noted or even established by the Code, of which some are general and regard ignorance and similar things which influence imputability; others concern the impubescent and cooperators.

a) General matters. alpha) Affected ignorance either of the law or of the penalty alone excuses from no penalties *latae sententiae* (canon 2229, § 1).

beta) If the law has the words: has presumed, has dared, knowingly, studiously, rashly, has acted deliberately, or other similar words which require full knowledge and deliberation, any diminution of imputability, whether on the part of the intellect or on the part of the will, exempts from penalties *latae sententiae* (canon 2229, § 2). It is said any diminution of imputability; hence even ignorance of the penalty, unless it is affected (cf. canon 2202, § 2); likewise even light fear.

gamma) If the law does not have those words:

1° Crass or supine ignorance of the law, or even of the penalty alone, exempts from no penalty *latae sententiae*. Ignorance of the law, or even of the penalty alone, which was not crass or supine excuses from medicinal penalties *latae sententiae*; but if the imputability of the delict is grave, it does not excuse from vindicative penalties *latae sententiae* (canon 2229, § 3, 1°, compared with canon 2218, § 2).

2° Drunkenness, omission of due diligence, weakness of mind, or impulse of passion, if, notwithstanding the diminution of imputability, the action is still gravely culpable, do not excuse from penalties *latae sententiae* (canon 2229, § 3, 2°).

3° Grave fear, if the delict tends toward contempt of the faith or of ecclesiastical authority or toward public harm of souls, in no way exempts from penalties *latae sententiae* (canon 2229, § 3, 3°). With

these things attended to, grave fear outside the enumerated cases excuses from penalties *latae sententiae*, at least on account of doubt; the doubt is introduced by canon 2218, § 2.

Note. Although the guilty person according to the norm of § 3, n. 1, is not bound by censures *latae sententiae*, nevertheless this does not prevent him, if the matter bears it, from being affected by another congruous penalty or penance (canon 2229, § 4).

b) Impubescent persons are excused from penalties *latae sententiae*, and are to be corrected rather by educational punishments than by censures or other graver vindicative penalties; but pubescent persons who have induced them to violate the law or have concurred with them in the delict according to the norm of canon 2209, §§ 1-3 (n. 849), themselves indeed incur the penalty established by law (canon 2230). Note that an irregularity from delict can nevertheless be contracted by impubescent persons (canon 985).

c) Cooperators. If several have concurred in perpetrating a delict, although only one is named in the law, those also who are mentioned in canon 2209, §§ 1-3, are bound, unless the law has expressly provided otherwise, by the same penalty; the others, however, are not likewise bound, but are to be punished with another just penalty according to the prudent judgment of the Superior, unless the law establishes a particular penalty against them (canon 2231).

Question. To what extent, if there is question of a penalty *latae sententiae*, is a declaratory sentence required?

Response. A penalty *latae sententiae*, whether medicinal or vindicative, binds the delinquent who is conscious to himself of the delict by the fact itself in both forums; nevertheless, before a declaratory sentence, the delinquent is excused from observing the penalty whenever he cannot observe it without infamy, and in the external forum no one can exact from him the observance of that same penalty, unless the delict is notorious, the prescription of canon 2223, § 4, remaining firm (canon 2232, § 1; n. 856).

A declaratory sentence carries the penalty back to the moment of the committed delict (canon 2232, § 2); this is practical, for example, in the case of restitution to be made of fruits received, which therefore must be computed from the moment of the perpetrated delict (cf. canon 2280).[2]

[1] At least insofar as the defect of grave imputability excuses from any penalty in the internal forum, and also in the external forum if the defect is proved for the external forum (cited canon).

[2] On the contrary, if someone incurs excommunication *latae sententiae* and before the sentence acquires an office, after the sentence the acquisition is not rendered invalid, as Cerato thinks, p. 20; for only acquisition after the sentence is invalid (cf. canons 2265, § 1, 2°; 2266; 2296, § 2).

859 III. Requisites for someone to be able to be punished here and now with a penalty *ferendae sententiae*. No penalty can be inflicted unless: 1° it is certainly established that the delict has been committed; 2° it is certainly established that the delict has not been legitimately prescribed; 3° the guilty person, if there is question of inflicting a censure, persists in contumacy (canon 2233). It is said:

1. It is certainly established that the delict has been committed; but by what method the fact and imputability of the delict must be judged, see in the Code, book IV, title XIX, on criminal trial.
2. It is certainly established that the delict has not been legitimately prescribed. How a delict is prescribed is explained by canon 1703, compared, however, with canon 1555, § 1.[1]

3. If there is question of inflicting a censure, the guilty person is to be rebuked and warned to withdraw from contumacy, with a suitable time for repentance granted, if in the prudent judgment of the same judge or Superior the case bears this; if contumacy persists, the censure can be inflicted (canon 2233, § 2). What contumacy is, see n. 862. Formerly at least three warnings were prescribed, though for a just cause one sufficed (cf. now canons 649, 660). Under present law, however, it is left to the prudence of the Superior how many warnings he gives and also at what interval of time he gives them. Moreover, warnings are required for the validity of the censure; hence a censure *ferendae sententiae* cannot validly be applied to a delinquent unless after warnings he remains contumacious. On the canonical form cf. canon 2143.

Note 1. One who has committed several delicts must not only be punished more gravely, but also, if in the prudent judgment of the judge the matter bears it, must be subjected to vigilance or to another penal remedy (canon 2234).

Note 2. A frustrated delict or an attempt of delict, unless they are punished by law as distinct delicts, can be punished with a fitting penalty according to their gravity, unless the delinquent is freed from all imputability because he spontaneously desisted from the execution of the delict begun, and no harm or scandal followed from the attempt (canon 2235, compared with canon 2213, § 3).

[1] What the Superior can and must do in defect of this and of the prior condition, see n. 855; cf. canon 2222, § 2.

860 IV. Obligation of observing the penalty. A penalty seems to oblige from the motive of the law to which the sanction has been added. Moreover, the obligation is grave of its kind. Nevertheless, fear of extrinsic and proportionate harm excuses; hence, if the delict is not notorious, even infamy excuses from observing a penalty *latae sententiae*, for then infamy is an extrinsic inconvenience.

Part IV. On the Remission of Penalties

861 I. The act of remission. Medicinal penalties are remitted through absolution, vindicative penalties through dispensation (canon 2236, § 1).

II. Competent person. Remission of a penalty in general can be granted by him who issued the penalty, or by his competent Superior or successor, or by him to whom this power has been committed (canon 2236). It is said competent Superior, because superiority of precedence of itself does not include power over the jurisdiction of an inferior (cf. canon 271; canon 2236, § 1). Furthermore, the power of exempting from a law also carries with it the power of remitting a penalty annexed to the law (canon 2236, § 2). But a judge who by office applies a penalty constituted by a Superior cannot remit it once it has been applied (canon 2236, § 3). As to those to whom the power of remitting a penalty, whether as ordinary or as delegated, has been committed, we note from the Code:

1. The Ordinary can, by ordinary power, and hence also through one habitually delegated: 1° in public cases remit penalties *latae sententiae* established by common law, except: a) cases brought to the contentious forum; b) censures reserved to the Apostolic See; c) penalties of incapacity for benefices, offices, dignities, functions in the Church, active and passive voice, or deprivation of these, perpetual suspension, infamy of law, deprivation of the right of patronage and of a privilege or grace granted by the Apostolic See (canon 2237, § 1); 2° in occult cases, remit the same penalties, except censures reserved to the Apostolic See in the most special or special manner (canon 2237, § 2).
2. What any confessor or even any priest can do by a power delegated by law, see n. 865.
3. Besides, delegated power by privilege strictly so called is often given to Nuncios and others for remitting penalties, but only medicinal penalties. Concerning the privilege broadly so called of Cardinals regarding reserved censures, it is stated in its place.

Finally, there are those who can absolve from penalties with this single effect: that toward those punished they can use some privilege of dispensing, according to canon 66, § 3: "In the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation" (cf. canon 200, § 1). This is called absolution for the effect.

III. Mode of remitting. 1. For validity it is required that remission of a penalty not be extorted by force or grave fear (canon 2238). Moreover, error renders the act invalid if it concerns that which constitutes the substance of the act or falls upon a condition *sine qua non* (canon 104).

2. A penalty can validly be remitted to one present or absent, absolutely or under condition, in the external forum or in the internal forum only (canon 2239, § 1). It is said:

a) To one present or absent; nevertheless remission made in the internal-sacramental forum requires the person to be absolved or dispensed to be present.

b) Absolutely or under condition; even under a suspensive condition, for example: I remit the penalty, which will have effect when you have made restitution. Remission can also be granted unto reincidence, for example: if then you do not make restitution, you will fall again into the penalty which now I effectively remit.

c) In the external forum or in the internal forum only; concerning the effect of remission in the internal forum only, see canon 2251 (p. 730, V, 2).

3. Although a penalty can also be remitted orally, nevertheless if it was inflicted in writing, it is expedient that its remission also be granted in writing (canon 2239, § 3).

Note. A delinquent can not only be freed from a penalty through remission, but also can escape a penalty to be inflicted through prescription of the penal action, concerning which see canon 1703 (canon 2240).

Dissertation II. On Penalties in Species

According to the norm of the Code, here there will be discussion both of penalties taken in the proper sense, medicinal as well as vindicative, and of disciplinary means, or penal remedies and penances.

Part I. On Medicinal Penalties, or on Censures

We shall speak first of censures in general, then of censures in species.

Section I. On Censures in General

We shall treat first of the notion, multiplication, and division of censure; then of reservation; finally, of remission of censure.

Chapter I. On the Notion, Multiplication, and Division of Censure

862 I. Notion. Censure is a penalty by which a baptized man, delinquent and contumacious, is deprived of certain spiritual goods or goods annexed to spiritual things, until, withdrawing from contumacy, he is absolved (canon 2241, § 1). It is said:

1. Baptized, because the Church lacks jurisdiction over the non-baptized; against heretics and schismatics she can issue censures.
2. Delinquent and contumacious; these things will be explained more fully under II.
3. Until, withdrawing from contumacy, he is absolved. Namely, censure is a medicinal penalty, and therefore primarily intends the amendment of the guilty person; hence as soon as the delinquent withdraws from contumacy, he must be absolved (St. Alphonsus VII, 1).

Note. Censures, especially those *latae sententiae*, and most of all excommunication, are not to be inflicted except soberly and with great circumspection (canon 2241, § 2), "since, as the Council of Trent says,[1] experience teaches that if it is struck rashly or for light matters, it is rather despised than feared, and produces ruin rather than salvation."

II. A fuller exposition of the notion will show what things are required on the part both of the delict and of the delinquent, so that the penalty of censure may be decreed; and what things are required so that the delinquent may be absolved.

1. Requisites on the part of the delict. By censure there is punished only an external delict (n. 846), grave (n. 858), consummated (n. 858; St. Alphonsus VII, 31-34, 36; canon 2242, § 1). Note that a grave delict is required not only as to the external act, but also as to the internal act, so that whatever excuses from mortal sin also excuses from censure (n. 858), at least in the internal forum, because in the external forum malice is presumed.
2. The requisite on the part of the delinquent is contumacy (cited canon). Moreover:

a) If there is question of censures *ferendae sententiae*, one is contumacious who, notwithstanding the warnings mentioned in canon 2233, § 2 (n. 859), does not desist from the delict or refuses to do penance for the perpetrated delict with due reparation of damages and scandal (canon 2242, § 2).[2]

b) But to incur a censure *latae sententiae*, transgression of the law or precept to which the penalty *latae sententiae* is annexed suffices, unless the guilty person is excused from it by a legitimate cause (cited canon). It is disputed whether, in a case in which there is question of a censure which is not incurred unless the effect has followed, a transgression morally persisting until the effect has followed is required, so that the censure is not contracted by him who repents of the transgression before the effect. St. Alphonsus (VII, 40) and others affirm this, because a censure does not seem to be contracted

by one who, at the moment at which according to the law it is contracted, is already no longer contumacious.

Note. Censure can also be issued against unknown delinquents (canon 2242, § 1), provided, however, that they are somehow determined; as happens, for example, in establishing censures *latae sententiae*. But a censure issued against an uncertain or indeterminate person would be invalid, for example: "I excommunicate one of the three authors of this crime."

3. The requisite for a delinquent to be absolved is that contumacy has ceased. Moreover, contumacy must be said to have ceased when the guilty person has truly repented of the committed delict and at the same time has given congruous satisfaction for damages and scandal, or at least has seriously promised it; but to judge whether the repentance is true, the satisfaction congruous, or the promise of the same serious or not, belongs to him from whom absolution from the censure is sought (canon 2242, § 3). Therefore the one absolving can sometimes require cautions, so that he may be certain of the serious conversion of the penitent.

Question. When does censure produce its effect, and to what extent is appeal or recourse admitted concerning a censure inflicted or threatened?

Response 1. Censures inflicted by judicial sentence carry execution with them as soon as they have been issued, and from them there is no appeal except in devolutive effect; likewise from censures inflicted in the manner of a precept there is recourse, but in devolutive effect only[3] (canon 2243, § 1).

Response 2. But appeal or recourse from a judicial sentence or precept threatening censures, even censures *latae sententiae* not yet contracted, suspends neither the sentence or precept nor the censures, if there is question of a matter in which law does not admit appeal or recourse even with suspensive effect; otherwise it suspends the censures, the obligation of observing what is commanded by the sentence or precept nevertheless remaining firm, unless the guilty person has lodged appeal or recourse not only from the penalty, but also from the sentence or precept itself (canon 2243, § 2).

III. Multiplication of censure. Since by several titles someone can be deprived of the same good, "not only diverse censures, but even a censure of the same species, can be multiplied in the same subject" (canon 2244, § 1). Moreover, according to the adage, as many penalties as delicts, the Code establishes:

1. A censure *latae sententiae* is multiplied: 1° if diverse delicts, each of which carries a censure with it, are committed by the same or by distinct action (p. 716, IV, 1, 1°); 2° if the same delict, punished with a censure, is repeated several times, so that there are several distinct delicts (p. 716, IV, 1, 2°); 3° if a delict, punished with diverse censures by distinct Superiors, is committed once or several times (canon 2244, § 2, 1°, 2°, 3°).

2. A censure *ab homine* (inflicted) is multiplied if several precepts, or several sentences, or several distinct parts of the same precept or sentence, each inflicts its own censure (canon 2244, § 3).

IV. Division. Censure, as was said of penalty in general (n. 853), is determinate or indeterminate, *latae* or *ferendae sententiae*, *a iure* or *ab homine*. Besides, censures are divided:

1. By reason of the deprivation of goods, into excommunication, suspension, and interdict; concerning these separately below.

2. By reason of the power of remitting, some are reserved, others non-reserved (canon 2245, § 1). We shall speak specifically of reservation.

[1] Session 25, chapter 3.

[2] An unknown delinquent must be warned by edict before a censure is inflicted, according to the norm of canon 1724, compared with canon 1720, 1 and 2 (cf. also canon 1717, 3).

[3] Recourse extends more broadly than appeal, since the former can be extrajudicial, but the latter cannot in present Law.

Chapter II. On Reservation of Censure

863 I. Notion of reservation. Reservation of censure is its evocation to the judgment of the Superior; therefore it limits the inferior's power of absolving (canon 893, §§ 1 and 2).

II. Power of reserving. Those same persons can reserve censures who can issue them (cited canon). Nevertheless, "if a censure is reserved to the Apostolic See, the Ordinary cannot issue another censure reserved to himself for the same delict" (canon 2247, § 1). In addition, canon 2246, § 1, admonishes: "Let no censure be reserved unless with attention to the peculiar gravity of the delicts and to the necessity of providing more suitably for ecclesiastical discipline and of healing the consciences of the faithful."

III. Reserved censures. 1. A censure *ab homine* (inflicted)[1] is reserved, and indeed to him who inflicted the censure or issued the sentence, or to his competent superior, or successor, or delegate (canon 2245, § 2).

2. Censures *latae sententiae*, established by law or by precept, are reserved if this is expressly said in the law or precept (canon 2245, § 4). Moreover, among censures reserved by law, some are reserved to the Ordinary, others to the Apostolic See (canon 2245, § 2). Among those reserved to the Apostolic See, some are reserved simply, others in a special manner, others in a most special manner (canon 2245, § 3).

IV. Interpretation of reservation. Reservation receives strict interpretation (canon 2246, § 2). Therefore reservation is not had in doubt whether the requisites are present so that it must be applied.

V. Effect of reservation of censure with respect to sin. Reservation of a censure impeding reception of the sacraments (n. 864) imports the reservation of the sin to which the censure is annexed (canon 2246, § 3). But a sin of this kind is said to be reserved by reason of the censure, not by reason of itself; hence, "if someone is excused from the censure or has been absolved from it, the reservation of the sin ceases entirely" (cited canon).

VI. Limits of reservation. Reservation of a censure in a particular territory does not exert its force outside the boundaries of that territory, even if the censured person goes out of the territory to obtain absolution; but a censure *ab homine* is reserved everywhere, so that the censured person can nowhere be absolved without the due faculties (canon 2247, § 2).

[1] Inflicted; for a censure *latae sententiae* added to a particular precept is indeed *ab homine*, but is not always reserved, as is said under III, 2.

Chapter III. On Remission of Censure

864 I. The act of remitting. Any censure, once contracted, is removed only by legitimate absolution (canon 2248, § 1). Besides, note:

1. A censure removed through absolution does not revive except in the case in which a burden imposed under penalty of reincidence has not been fulfilled (canon 2248, § 3).
2. If someone is held by several censures, he can be absolved from one, the others in no way being absolved (canon 2249, § 1).
3. One seeking absolution must indicate all cases; otherwise the particular absolution is valid only for the case expressed. But if the absolution, although a particular petition had been made, was general, it is valid also for cases withheld in good faith, except for a censure reserved to the Apostolic See in the most special manner, but not for those withheld in bad faith (canon 2249, § 2).
4. Regarding the connection of remission of censure with sacramental absolution, observe:

a) If there is question of a censure which does not impede reception of the Sacraments, for example of suspension, the censured person, duly disposed and withdrawing from contumacy, can be absolved from sins, the censure remaining firm (canon 2250, § 1).

b) But if there is question of a censure which impedes reception of the Sacraments, the censured person cannot be absolved from sins unless he has first been absolved from the censure (canon 2250, § 2). It is said cannot be absolved, that is, cannot be absolved licitly; but he is absolved validly unless the penitent knows that he cannot be licitly absolved and therefore is indisposed. If the censure is reserved, the sin to which the censure is annexed is also reserved; nevertheless, since it is not reserved by reason of itself, the confessor does not lack jurisdiction over it; hence absolution, even granted in bad faith, directly absolves the penitent even from the reserved sin, unless again the penitent knows that he cannot be licitly absolved and therefore is indisposed (St. Alphonsus VII, 158, 159).

