FRANCISCO SUÁREZ

A TREATISE ON LAWS AND GOD THE LAWGIVER

BOOK VI

ON THE INTERPRETATION, CESSATION AND CHANGE OF HUMAN LAWS

Only Chapter IX of this Book is included in these *Selections*

CHAPTER IX

ARE THERE OCCASIONS WHEN A LAW, AS A WHOLE, AUTOMATICALLY CEASES TO EXIST, WITH THE CESSATION OF ITS CAUSE?

A law is of itself perpetual, and it is enacted for the sake of the community.

1. Since a law is essentially perpetual, and is enacted for the sake of the community, it is manifestly incapable of lapsing through the disappearance of its efficient cause.

For a law does not cease to exist because of the legislator's death, nor because his successor dies, a point that is clearly demonstrated by our earlier discussion[1]; and therefore, it is not abolished by the mere passage of time, since it should [as a general rule] be established as valid for an indefinite period. If, indeed, it is occasionally possible for a law to be enacted with reference to a specified period, that is nevertheless an exceptional occurrence and such a law carries with it—subjoined, as it were—its own abrogation, which is to become effective at the time so specified and which comes under another class of annulment, discussed below [in Chapter xxv].[2]

Again, laws do not lapse from any defect on the part of those for whom they are enacted. For a state or a people, viewed as a community, is essentially perpetual, persisting through a continuous process of succession; and though a given state, or people, may suffer complete annihilation, such an event is rare and, practically speaking, does not call for consideration.

Therefore, the only way in which a law can cease to exist is as the result of a change in the object to which it relates. This change, in a physical sense, may occur in any one of various ways; but for present purposes we need to consider only such changes in the subject-matter of laws as concern the essential reason for the imposition of the legal obligation upon that subject-matter. For, assuming that the said reason persists, the [corresponding] law will not cease to exist on the ground [of a change in its object]; and accordingly, it will not in any sense cease to exist, unless it is repealed, since it is derived from no other mutable cause as a factor in its preservation, a point which we have made [above, in Book I, chapter x].[2]

If, however, a change does take place in the object of the law, that object being regarded from the standpoint above specified, then, whatever may be the source of this change, we are confronted by the same question, namely: whether or not, by virtue of the said change in its subject-matter, the law itself ceases to exist; for this is equivalent to

[1] [*De Legibus*, Bk. I, chap. xx, which is not included in these *Selections*.—Tr.]
[2] [This Chapter is not included in these *Selections*.—Tr.]

inquiring whether, upon the complete disappearance of its entire reason or end, the law also disappears, being altogether extinguished and abolished. But I have employed the phrase, 'upon the complete disappearance of its entire reason'. For we are not at this point concerned with cessation in regard to some particular act, nor with any 666
similar change of a partial character, transpiring only on one occasion, or with respect to a given part of the law's subject-matter and for a given period of time; inasmuch as our discussion of this partial change, contained in the preceding Chapter [Chapter viii],[1] will suffice. It would indeed be possible to consider in this context a different aspect, of partial change, either perpetual change affecting some notable part of the subject-matter of the law, or temporary change affecting the whole of that subject-matter; but I shall deal with these aspects in closing.

2. The other distinction, however, which was also laid down in the preceding Chapter[2] (a distinction turning upon the two ways in which the [essential] reason or end of a law may cease to exist, namely, contrary and negative), most emphatically demands consideration at this point: partly in order that we may see whether or not both [modes] may relate to the law as a whole, and partly in order that we may explain which of these [modes] leads to the disappearance of the law itself.

The cessation may be either contrary or negative.

The object of a law, then, is said to alter by contrariety,[3] whenever—as the result of a change in subject-matter or in [external] considerations or circumstances—the observance of the law becomes unjust, or somehow evil; or if its observance is rendered impossible, or at least so difficult and laborious as to be considered impossible for practical purposes and with respect to the community as a whole; or, finally, if such observance comes to be wholly useless and vain from the standpoint of the common good. On the other hand, a negative change will take place when the reason for the enactment of a law has departed entirely from the subject-matter thereof, although, despite the disappearance of that reason, the subject-matter in itself is neither evil, nor impracticable, nor useless, nor unjust.

