MANUAL OF MORAL THEOLOGY

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VOLUME I

On the General Principles of the Christian Life, and on its Exercise

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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).

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[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.).

[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.[5][6][7]

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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