865 II. Power of absolving. 1. In ordinary circumstances absolution can be granted as follows:

a) From a non-reserved censure, in the sacramental forum, any confessor can absolve; outside the sacramental forum, anyone who has jurisdiction over the guilty person in the external forum can absolve (canon 2253, n. 1).

b) From a censure *ab homine*, he who inflicted the censure or issued the sentence, or his competent Superior, or successor, or delegate, can absolve; moreover, he can grant absolution even if the guilty person has transferred his domicile or quasi-domicile elsewhere (canon 2253, 2°).

c) From a censure reserved by law, he who constituted the censure or to whom it is reserved can absolve, as can their successors or competent superiors or delegates. Therefore:

alpha) From a censure reserved to the Bishop or Ordinary, any Ordinary can absolve subjects; but the local Ordinary can absolve also travelers.[1]

beta) From a censure reserved to the Apostolic See, both the Apostolic See itself can absolve, and others who have obtained from it the power of absolving, whether general if the censure is reserved simply,[2] or special if it is reserved in a special manner, or finally most special if it is reserved in a most special manner (canon 2253, n. 3).

Note. Cardinals, by force of privilege, validly absolve any penitents whatever throughout the world from all sins and censures, even reserved ones, except only censures reserved to the Apostolic See in the most special manner and those which are annexed to the revelation of the secret of the Holy Office (canon 239, § 1, 1° and 2°).[3] - The canon penitentiary, both of a cathedral church and of a collegiate

church, obtains by law ordinary power, which however he cannot delegate to others, of absolving even from sins and censures reserved to the Bishop, in the diocese even outsiders, and diocesan persons even outside the territory of the diocese (canon 401, § 1). - Finally, a priest chosen by a Cardinal as confessor for himself and his household can absolve them from the same sins and censures from which Cardinals can absolve (canon 239, § 1, 2°). The same must be said, also as concerns cases reserved to the local Ordinary, of the priest whom the Bishop has chosen as confessor for himself and his household (canon 349, § 1, 1°).

2. In more urgent cases any confessor in the sacramental forum can absolve from censures *latae sententiae* reserved in any manner whatever, with the burden imposed under penalty of reincidence of having recourse, the name withheld, to the Superior and of standing by his commands (canon 2254, § 1). It is said:

a) In more urgent cases. A case is urgent if censures *latae sententiae* cannot be observed externally without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of grave sin for the time necessary for the competent Superior to provide (cited canon).

b) From censures *latae sententiae* reserved in any manner whatever; therefore it is doubted whether the faculty extends itself to a censure *ab homine*, contracted by force of a particular precept, if it is *latae sententiae*. Now this seems to have to be denied; for if it extended itself to that censure, surely, just as in canon 2252, both it would be expressly named and mention would explicitly be made of it in the recourse to be instituted after absolution.

c) With the burden imposed, under penalty of reincidence, of having recourse. Moreover, recourse must be made within a month, at least by letter and through the confessor, if this can be done without grave inconvenience (cited canon).

d) To the Superior, that is, to the Sacred Penitentiary or to the Bishop or another superior endowed with the faculty (cited canon). But notice that recourse can then be made even to the Bishop only if he is endowed with the faculty.[4] Recourse cannot be made to just any subdelegate.[5]

e) And of standing by his commands; this likewise seems imposed under penalty of reincidence.[6]

Note 1. Nothing prevents the penitent, even after absolution accepted as above, and after recourse also has been made to the Superior, from approaching another confessor endowed with the faculty, and from obtaining absolution from him after the confession at least of the delict with the censure has been repeated. Once that absolution has been obtained, he may receive commands from the same confessor, without being bound thereafter to stand by other commands subsequently arriving on the part of the Superior (canon 2254, § 2).

Note 2. But if in some extraordinary case this recourse is morally impossible, then the confessor himself, except in the case of a censure contracted from true or fictitious absolution of an accomplice, can grant absolution without the burden mentioned above, nevertheless imposing those things which must be imposed by law, and imposing a congruous penance and satisfaction for the censure, so that the penitent, unless within a congruous time to be fixed beforehand by the confessor he has done penance and given satisfaction, falls back into the censure (canon 2254, § 3).

It is said: But if... this recourse is morally impossible. Moreover, it is morally impossible: 1° when "neither the confessor nor the penitent can send a letter to the Sacred Penitentiary and it is hard for the

penitent to approach another confessor";[7] indeed, 2° when only the confessor can write, but it is morally impossible for the penitent to return to him, and it is hard to approach another confessor.[8]

It is said: Except in the case of a censure contracted from absolution of an accomplice. Hence the confessor cannot grant absolution to a priest offending in this way without the burden of having recourse; therefore the obligation remains until it has been fulfilled. But if both the confessor and the penitent here and now cannot satisfy the obligation physically or morally - suppose on account of sickness or inability to write - the penitent is excused until the impediment has ceased (n. 414).

For the formula of having recourse, see n. 415.

3. In danger of death, from whatever cause it proceeds, all priests, although not approved for confessions, validly and licitly absolve any penitents whatever from any sins or censures, however reserved and notorious, even if an approved priest is present; except, only as to liceity, the case of absolution of an accomplice when another priest is present (canon 882). Nevertheless:

a) Those who, placed in danger of death, have received absolution from some censure *ab homine* or from a censure reserved to the Apostolic See in the most special manner from a priest lacking the special faculty, are bound by the obligation of having recourse (canon 2252).

b) Recourse must be made to him who issued the censure, if there is question of a censure *ab homine*; to the Sacred Penitentiary or to the Bishop or another endowed with the faculty, if there is question of a censure *a iure* (cited canon).

c) Recourse obliges under penalty of reincidence (cited canon); moreover, it seems to press from the time of recovered health. Finally, one must stand by the commands received in the recourse (cited canon), and indeed, as it seems, under penalty of reincidence.[9]

Note. If one absolved from a reserved censure *ab homine* should prefer after recovered health to seek absolution again, for example from a delegate (canon 2245, § 2), rather than to have recourse to him who issued the censure, this is certainly licit for him.

4. Finally, regarding absolution from censure, let these things be noted concerning supplied jurisdiction:

a) In common error or in a positive and probable doubt, whether of law or of fact, the Church supplies for both the external and internal forum (canon 209).

b) When the power of absolving for the internal forum has been granted, an act placed through inadvertence after the time has elapsed or the number of cases has been exhausted is valid (canon 207, § 2).

c) If a confessor, ignorant of the reservation, absolves a penitent from censure and sin, the absolution from the censure is valid, provided it is not a censure *ab homine* or a censure reserved to the Apostolic See in the most special manner (canon 2247, § 3).

[1] Regular confessors have this power, but delegated by force of privilege, even those who are not Ordinaries or local Ordinaries.

[2] Ordinaries have this ordinary power in occult cases, as was said in n. 861.

[3] From canon 239, § 1, 2°, it seems to follow that Cardinals cannot delegate this power; otherwise this number 2° would be superfluous; indeed, because the privileges of canon 239 are to be judged personal (cf. *II Monitor ecclesiasticus* 1919, p. 308).

[4] Pontifical Commission, November 12, 1922, to VIII (*A.A.S.* 1922, p. 663).

[5] Cf. Holy Office, December 19, 1900.

[6] Response of the Holy See, March 30, 1892, to 3 (*A.S.S.* XXIV, p. 746).

[7] Holy Office, November 9, 1898 (*Collectanea*, n. 2023).

[8] Holy Office, September 5, 1900, compared with June 7, 1899 (*Collectanea*, nn. 2095, 2052). The danger that letters may be opened does not excuse from recourse, since inconveniences are sufficiently forestalled by suppression of the name and pronoun.

[9] Response of the Holy See, March 30, 1892, to 3 (*A.S.S.* XXIV, p. 746).

866 III. Obligation of absolving. Absolution cannot be denied as soon as the delinquent has withdrawn from contumacy according to the norm of canon 2242, § 3 (n. 862); moreover, the one absolving from a censure can, if the matter bears it, inflict a congruous vindicative penalty or penance for the perpetrated delict (canon 2248, § 2).

867 IV. Form of absolving. Absolution from censure in the sacramental forum is contained in the accustomed form of absolution from sins, prescribed in the ritual books;[1] in the non-sacramental forum it can be given in any manner whatever, but for absolution from excommunication it is regularly fitting to use the form handed down in the same books[2] (canon 2250, § 3).

[1] "May Our Lord Jesus Christ absolve you," etc.

[2] Roman Ritual, title III, chapter 3, n. 7: "May Our Lord Jesus Christ absolve you; and I, by His authority and by the authority committed to me by our most holy Lord the Pope (if he was delegated by the Pope), or: by the most reverend Bishop N., or by such-and-such Superior, absolve you from the bond of excommunication into which you have fallen (or: have been declared to have fallen), because of such-and-such deed (or: such-and-such cause, etc.); I restore you to the communion and union of the faithful, and to the holy Sacraments of the Church, in the name of the Father, and of the Son, + and of the Holy Spirit. Amen."

868 V. Effect of absolution in relation to the forum for which it is valid. 1. If absolution from censure is given in the external forum, it affects both forums (canon 2251).

2. If in the internal forum, the absolved person, scandal having been removed, can bear himself as such also in acts of the external forum; but unless the granting of absolution is proved or at least legitimately presumed in the external forum, the censure can be urged by Superiors of the external forum, whom the guilty person must obey, until absolution has been obtained in that same forum (cited canon).

Section II. On Censures in Species

869 Preliminary Note I. Censures are: 1° excommunication; 2° interdict; 3° suspension (canon 2255, § 1).

Preliminary Note II. Excommunication can affect only physical persons, and therefore, if at any time it is issued against a moral body, it is understood to affect the individuals who have concurred in the delict;[1] interdict and suspension can also affect a community as a moral person; excommunication and interdict can also affect lay persons; suspension, clerics only; interdict, also a place; excommunication is always a censure; interdict and suspension can be either censures or vindicative penalties, but in doubt they are presumed to be censures (canon 2255, § 2).

Preliminary Note III. In the canons which follow:

1° By the name divine offices are understood functions of the power of order which, by the institution of Christ or of the Church, are ordered to divine worship and can be performed by clerics alone (canon 2256, 1°). Mass, the chanting of the hours in choir, a public procession, solemn blessings and consecrations, Benediction with the Most Holy Sacrament, and other things of that kind are enumerated; a sermon also is a divine office, but no one is ever prohibited from assisting at it; cf. canon 2275, canon 2259, § 1.

2° By the name legitimate ecclesiastical acts are signified: to hold the office of administrator of ecclesiastical goods; to act as judge, auditor and relator, defender of the bond, promoter of justice and of the faith, notary and chancellor, messenger and apparitor, advocate and procurator in ecclesiastical causes; to hold the office of sponsor in the sacraments of baptism and confirmation; to cast a vote in ecclesiastical elections; to exercise the right of patronage (canon 2256, 2°).

[1] Concurrence according to the norm of canon 2231 seems to be intended.

Chapter I. On Excommunication

870 I. Notion. Excommunication is a censure by which someone is excluded from the communion of the faithful, with the effects which are enumerated in the canons which follow and which cannot be separated (canon 2257, § 1). That exclusion from ecclesiastical communion, that is, from participation in the goods whose dispensation has been committed to the Church, is among the greatest penalties, and is to be inflicted only with great circumspection (canon 2241, § 2); when it is inflicted or declared in judgment, it is reserved to a collegiate tribunal of three judges (canon 1576, § 1, 1°). It is also called anathema, especially if it is inflicted with the solemnities which are described in the Roman Pontifical[1] (canon 2257, § 2).

[1] Roman Pontifical, title *The Order of Excommunicating and Absolving*.

871 II. Division. Although on the one hand the effects of excommunication are inseparable from one another, and therefore cannot be separated at the judgment of the one inflicting the penalty, nevertheless by the law itself the effects of excommunication are increased after a condemnatory or declaratory sentence. Furthermore, for the benefit of the faithful the distinction between tolerated and to-be-avoided excommunicates has been introduced (cf. canon 2258, § 1).

1. Tolerated persons are those with whom it is permitted to the faithful to communicate fully in profane matters,[1] and in some sacred matters according to the rules to be handed down. This toleration is for the benefit of the faithful, because exclusion from the communion of the faithful of itself also includes civil communication with them.
2. To-be-avoided persons are those whom the baptized are bound to avoid both in profane and in sacred matters within the limits established by law. But no one is to be avoided unless: a) he has laid violent hands on the person of the Roman Pontiff, and he is to be avoided by the fact itself (canon 2343, § 1, 1°); b) he has been excommunicated by name by the Apostolic See, the excommunication has been publicly denounced, and in the decree or sentence it is expressly said that he must be avoided (canon 2258, § 2).

[1] Saving the natural law, which commands that the danger of perversion be avoided.

872 III. Nine effects are enumerated; moreover, the following are prohibited according to the norm of law:

1. Assistance at divine offices. Assistance is twofold, active and passive. One actively assists who in some way participates in the celebration of divine offices; hence even an inferior minister or one reciting in public psalmody. But singers and organists are not judged to concelebrate. One passively assists who is present but does not participate in the celebration. Therefore:

a) Any excommunicated person lacks the right of assisting, whether actively or passively, at divine offices, but not at the preaching of the word of God (canon 2259, § 1). Nevertheless he himself cannot preach. Moreover, an occult tolerated person by any assistance of itself sins only venially, or even, according to many, not at all, if there is question of passive assistance. A tolerated person after sentence, or one otherwise notorious, sins lightly by passive assistance; gravely by active assistance, if the matter is grave. A to-be-avoided person sins gravely by any assistance, if the matter is grave (St. Alphonsus VII, 173, 175, 177).

b) Regarding the expulsion of an excommunicated person, note:

alpha) Not only a to-be-avoided person, but also anyone after declaratory or condemnatory sentence, or otherwise notoriously excommunicated, is to be repelled from active assistance (canon 2259, § 2).

beta) A tolerated person can be repelled from passive assistance, since he lacks the right of assisting, but he need not be repelled. A to-be-avoided person must be expelled, or, if he cannot be expelled, the office must cease, provided this can be done without grave inconvenience (cited canon). Hence St. Alphonsus (VII, 177), concerning the Sacrifice of the Mass, says: "If he (the to-be-avoided person) cannot be expelled, the office must be omitted, even on a feast day; and the celebrant, if the Canon has not yet begun, must break off the Mass; if he has begun the Canon, he can, the others departing, either proceed with the sacred action or break it off, on account of the probability of each opinion;[1] if he has consecrated, the minister alone remaining, he must proceed up to Communion inclusive and complete the rest in the sacristy or another decent place," connected with the church.

Corollary I. Ignorance which is not gravely culpable, grave fear, and in general a grave extrinsic inconvenience excuses from observing the things set forth.

Corollary II. Prohibited passive assistance contains for the excommunicated person a dispensation from the precepts of hearing Mass, going to choir, and paschal confession. The last of these, however, presses the obligation of seeking absolution from the censure. Nevertheless he is bound privately, and if he is to be avoided, alone, to recite the canonical hours, if he is a cleric or a regular according to canon 610, § 3.

Corollary III. An excommunicated person is not prohibited from entering the Church at a time when the divine offices are not being celebrated, in order to pray privately (St. Alphonsus VII, 174).

2. Reception of sacraments and sacramentals.

a) Any excommunicated person cannot licitly receive the sacraments (canon 2260, § 1); but generally he receives them validly. I have said generally, for regarding the sacrament of Penance the things said in n. 864 are valid.

b) An excommunicated person after declaratory or condemnatory sentence[2] cannot licitly receive sacramentals. An occult tolerated person and one notorious by fact are not prohibited; but sacramentals do not profit these persons either, at least from the impetration of the Church, in whose prayer they do not participate. But exorcism can be performed licitly and validly by legitimate ministers

upon any excommunicates (canon 1152). Likewise they seem always validly to receive constitutive sacramentals; for minor orders this follows from canon 968, § 1.

3. Ecclesiastical burial. This consists in the transfer of the body to the church, obsequies celebrated over it in the same church, and its deposition in a place legitimately deputed for burying the faithful departed (canon 1204). Now this ecclesiastical burial must be denied only to an excommunicated person after condemnatory or declaratory sentence, unless before death he has given some signs of penitence (canon 1240, § 1, 2°). Furthermore, to one excluded from ecclesiastical burial there must be denied both any funeral Mass, even an anniversary one, and other public funeral offices (canon 1241); concerning a private Mass to be celebrated for him, cf. n. 208. If the body of an excommunicated person after sentence, or of a to-be-avoided person, contrary to the statutes of the canons, has obtained burial in a church or cemetery, it must be exhumed by permission of the Ordinary, if this can be done without grave inconvenience and the body can certainly be distinguished from other bodies (canons 1172, § 1, 4°; 1175; 1207; 1242).

But if prohibited ecclesiastical burial is stubbornly demanded by others, even with grave threats, nevertheless "care must be taken that all things be done according to the norm of the sacred canons; but insofar as this cannot be obtained without danger of disturbances and scandal, the pastor, neither by himself nor through other priests, is to concur in any way in the funeral rites and burial."[3]

4. Confection and administration of sacraments and sacramentals. An excommunicated person is prohibited from licitly confecting and administering the Sacraments and Sacramentals, saving the exceptions which follow (canon 2261, § 1):

a) The faithful can, for any just cause, seek Sacraments and Sacramentals from an excommunicated person, especially if other ministers are lacking; and then the excommunicated person who is requested can minister them and is held by no obligation of inquiring into the cause from the one requesting (canon 2261, § 2).

b) But from excommunicated persons to be avoided, and also from other excommunicated persons after a condemnatory or declaratory sentence has intervened, the faithful can seek, in danger of death alone, both sacramental absolution according to the norm of canon 882 (n. 370) and 2252 (p. 729), and also, if other ministers are lacking, the other Sacraments and Sacramentals (canon 2261, § 3).

As regards validity: Sacraments are always validly ministered by any persons possessing the required power of order, unless special jurisdiction is required for this; likewise Sacramentals, unless a special faculty is required for them. But an excommunicated person cannot enjoy this faculty, as will be said below at canon 2263, although he validly uses it.

5. Participation in indulgences, etc. An excommunicated person does not become a participant in indulgences, suffrages, and public prayers of the Church (canon 2262, § 1). It is said:

a) Indulgences, whether those which are applied to the living by an act of jurisdiction, or those which are granted to the dead by way of suffrage.

b) Suffrages; by this name here there seem to be understood prayers and liturgical rites which are performed by sacred ministers, either alone or together with the faithful, for a deceased person or for all the departed.

c) Public prayers of the Church, that is, those which are poured forth by sacred ministers, either alone or together with the faithful, in the name of the Church, such as canonical recitations of the divine office, Litanies, etc.

Nevertheless, the following are not prohibited: 1° the faithful praying privately for an excommunicated person; 2° priests applying Mass privately and with scandal removed for him; but, if he is to be avoided, only for his conversion (canon 2262, § 2). Besides, by way of exception, the Church prays for these persons on Feria VI in Parasceve, in the prayer for heretics and schismatics.