3. Whenever there occurs, then, in the entire subject-matter of a law, a change resulting in a contrary effect,[4] no occasion for doubt or argument arises. For all authorities acknowledge that under such circumstances the law *ipso facto* ceases to exist; inasmuch as these very circumstances divest

A change with contrary effect[4] destroys the validity of a law.

[1] [This Chapter is not included in these *Selections*.—Tr.]
[2] [Not included in these *Selections*.—Tr.]
[3] [The terminology is technical and impossible to translate without circumlocution. Cessation of law is said to be *contraria*, when its observance would be harmful. It is said to be *negativa*, when the reason for the law has ceased to exist.—Reviser.]
[4] [i.e. an effect through which the observance of the law becomes harmful or impossible.—Tr.]

it of its just character, wherefore it is divested of its character as law, since (as we have often said, quoting Augustine [*On Free Will*, Bk. I, chap. v]) an unjust law is not law. Augustine.

The antecedent is clearly true. For a law enjoining anything wrong, impossible of fulfilment, or devoid of usefulness for the common good, is unjust and null, a point which is made manifest by our discussion in Book I[1]; and as the result of a change with contrary effect occurring in the object [of a prescription], the thing prescribed becomes wrong, impossible of fulfilment, or useless, as we have already explained; therefore, if a law should continue to exist [after such a change had transpired], it would then be enjoining something wrong and would thus itself be wrong, or else impossible or useless, wherefore it would be unjust.

Consequently, in the event of such [a change], it is not necessary for the prince to revoke the law before the latter can licitly be disobeyed; nor is it necessary even that the said law be abolished by custom, since its non-observance becomes just prior to the introduction of that custom; and for these reasons I have declared that the law ceases, *ipso facto*, to exist. This truth is, indeed, self-evident whenever the very observance of the law becomes wrong, since the continued existence of an obligation to do wrong is inconceivable.

Moreover, the same assertion applies when [this observance] becomes impossible; for no one is bound to attempt the impossible. Furthermore, in so far as relates to the community, a virtual impossibility suffices [to dissolve the obligation]. Accordingly, when such an impossibility presents itself,[2] the law in question ceases *ipso facto* to exist for the community. Therefore it also ceases to exist for individuals.

The same reasoning is once more applicable when the subject-matter of a law becomes useless and vain from the standpoint of the common good. For, by virtue of that fact, such subject-matter is rendered incapable of imposing a legal obligation upon the community, and consequently, incapable also of imposing it upon individuals.

It is necessary, however, that such a change, effected universally in the entire subject-matter of the law, shall be a clear and evident fact; for, in doubtful cases, a law always retains its rightful force and foothold (so to speak) and the presumption is always in favour of the justice of the law. The chief argument in support of this contention is the fact that, when the change is not evident and clearly apparent to all, a lack of significance and universality in that change is indicated. Therefore, in so far as concerns this point, there seems to be no need of additional

There must be evidence of such change before the law can lose its force.

[1] [Chapter ix of the *De Legibus*; *supra*, pp. 105 *et seq.*—Tr].
[2] [This English clause is an interpretation of a single word, *tunc*, in the Latin text.—Tr.]

distinctions as to greater or lesser doubt. On the contrary, certain knowledge should be absolutely required, although it will suffice if this knowledge is based upon the public and undeviating opinion of the people.

4. Accordingly, we are now confronted solely with a certain difficulty in regard to those occasions on which the essential reason for the law ceases generally to exist, but in a negative sense only. For it would seem that such a cessation does not suffice to destroy the force of the law as a whole.

The first argument in support of this view is as follows: the same proportion and relationship apparently exist between the whole [reason] and the whole [law], as those which exist between the respective parts; but, when a negative[1] cessation takes place in a particular case, in the reason for a law, the obligation imposed by the law does not [on that account] cease to exist; and therefore, when there is a general cessation of the reason, the law as a whole is not thereby destroyed.