6. The exercise of some acts, functions, and privileges, namely by force of canon 2263:

a) An excommunicated person is removed from legitimate ecclesiastical acts within the limits defined by law in their proper places (cf. canon 2256, n. 2; n. 869, prelim. III, 2°).

b) He cannot act in ecclesiastical causes except according to the norm of canon 1654.

c) He is prohibited from discharging ecclesiastical offices or functions, strictly so called, canon 145, and from enjoying privileges previously granted by the Church. Therefore he does not lose functions, unless he is to be avoided, cf. below canon 2266, and privileges. Privileges are understood as personal privileges, strictly or broadly so called, granted to a physical person, or to a religious institute or generally to a moral person for the benefit of physical persons; not, however, privileges of the clerical state (canon 123) or others granted principally for the benefit of the religious institute itself or of the moral person, for example the privilege of exemption; and indeed granted by any ecclesiastical law or Superior. Moreover, besides rights, habitual faculties are numbered with privileges, which are granted either in perpetuity or for a predefined time or a certain number of cases (canon 66, § 1); for example, the faculty of dispensing in matrimonial impediments, or the special faculty of attaching indulgences to sacred things by a blessing. An excommunicated person would indeed use these faculties validly, but illicitly.

7. Exercise of jurisdiction of the internal and external forum. An excommunicated person before sentence exercises jurisdiction validly but illicitly, unless he is requested by the faithful for a just cause. After sentence he exercises it invalidly and illicitly, unless he is requested according to the norm of canon 2261, § 3 (p. 734); then he acts validly and licitly. Therefore excommunicated persons who have not been requested illicitly or invalidly issue laws, delegate others, etc. (St. Alphonsus VII, 185). Nevertheless note that sometimes the invalidity of the act of jurisdiction does not prevent the validity of the external act placed, for example in the distribution of Sacraments.

8. Exercise and acquisition of some special rights. By force of canons 2265 and 2266:

a) An excommunicated person before sentence:

alpha) Validly, but illicitly, exercises the right of electing, presenting, and nominating.

beta) Validly, but illicitly, acquires dignities, offices, strictly so called, benefices, ecclesiastical pensions, or another function, broadly so called, in the Church.

gamma) Validly, but illicitly, is promoted to Orders, even minor ones, and first tonsure (canons 950; 968, § 1).

b) An excommunicated person after sentence:

alpha) Illicitly and invalidly exercises the right of electing, presenting, and nominating.

beta) Illicitly and invalidly acquires dignities, offices, strictly so called, benefices, ecclesiastical pensions, or another function, broadly so called, in the Church.

gamma) Validly, but illicitly, is promoted to Orders, even minor ones, and first tonsure.

delta) He cannot validly obtain any pontifical grace,[4] unless mention of the excommunication is made in the pontifical rescript.

epsilon) He remains deprived of the fruits of the dignity, office, benefice, pension, or function, if he has any in the Church.

c) A to-be-avoided person suffers the same effects as an excommunicated person after sentence; but in addition he remains deprived of the dignity itself, office, benefice, pension, or function.

9. Communion in profane matters. The faithful must avoid communion in profane matters with an excommunicated person to be avoided, unless there is question of a spouse, parents, children, servants, subjects, and generally unless a reasonable cause excuses (canon 2267). From the latter words it follows that the prohibition presses only under light sin. Nevertheless note canon 2338, § 2: those rendering any assistance or favor to an excommunicated person to be avoided in the delict on account of which he was excommunicated incur by the fact itself an excommunication simply reserved to the Apostolic See.[5]

[1] See, nevertheless, how the parallel case is resolved in canon 1173, § 2.

[2] The things which are valid concerning an excommunicated person after sentence must also be understood concerning a to-be-avoided person, although condemned by decree of the Apostolic See, but not concerning one notorious by fact.

[3] Sacred Penitentiary, December 10, 1860 (*A.S.S.* I, p. 563, question 21).

[4] There are also dispensations and privileges, according to canon 36, § 2; cf. the Order to be observed in the Sacred Congregations, September 20, 1908, Part II, chapter III, n. 6. If mention of the penalty is made, absolution for the effect is added.

[5] One gives favor who, although he becomes in no way a participant in the continued delict, nevertheless procures for the delinquent some material or moral advantage on account of it (Chelodi, op. cit., p. 80, 2).

873 IV. Violation of excommunication is a grave or light sin according as the excommunicated person places an act excluded by excommunication of grave or light importance. In addition, a cleric excommunicated in sacred orders, who places an act of order reserved to clerics constituted in sacred order, is irregular (canon 985, 7°). Finally, if someone, with hardened spirit, has wallowed for a year in the censure of excommunication, he is suspected of heresy (canon 2340, § 1).

Chapter II. On Interdict

874 I. Notion. Interdict is a censure by which the faithful, remaining in the communion of the Church, are prohibited from the sacred things which are enumerated in the canons which follow (canon 2268, § 1). It is said censure, but it can besides be inflicted as a vindicative penalty (n. 890). It is said sacred things; these are divine offices, Sacraments and Sacramentals, or ecclesiastical burial. Furthermore, those personally interdicted sometimes cannot exercise certain rights. The effects of interdict can be separated, so that it is left to the judgment of the Superior which privations he commands, unless it is an interdict established by common law.

875 II. Division. Interdict is: 1° personal or local;[1] 2° general or particular, according as the subjects of the penalty differ.

1. Interdict is personal when the use of sacred things is directly interdicted to the persons themselves; local, when the use of sacred things is indirectly interdicted to persons, because in certain places the dispensation or reception of sacred things is forbidden (cf. canon 2268, § 2).

2. It is general when it is issued against a group of persons, and is a general personal interdict; or against some territory, whose sacred and profane places it affects, and is a general local interdict. It is particular when it is issued against particular persons expressly designated, and is a particular personal interdict; or against particular sacred places, namely churches, altars, cemeteries, and is a particular local interdict.

Finally, a personal interdict can be issued at the same time both against a community as such and against the individual delinquent persons of some community, so that the interdict is at once general and particular.

[1] Formerly there existed a mixed or ambulatory interdict, which held any place during the presence of the interdicted person; now it has been abolished.

876 III. Author. 1. A general interdict against a diocese, whether against the territory or against the people, can be issued only by the Apostolic See or at its mandate (canon 2269, § 1).

2. A general interdict against a parish, and also any particular interdict against subject persons or places, can be issued by a Bishop (cited canon). A religious Superior cannot issue a local interdict, because his jurisdiction is only personal.

877 IV. Interpretation. 1. When a city is interdicted, accessory places, even exempt ones, and the cathedral church itself also remain interdicted; when a church is interdicted, contiguous chapels are interdicted, but not the cemetery; when a chapel is interdicted, the whole church is not interdicted, nor, when a cemetery is interdicted, is the church contiguous to it interdicted, but all oratories erected in the cemetery are interdicted (canon 2273).

2. A personal interdict follows the persons who are held by the interdict everywhere, so that in whatever place they suffer the effects of the penalty (canon 2269, § 2); but a general personal interdict does not hold infants and others not liable to penal law, nor arriving persons, travelers, and vagrants; but it does hold the innocent, and even the absent, who, for example by domicile, are members of the community. Furthermore, from the common and more benign interpretation, when the people are interdicted, the clergy are not of themselves judged interdicted; and also conversely, so that when the clergy are interdicted, the non-interdicted people can call other clerics. Likewise, when the clergy are interdicted, religious are not judged interdicted unless they have a secular benefice (St. Alphonsus VII, 331).

3. A local interdict does not press outside the interdicted place; but in the interdicted place all, even outsiders or exempt persons, a special privilege excluded, must observe it (cited canon). The reason is that it directly affects the territory, but indirectly the persons; nevertheless for the innocent and travelers, or even for infants, such an interdict does not have the character of a penalty, but of a disciplinary privation. The same is valid concerning the innocent in a personal interdict.

878 V. Effects of a local interdict. A local interdict, whether general or particular, prohibits in the place any divine office or sacred rite, with the following exceptions (canon 2270, § 1):

1. In every local interdict: 1° All sacraments and sacramentals can be ministered to the dying, with the things to be observed being observed; the chief of these are that the ministers not be impeded and solemnities be omitted (canon 2270, § 1, compared with canon 2271, 2°). 2° A local interdict is suspended on the day of the Nativity of the Lord, Easter, Pentecost, the Most Holy Body of Christ, and the Assumption of the Blessed Virgin Mary into heaven,[1] and only the conferral of orders and the solemn nuptial blessing are prohibited (canon 2270, § 2). It is said on the day, so that the octave is excluded.

2. In a general local interdict, unless the decree expressly provides something else:

a) Clerics, provided they themselves are not personally interdicted, are permitted to perform privately all divine offices and sacred rites in any church or oratory, with closed doors, in a subdued voice, and without bells being rung (canon 2271, 1°).

b) But in the cathedral church, parochial churches, or in the church which is the only one in the town, and in those alone, there are permitted: the celebration of one Mass, reservation of the Most Holy Sacrament, administration of baptism, Eucharist, and penance, assistance at marriages, with the nuptial blessing excluded, funeral obsequies of the dead, any solemnity nevertheless being forbidden, the blessing of baptismal water and of sacred oils, and the preaching of the word of God. In these sacred functions, however, chant and pomp in sacred furnishings and the sound of bells, organs, or other musical instruments are prohibited; and sacred Viaticum is to be carried privately to the sick (canon 2271, 2°).

3. In a particular local interdict:

a) If the altar or chapel of some church has been interdicted, no sacred office or sacred rite is to be celebrated in them (canon 2272, § 1).

b) If the cemetery has been interdicted, the bodies of the faithful can indeed be buried there, but without any ecclesiastical rite (canon 2272, § 2).

c) If the church or oratory of some Chapter has been interdicted, and the Chapter has not been interdicted, because then nothing is permitted to it, the Chapter is permitted to perform all divine offices and sacred rites of its function privately, according to canon 2271, 1°, in any church or oratory, even in its own interdicted church or oratory, unless the decree of interdict commands that in another church or oratory the conventual Mass be celebrated and the canonical hours be publicly recited (canon 2272, § 3, 1°).

d) If the parochial church has been interdicted, it is permitted to perform in it all the things which above, canon 2271, 2°, were said concerning the cathedral church and other parochial churches under a general interdict, unless the decree of interdict substitutes another church for it during the time of the interdict (canon 2272, § 3, 2°).

[1] Furthermore in Spain on the day of the Immaculate Conception of the Blessed Virgin Mary by privilege of Leo X.

879 VI. Effects of personal interdict. Those personally interdicted by force of canon 2275:

a) Cannot celebrate divine offices or assist at them, except the preaching of the word of God; those passively assisting need not be expelled; but interdicted persons after a condemnatory or declaratory

sentence has been issued, or otherwise notoriously interdicted, are to be repelled from active assistance which carries with it some participation in celebrating divine offices (cited canon, 1°).

b) They are prohibited from ministering and confecting Sacraments and Sacramentals, unless the interdicted person before sentence has been requested by the faithful, who may seek this for a just cause, especially if other ministers are lacking; or unless after sentence he has been requested in danger of death, either to absolve the faithful sacramentally, although another priest is present, or to give the other Sacraments and Sacramentals if other ministers are lacking.

c) They are prohibited from receiving the Sacraments; and after sentence they also receive Sacramentals illicitly, except exorcism (canon 1152); but an interdicted person also receives Sacramentals validly, because he communicates with the prayer of the Church.

d) They are also held by the prescription of canon 2265; therefore the things said on p. 735, 8, a) and b), alpha-delta, are to be applied to them.

e) After sentence they are deprived of ecclesiastical burial (cf. canon 1204), unless before death they have given some signs of penitence; and under the same restriction there must be denied to them both any funeral Mass, even an anniversary one, and other public funeral offices.

f) Finally, after sentence, a pastor or local Ordinary assists at marriage invalidly, whether by himself or through another (canon 1095). Before sentence he assists even licitly.

880 VII. Effects of an interdict issued because a community or college has perpetrated a delict. An interdict of this kind can be issued either against the individual delinquent persons, or against the community as such, or against the delinquent persons and the community (canon 2274, § 1). Now:

1. If the interdict has been issued against the individual delinquent persons, those persons, but not the innocent, are personally interdicted, and therefore are held by the things set forth under VI (canon 2274, § 2).
2. If the interdict has been issued against the community as such, the community or college cannot exercise any spiritual right which belongs to it (canon 2274, § 3). Spiritual rights are judged to be: the right of electing, presenting, conferring benefices, celebrating the divine office by office,[1] etc.; but not the right of administering goods and similar things.
3. If the interdict has been issued against the delinquents and against the community, the effects assigned under 1 and 2 are cumulated (canon 2274, § 4).

[1] For example, celebrating the conventual Mass and reciting the canonical hours in common, if there is question of a Chapter interdicted as such (canon 2272, § 3, 1°).

881 Question 1. To what extent does interdict redound upon the innocent?

Response 1. One who is subject to a local interdict, without having given cause for it and without being prohibited by another censure, can, if he is duly disposed, receive the Sacraments without absolution from the interdict or any other satisfaction; and indeed, in the interdicted place itself, those sacraments which are licitly administered there (canon 2276; cf. canon 2271, n. 878), or in another non-interdicted place, the other sacraments. Likewise he can freely go to other places so that he may assist at divine offices and be freed from the other privations of the local interdict.

Response 2. An innocent person, if an interdict is issued against the individual delinquents of the community of which he is a member, undergoes the effects of those personally interdicted only indirectly, because he cannot receive sacraments or other things from them. He himself is free in all things, and not even for the external forum does he need absolution in order to receive the Sacraments (canon 2276).

Response 3. An innocent person, being subject to an interdict against a community as such, cannot exercise the common rights of the community; but because he is not held by the censure, since it supposes a delict, he does not need absolution in order to receive the Sacraments (canon 2276).

Response 4. If the things placed under responses 2 and 3 are cumulated, the things said there are to be observed (cited canon).

Note. Those who have given cause for a local interdict or for an interdict against a community or college are by the fact itself personally interdicted (canon 2338, § 4).

Question 2. What does interdict from entrance into the church import?

Response. Interdict from entrance into the church, which is a certain part of a special personal interdict, does not deprive one of those goods which we indicated under VI, but from canon 2277 it carries with it the prohibition that one celebrate divine offices in church or assist at them, except preaching, or have ecclesiastical burial. Therefore he can, provided he is duly disposed, receive the Sacraments, even in church, when divine offices are not being celebrated; or celebrate divine offices or assist at them outside the church, taken in the strict sense according to canon 1161. But if he assists, actively or passively, in church, he need not be expelled; nor if he is buried in a sacred place is it necessary that the body be removed.

In present Law it is established in only three cases (canon 2329; canon 2338, § 3; canon 2339); it can be issued as a vindicative penalty.

882 VIII. Cessation of interdict. It is proper to interdict that, besides the modes common to all penalties, it also ceases when the interdicted place has been destroyed or the interdicted community extinguished. But it is clear of itself that absolution given in the internal forum never touches the local interdict itself, or a general personal interdict as such. One who without fault is subject to an interdict against a community is freed by the fact itself from this interdict when he ceases to be a member of the community; nor does he need absolution.

883 IX. Violation of interdict is a grave or light sin according as the act excluded by interdict is of grave or light importance (cf. St. Alphonsus VII, 336).

Chapter III. On Suspension

884 I. Notion. Suspension is a censure by which a cleric is prohibited from office or benefice, or from both (canon 2278, § 1). It is said:

1. Censure; but it can be inflicted as a vindicative penalty (canon 2255, § 2).
2. Cleric, because he alone is the subject of suspension; and indeed suspension can be issued against a community and members at the same time.

3. Office; this is understood strictly so called (canon 145, § 2), and is defined: a function constituted stably by divine or ecclesiastical ordination, to be conferred according to the norm of the sacred canons, carrying with it at least some participation in ecclesiastical power, whether of order or of jurisdiction (canon 145, § 1). But because the effects of suspension are maximally divisible (canon 2278), a cleric can by suspension be prohibited even from only part of the power either of order or of jurisdiction, as will be explained.

4. Benefice; moreover, an ecclesiastical benefice is defined as a juridic entity constituted or erected in perpetuity by competent ecclesiastical authority, consisting of a sacred office and the right of receiving revenues from the endowment annexed to the office (canon 1409). But in the penalty of suspension from benefice only the right of receiving revenues is considered, insofar as it is distinguished from the annexed office, as will also be clear below.

885 II. Division. Suspension can be distinguished into total and partial, according as it comprehends all or not all the effects of suspension. Partial suspension is chiefly divided into suspension from office alone and from benefice alone. Suspension from office is either from office simply or from some part of the office, for instance from jurisdiction, from divine things, etc.; these things will be clearer from what will be said concerning the effects of suspension.

886 III. Effects. The effects of suspension can be separated, but unless something else is established, suspension generally issued comprehends all the effects which are enumerated in the article on suspension; otherwise one must speak of suspension from office or from benefice, which comprehends only the effects of one or the other species. Regarding the effects in species, these things are established:

1. Suspension from office simply,[1] no limitation having been added, forbids every act both of the power of order and of jurisdiction, and also of mere administration belonging by office, except the administration of the goods of one's own benefice (canon 2279, § 1). For the administration of the goods of a benefice can be taken away only by an express clause, as is noted in canon 2280.

By force of canon 1095, a pastor or local Ordinary suspended from office, after sentence, assists at marriage invalidly, whether by himself or through another; before sentence he certainly assists validly, but perhaps illicitly by himself, because it seems to be an act of administration belonging by office. For the same reason other acts seem to be prohibited, such as the administration of Viaticum, solemn Baptism, etc. Preaching is not an act of jurisdiction strictly so called, nor, as it seems, of administration; but perhaps it is prohibited to one suspended from office as the exercise of the magisterium which belongs to him from granted jurisdiction.

2. Suspension from office partially carries these things with it:

a) Suspension from jurisdiction generally forbids every act of the power of jurisdiction for both forums, ordinary as well as delegated (canon 2279, § 2, 1°).[2] Jurisdiction is to be taken in the strict sense, so that it does not comprehend acts which require only mission or permission (canons 1328, 848, 748); likewise assistance at the contracting of marriage is not an act of true jurisdiction.

b) Suspension from divine things forbids every act of the power of order which someone obtains either through sacred ordination or through privilege (canon 2279, § 2, 2°). It is said through privilege, for instance the privilege of ministering Confirmation (canon 782, § 3).[3]

c) Suspension from orders forbids every act of the power of order received through ordination (cited canon, 3°), whether major or minor. "One thus suspended can exercise all acts of jurisdiction which do not require the actual use of order; therefore a Bishop suspended from orders only can approve Confessors, although he himself cannot absolve from sins";[4] namely, he acts illicitly or invalidly according to canon 2284.

d) Suspension from sacred orders forbids every act of the power of order received through ordination in sacred orders (cited canon, 4°); the same applies as under c).

e) Suspension from exercising a certain and definite order forbids every act of the designated order; moreover the suspended person is also prohibited from conferring the same order and from receiving a higher order and exercising it after it has been received after suspension (cited canon, 5°).

f) Suspension from conferring a certain and definite order forbids conferring that order, but not an inferior or higher one (cited canon, 6°).

g) Suspension from a certain and definite ministry, for example hearing confessions, or office, for example one with care of souls, forbids every act of that same ministry or office (cited canon, 7°).

h) Suspension from pontifical order forbids every act of the power of episcopal order (cited canon, 8°), for example the blessing of holy oils, conferral of Orders, even Tonsure, consecration of a church, Confirmation, etc.; but a Pontifical Mass is permitted.

i) Suspension from pontificals forbids the exercise of pontifical acts (cited canon, 9°), namely of those sacred functions which by liturgical laws require the pontifical insignia, that is, the staff and miter (canon 337, § 2). One suspended in such a way is indirectly prohibited from exercising acts of order which cannot be exercised without pontificals. Therefore this suspension directly or indirectly prohibits: Pontifical Mass and Vespers, solemn assistance at Mass, conferral of Orders, Tonsure excepted, which probably can be conferred without staff and miter, consecration of a Bishop, blessing of an Abbot, solemn blessing and consecration of virgins, blessing and coronation of kings, blessing or consecration of a church bell, consecration of a church, altar, sacred vessels, solemn blessing of the cornerstone and cemetery, solemn reconciliation of a church and cemetery, solemn Confirmation.[5]

3. Suspension from benefice deprives one of the fruits of the benefice, except habitation in the benefice buildings, but not of the right of administering the benefice goods, unless the decree or sentence of suspension expressly takes away from the suspended person the power itself of administering and assigns it to another (canon 2280, § 1). Fruits are understood as all temporal revenues which remain after the necessary expenses of the benefice have been deducted, namely for Mass obligations, taxes, etc. What things are comprehended in the fruits of the benefice depends on its very erection, according to canon 1410; therefore the question cannot generally be solved, as several authors today have retained from the old law, whether, for example, daily distributions are comprehended in the fruits; rather, what the law is will have to be gathered from the custom of places and from the express will of the one issuing the penalty.[6] See also canon 1412.

One suspended in such a way retains the right of administering the benefice goods, unless the decree or sentence of suspension expressly takes away the administration itself from the suspended person and assigns it to another (canon 2280, § 1). But if the suspended person truly needs it, he can retain those things which are necessary for his sustenance, if his penalty is vindicative; for this seems to be the benign mind of the Superior (cf. the parallel case, canon 2303, § 2); but not if the penalty is a

censure, because its duration depends on the conversion of the delinquent (cf. St. Alphonsus VII, 316, doubt 1).

The suspended person must restore fruits illicitly received (cf. canon 2232, §§ 1 and 2); and, if need be, he can also be compelled to this restitution by canonical sanctions (canon 2280, § 2).

4. Suspension generally issued, or suspension from office or from benefice:

a) If it has been issued by the local Ordinary, it affects all offices or benefices which the cleric has in the diocese of the suspending Superior, unless something else appears (canon 2281); but the local Ordinary cannot suspend a cleric from a determinate office or benefice which is found in another diocese (canon 2282). It is expressly said: from a determinate office or benefice, because special suspensions, for example from orders, bind the guilty person everywhere (canon 2226, § 4); but if there is question of suspension from jurisdiction, only insofar as this depends on the Superior who inflicted the penalty.

b) If it is *latae sententiae*, imposed by common law, it affects all offices or benefices in whatever diocese they are possessed (canon 2282).

Note. The things which canon 2265 establishes concerning excommunication are also applicable to suspension (canon 2283). Hence to anyone suspended there are to be applied the things said on p. 735, n. 8, a) and b), alpha-delta.

5. If the censure of suspension which forbids administration of Sacraments and Sacramentals has been incurred, this prohibition does not press when, before sentence, he has been requested by the faithful, who may seek this for a just cause, especially if other ministers are lacking; or when, after sentence, he is requested in danger of death, either to absolve the faithful sacramentally, although another priest is present, or to give the other Sacraments and Sacramentals if other ministers are lacking. Besides, the things said on p. 734, 4, are to be applied, except the last clause, which is added from canon 2263 (canon 2284).

If the censure of suspension which prohibits an act of jurisdiction in the internal or external forum has been incurred, the things said under 6 are valid; nevertheless an act of jurisdiction is sometimes also invalid, namely if a declaratory or condemnatory sentence has been issued, or if the Superior declares that he revokes the jurisdiction itself; and when this last has taken place, even in danger of death only the faithful can seek from the suspended person an act of jurisdiction, which then is valid and licit, always saving canon 884 on absolution of an accomplice (canon 2284).

6. If a community or college of clerics has committed a delict, suspension can be issued either against the individual delinquent persons, or against the community as such, or against the delinquent persons and the community (canon 2285, § 1). Moreover:

a) If the first, the canons of this article are to be observed (canon 2285, § 2), that is, the canons explained in this chapter.

b) If the second, the community is prohibited from the exercise of the spiritual rights which belong to it as a community (canon 2285, § 3). One who ceases to be a member of the suspended community is freed from suspension by the fact itself, and does not need absolution.

c) If the third, the effects are cumulated (canon 2285, § 4).

[1] Sometimes the prohibition does not press, namely when the suspended person is requested according to canon 2284, concerning which see below pp. 768-769, note 3.

[2] What happens if the suspended person is requested by the faithful will be said below; in the same place there will be discussion of the validity of prohibited acts (canon 2284).

[3] See again the limits of canon 2284.

[4] Aertnys-Damen, op. cit., II, 1023.

[5] Solemn is rather often added, because a simple priest can sometimes be delegated to perform several functions in a simpler manner without pontificals (canons 1156; 1163; 1170, § 2; 1205, § 1; 1207). Cf. also canon 294, § 2, as to which functions it is not licit for a Bishop to perform without pontificals, except Confirmation and Tonsure.

[6] Chelodi, op. cit., p. 51.

887 IV. Violation of suspension is a grave or light sin according as the suspended person places an act excluded by suspension of grave or light importance. In addition, a suspended person prohibited from the exercise of Sacred Order, who places an act of Order reserved to clerics constituted in Sacred Order, is irregular (canon 985, 7°).

Scholion. On Suspension from Informed Conscience

888 I. Notion. Suspension from informed conscience is suspension from office, whether total or partial, which is inflicted by the Ordinary by simple decree, by an extrajudicial way and without prior canonical warnings (cf. canons 2186, § 1; 2187). It is not licit to use this extraordinary remedy if the Ordinary can, without grave inconvenience, proceed against the subject according to the norm of law (canon 2186, § 2).

II. Mode of proceeding. A decree of this kind is to be given in writing, unless circumstances demand otherwise, with the day, month, and year designated; and in it:

1. It must be expressly said that the suspension is issued from informed conscience, or from causes known to the Ordinary himself;
2. The time of duration of the penalty must be indicated; moreover, the Ordinary should abstain from inflicting it in perpetuity. But it can be inflicted even as a censure, provided that in this case the cause for which the suspension is imposed is made known to the cleric;
3. The acts which are prohibited must be clearly indicated, if the suspension is inflicted not in whole but in part (canon 2188).

Note. If a cleric is suspended from an office in which another must be substituted in his place, for example, an administrator in the care of souls, the one who is substituted is to receive a wage from the fruits of the benefice to be determined according to the prudent judgment of the Ordinary (canon 2189, § 1). A suspended cleric, if he feels burdened, can seek diminution of the pension from the immediate Superior who in the judicial way would be the judge of appeal (canon 2189, § 2).

III. The cause for proceeding in this way is a delict of the cleric: 1° so grave that it must be coerced by a penalty of this kind; 2° morally certain; that is, from investigations conducted the Ordinary must have gathered proofs of such a kind as make him certain that the cleric truly perpetrated the delict (canon 2190). Moreover, concerning the delict observe:

1. A just and legitimate cause is an occult delict (canon 2191, § 1; n. 846).

2. On account of a notorious delict, suspension from informed conscience can never be issued (canon 2191, § 2); but suspension from informed conscience is valid if from several delicts only one was occult (canon 2192).

3. In order that a public delict (n. 846) can be punished by suspension from informed conscience, it is necessary that some one of the following circumstances occur: 1° if upright and serious witnesses indeed disclose the delict to the Ordinary, but can by no means be induced to give testimony about it in trial, nor can the delict be proved in judicial process by other proofs; 2° if the cleric himself prevents, by threats or other means used, a judicial process from being instituted or, once begun, from being completed; 3° if impediments to carrying out the judicial process and issuing the sentence arise from adverse civil laws or from grave danger of scandal (canon 2191, § 3).

IV. Disclosure of the cause to the guilty person. 1. In the case of a censure, that is, of a medicinal penalty, the cause for which this suspension is imposed is to be made known to the cleric, so that he may know in what matter he is to be corrected and, once corrected, can seek absolution.

2. In the case of a vindicative penalty, it is left to the prudent judgment of the Ordinary whether to disclose or withhold from the cleric the cause of the suspension, or the delict, pastoral solicitude and charity nevertheless being used, so that, if he has judged that the delict should be made known to the cleric, the penalty, from the paternal admonitions which he has interposed, may serve not only for the expiation of guilt, but also for the amendment of the delinquent and the removal of the occasion of sin (canon 2193).

V. Recourse from a censure is given only in devolutive effect (canon 2243, § 1), but from a vindicative penalty also in suspensive effect (canon 2287).

If a cleric lodges recourse from a suspension inflicted on him, the Ordinary must send to the Apostolic See the proofs by which it is established that the cleric truly perpetrated the delict which can be punished by this extraordinary penalty (canon 2194).

Part II. On Vindicative Penalties

Section I. On Vindicative Penalties in General

889 I. Notion. Vindicative penalties are those which tend directly to the expiation of the delict, so that their remission does not depend on the cessation of the delinquent's contumacy (canon 2286).

II. Division. A vindicative penalty is distinguished:

1. By reason of the privation, into spiritual or mixed, or even merely temporal, because sometimes it deprives one of merely temporal goods; otherwise than a censure (n. 862).
2. By reason of the subject, into one common to all the faithful or special to clerics.
3. Finally, just as censure, so also a vindicative penalty is *latae* or *ferendae sententiae*, *a iure* or *ab homine*, determinate or indeterminate.

Note 1. From inflicted vindicative penalties there is given appeal or recourse in suspensive effect, unless something else is expressly provided in law (canon 2287).

Note 2. In canon law the so-called conditional condemnation is assumed; for canon 2288 establishes: if the guilty person is such that for the first time after a life laudably passed he has offended, it is remitted to the prudence of the judge to suspend the execution of the ordinary penalty inflicted by condemnatory sentence; yet on this condition, that if the guilty person within the next three years commits another delict of the same or another kind, he undergo the penalty due to each delict (canon 2288). With the three years having passed without crime, the guilty person is free from the effect of the condemnation. Nevertheless this conditional condemnation is not admitted: 1° in penalties of degradation, deposition, deprivation of office or benefice; 2° if the necessity of repairing scandal presses (cited canon).

III. Cessation. A vindicative penalty is ended:

1. By its expiation (canon 2289), and this mode corresponds to its nature.
2. By dispensation (cited canon); for this there is required a cause proportionate to the gravity of the penal law, because dispensation in a vindicative penalty is against the intention of the law; it is certainly also required that the guilty person be amended and that he have repaired damages and scandal according to his powers. Nor, when the dispensation sought has been denied, can the guilty person appeal, but only for a grave cause have extrajudicial recourse to the Superior.

Dispensation can be granted by: 1° him who issued the penal law or penalty; 2° his competent Superior or successor; 3° the person to whom the power of dispensing from the penalty or from the penal law has been committed (canons 2236; 2237; 2290). Moreover, this power has been committed as follows:

a) The Ordinary, by force of canon 2237, can by ordinary power: 1° in public cases remit vindicative penalties *latae sententiae* established by common law, except cases brought to the contentious forum, and penalties of incapacity for benefices, offices, dignities, functions in the Church, active and passive voice, or deprivation of these, perpetual suspension, infamy of law, deprivation of the right of patronage and of a privilege or grace granted by the Apostolic See; 2° in occult cases remit vindicative penalties *latae sententiae* established by common law and reserved in any manner whatever.

b) Any confessor can in the sacramental forum, in more urgent occult cases, namely, if from observance of a vindicative penalty *latae sententiae* the guilty person would betray himself with infamy and scandal: 1° suspend the obligation of observing the penalty, with the burden imposed of having recourse at least within a month by letter and through the confessor, if this can be done without grave inconvenience, the name withheld, to the Sacred Penitentiary or to the Bishop endowed with the faculty, and of standing by his commands; 2° dispense, if in some extraordinary case the aforesaid recourse is impossible, nevertheless imposing those things which by law must be imposed and imposing congruous penance and satisfaction for the penalty, so that the penitent, unless within a congruous time to be fixed beforehand by the confessor he has done penance and given satisfaction, falls back into the penalty (canon 2290, § 2, compared with canon 2254, § 3); that is, reincidence, although by its own nature it regards censures, nevertheless of itself does not prevent a Prelate from dispensing from a penalty under the condition that the dispensed person, if he does not perform something, is again bound by the bond of the same penalty.[1]

[1] Lega, op. cit., n. 135.

Section II. On Common Vindicative Penalties

890 From canon 2291, the vindicative penalties which can affect all the faithful according to the gravity of delicts, in the Church, especially,[1] are:

I. A local interdict and an interdict against a community or college, in perpetuity or for a predefined time or at the good pleasure of the Superior.

II. An interdict from entrance into the church, in perpetuity or for a predefined time or at the good pleasure of the Superior.

III. Penal transfer or suppression of an episcopal or parochial see; concerning this notice: 1° penal suppression or transfer of an episcopal see is reserved to the Roman Pontiff; 2° but that of a parochial see cannot be decreed by local Ordinaries except with the counsel of the Chapter (cf. canons 248, § 3; 1421; 1428).

IV. Infamy of law; concerning this note:

1. Infamy is either of law or of fact (canon 2293, § 1). Infamy of law is that which is established in cases expressed by common law (canon 2293, § 2). Infamy of fact is contracted when someone, on account of a perpetrated delict or on account of depraved morals, has lost good reputation among upright and serious faithful, the judgment concerning which belongs to the Ordinary (canon 2293, § 3).[2] Neither affects the delinquent's blood-relatives or affines; nevertheless infamy of fact arising from the deed of household members or blood-relatives with whom an irremovable pastor lives can be for him a canonical cause of removal (canon 2293, § 4).
2. One who labors under infamy of law is not only irregular from defect, but besides is incapable of obtaining benefices, pensions, offices, and ecclesiastical dignities, of performing legitimate ecclesiastical acts,[3] of exercising an ecclesiastical right or function, and finally must be barred from exercising ministry in sacred functions (canon 2294, § 1). One who labors under infamy of fact, as long as it endures in the judgment of the Ordinary, is simply impeded from receiving orders, and must also be repelled from ecclesiastical dignities, benefices, and offices strictly so called, from exercising sacred ministry, and from legitimate ecclesiastical acts (canon 2294, § 2); nevertheless he is not incapable, and therefore he validly acquires and acts.

3. Infamy of law ceases only by dispensation granted by the Apostolic See; infamy of fact ceases when, all circumstances having been weighed and especially by long amendment of the guilty person, good reputation among upright and serious faithful has been recovered in the prudent judgment of the Ordinary (canon 2295).

V. Deprivation of burial; concerning this observe:

1. What both ecclesiastical burial and deprivation of it import was said on p. 733.
2. All baptized persons are to be granted ecclesiastical burial unless they are expressly deprived of it by law (canon 1239, § 3). Catechumens who without any fault of their own die without baptism are to be numbered with the baptized (canon 1239, § 2).
3. Those who have died without baptism are not to be admitted to ecclesiastical burial (canon 1239, § 1); yet in them this does not have the character of a penalty. But by way of penalty, from canon 1240, § 1, the following are deprived of ecclesiastical burial, unless before death they have given some signs of penitence:[4]

a) Notorious apostates from the Christian faith, or those notoriously attached to a heretical or schismatic sect, or to a Masonic sect or other societies of the same kind.

b) Excommunicated or interdicted persons after condemnatory or declaratory sentence; from this it is clear that deprivation of ecclesiastical burial depends not only on common law, but also on particular law, for the Ordinary can establish these penalties.

c) Those who have killed themselves by deliberate plan; this plan is presumed in doubt, according to canon 2200, § 2.

d) Those who died in a duel or from a wound received from it.

e) Those who have commanded their body to be handed over to cremation.

f) Other public and manifest sinners, for example those who for a long time have contemned reception of the Sacraments.

Note. If some doubt occurs in the aforesaid cases, the Ordinary should be consulted if time permits; if the doubt remains, the body is to be handed over to ecclesiastical burial, yet in such a way that scandal is removed (canon 1240, § 2); cf. also the decision of the Sacred Penitentiary handed down on p. 734.

VI. Deprivation of Sacramentals.

VII. Deprivation or suspension for a time of a pension which is paid by the Church or from the goods of the Church, or of another ecclesiastical right or privilege (cf. canons 1429; 2161; 2299, § 3).

VIII. Removal from exercising legitimate ecclesiastical acts.

IX. Incapacity for ecclesiastical graces or functions in the Church which do not require the clerical state, or for obtaining academic degrees by ecclesiastical authority; concerning this notice:

1. If there is question of things for obtaining which capacity is established by common law,[5] the Apostolic See alone can inflict the penalty of incapacity (canon 2296, § 1).
2. Rights already acquired are not lost on account of supervening incapacity, unless the penalty of deprivation is added to this (canon 2296, § 2).

Note. The things said under 1 and 2 are said generally, and therefore are to be applied to incapacity, whether as it is an effect of infamy of law, or as it is a penalty common to the faithful under IX, or peculiar to clerics (canon 2298, 5°).

X. Deprivation or suspension for a time of a function, faculty, or grace already obtained.

XI. Deprivation of the right of precedence (canon 106), or of active and passive voice, or of the right of bearing titles of honor, vesture, or insignia which the Church has granted.

XII. Pecuniary fine. Pecuniary fines inflicted by common law, the expenditure of which is not predefined by the same law, and other fines established or to be established by particular law, local Ordinaries must expend for pious uses, not for the benefit of the episcopal or capitular table (canon 2297).

[1] Whence it is drawn that the enumeration is not taxative; therefore the Superior, the things to be observed being observed, can inflict a congruous penalty not contained in this series.

[2] Infamy of law alone is a true penalty, but not infamy of fact, as is also clear from the mode of cessation.

[3] "According to the norm of law" is understood (cf. canon 2263), because, for example, before sentence one infamous with infamy of law would be only illicitly a sponsor in the Sacraments, but after it invalidly (cf. canons 765, 766, 795, 796); concerning the right of patronage see canon 1470, § 4.

[4] It is not enough that one deprived of the senses has received absolution under condition, since this can be given although signs of penitence do not appear.

[5] For example, capacity for acquiring graces (canon 36).

Section III. On Vindicative Penalties Peculiar to Clerics

891 From canon 2298, the vindicative penalties which are applied to clerics alone are:

I. Prohibition of exercising the sacred ministry except in a certain church.

II. Suspension in perpetuity, or for a predefined time, or at the good pleasure of the Superior.

III. Penal transfer from an office or benefice obtained to a lower one; concerning this note: if a cleric obtains an irremovable benefice, he can be deprived of it as a penalty only in cases expressed by law; if it is removable, also for other reasonable causes (canon 2299, § 1).

IV. Deprivation of some right joined with a benefice or office; concerning this canon 2299, § 2, establishes: clerics obtaining benefices, offices, and dignities can also be prohibited for a certain time only from some ministry joined with them, for example the ministry of preaching, hearing confessions, etc.