Secondly, it is argued that the negative cessation of the reason for a law is not manifestly attended by an immediate cessation of the will of the prince; therefore, the law does not necessarily pass immediately from existence. The consequent is clearly true, because it is from the will of the prince that the law derives its binding force. The antecedent, moreover, has been proved above[2]: for it is possible either that the will of the prince may be motivated at the outset by several reasons, of which the principal one or the one best known—not the whole number—is declared by him; or, at least, his will may be motivated by one reason at the outset, while the motivation is continued later by a different reason, as we remarked previously in our discussion of tributes.[3]

A third argument is this: when the reason or object of a law ceases in a purely negative sense, the law can still be observed without 667
sin; consequently, by virtue of the same binding force, it should be observed as long as it has not [positively] been revoked. The antecedent is an assumption based on the very meaning of the terms involved. The truth of the consequent is proved, indeed, by the fact that under the circumstances described no peril is involved in the observance of the law, whereas great peril may attend its transgression, partly because the cessation of the prince's will cannot immediately become a certainty, and partly because grave moral evils might ensue if so extensive a licence were granted to the people.

Finally, one could cite, in support of the same view, those writers who declare that a law does not cease to exist although the reason for

[1] [The Latin at this point has *illo modo*, evidently referring to *negatiuè*, above.—Tr.]
[2] [*Supra*, pp. 51 *et seq.*; *De Legibus*, Bk. I, chaps. iv and v.—Tr.]
[3] [*De Legibus*, Bk. V, chap. xiii, which is not included in these *Selections*.—Tr.]

the law may disappear. To these authors I have alluded at the beginning of the preceding Chapter [Bk. VI, chap. viii].[1]

5. Nevertheless, the commonly accepted opinion is that a law ceases to exist, when the reason for the law disappears in a general way, that is to say, more frequently than not in regard to the community as a whole.

On what occasions a law ceases to exist upon the disappearance of the reason for the law.

This opinion is, first of all, the view of those persons who assert that, when the reason for a law disappears in a particular case (even though this cessation be purely negative), the obligation imposed by the law also disappears, in so far as concerns that particular case. For these same authorities are compelled, *a fortiori*, to make a similar assertion with respect to total cessation. Accordingly, we may cite Panormitanus, on the *Decretals* (Bk. III, tit. xlix, chap. viii [, no. 38]) in support of the said opinion. Innocent, Antoninus and other writers mentioned in the preceding Chapter[1] clearly indicate, in their comments on this passage, that they support the same view. The point is more clearly made, to be sure, by Peter Ledesma ([*Theologiae Moralis*,] Pt. II, chap. iv, qu. xvii, art. 2, 3d doubt, ad 4 and qu. xviii to 12th doubt after the second conclusion, and 14th doubt after the third conclusion), and by Covarruvias (on *Decretals*, Bk. IV, pt. II, § 9, no. 8 and *ibid.*, Bk. III, tit. xxvi, chap. x, no. 9) where he cites Fortunius (*De Ultimo Fine Utriusque Iuris Canonici et Civilis*, Illat. xv and xvi). Castro (*De Potestate Legis Poenalis*, Bk. I, chap. v, docum. 3) upholds a like opinion, as do Cajetan (on II.-II, qu. 147, art. 5, and in other passages above cited) and, in general, the commentators on St. Thomas (I.-II, qu. 96, art. 6). Soto expresses himself in a similar manner, but he appends a limiting condition which it will be necessary for us to consider before recording his true argument and solution.

Panormitanus. Innocent. Antoninus. Ledesma. Covarruvias. Fortunius. Castro. Cajetan. St. Thomas. Soto.

6. A question may be raised, then, as to whether, when the reason for a law ceases in a general way to exist, we should conceive of the law as also ceasing to exist, *ipso facto*, in such a way that its non-observance on the part of the subjects would be licit, nor would it be necessary for them to await a proclamation or revocation by the prince; or whether [, on the other hand,] we should say that the law becomes void for the reason that with the disappearance of its cause, the prince is bound to abolish that law.