V. Incapacity for all or for some dignities, offices, benefices, or other functions proper to clerics (cf. canon 2296).

VI. Penal deprivation of a benefice or office with or without pension; concerning this observe canon 2299, § 1, cited under III.

Note. Regarding numbers III, IV, and VI, note canon 2299, § 3: A cleric cannot be deprived of a benefice or pension by title of which he was ordained, unless provision is made from elsewhere for his honorable sustenance, saving the prescription of canons 2303, 2304.

VII. Prohibition of dwelling in a certain place or territory. The Ordinary can command as a penalty that a subject cleric remain outside a certain place or territory and dwell in a certain place or territory of his diocese; but he cannot prescribe that a cleric dwell in a certain place outside the boundaries of his diocese, unless the consent of the Ordinary of that place is added, or there is question of a house of penance or correction destined not only for diocesan clerics but also for outsiders, or of an exempt religious house, with the consent of its Superior (canon 2301). Nevertheless, both prescription and prohibition of dwelling in a certain place and placement in a house of penance or in a religious house, especially if they are going to endure for a long time, are to be imposed only in grave cases in which, in the prudent judgment of the Ordinary, these penalties are necessary for the amendment of the cleric or the repair of scandal (canon 2302).

VIII. Prescription of dwelling in a certain place or territory. See the things said under VII.

IX. Deprivation for a time of ecclesiastical habit. If a cleric gives grave scandals and, having been warned with threat of penalty, does not come to his senses, nor can the scandal be removed otherwise, he can meanwhile be deprived of the right of wearing ecclesiastical habit; this deprivation, while it endures, carries with it the prohibition of exercising any ecclesiastical ministries and deprivation of clerical privileges (canon 2300).

X. Deposition; concerning this we note:

1. Deposition, the obligations arising from the order received and clerical privileges remaining firm, carries with it both suspension from office and incapacity for any offices, dignities, benefices, pensions, functions in the Church, and also deprivation of those things which the guilty person has,[1] although he was ordained by title of them (canon 2303, § 1). But in this last case, if the cleric truly needs it, the Ordinary, according to his charity, should take care to provide for him in the better way possible, lest he be forced to beg with dishonor to the clerical state (canon 2303, § 2).
2. The penalty of deposition cannot be inflicted except in cases expressed by law (canon 2303, § 3); moreover, it must be inflicted before a tribunal of five judges (canon 1576, § 1, 2°).

The penalty of deposition is always *ferendae sententiae*; therefore a deposed person is subjected to the effects of suspension after sentence as regards the validity of acts of office.

XI. Perpetual deprivation of ecclesiastical habit is a special penalty of a deposed cleric; for if a deposed cleric does not give signs of amendment, and especially if he continues to give scandal and, having been warned, does not come to his senses, the Ordinary can perpetually deprive him of the right of wearing ecclesiastical habit (canon 2304, § 1); but only before a tribunal of five judges (canon 1576, § 1, 2°). This deprivation (canon 2304, § 2) carries with it deprivation of clerical privileges and cessation of the prescription by which the Ordinary according to his charity should take care to provide for him, if the cleric truly needs it. Nevertheless he is bound by the obligation of observing celibacy and the canonical hours.

XII. Degradation; concerning this the Code establishes:

1. Degradation contains in itself deposition, perpetual deprivation of ecclesiastical habit, and reduction of the cleric to the lay state (canon 2305, § 1). A degraded cleric in major orders is not bound to recite the canonical hours, but he is bound to observe celibacy (canons 135; 213, § 2); every degraded cleric besides is prohibited from wearing the tonsure (canon 213, § 1).

2. This penalty can be issued only because of a delict expressed in law, or if a cleric, already deposed and deprived of clerical habit, still continues to give grave scandal for a year (canon 2305, § 2). But there is not an obligation of proceeding in this way immediately after a year.[2] Besides, it must be inflicted in the same way as deposition and perpetual deprivation of ecclesiastical habit.
3. Degradation is either verbal or edictal, which is imposed by sentence alone, yet in such a way that it immediately has all its juridic effects without any execution; or real, if the solemnities prescribed in the Roman Pontifical are observed (canon 2305, § 3). But this real degradation adds no juridic effect to the penalty already inflicted.
4. Dispensation from the penalty of degradation inflicted on a cleric in major orders is reserved to the Holy See (canon 212, § 2); as regards dispensation from the penalty of deposition, the same is not established.

[1] Wherever, for it is a penalty of common law (cited canon, § 3).

[2] Against clerics in minor orders the Ordinary can proceed in an easier way, namely by decree; cf. canon 211, § 2, where the penalty of degradation is not even mentioned (cf. § 1). A cleric in minor orders dismissed in this way can be admitted again by the Ordinary according to canon 212, § 1, otherwise than a cleric in major orders (canon 212, § 2).

Part III. On Penal Remedies and Penances

These are disciplinary means of coercing delicts, which do not attain the character of penalty in the proper sense.

Section I. On Penal Remedies

892 I. Notion. A penal remedy is a canonical means of forestalling true delicts or further delicts. Because they import some penality, they suppose some transgression of law which nevertheless does not reach the character of a delict, and some fault, although not grave. The case is when a transgression for the transgressor is the occasion or danger of committing a true delict, or contains suspicion of that delict and thence scandal of the faithful, for example visits or familiarities of a cleric with persons of diverse sex.[1] Furthermore, sometimes a penal remedy is substituted for or added to a penalty, so that further delicts may be forestalled (canons 2223, § 3, 3°; 2224, § 2; 2234).

II. Penal remedies from canon 2306 are: 1° warning; 2° correction; 3° precept; 4° vigilance; this enumeration seems to be taxative.

1. Warning. Him who is in the proximate occasion of committing a delict, or upon whom, from an inquiry conducted, there falls grave suspicion of a committed delict, the Ordinary is to warn by himself or through an interposed person (canon 2307).
2. Correction. If from someone's conduct scandal or grave disturbance of order arises, there is place for correction, to be made by the Ordinary by himself or through an interposed person, even by letter, adapted to the particular conditions of the person and of the fact in question (canon 2308).

Regarding the mode of making warning and correction, the Code establishes:

a) Both warning and correction can be either public or secret (canon 2309, § 1).

b) Public correction or warning is to be made either before a notary or two witnesses, or by letter, yet in such a way that the reception and tenor of the letter are established from some document (canon 2309, § 2; cf. canon 2143, § 3).

c) Public correction can be made only against a guilty person convicted of or confessing a delict; and it is judicial if it is made by a judge sitting for tribunal or by the Ordinary before criminal process; extrajudicial if it is made in the manner of a precept outside judgment (canons 2309, § 3; 1933, § 4). The latter admits recourse; the former, appeal.

d) Judicial correction[2] either is had in place of a penalty, or is made to increase the penalty, especially if there is question of a recidivist (canon 2309, § 4).

e) Warning and correction, even if they were made secretly, must be established from some document to be preserved in the secret archive of the Curia (canon 2309, § 5).

f) Both correction and warning can be made once or several times, according to the judgment and prudence of the Superior (canon 2309, § 6).

3. A precept must accurately indicate, and this with threat of penalty in case of transgression, what the person forestalled must do or avoid. It is to be given after warnings and corrections have been made in vain, or if it is not licit to hope for effect from them (canon 2310); therefore if there is no hope of fruit, warnings or corrections can be omitted.

4. Vigilance. If the gravity of the case bears it, and especially if there is question of one who is in danger of relapsing into the same crime, the Ordinary is to subject him to vigilance (canon 2311, § 1). Vigilance can also be prescribed to increase a penalty, especially against recidivists (canon 2311, § 2; cf. canons 2234; 2224, § 2).

[1] Wernz, op. cit., n. 253.

[2] Cf. canons 1947-1953, which we leave to canonists to explain. Judicial correction cannot be made a third time against the same guilty person (canon 1949, § 1); when it must be omitted, see canon 1948.

Section II. On Penances

893 I. Notion. Penances in the external forum are imposed so that the delinquent may either escape a penalty or receive absolution or dispensation from a contracted penalty (canon 2312, § 1). In order that a penance can be imposed, grave imputability of a committed delict is nowhere required; nor is it required that there be a delict in the proper sense. That a transgression which does not reach the character of a delict suffices is clear first from the same canon, § 2, where this is insinuated by the words delict or transgression; then from canon 1313, § 2, according to which a penance can be joined by the Ordinary to a warning; but this does not prerequire a delict. Hence by reason of scandal given or danger of delict, and in other cases where amendment, for example of a cleric, is desired, the Ordinary can oblige him especially to make spiritual exercises, since these also have the character of a preventive remedy.[1]

II. Division. Penances are public or secret insofar as they must be fulfilled in a way easily knowable by others, for example an unusual pilgrimage, or can be fulfilled secretly, for example prayers to be recited. Moreover, on account of an occult delict or transgression, a public penance is never to be imposed (canon 2312, § 2).

III. Application. Penances are to be moderated not so much according to the quantity of the delict as according to the contrition of the penitent, with the qualities of persons and the circumstances of delicts weighed (canon 2312, § 3); for just as a penalty in the proper sense regards more the delict to be coerced or vindicated, so disciplinary penance regards more the disposition of the penitent, whether to be corrected or to be confirmed.

IV. The principal penances from canon 2313, § 1, are precepts:

1. Of reciting determinate prayers.
2. Of making some pious pilgrimage or other works of piety.
3. Of observing a particular fast.
4. Of expending alms for pious uses.
5. Of making spiritual exercises in a pious or religious house for some days.

The Ordinary, according to his prudence, can add these or other penances to the penal remedy of warning and correction (canon 2313, § 2), namely so that the guilty person may show his amendment by their fulfillment.

[1] Wernz, op. cit., n. 251.

Dissertation III. On Penalties Established for Individual Delicts

I note beforehand canon 6, n. 5: As regards penalties of which no mention is made in the Code, whether they are spiritual or temporal, medicinal or, as they say, vindicative, *latae* or *ferendae sententiae*, they are to be held as abrogated.

With these things noted, we shall speak chiefly of medicinal penalties, or censures, and of those *latae sententiae*; the others come less into use for confessors. Therefore one must treat first of excommunications, then of interdicts, finally of suspensions.

Part I. On Excommunications

Section I. Excommunications Reserved to the Roman Pontiff in the Most Special Manner

The following contract this excommunication:

I. One who has thrown away the consecrated species, or has taken them away or retained them for an evil end (canon 2320). It is said:

1. Consecrated species, whether of bread or wine, whether several or one, or consecrated particles.
2. Has thrown away, suppose by throwing the species onto the ground; but one who places the consecrated species upon the pall in order to remove the pyx does not incur the excommunication.
3. Has taken away or retained for an evil end, suppose to profane them. It also suffices that someone retain species taken away by another for an evil end. But one is not excommunicated who takes away or retains the species, for example, in order to adore them at home.

Note. The delinquent is suspected of heresy, infamous by the fact itself, and if a cleric, besides, is to be deposed (canon 2320).

II. One who has laid violent hands on the person of the Roman Pontiff (canon 2343). This canon must be interpreted broadly, since it regards the privilege of the canon, as it is called, insofar as it belongs to the Roman Pontiff; see the interpretation on p. 766.

Note. The delinquent is infamous by the fact itself, and if a cleric, besides, must be degraded (canon 2343).

894 III. One absolving, or pretending to absolve, an accomplice in a base sin incurs by the fact itself an excommunication reserved to the Apostolic See in the most special manner; and this even at the article of death, if another priest, although not approved for confessions, can receive the confession of the dying person without some grave infamy and scandal going to arise, except in the case in which the dying person refuses to confess to another. One absolving or pretending to absolve an accomplice who indeed does not confess the sin of complicity, from which he has not yet been absolved, does not escape the same excommunication if he behaves in this way because he was induced to do so by the accomplice-confessor, whether directly or indirectly (canon 2367); see the interpretation of this canon in n. 412 sq.

IV. A confessor who has presumed to violate the sacramental seal directly (canon 2369, § 1). A few judge that this censure is *ferendae sententiae*, because the word has presumed seems to remain ambiguous; moreover, in penalties the more benign interpretation must be made (canon 2219, § 1; p. 712). But the contrary seems altogether to have to be admitted, both because censures reserved to the Supreme Pontiff were always *latae sententiae*, and because, if the contrary opinion were admitted, the Bishop could issue the censure of which we speak, but could not absolve from it, as reserved to the Supreme Pontiff; which cannot be admitted according to the things said on p. 727, 1, c.

What a direct violation of the sacramental seal is, see n. 428.

Note 1. A confessor who has presumed to violate the sacramental seal only indirectly (n. 418) is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even, according

to the gravity of the delict, is to be declared incapable of receiving them, and in graver cases is also to be subjected to degradation (canon 2369, § 1).

Note 2. Whoever has rashly violated the prescription of canon 889, § 2,[1] is to be punished according to the gravity of the guilt with a salutary penalty, which can even be excommunication (canon 2369, § 2).

V. To this place can be referred:

1. Excommunications established for delicts which can be committed in electing the Supreme Pontiff, and which are contained in the Constitution of Pius X *Vacante Sede Apostolica*, December 25, 1904. Namely, those perpetrating delicts of this kind "can be absolved by no one, not even by the Major Penitentiary by force of any faculty, except by the Roman Pontiff, unless at the article of death" (cited Constitution, § 51).
2. The excommunication annexed to the revelation of the secret of the Holy Office (canon 239, § 1, 1°, compared with canon 243). Moreover, from the decree of the Sacred Consistorial Congregation, April 25, 1917, it follows that the same secret must be observed by those from whom information is requested concerning those to be promoted to the Episcopate.[2]

[1] That is, the interpreter and all others to whom knowledge of a confession has come in any way whatever, who by word or sign or in any other way and for any cause betray the sinner in any manner.

[2] *A.A.S.* 1917, p. 232; Aertnys-Damen, op. cit., II, n. 1044, note 2.

Section II. Excommunications Reserved to the Roman Pontiff in a Special Manner

895 This excommunication is contracted by:

I. All apostates from the Christian faith, and all and each heretics or schismatics (canon 2314, § 1, 1°, and § 2). This excommunication is reserved to the Apostolic See in a special manner only insofar as absolution is to be imparted in the forum of conscience (cited canon, § 3; cf. 3, b). Who come under the name of apostates, heretics, and schismatics, see canon 1325, § 2 and volume I, n. 492. Note, however, that it is required that apostasy, heresy, or schism be externally manifested. For the rest, observe:

1. As to apostates. Here belong both those who reject every religion, such as atheists, pantheists, naturalists, and so-called free-thinkers; and those who pass over, for example, to Judaism, Mohammedanism, or paganism; but not those who are only practically indifferent.
2. As to heretics. It is not required that someone be enrolled in some heretical sect. Those enrolled in a sect, however, are deemed, for the external forum, to have contracted the censure, although perhaps internally they are not formal heretics and therefore have not in fact contracted the censure (n. 862).
3. Schismatics. It is not required that someone be enrolled in a schismatic body; but neither is it enough that someone, even habitually, transgress special commands of the Supreme Pontiff. For the rest, note:

a) Unless they, namely apostates, heretics, or schismatics, having been warned, come to their senses, they are to be deprived of benefice, dignity, pension, office, or other function, if they have any in the Church; they are to be declared infamous; and clerics, after a repeated warning, are to be deposed (canon 2314, § 1, 2°). If they have given their name to a non-Catholic sect or publicly adhered to it,

they are *ipso facto* infamous, and clerics *ipso facto* and without any declaration lose any offices whatever, and, after a warning has been given in vain, are to be degraded (canon 2314, § 1, 3°).

b) As to absolution from the excommunication set forth, observe:

alpha) Absolution to be imparted in the forum of conscience is reserved to the Apostolic See in a special manner (canon 2314, § 2). The faculty of absolving any penitents whatever, except heretics who purposely disseminate heresy among the faithful, from any censures and ecclesiastical penalties incurred on account of heresies externalized either with no one hearing or noticing, or before others, is customarily granted through the Sheet of the Sacred Penitentiary. Nevertheless it cannot be exercised except in the act of sacramental confession and for the forum of conscience only, after a secret abjuration has first been made before the confessor. Moreover, a salutary penance is to be imposed, together with frequency of the sacraments and the obligation of repairing the scandals caused. For the forum of conscience no form of abjuration seems prescribed; hence, for example, these words of the Profession of Faith at the end suffice: "I likewise condemn and reject any heresies whatever condemned by the Church."

beta) If the delict of apostasy, heresy, or schism has in any way been brought to the external forum of the local Ordinary, even by voluntary confession, that same Ordinary, but not the Vicar General without a special mandate, can by his ordinary authority absolve in the external forum the one who has come to his senses, after an abjuration juridically performed and with the other things to be observed by law observed; and one thus absolved can then be absolved from sin by any confessor in the forum of conscience. Abjuration is held to have been juridically performed when it is made before the local Ordinary himself or his delegate and at least two witnesses (canon 2314, § 2). As to the form of abjuration, in practice the Profession of Faith which is placed at the beginning of the Code suffices.

Question: whether those doubtfully baptized or doubtfully validly baptized, who are guilty of apostasy, heresy, or schism, are subject to excommunication.

Response: They are or are not subject to the excommunication according as in fact they were validly or not validly baptized. Since this here and now is doubtful, absolution is to be granted as a precaution if they are converted to the Church. If you object that those doubtfully baptized or doubtfully validly baptized are not subject to the laws of the Church, I answer: if it concerns laws which deprive someone of some good, they are subject or not subject to them according as valid baptism did or did not take place; if the discussion is of laws which regard an act, see volume I, n. 130.

II. One suspected of heresy who, having been warned and punished according to the norm of canon 2315, has not completely amended himself within six months from the penalty contracted (canon 2315). Moreover, the following are suspected of heresy:

1. Whoever in any way willingly and knowingly helps the propagation of heresy (canon 2316).
2. Whoever communicates in divine things with heretics by actively assisting at their rites (canon 2316; p. 732).
3. Those who enter marriage with an explicit or implicit agreement that all or some of the offspring be educated outside the Catholic Church (canon 2319, § 1, n. 2, § 2).
4. Those who knowingly presume to offer their children to non-Catholic ministers for baptism (ibid., n. 3).

5. Parents, or those holding their place, who knowingly hand over their children to be educated or instructed in a non-Catholic religion (ibid., n. 4).
6. Whoever has thrown away consecrated species or has taken them away or retained them for an evil purpose (canon 2320).
7. Those appealing from the laws or mandates and decrees of the Roman Pontiff to a Universal Council (canon 2332).
8. Whoever, with hardened spirit, has wallowed for a year in excommunication (canon 2340, § 1).
9. All, even those of episcopal dignity, who knowingly through simony have promoted someone to Orders or have been promoted, or have administered or received other Sacraments (canon 2371).