For the remaining authorities (with the exception of Soto), even though they may not expressly bring up this point, are clearly referring to cessation *ipso facto*. Confirmation of their view[2] may be found in the fact that if that view were not correct,[3] the disappearance of the law in this special mode would not differ from a revocation thereof; rather,

[1] [Not included in these *Selections*.—Tr.]
[2] [Simply *hoc*, in the Latin.—Tr.]
[3] [Simply *alias*, in the Latin.—Tr.]

at most, a legitimate cause for abrogating the law would be assigned in consequence of the said [mode of disappearance], even as many other causes may be assigned. A further confirmation is the fundamental assumption that an effect ceases with the cessation of its cause; an assumption which is understood to refer to cessation *ipso facto*, as we deduce from a chapter of the *Decretals* (Bk. II, tit. XXIV, chap. XXVI). Thus the explanation of this cessation is customarily concerned with the true and adequate cause on which the effect depends for its continued existence, in accordance with the purport of the Gloss on that passage, and more clearly with other parts of the Gloss (on *Decretals*, Bk. I, tit. IX, chap. XI, word *cessante*; on *Decretum*, Pt. I, dist. LXI, can. VIII, § 2 (*Sed sciendum*), word *causa*; on *ibid.*, Pt. II, causa I, qu. VII, can. VII, and the text itself). But when we speak in the present discussion of the cessation of the cause, or reason, or end of a law, we are speaking [precisely] of the adequate cause; otherwise, it would not be said, that the cause ceases in an absolute sense. Therefore, when this adequate cause ceases, the law also should cease, *ipso facto*, for both the will of the prince and the utility of the law are dependent upon the said cause. Accordingly, if such a reason had not existed from the beginning, the law could not have been set up justly; and therefore, it cannot justly be kept in existence independently of that reason.

Gloss.

7. Nevertheless, Soto clearly supports the contrary view. For he says (*De Iustitia et Iure*, Bk. I, qu. VI, art. VIII): 'If the cause has totally ceased to exist, then the law also should cease to exist; nevertheless, it does not lose its force until it is abrogated by the prince or by custom.'[1] It is evident that Soto is speaking here of the negative cessation of the cause, since he denies that its occurrence with regard to a particular instance would suffice to deprive the law of its binding force in that instance. In another passage (*ibid.*, Bk. III, qu. IV, art. V, ad 1) he practically repeats this assertion, saying: 'For though it may be incumbent upon the prince to change this [law], it is not permissible for his subjects to act in opposition thereto, so long as the natural law concedes permission (that is to say, permits the thing legally prescribed), unless [the precept in question] has become contrary to natural law.'[1] Soto, then, does not believe that a law ceases to exist *ipso facto*, before abrogation, so long as the reason therefor does not cease in such a way that the thing prescribed becomes contrary to the law of nature.

To be sure, he does not state the basis of his opinion, but he does indicate that, as long as the subject-matter of a law is capable of involving a binding obligation, so long will the law endure, provided it is not repealed. Yet the subject-matter of the law does not become in general incapable of involving such an obligation simply because the

[1] [This quotation, as given by Suárez, varies slightly from Soto's text.—TR.]

reason for the law ceases to exist. For this subject-matter may [still] be not evil, and [even] useful to the state, though it may not be such as it was formerly nor [absolutely] necessary, as it was before; because this [change in the reason] does not sufficiently justify the immediate and necessary conclusion that the said law is abrogated.

A confirmation of the foregoing argument may be derived from the objections [to the opposing view]. For it is contrary to a due
668 regard for order that the law laid down by a superior should be disobeyed without his consent, as long as it is licitly and easily possible to obey that law, inasmuch as such disobedience may give rise also to scandal and disturbances or to fraud within the state. A middle course, then, may be pursued in our deductions, as follows: when the cause or reason of the law ceases in a general sense, the law also ceases, in itself and *ipso facto*; but, in spite of this cessation, the subjects cannot licitly begin to act in opposition to the said law before the prince has proclaimed its cessation, because this limitation is expedient for the common good. We arrive at that conclusion in the same way as we arrived at the assertion made by us in the preceding Book,[1] namely, that a penalty is often incurred *ipso facto*, but has no binding force before a declaratory decree is issued.