Section II. Excommunications Reserved to the Roman Pontiff in a Special Manner (continued)

III. After the work has been made public, publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism; likewise those defending these same books or others prohibited by name through apostolic letters, or knowingly reading or retaining them without due permission (canon 2318, § 1). First, note that it is required that the work have been made public, in other words, that it have been multiplied for fairly common use, not merely for the use of a few, say only of students; a fortiori a manuscript is excluded. For the rest, it does not matter whether the work was multiplied by type, by polygraph, or by lithograph. Next it is required that the work made public constitute a book. The word "book" is to be taken as it was formerly taken (cf. canon 6, nn. 2-4), that is, for a literary work of a certain bulk and a certain unity. It is said to be of a certain bulk, for example, to choose a middle point among the different opinions, about eighty pages in octavo. Therefore a separately published letter or sermon, small pamphlets, newspapers or periodicals,[1] are excluded; but not periodical publications, whether taken separately, provided they are of sufficient bulk, or bound in fascicles,[2] and thus constituting the required unity. Moreover, the following are excommunicated:

1. Publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism. It is said:

a) Publishers, namely those properly so called, so that the author of the book as such is not included, but he is included insofar as he procures the publication (canon 2209, § 3). Nor are the owner of the workshop, the typesetters, or those turning the press excommunicated; for they do not concur in the publication formally taken, that is, in the multiplication insofar as this is ordered to fairly common use, or at least they are not such that without their work the publication would not have taken place (cf. canon 2209, § 3).

b) Of apostates, etc. Thus books of infidels or Catholics are not included, even though perhaps they defend apostasy, etc. Yet one who defends apostasy, etc., is presumed to be an apostate, etc.; nor is it required that the author of the book be enrolled in an apostate sect, etc.

c) They defend, that is, with added arguments they defend or recommend; nevertheless it is not required that the book treat professedly of religion.

2. Those defending, or knowingly and without due permission reading or retaining, either the books mentioned under 1, or others prohibited by name through apostolic letters. As to the latter, some require that the apostolic letters have prohibited them under penalty of excommunication reserved

to the Holy See. But neither the Constitution *Apostolicae Sedis*, which first established that censure, nor the cited and clear canon permits that condition to be added.

a) Defenders are, for example, those who prevent a book from being destroyed or denounced, one who praises the doctrine contained in the book, or who disapproves its condemnation; but not one who praises the style or genius of the author, or the good doctrine which is found in the book (St. Alphonsus, VII, 297).

b) Knowingly (n. 858) and without due permission reading; concerning this, observe: 1° formal reading is required, so that one who merely hears another reading is not included (St. Alphonsus, VII, 292), nor one who recites from memory what he formerly read, nor one who reads through a book while ignorant of the language; but a blind person who perceives the type with his fingers is included. 2° Reading of notable matter is required, considered either by quantity alone, as if you read two or three pages, or by quality, that is, by danger; in this case even a few lines can suffice, because in them there can be a danger of perversion (St. Alphonsus, VII, 284, 292).

c) Those retaining, namely knowingly and without due permission; moreover, for a notable time, say for three or four days (St. Alphonsus, VII, 295). For the rest, observe: it is all the same whether one retains his own book or another's; whether he retains the book with himself or with another who does not have the faculty; whether he understands the retained book or not. But one is excused who deposits the book with another who has the faculty, and does this with an agreement not to reclaim it except after permission has been obtained; likewise one who retains the book because he is awaiting either the required permission or an occasion of handing it over to the Superior (St. Alphonsus, VII, 295-298).

A bookbinder is indeed counted among those retaining, but is easily excused if he binds books for one having the faculty to read them, or has another just cause. Likewise the custodian of another's library escapes excommunication, unless he retains the books in his own room or house. Finally, where, as in religious houses, there is a common library, it is licit to keep prohibited books in a locked cabinet.

IV. One not promoted to the priestly order, if he simulates the celebration of Mass or hears a sacramental confession (canon 2322, 1°). It is said:

1. One not promoted to the priestly order. Thus the censure regards both a layman and a cleric who has not yet been raised to the priesthood, but not a priest, even though suspended or degraded.
2. If he simulates the celebration of Mass; that is, if he conducts himself in such a way that others judge that the Sacred Rite is being celebrated.
3. Or hears a sacramental confession. What sacramental confession is, see n. 430. It suffices to have heard a sacramental confession, even if absolution is omitted.

Note. If the delinquent mentioned under IV is a layman, he is to be deprived of a pension or function, if he has any in the Church, and is to be punished with other penalties according to the gravity of the fault; but a cleric is to be deposed (cited canon); each, if he has usurped other priestly functions, is to be punished by the Ordinary according to the gravity of the fault (canon 2322, § 2).

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[1] Holy Office, April 21, 1880 (*Collectanea*, n. 1533).

[2] Holy Office, January 13, 1892 (*Collectanea*, n. 1777).

V. All and each, of whatever status, grade, or condition they may be, even royal, episcopal, or cardinalitial, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a Universal Council (canon 2332).

1. All and each. The excommunication regards only physical persons, not moral persons.
2. From the laws, etc., of the Roman Pontiff for the time being, but not from the laws, etc., of a Sacred Congregation, unless the ordinance was issued by the express or special mandate of the Supreme Pontiff or approved by him in specific form; nor is an appeal from the laws, etc., of a deceased Supreme Pontiff sufficient.
3. To a Universal Council, whether present or future; but an appeal to a Provincial Council or to a future Pontiff is not sufficient.

Note. Those about whom the discussion is under V are also suspected of heresy. But Universities, Colleges, Chapters, or other moral persons, by whatever name they are called, incur an interdict likewise reserved to the Apostolic See in a special manner (canon 2332).

VI. Those having recourse to lay power in order to impede letters or any acts proceeding from the Apostolic See or from its Legates, or directly or indirectly prohibiting their promulgation or execution, or on account of them injuring or terrifying either those to whom the letters or acts pertain or others (canon 2333). Under the name of the Apostolic See also come the Congregations, Tribunals, and Offices through which the Roman Pontiff is accustomed to transact the business of the universal Church (canon 7). Under the name of Legates of the Holy See are included Legates *a latere* (cf. canon 266), Nuncios and Internuncios (cf. canon 267), and Apostolic Delegates (cf. canon 267). Moreover, the following are excommunicated:

1. Those having recourse to lay power in order to impede any letters or acts proceeding from the aforesaid. It is all the same whether someone has recourse by himself or through another, in writing or by living voice. As to the lay power to which recourse is had, certainly those who enjoy power of jurisdiction are understood, such as the Government, magistrates, and judges. The same seems to be said of those having recourse to persons who possess only administrative power, such as prefects of cities; for the law does not distinguish. Finally, it is required that it concern letters or acts already issued, so that one is not excommunicated who impedes them from being issued.
2. Those directly or indirectly prohibiting the promulgation or execution of the said letters or acts. Those prohibiting are understood to be those who enjoy public authority.[1] Promulgation, however, is taken in the proper sense; hence it is carefully to be distinguished from dissemination. Execution regards all things necessary for the letters or acts to have effect, such as the preparation of instruments by notaries and their notification to the parties.
3. Those injuring or terrifying, on account of the said letters or acts, either those to whom they are directed or others, that is, those to whom their promulgation or execution pertains. It is said injuring, namely gravely, and indeed in the goods of the body. It is disputed whether those injuring in goods of fortune or of the soul, or in honor or reputation, are included. Those denying this rely on the fact that injury properly taken regards the body. Given the controversy, we follow the negative part. Those are called terrifying who inflict very grave fear on someone.

It is more commonly taught that those terrifying are not excommunicated unless the effect has followed, that is, unless the letters or acts have in fact been impeded. It is disputed concerning those

injuring; but without reason is a distinction admitted between those injuring and those terrifying.

VII. Those who issue laws, mandates, or decrees against the liberty or rights of the Church (canon 2334, § 1).

1. Those issuing laws, etc.; by this expression are included those who effectively concur in making laws, etc., such as ministers who propose laws, deputies who vote for them, the prince who confirms or promulgates them; likewise rulers of provinces or cities who issue a decree, and counselors who assent to it. The censure is contracted when the law has been promulgated, the decree issued, the mandate intimated. Neither notaries who enter laws, etc., into the acts, nor judges who see that they are observed, incur the excommunication.

2. Against the liberty or rights of the Church; these words must be taken in the broadest sense. Therefore those are excommunicated who issue laws, etc., against the right, for example, of teaching evangelical doctrine (canon 1322, § 2), of educating those who desire to devote themselves to ecclesiastical ministries (canon 1352), of founding schools of any discipline whatever, not only elementary, but also middle and higher schools (canon 1375), of requiring that the faithful not publish books which it has not beforehand reviewed by its own judgment, and of prohibiting, for a just cause, books published by anyone whatever (canon 1384, § 1), of freely and independently of civil power acquiring, retaining, and administering temporal goods for pursuing its own proper ends (canon 1495, § 1), which right also belongs to individual churches and other moral persons which have been erected as juridical persons by ecclesiastical authority (canon 1495, § 2), of requiring from the faithful those things which are necessary for divine worship, for the fitting support of clerics and other ministers, and for its remaining proper ends (canon 1496), of possessing its own cemeteries (canon 1206, § 1), of coercing delinquent subjects with penalties both spiritual and temporal (canon 2214, § 1), etc.

Note. Clerics who commit the delict just described are punished with the penalty of suspension or privation of the benefice, office, dignity, pension, or function itself, if perhaps they have any in the Church; religious, however, are punished with privation of office and of active and passive voice and with other penalties according to the norm of the constitutions (canon 2336, § 1).

VIII. Those who directly or indirectly impede the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, by having recourse for this to any lay power (canon 2334, § 2). For this excommunication to be incurred, it is required:

1. That the exercise of ecclesiastical jurisdiction be impeded. It is not enough to impede the exercise either of the power of order alone, or of merely administrative power, or of natural right. But it is all the same whether the exercise of jurisdiction of the internal forum or the external forum is impeded, whether it is impeded directly, say by acting, for example, against the Bishop, or indirectly, say by vexing officials.

2. That the exercise of ecclesiastical jurisdiction be impeded by means of recourse to any lay power. Therefore this excommunication does not affect a private person who impedes without recourse, nor a Superior or judge who executes or applies the law; but it does affect a Superior who impedes by means of recourse to a higher lay power. For the rest, it does not matter whether recourse is had to legislative power or only to judicial or executive power.

3. That the effect has followed; this is indicated by the very word "impeding."[2]

Note. Clerics who commit the delict discussed are punished with the penalty of suspension or privation of the benefice, office, dignity, or pension itself according to the norm of the constitutions (canon 2336, § 1).

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[1] Formerly it was disputed whether those incurred excommunication who, by private authority, prohibited promulgation or execution. But since the legislator, aware of the controversy, did not change the wording of the law, the more benign, that is, the negative opinion, seems to be followed.

[2] Pontifical Commission, July 25, 1926 (*A.A.S.* 1926, p. 394).

IX. Whoever against the prescription of canon 120 has dared to drag before a lay judge any one of the Cardinals of the Holy Roman Church or Legates of the Apostolic See, or major Officials of the Roman Curia for affairs pertaining to their function, or his own Ordinary (canon 2341). The prescription of canon 120, insofar as it must here be kept before the eyes, establishes that Cardinals of the Holy Roman Church, Bishops, even titular ones, Legates of the Apostolic See, and major Officials of the Roman Curia cannot be summoned before a lay judge for affairs pertaining to their function without the permission of the Apostolic See, unless in some place by special concession there has been derogation at least in part from the privilege of forum (cf. volume I, n. 1153). For the rest, observe:

1. What the words "has dared" signify, see n. 858.
2. Under the name of those dragging do not come judges and other subordinate officials, but private persons who cause the persons mentioned to appear before a lay judge. Moreover, it is required that they be summoned as defendants, or that they be convened; it is not enough that they be summoned as witnesses. Finally, the major Officials of the Roman Curia, not others, must be summoned for affairs pertaining to their function.
3. Legates of the Apostolic See are Nuncios, Internuncios, and Apostolic Delegates. The major Officials of the Roman Curia are: a) the Assessor and Commissary of the Sacred Congregation of the Holy Office; b) the Assessor and Substitute of the Sacred Consistorial Congregation; c) the Prelate Secretary and Substitute of the Sacred Congregation of Rites; d) the Prelate Secretary and Substitute of the Sacred Congregation of Seminaries and Universities; e) the Regent of the Sacred Penitentiary; f) the Prelate Secretary of the Apostolic Signatura or Auditor of the Most Holy One; g) the Prelate Auditors of the Sacred Roman Rota; h) the Regent and Substitute of the Apostolic Chancery; i) the Vice-Camerlengo of the Holy Roman Church and the Auditor General of the Reverend Apostolic Camera; k) the Substitute of the Secretariat of State; l) the Chancellor of Apostolic Briefs; m) all Prelate Secretaries and Undersecretaries of the other Congregations.
4. Under the name of Ordinary, since it is not said "local Ordinary," there also seems to be included the major Superior of an exempt clerical religious institute (canon 198, § 1).

In view of the word "dragging" and canons 2228 and 2242, § 1, it seems to be required that the summoned person actually appear before the judge.

X. Whoever has laid violent hands on the person of a Cardinal of the Holy Roman Church or Legate of the Roman Pontiff, Patriarch, Archbishop, Bishop, even only a titular one (canon 2343, § 2, 1° and § 3). Violent laying on of hands imports an external injury, contained in deed and gravely sinful, whether against the body, or against liberty, say by imprisoning, or against dignity, say by tearing garments (St. Alphonsus, VII, 273). Moreover, it is required that one know the person on whom he inflicts injury to be a Cardinal, etc.

Note. Whoever has laid violent hands on the person of a Cardinal of the Holy Roman Church or Legate of the Roman Pontiff is moreover *ipso facto* infamous and is deprived of benefices, offices, dignities, pensions, and any function whatever, if he has one in the Church (canon 2343, § 2, 2° and 3°).

XI. Those usurping or detaining, by themselves or through others, goods or rights pertaining to the Roman Church (canon 2345). Usurpers are those who occupy another's thing as due to themselves. Hence thieves and robbers are not included.[1] Those detaining are those who unjustly retain a thing usurped, or received from a usurper. This excommunication, however, does not affect those who usurp or detain goods or rights pertaining to churches other than the Roman Church.

Note. If the delinquents are clerics, they are moreover to be deprived of dignities, benefices, offices, and pensions, and declared incapable of them (canon 2345).

XII. All fabricators or falsifiers of letters, decrees, or rescripts of the Apostolic See, or those knowingly using the same letters, decrees, or rescripts (canon 2360, § 1). The following are excommunicated: 1° fabricators, that is, those who compose false letters, decrees, or rescripts; 2° falsifiers, that is, those who so adulterate letters, decrees, or rescripts of the Holy See that the sense is substantially changed; 3° those using such fabricated or adulterated letters, etc., even if they do not obtain the intended effect.

Note. Clerics committing the delict mentioned under XII are moreover to be coerced by other penalties, which can extend even to privation of benefice, office, dignity, and ecclesiastical pension; religious, however, are to be deprived of all offices which they have in religion and of active and passive voice, besides the other penalties established in the proper constitutions of each (canon 2360, § 2).

XIII. Whoever by himself or through others falsely denounces a confessor for the crime of solicitation before Superiors (canon 2363). It is said:

1. By himself or through others, namely "by wickedly procuring that this be done by others."[2]
2. For the crime of solicitation; concerning this see n. 416 sq.
3. Before Superiors, that is, before those to whom the denunciation must be made, namely before the local Ordinary or the Congregation of the Holy Office (n. 427).

Note 1. The delinquent cannot in any case be absolved from the contracted censure unless he has formally retracted the false denunciation and, as far as he can, repaired the damages, if any followed from it, with a grave and long-lasting penance moreover imposed (canon 2363). Thus before absolution there is required both formal retraction before those to whom the denunciation was made, and reparation of damages, insofar as this can be provided here and now; damages, I say, which followed, for example, from the confessor's suspension. In danger of death a retraction suffices, even one drawn up by the confessor, signed by the delinquent, and afterward to be handed over to the local Ordinary or the Congregation of the Holy Office; or, if necessity does not permit that, an oral retraction before two witnesses, for example, the confessor and another person, who can afterward communicate it to the judge. Finally, in a case in which absolution cannot be deferred without danger of infamy, a written retraction left with the confessor suffices; or, if even that cannot be provided, a serious promise of satisfying the obligation as soon as possible.

Note 2. Canon 2363 cited in note 1 is closed with these words: with the prescription of canon 894 remaining firm. Moreover, in view of the cited canon, the sin of false denunciation is the single sin

reserved by reason of itself; therefore it is reserved and remains reserved, even if the censure has not been contracted, say because of ignorance, or has been remitted.

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[1] Holy Office, March 9, 1870.

[2] Constitution *Sacramentum Poenitentiae*.

Section III. Excommunications Simply Reserved to the Roman Pontiff

896 This excommunication is contracted by:

I. Those making gain from indulgences (canon 2327). By force of this canon, those are excommunicated who, after receiving a price, gain profit either by granting, publishing, or causing indulgences to be published. It is required that the price have been accepted, but not that a simoniacal intention was present; it does not matter whether the price is expended on pious works. By force of this canon those are also excommunicated who, because of indulgences, sell for more objects enriched with indulgences.

Bishops also can contract this censure.

II. Those giving their name to a Masonic sect or to other associations of the same kind which machinate against the Church or legitimate civil powers (canon 2335). For the penalty to regard a certain association, it is required that it machinate against the Church or legitimate civil powers. It is disputed whether there are also required, as obtains in the Masonic sect, a strict bond by which members are united and a hidden organization. Some deny this, because they take the words "which machinate..." as merely explanatory of "of the same kind." Others affirm it, because they judge the words "of the same kind" to be taken in a broader sense, so that they also include the hidden organization which obtains in the Masonic sect. Given the doubt, we follow the milder opinion, the more so because if it were enough that an association machinated against the Church or legitimate civil powers, the legislator would certainly have omitted from the new Code the words "of the same kind," which gave occasion to the dispute. Hence canon 2335 certainly regards, besides the sect of Masons, the societies of the Carbonari,[1] Fenians,[2] Anarchists, Nihilists, and Internationalists; but not, although they are prohibited, socialist,[3] biblical,[4] clerico-liberal societies; nor the workers' societies called Odd Fellows,[5] Sons of Temperance, Knights of Pythias, Independent Order of Good Templars (*Guttempler-Orden*)[6] and societies which promote the cremation of human corpses.[7] Moreover:

1. Clerics who have committed the delict discussed under II are punished with the penalty of suspension or privation of the benefice, office, dignity, pension, or function itself, if perhaps they have any in the Church; religious, however, with privation of office and of active and passive voice and with other penalties according to the norm of the constitutions. In addition, clerics and religious giving their name to a Masonic sect and other similar associations must be denounced to the Sacred Congregation of the Holy Office (canon 2336).
2. The confessor to whom the faculty is granted of absolving from the censure set forth should require from the delinquent those things which the Holy See is accustomed to require: that they separate themselves entirely from the prohibited society and abjure it. But in a case in which great damage would flow from this for them, they can materially sustain the enrollment, but they are bound formally to renounce the society; and therefore: 1° let them promise that never again will it be the case that they involve themselves in any act of those societies, whether secret or public, and

especially that they will never again pay the required contribution; 2° let scandal be removed in the best way that can be done; 3° let them be disposed in mind to withdraw their name if and when they can do this without grave damage.[8]

In the faculties of the Sacred Penitentiary it is established: 1° let them separate themselves entirely from the prohibited society and abjure it; 2° let them denounce ecclesiastical and religious persons, if they know any enrolled in it; 3° books, manuscripts, and signs pertaining to the same, if they retain any, let them hand over into your hands, to be cautiously transmitted to the Holy Office as soon as possible, or at least, if just and grave causes demand it, to be destroyed; 4° with a grave salutary penance joined according to the measure of the faults, together with frequency of sacramental confession and the obligation of repairing the scandals caused.

III. Those presuming, without due faculty, to absolve from an excommunication *latae sententiae* reserved to the Apostolic See in a most special or special manner (canon 2338, § 1). As to the word "presuming," see what was said in n. 858. For the rest, it is required that they actually absolve from the censure; it is not enough that they merely hear the delinquent or pretend to absolve him.

IV. Those furnishing any help or favor whatever to an excommunicated person to be avoided in the delict for which he was excommunicated; likewise clerics knowingly and spontaneously communicating with the same in divine things and receiving him in divine offices (canon 2338, § 2).

1. As to the former, it should be noted that it concerns a delict already committed, and therefore help or favor furnished by which someone can persist in the delict for which he was excommunicated.
2. As to the latter, observe: 1° since the law is to be interpreted strictly, religious do not come under the name of clerics unless they have received first tonsure (canon 108); 2° those communicating in divine offices are those who perform divine things with one to be avoided; 3° those receiving in divine offices are understood to be those who, enjoying the right or office of admitting to divine offices, admit an excommunicated person to be avoided to them.

V. If anyone against the prescription of canon 120 has dared to drag before a lay judge another, that is, not his own, Bishop, even merely titular, or an Abbot or Prelate *nullius*, or one of the supreme Superiors of religions of pontifical right (canon 2341). The prescription of canon 120, insofar as it must here be attended to, establishes that Bishops, even titular ones, Abbots or Prelates *nullius*, and supreme Superiors of religions of pontifical right cannot be summoned before a lay judge without the permission of the Apostolic See, unless in some place by special concession there has been derogation at least in part from the privilege of forum.

On the phrase "has dared," see n. 858; on the phrase "those dragging," p. 766.

Note. A cleric who, without having obtained permission from the local Ordinary, has dared to drag before a lay judge another person enjoying the privilege of forum, apart from those enumerated here and on p. 766 under IX, incurs *ipso facto* 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 (canon 2341).

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[1] Cf. Constitution of Pius VII, *Ecclesiam*, September 25, 1821, and Leo XII, *Graviora*, March 13, 1825.

[2] Cf. Holy Office, January 12, 1870.

[3] Encyclical of Leo XII, *Quod Apostolici*, December 28, 1878.

[4] Constitution of Pius IX, *Qui pluribus*, 1846.

[5] *Syllabus*, § 178.

[6] Holy Office, August 20, 1894.

[7] Holy Office, August 9, 1893; Holy Office, May 19, 1886.

[8] Holy Office, March 7, 1883 (*Collectanea*, n. 1593).

Section III. Excommunications Simply Reserved to the Roman Pontiff (continued)

VI. Those violating cloister, as follows; namely, the following are excommunicated:

1. Those violating the cloister of nuns, of whatever kind or condition or sex they may be, by entering their monasteries without legitimate permission, and likewise those introducing or admitting them (canon 2342, 1°). It concerns papal cloister. The following are excommunicated: 1° those entering without legitimate permission, that is, with the whole body, not with one foot only or one step; 2° those introducing those who violate cloister by entering without legitimate permission. Those also are included who introduce impuberes, since they too can violate cloister, although they do not contract the censure. There is doubt about those introducing persons lacking the use of reason, since these, strictly speaking, do not violate cloister. Given the doubt, we follow the milder opinion; 3° those admitting. They are understood to be those who, performing the office of guarding cloister, such as the prioress and the portress, receive those who violate cloister by entering without permission; for the rest, what has just been said about those introducing applies.

Note. If clerics violate the cloister of nuns, they are moreover to be suspended for a time to be defined by the Ordinary according to the gravity of the fault (canon 2342, 1°).

2. Women violating the cloister of male regulars; likewise Superiors and others, whoever they may be, introducing or admitting them of whatever age (canon 2342, 2°). It concerns the cloister of men who have pronounced solemn vows (cf. canon 488, 2° and 7°). The following are excommunicated: 1° women violating the cloister of male regulars; 2° those introducing, or 3° admitting, those who violate cloister by entering; also those introducing or admitting impuberes. There is doubt about those introducing or admitting persons lacking the use of reason, since these, strictly speaking, do not violate cloister; but it seems that it must be affirmed, since the canon says: of whatever age.

Note. Religious who introduce or admit are to be deprived of office, if they have one, and of active and passive voice (canon 2342, 2°).

3. Nuns illegitimately leaving the cloister against the prescriptions of canon 601 (canon 2342, 3°). The discussion is of papal cloister; it is required, however, that the nun leave with the whole body, not with one foot only or one step (St. Alphonsus, VII, 229).

VII. If anyone has presumed, by himself or through others, to convert and usurp for his own uses ecclesiastical goods of any kind, whether movable or immovable, corporeal or incorporeal, or to impede the fruits or revenues of the same from being received by those to whom they belong by law (canon 2346).

1. The disposition regards ecclesiastical goods belonging either to the universal Church or the Apostolic See, or to an ecclesiastical moral person.[1]

2. It is required either that someone, by himself or through another, usurp the said goods and convert them to his own uses, or that he impede their fruits from being received by those to whom they belong by law.

An usurper is one who occupies another's thing as due to himself.[2] Some now doubt concerning those who buy or lease goods already usurped. But "a change of the prior law is seriously doubtful, both because of the practice of the Holy See, which seems to be confirmed in the Constitution *Si unquam* of Pius XI, July 15, 1924, ad V,[3] and because of the nearly unanimous opinion of writers."[4] Hence one should not depart from the old law.

3. The excommunication persists as long as the one who has incurred the censure has not fully restored the goods themselves, removed the aforesaid impediment, and then obtained absolution from the Apostolic See (canon 2346).

Note. But if the delinquent was the patron of the same church or goods, he also exists *ipso iure* deprived of the right of patronage; but a cleric committing this delict or consenting to it is moreover deprived of any benefices whatever, is rendered incapable of any others whatever, and is suspended from the execution of his orders, even after full satisfaction and absolution, at the discretion of his Ordinary (cited canon).

VIII. Those perpetrating a duel, or simply provoking to it or accepting it, or furnishing any cooperation or favor whatever; and likewise those deliberately watching it and permitting it, or, as far as lies in them, not prohibiting it, of whatever dignity they may be (canon 2351, § 1). What a duel canonically accepted is, see volume I, n. 747. The following are excommunicated:

1. Those dueling; likewise those provoking and accepting, even if the duel did not follow.

2. Those furnishing cooperation or favor, provided the duel followed. It is required, however, that the favor or cooperation be sufficiently proximate and efficacious; hence, for example, those commanding and counseling are excommunicated; those who deliver or post the challenge; those who accompany the duelists and thus add courage to them; physicians and confessors assisting, even with the intention of giving help to the duelists if there is need; likewise if by agreement they remain with the same intention in a nearby place or house;[5] masters of arms who instruct those about to fight in order for the duel about which agreement has been made. But not sellers of weapons, nor public drivers who lead the duelists to the agreed place.

3. Those watching deliberately are understood to be those who approach the place of the duel in order to watch, so that they intensify the fight or add splendor to it; but not those who, arriving by chance, stop, or look from afar or from a hidden place.

4. Those permitting, or not prohibiting as far as lies in them, are understood to be those who enjoy authority, whether civil or military, but not private persons.

Note. The duelists themselves and those called their seconds are moreover *ipso facto* infamous (canon 2351, § 2). Those who die in a duel or from a wound received from it are deprived of ecclesiastical burial, unless before death they gave some signs of repentance (canon 1240, § 1, 4°).

IX. Clerics constituted in sacred orders or regulars or nuns after a solemn vow of chastity, and likewise all who presume to contract marriage, even only civilly, with any one of the aforesaid persons (canon 2388, § 1).

1. Concerning the word "presuming," compare what was said in n. 858. Knowledge in the act of contracting marriage is required; hence those who contracted ignorantly remain immune from the excommunication, even if afterward the ignorance ceases and they persist in the attempted marriage.
2. The excommunication is incurred even if the marriage is invalid also because of another impediment, say consanguinity;[6] likewise through civil marriage, even though invalid because of defect of form.[7]

Note. Delinquent clerics, moreover, if warned and if they do not come to their senses within a time predetermined by the Ordinary according to the diversity of circumstances, are to be degraded (canon 2388, § 1). In addition, because of tacit renunciation admitted by the law itself, any offices whatever of the cleric are vacant *ipso facto* and without any declaration (cited canon, canon 188, 5°).

X. Those perpetrating the delict of simony in any ecclesiastical offices, benefices, or dignities whatever (canon 2392, 1°). What simony is and how many kinds there are, see volume I, n. 620 sq.

1. Since the law does not distinguish, the excommunication affects simony of both divine and ecclesiastical law, both conventional and real and confidential (cf. canon 728), but not mental or merely internal simony.
2. It is disputed whether the law includes only offices strictly so called or also those broadly so called. For the rest, Bishops also, but not Cardinals, are liable to the penalty (canon 2227, § 2).

Note 1. Delinquents remain *ipso facto* deprived forever of the right of electing, presenting, and nominating, if they have any. If they are clerics, they are moreover suspended (canon 2393, 2° and 3°).

Note 2. The simoniacal contract itself and, if simony is committed concerning benefices, offices, or dignities, the subsequent provision lack all force, although the simony was committed by a third person, even without the knowledge of the one provided, provided this is not done in fraud of the same provided person or with him contradicting it. Therefore: 1° before any sentence of a judge, a thing simoniacally given and accepted, if it is capable of restitution and reverence due to the spiritual thing does not stand in the way, must be restored, and the benefice, office, or dignity must be resigned; 2° one simoniacally provided does not make the fruits his own; but if he has received them in good faith, it is permitted to the prudence of the judge or Ordinary to condone the fruits received to him wholly or in part (canon 729, 1° and 2°).

XI. A Vicar Capitular and all others, both of the Chapter and outsiders, who by themselves or through another have removed, destroyed, concealed, or substantially altered any document pertaining to the episcopal Curia (canon 2405). Under the name of document do not come books, precious things, and writings of lesser importance. For the rest, it is all the same whether the document was composed by the episcopal Curia or directed to it. But for the excommunication to be contracted, it is required that some damage follow from the removal, etc., of the document, or that prejudice be brought to the diocese or episcopal rights (cf. canon 435, § 3).

Note. Delinquents can also be punished by the Ordinary with privation of office or benefice (canon 2405).

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[1] Those, however, who usurp or detain ecclesiastical goods pertaining to the Roman Church incur an excommunication reserved to the Roman Pontiff in a special manner (p. 767).

[2] Holy Office, March 9, 1870.

[3] *A.A.S.* 1924, p. 311.

[4] Creusen, *Epitome*, n. 546.

[5] Holy Office, May 28, 1884.

[6] Holy Office, January 13, 1892.

[7] Holy Office, December 22, 1880.

Section IV. Excommunications Reserved to Ordinaries

First recall these words of canon 198, § 1: In law, by the name of Ordinary are understood, unless someone is expressly excepted, besides the Roman Pontiff, for his own territory each residential Bishop, Abbot or Prelate *nullius* and their Vicar General, Administrator, Vicar and Prefect Apostolic, and likewise those who, when the aforesaid are lacking, meanwhile succeed to governance by prescription of law or from approved constitutions; but for their own subjects, major Superiors in exempt clerical religious institutes.

897 Moreover, the following contract an excommunication reserved to the Ordinary:

I. Catholics: 1° who enter marriage before a non-Catholic minister against the prescription of canon 1063, § 1; 2° who are united in marriage with an explicit or implicit agreement that all or some of the offspring be educated outside the Catholic Church; 3° who knowingly presume to offer their children to non-Catholic ministers for baptism; 4° parents or those holding the place of parents who knowingly hand over children to be educated or instructed in a non-Catholic religion (canon 2319, § 1).

1. The prescription of canon 1063, § 1 is this: "Even if a dispensation has been obtained from the Church over the impediment of mixed religion, the spouses cannot, either before or after the marriage entered before the Church, also approach, whether by themselves or by proxy, a non-Catholic minister as one dedicated to sacred rites, in order to give or renew matrimonial consent." Hence it is not prohibited, indeed as § 2 has it, "it is not disapproved that, when civil law commands it, the spouses present themselves, even before a non-Catholic minister, performing only the function of a civil official, and that only for accomplishing the civil act, for the sake of civil effects." The censure is contracted, however, whether matrimonial consent is entered or renewed before a non-Catholic minister as one dedicated to sacred rites.
2. An implicit agreement is had, for example, when the Catholic party obliges himself to fulfill all the wishes of the non-Catholic party concerning religious education. The excommunication is incurred at the moment at which the marriage is contracted with the agreement, whether previously entered and not retracted or now entered.
3. On the word "knowingly" see what was said in n. 858. Since it is said "their children," for example, a midwife who offered another's offspring to a non-Catholic minister for baptism would be immune from the excommunication. For the rest, the excommunication is incurred also in a case in which baptism would probably be conferred invalidly.
4. Those holding the place of parents can be tutors or even others who are endowed with the right and office of looking after education or instruction.

Note. Those mentioned under 2, 3, and 4 are moreover suspected of heresy (canon 2319, § 2).

II. Whoever makes false relics, or knowingly sells, distributes, or exposes them to the public veneration of the faithful (canon 2326). The word "knowingly" refers to the acts of selling, distributing, and exposing to public veneration. Since it concerns false relics, one does not incur the excommunication who distributes or exposes for veneration relics whose document of authenticity has perished, or concerning whose genuineness he doubts (cf. canon 1285).

III. Whoever has laid violent hands on the person of other clerics, that is, clerics inferior to Bishops, or of religious of either sex (canon 2343, § 4). What violent laying on of hands imports, see p. 766 under X. For the excommunication to be incurred, it is required that the delinquent lay hands on the person of another, not on his own person, and that he know that person to be a cleric, religious, etc. The persons whose violent handling is punished with excommunication are:

1. Clerics, that is, those who by at least first tonsure have been assigned to divine ministries (canon 108, § 1), and have not been deprived of the privileges of clerics; hence even excommunicated, suspended, interdicted, and deposed clerics (cf. canon 2303, § 1), but not those perpetually deprived of the right of wearing ecclesiastical habit (canon 2304, § 2), the degraded (canon 2305, § 1), and all who have legitimately been reduced or have returned from the clerical state to the lay state (canon 213, § 1).
2. Religious of either sex, that is, those who have pronounced vows, whether solemn or simple, perpetual or temporary, in some religion (canon 488, 7°).
3. Male and female novices (cf. canon 614), but not postulants.
4. Members of either sex without public vows, living in common under the governance of Superiors according to approved constitutions (canon 680).

Note. The Ordinary should moreover punish the delinquent with other penalties, if the matter requires it, according to his prudent judgment (canon 2343, § 4).

IV. Those procuring abortion, the mother not excepted, the effect having followed (canon 2350, § 1).

1. Abortion is to be taken in the strict sense, that is, for the ejection of a fetus not yet viable (volume I, n. 733). Therefore the so-called acceleration of birth, the ejection of a dead fetus or a mere mole, and the expulsion of received semen, likewise embryotomy and similar illicit operations, are excluded. But no distinction is to be made between an animated and an unanimated fetus.
2. Those procuring abortion are understood to be the mother and others, whether female or male, who intend abortion and either physically cause it, or by command or by fear induced cause another to cause it. It is said, who intend abortion; hence one is immune from excommunication who, not intending abortion, for example, strikes his wife from anger, even if he foresees abortion. It is said, either by command or etc.; but if you were to deny that those commanding and those inducing fear come under the name of procurers, nevertheless one commanding, as the principal author of the delict, and one inducing fear, as inducing to the delict, are subject to the excommunication. Counselors and others concurring proximately are not counted among procurers, although as cooperators they contract the excommunication if the delict would not have been committed without their work (canon 2209, § 3). Those selling means do not ordinarily incur excommunication, both because ordinarily even without their work, namely with another selling the means, the delict would have been perpetrated, and because the concurrence is remote.

3. The effect having followed, that is, certainly followed; hence in doubt whether a fetus or a mere mole, whether a living or dead fetus, was ejected, the excommunication does not hold.

Whether one whom it repents of the committed crime before the effect follows incurs the excommunication, see p. 723.

Note 1. If the delinquent is a cleric, he is moreover to be deposed (canon 2350, § 1).

Note 2. Those who have procured the abortion of a human fetus, the effect having followed, and all cooperators, are irregular from delict (canon 985, 4°).

V. A religious, apostate from religion, incurs by the law itself an excommunication reserved to his own major Superior, or, if the religion is lay or non-exempt, to the Ordinary of the place in which he is staying (canon 2385).

1. One is called an apostate from religion who is professed from perpetual vows, whether solemn or simple, and who illegitimately leaves the religious house with the intention of not returning, or who, though having left legitimately, does not return with the intention of withdrawing himself from religious obedience (canon 644, § 1). The malicious intention mentioned in § 1 is presumed by law if the religious within a month has neither returned nor manifested to the Superior his intention of returning (canon 644, § 2).
2. The excommunication is reserved to his own major Superior if the religion is clerical exempt; if the religion is lay or non-exempt, it is reserved to the Ordinary of the place in which the delinquent is staying (canon 2385), that is, actually staying, even if he has domicile or quasi-domicile elsewhere.

Note. A religious apostate from religion is excluded from legitimate ecclesiastical acts and deprived of all privileges of his religion; and if he returns, he perpetually lacks active and passive voice, and moreover must be punished by the Superiors with other penalties according to the gravity of the fault, according to the norm of the constitutions (canon 2385).

VI. Professed members of perpetual simple vows, both in Orders and in religious Congregations, who presume to contract marriage even only civilly, both they themselves and all who contract with them (canon 2388, § 2). Note that the excommunication does not affect professed members of temporary vows. For the rest, see p. 772 under IX.

Section V. Excommunications Not Reserved

898 The following incur an excommunication not reserved:

I. Authors and publishers who, without due permission, arrange for the books of Sacred Scripture, or notes or commentaries on them, to be printed (canon 2318, § 2).

1. The excommunication regards both the books of Sacred Scripture themselves and notes or commentaries on them. The printing of one book suffices, but not of only a part; likewise the printing of notes or of a commentary on one book, even if they present entirely correct doctrine.
2. The excommunication affects both authors and publishers who, without due permission, arrange for either books or notes or commentaries to be printed; but not the owner of the workshop, typesetters, and those who distribute what has been printed.

II. Those who have dared to command or compel that infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, be handed over to ecclesiastical burial against the prescription of canon 1240, § 1, 2° (canon 2339). Excommunicated and interdicted persons are understood after a declaratory or condemnatory sentence (canon 1240, § 1, 2°). Canon 1240, § 1, however, establishes that the persons enumerated in the cited canon are to be deprived of ecclesiastical burial, unless before death they gave some signs of repentance. For the rest, note:

1. On the phrase "have dared," see what was said in n. 858.
2. The excommunication regards the handing over of the enumerated persons to ecclesiastical burial. Ecclesiastical burial consists in the transfer of the corpse to the church, the funeral rites celebrated over it in the same place, and its deposition in a place legitimately deputed for burying the faithful departed (canon 1204). A place legitimately deputed for this is understood not only as a cemetery (canon 1205, § 1), but also a blessed tomb in an unblessed cemetery (canon 1206, § 3). Moreover, for incurring the censure, deposition, even if performed with a sacred rite, in a profane place does not suffice. It is disputed: 1° whether it is enough that the deceased be placed in a sacred place without a sacred rite; 2° whether it is enough that he be placed in a sacred place and with a sacred rite, or whether it is required that all the elements contained in canon 1204 be present. Those who deny that all these are required rely on the explanations of old authors, by which they think one must stand. But the obvious sense of the law so favors the more benign opinion that in practice we admit the opinion which requires all the elements contained in canon 1204 for excommunication.
3. The excommunication affects those commanding and compelling the enumerated persons to be handed over to ecclesiastical burial. Those commanding are those who order it by authority, whether public or private. Thus those burying or assisting at burial are not excommunicated.

Note. Those who spontaneously give burial to the persons enumerated above contract an interdict from entrance into a church reserved to the Ordinary (canon 2339).

III. All those in any way guilty, whether by giving, receiving, or furnishing consent, when the apostolic beneplacitum required in alienating ecclesiastical goods has knowingly been omitted (canon 2347, 3°).

1. The word "knowingly" refers both to those giving and to those receiving and furnishing consent.
2. The excommunication regards the perfected alienation of ecclesiastical goods for which the apostolic beneplacitum is required. Moreover:

a) Alienation now, as before, seems to be taken not only for alienation properly so called, by which bare or useful ownership of a thing is transferred to another, but also for alienation in a broader sense, by which ownership of a thing, whether bare or useful, is burdened (cf. canon 6). Alienations are: donation, sale, exchange, pledge, mortgage, imposition of a passive servitude, remission of an active servitude, compromise, settlement, lease. Perfect alienation, however, is required; hence, if in some place ownership of a sold thing is not transferred except by delivery, this must have been done for the excommunication to be incurred.

b) Ecclesiastical goods are temporal goods, whether corporeal, both immovable and movable, or incorporeal, which belong either to the universal Church and to the Apostolic See or to another moral person in the Church (canon 1497, § 1); the Sacred Congregation of the Council declared that public securities are not excluded.[1]

c) The apostolic beneplacitum is required: 1° Generally for alienating ecclesiastical goods which are either precious or exceed the value of thirty thousand lire or francs[2] (canon 1532, § 1, 1° and 2°), according to what was said and explained in volume I, n. 974. Nevertheless, bearer bonds, as they are called, can be exchanged for other bonds more safe, or at least equally safe and fruitful, with any kind of trade or negotiation excluded, and with the consent of the Ordinary, the diocesan Council of administration, and others whose interest it is (canon 1539, § 2). 2° The apostolic beneplacitum is required for leasing, if the value of the lease, considering, as it seems, the whole time for which the lease is established, exceeds thirty thousand lire or francs, and the lease is beyond nine years (canon 1541, § 2, 1°). A lease made under the condition, "If the apostolic beneplacitum is obtained," is in no way affected by the excommunication, because such a lease is not perfected before the condition is fulfilled, that is, before the beneplacitum is obtained.

3. The excommunication affects those giving, those receiving, and those furnishing consent. Those giving are understood to be those who by themselves or through others alienate goods, but not agents of those alienating, nor those who destroy or steal goods.[3] Those receiving are those for whose benefit the contract is entered. Those furnishing consent are excommunicated if their consent must be sought, which also applies to lay persons.

IV. All, shining with any dignity whatever, who in any way coerce either a man to embrace the clerical state, or a man or woman to enter religion or to emit religious profession, whether solemn or simple, whether perpetual or temporary (canon 2352).

1. The excommunication regards coercion:

a) Either to embracing the clerical state. The clerical state is embraced through reception of first tonsure (canon 108, § 1). Likewise he seems liable to the censure who would coerce someone to receive major orders (cf. canon 971).

b) Or to entering religion. Religion is a society approved by legitimate ecclesiastical authority, in which members, according to the proper laws of that same society, pronounce public vows, perpetual or temporary, though to be renewed after the time has elapsed, and thus tend to evangelical perfection (canon 488, 1°). It is all the same whether it concerns an Order or a Congregation, a clerical or lay religion, a religion of pontifical right or diocesan right. Entrance into religion is now made, as it seems to many, by admission to postulancy, and, where there is no postulancy, by admission to the novitiate. That admission to postulancy suffices seems to be drawn from the fact that the ancient law distinguished entrance into a monastery and reception of the habit, or entrance into the novitiate, and that it also punished with excommunication one who coerced someone to enter a monastery or to begin postulancy.

c) Or to emitting religious profession. One who would coerce someone both to enter religion and to emit profession would incur a twofold excommunication.

2. The excommunication affects all, even Bishops but not Cardinals (canon 2227, § 2), all, I say, coercing in any way, whether directly or indirectly, say by acting upon parents, whether by grave fear, importunate entreaties, or other means without which the effect would not have followed.

3. The excommunication is not incurred unless the effect has followed.

V. A faithful person who knowingly has omitted to denounce within a month the one by whom he was solicited, against the prescription of canon 904 (canon 2368, § 2). Canon 904 sets forth the obligation

of denouncing in these words: According to the norm of the apostolic constitutions and especially of the Constitution of Benedict XIV *Sacramentum poenitentiae*, June 1, 1741, the penitent must denounce, within a month, to the local Ordinary or to the Sacred Congregation of the Holy Office, the priest guilty of the delict of solicitation in confession; and the confessor must, with his conscience gravely burdened, warn the penitent of this burden. Moreover:

1. The excommunication regards omission of the denunciation to be made by the solicited person; concerning this denunciation, see n. 416 sq.
2. The excommunication affects only the solicited persons themselves, but not those who know that another has been solicited. Moreover, it is required that the solicited person knowingly omitted the denunciation; from this it follows that there can be a cause excusing from excommunication which does not excuse from the obligation of denouncing; namely, any cause diminishing imputability excuses from this excommunication (n. 858). An impubes is indeed bound by the obligation of denouncing, but not by the excommunication, unless after attaining puberty he omits the obligation.
3. The delinquent is not to be absolved unless after he has satisfied, or has seriously promised that he will satisfy (canon 2368, § 2). One absolved who seriously promised that he would satisfy the obligation, but afterward, with his will changed, does not satisfy, does not fall back into the excommunication, although the obligation of denouncing persists.

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[1] January 17, 1906.

[2] Lest the value fluctuate too much, the value of gold money is safely attended to.

[3] Holy Office, March 2, 1870.

Part II. On Interdicts

899 Four interdicts *latae sententiae* are enumerated, namely:

I. Universities, colleges, chapters, or other moral persons, by whatever name they are called, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a Universal Council, incur an interdict reserved to the Apostolic See in a special manner (canon 2332). This interdict affects the moral persons appealing; physical persons appealing in this way contract excommunication (p. 763). What an interdict issued against a moral person imports, however, see p. 740, VII and question 1.

II. They contract by the law itself an interdict from entrance into a church, until, at the judgment of the one whose sentence they have despised, they have made congruous satisfaction: those knowingly celebrating divine things or causing divine things to be celebrated in interdicted places; or admitting to the celebration of divine offices, which are forbidden by censure, clerics excommunicated, interdicted, or suspended after a declaratory or condemnatory sentence (canon 2338, § 3).[1]

1. The word "knowingly" refers to those celebrating, to those causing divine offices to be celebrated, and to those admitting. Therefore the interdict affects:

a) Those knowingly celebrating or causing divine things to be celebrated (p. 731) in interdicted places, excepting, however, those divine things which can be done according to the norm of canons 2270-2272 (n. 878).

b) Those knowingly admitting, to the celebration of divine offices forbidden by censure, clerics excommunicated, interdicted, or suspended, against whom a declaratory or condemnatory sentence has been issued. Those admitting are understood to be those who have the office and right of admitting or repelling, such as a pastor or rector.

2. The interdict is to be removed, or rather seems to cease *ipso facto*, as soon as the delinquents have made congruous satisfaction at the judgment of the one whose sentence they have despised.[2] Thus judgment concerning congruous satisfaction belongs to him who interdicted the place or issued the declaratory or condemnatory sentence against the clerics who are admitted to divine offices.

III. Those who spontaneously give burial to infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, against the prescription of canon 1240, § 1 (canon 2339), contract an interdict from entrance into a church reserved to the Ordinary. What canon 1240, § 1 prescribes, see p. 750. For the rest:

1. On the word "spontaneously," compare what was said in n. 858.
2. In what sense ecclesiastical burial is taken, see p. 778.
3. Those giving burial are understood to be clerics only, namely those whose role it is to perform all those things which pertain to ecclesiastical burial.

IV. Those who gave cause for a local interdict or an interdict against a community or college contract a personal interdict reserved to no one (canon 2338, § 4). But to what penalties persons personally interdicted are liable, see n. 879.

[1] This interdict, since it is neither perpetual, nor for a predefined time, nor at the pleasure of the Superior, seems to be a medicinal penalty, not a vindicative one (cf. canon 2291, 2°).

[2] Cf. Holy Office, February 1, 1871.

Part III. On Suspensions

Of suspensions now in force by law, some are medicinal penalties or censures, others are vindicative penalties (n. 2255, § 2).

Section I. On Suspensions which Are Censures or Medicinal Penalties

900 I. Clerics, even those raised to episcopal dignity, who knowingly through simony have promoted someone to Orders or have been promoted, or have administered or received other Sacraments, incur a suspension reserved to the Apostolic See (canon 2371).

1. The discussion is of a generally issued suspension (p. 742).
2. Simony is taken as explained on p. 773.
3. Under the name of order here also come first tonsure and episcopate (canon 950).
4. The word "knowingly" refers not only to the first part, but also to "have administered or received."

Note. Delinquents, even laymen, are moreover suspected of heresy (canon 2371).

II. Those who presume to receive orders from one excommunicated, suspended, or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic, contract *ipso facto* suspension *a divinis*, reserved to the Apostolic See (canon 2372). Under the name of order here does not come first tonsure, since it confers no power from which someone can be suspended (cf. canon 950).

Note. One who in good faith has been ordained by one of those enumerated above lacks the exercise of the order thus received until he is dispensed (canon 2372). Here it is not a question of a penalty, since delict is absent, but of mere privation. The dispensation, however, in view of general principles, belongs to the proper Ordinary of the one ordained.

III. Until he obtains absolution from the Holy See, a religious dismissed for delicts less than those mentioned in canon 670 remains *ipso facto* suspended (canon 671, 1°).

IV. A cleric who, against the prescription of canon 120, has dared to drag before a lay judge another person enjoying the privilege of forum, namely apart from Cardinals of the Holy Roman Church or Legates of the Apostolic See, or major Officials of the Roman Curia for affairs pertaining to their function, or his own Ordinary, or another Bishop, even merely titular, or an Abbot or Prelate *nullius*, or major Superiors of religions of pontifical right, contracts *ipso facto* suspension from office reserved to the Ordinary (canon 2341). The prescription of canon 120, insofar as it must here be attended to, establishes that another person besides the enumerated persons cannot be summoned before a lay judge without the permission of the local Ordinary, namely of the place in which the case is being conducted.

On the word "dragging," see p. 766.

The Ordinary to whom the suspension is reserved is the proper Ordinary of the suspended person, not the local Ordinary whose permission had to be obtained.

Note. If the delinquent is a layman, he must be punished by the Superiors with other penalties according to the gravity of the fault, according to the norm of the constitutions (canon 2341).

V. A fugitive religious, if he is in sacred orders, contracts *ipso facto* a suspension reserved to his own major Superior (canon 2386), that is, a priest, deacon, or subdeacon. Under the name of religious here also come members in societies of men who imitate the manner of life of religious, living in common under the governance of Superiors according to approved constitutions, but are not bound by the three customary public vows, nor are they properly designated by the name religious[1] (cf. canon 673, § 1).

The discussion is of a generally issued suspension (p. 742).

Note. The whole canon 2386 establishes the following: A fugitive religious incurs *ipso facto* privation of office, if he has any in religion, and suspension reserved to his own major Superior, if he is in sacred orders; but when he returns, he is to be punished according to the constitutions, and if the constitutions make no provision concerning this, the major Superior is to inflict penalties according to the gravity of the fault.

VI. The following contract a suspension reserved to no one:

1. A priest who without necessary jurisdiction has presumed to hear sacramental confessions is *ipso facto* suspended *a divinis* (canon 2366). Without necessary jurisdiction, that is, without at least probable jurisdiction (cf. canon 209). What sacramental confession is, see n. 430. It is enough, however, that someone hear a confession of this kind, even if he does not absolve the penitent.
2. A priest who without necessary jurisdiction has presumed to absolve from reserved sins is *ipso facto* suspended from hearing confessions (canon 2366). The pronouncement of the form of absolution is required, however, and mere hearing of confession or fictitious absolution is not enough.
3. Whoever maliciously approaches orders without letters or with false dimissorial letters, or before canonical age, or by a leap, is *ipso facto* suspended from the order received (canon 2374). Under the name of order here does not come first tonsure, because it confers no power from which someone can be suspended (cf. canon 950).[2] "Maliciously" is equated with the words "has presumed," etc., about which see p. 718.
4. A cleric who has presumed to resign an ecclesiastical office, benefice, or dignity into the hands of laymen incurs *ipso facto* suspension *a divinis* (canon 2400).
5. An Abbot or Prelate *nullius* who, against the prescription of canon 322, § 2, has not received the blessing, is *ipso facto* suspended from jurisdiction (canon 2402). Canon 322, § 2 establishes: Abbots or Prelates *nullius* who, by apostolic prescription or from the constitutions of their own religion, must be blessed, should receive the blessing, within three months from receiving the apostolic letters and with legitimate impediment ceasing, from the Bishop whom they prefer.
6. A Vicar Capitular who grants dimissorial letters for ordination against the prescription of canon 958, § 1, n. 3, is *ipso facto* subject to suspension *a divinis* (canon 2409). From canon 958, § 1, n. 3, the Vicar Capitular can give dimissorial letters for seculars only with the consent of the Chapter after a year from the vacant see; but within the year only to those constrained by reason of a benefice received or to be received, or by reason of some certain office for which, because of the necessity of the diocese, provision must be made without delay.

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[1] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 347).

[2] Whether the Episcopate is included, cf. Cerato, op. cit., p. 195.

Section II. On Suspensions which Are Vindicative Penalties

901 I. Until the Holy See has dispensed them, the following are suspended by the law itself: the Bishop consecrating someone as Bishop, the assisting Bishops or, in place of Bishops, the assisting priests, and the one who receives consecration without an apostolic mandate against the prescription of canon 953 (canon 2370). Canon 953 prescribes: Episcopal consecration is reserved to the Roman Pontiff, so that no Bishop may consecrate anyone as Bishop unless the pontifical mandate has first been established.

It concerns a generally issued suspension (p. 742), and one inflicted by way of vindicative penalty; this is clear from the fact that a censure or medicinal penalty is removed by absolution, but this suspension by dispensation of the Holy See (cf. canon 2236, § 1 and 2289).

The suspension among assisting priests affects only those who assist in place of Bishops, not others.

II. From canon 2373, the following *ipso facto* incur suspension for one year from the conferral of orders, reserved to the Apostolic See:

1. Those who, against the prescription of canon 955, have ordained another's subject without dimissorial letters of his own Ordinary. As to the prescription of canon 955, cf. n. 601. The suspension also affects one who confers first tonsure (cf. canon 950).
2. Those who, against the prescription of canon 993, n. 4, and canon 994, have ordained their own subject who had stayed elsewhere for so long a time that he could have contracted a canonical impediment there. Concerning the cited canons, see n. 650. The suspension also includes first tonsure (cf. canon 950).
3. Those who, against the prescription of canon 974, § 1, n. 7, have promoted someone to major orders without a canonical title (cf. n. 618).
4. Those who, without prejudice to legitimate privilege, have promoted a religious belonging to a family which is outside the territory of the ordaining Bishop, even with dimissorial letters of the proper Superior, unless it has been legitimately proved that some one of the cases occurs which are mentioned in canon 966 (cf. treatise on Order, n. 602).

Delinquents are suspended from the conferral of orders, with no order, indeed not even first tonsure and episcopal consecration, excepted (cf. canon 950).

III. A clerical religious whose profession has been declared null because of deceit committed by him, if he is constituted in major orders, remains *ipso facto* suspended until the Apostolic See has seen otherwise (canon 2387). Under the name of religious also comes a member of a society of clerical men living in common without vows; likewise under the name of profession comes the profession improperly so called, or that emitted by a member of the said society.[1]

Note. If the delinquent is constituted in minor orders, he is to be cast out from the clerical state (canon 2387).

IV. Chapters, convents, and all others to whom it pertains, admitting such elected, presented, or nominated persons before the exhibition of the letters, remain *ipso facto* suspended from the right of electing, nominating, or presenting at the pleasure of the Apostolic See (canon 2394, 3°). It concerns those who admit persons elected, presented, or nominated to an ecclesiastical benefice, office, or dignity, into possession or governance or administration of the same, before the elected, presented, or nominated persons have exhibited the necessary letters.

V. Religious Superiors who, against the prescription of canons 965-967, have presumed to send their subjects to another Bishop to be ordained are *ipso facto* suspended from the celebration of Mass for a month (canon 2410; cf. treatise on Order, n. 632). Under the name of religious Superiors also come Superiors of a society of men living in common without vows, if the society enjoys the right of granting dimissorial letters to its members.[2] Major Superiors are understood, and those exempt, to whom, namely, belongs the right of giving dimissorial letters.

The suspension is reserved to no one.

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[1] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 347).

[2] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 347).

Addenda

Volume I, p. 330, n. 491, line 4: let it be read thus: Positive infidelity is when an unbaptized person knows that God has spoken, and nevertheless denies or doubts that which God has manifested; privative infidelity is when an unbaptized person doubts, etc.

Volume I, p. 664, scholion: in place of "debtors," let "creditors" be read.

Volume I, p. 733, n. 1093, line 23: let it be read thus: it likewise persists, if in some region or diocese a habitual dispensation has been granted by the Holy See, say for five years, from a feast day not suppressed; because the foundation of cessation falls away.

Volume II, p. 416: in place of Article III, let Section VII be read.

Volume II, p. 417: in place of Section VII, let Section VIII be read.

Volume II, p. 498: in place of "and the form of betrothals," let "the fittingness and governance of betrothals" be read.

Volume II, p. 543: in place of can. 132, § 5, let can. 732, § 1 be read; and in place of can. 732, §§ 2 and 3, let can. 752, § 3 and can. 754, § 3 be read.

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