8. In order to expound my opinion, I assume from what has been said above that the subject-matter of human law is twofold.[2] For one phase of that subject-matter is of such a character that, viewed in itself, it is righteous and involves an act of virtue. Examples of this sort are the precept on fasting, that on praying, and so forth. The other phase is in itself of a neutral character. Examples of such subject-matter are the bearing or not bearing of arms; the taking of this or that object from a given place, and similar instances.

The subject-matter of human law is twofold.

In consequence of this dual subject-matter, there arises another difference, relating to the laws themselves. For, inasmuch as all human laws establish some deed of commission or of omission as coming under the head of a given virtue or vice (a fact which we have already pointed out), consequently, when the subject-matter of a law is essentially and of itself endowed with a righteous character, it is established proximately through the said law under the head of that virtue to which of itself and intrinsically it pertains. For example, fasting is put into the category of temperance, while omitting to fast is intemperance; and other examples could be pointed out, in like manner. Moreover, the same holds true in all cases in which a standard of virtue may, through the efficacy of a law, be founded upon such subject-matter. A case in point is that of the law fixing a given price. For,

[1] [Not included in these *Selections*.—TR.]
[2] [*Supra*, pp. 47 et seq.; *De Legibus*, Bk. I, chap. III, §§ 17 *et seq.*—TR.]

prior to the establishment of the law, this price did not represent a standard of justice; but after it has been determined by the law, it does embody such a standard; and, therefore, the act prescribed by the said law is put into the category of justice, while the violation of the law becomes an act of injustice.

On the other hand, when an act is itself of a neutral character and is not prescribed by any law that makes of it an intrinsic standard of virtue, but is legally prescribed or prohibited simply because of its utility in the attainment of some extrinsic end—when such is the case, all the righteousness of the act must be ascribed to the said end, on the basis of which righteousness[1] the act becomes in its turn obligatory and necessary, by the force of the law.

Thus we come at length to the conclusion that, in so far as concerns the laws of the first group,[2] the extrinsic end of the subject-matter involved in a precept is never adequate for the law; since intrinsic righteousness and the characteristic of virtue are directed always to a proximate and intrinsic end, and to an end, moreover, which is in itself sufficient, though every extrinsic end cease to exist. As for the laws of the second group,[3] however, the extrinsic end is [necessarily] adequate [to justify the various precepts], inasmuch as their subject-matter is not essentially and for its own sake an adequate [justification] of these precepts, being adequate only because of its utility in regard to some extrinsic end.

9. Accordingly, I hold, first: that a law prescribing an essentially good act, establishing it as falling intrinsically within the subject-matter of virtue, does not cease to exist because some extrinsic end of the law wholly disappears; even though [this end] may be all that is required in so far as the legislator's intention is concerned, and may perhaps have been so regarded [by him] that he would not have made the law independently thereof.

A law prescribing an [essentially] virtuous act does not cease to exist, upon the disappearance of an extrinsic end.

A proof of this assertion is supplied by the argument set forth in defence of Soto's opinion. For, despite the disappearance of every extrinsic end, the subject-matter of such a law remains in itself righteous, and suitable for law by the sole force of the intrinsic end involved, that is to say, because of the righteousness of the act in question; furthermore, this intrinsic end is always sought by the legislator, since he based the necessity and means for the said act upon this kind of virtue; consequently, despite the disappearance of every extrinsic[4] end, the law possesses a sufficient justification

[1] [Assuming that the Latin word *illa* is not a misprint for *illo*. If we read *illo*, the translation will perhaps be smoother: 'on the basis of which', referring to the extrinsic end.—Tr.]
[2] [i.e. those laws whose subject-matter is in itself a standard of right conduct.—Tr.]
[3] [i.e. those laws whose subject-matter is in itself of a neutral character.—Tr.]
[4] [Reading *extrinseco* with the 1856 edition, not *intrinseco*, which is the term here used. The context clearly indicates that the former reading is correct.—Tr.]

for its continued existence; and, therefore, it will not be rendered void.

A confirmation of the foregoing argument will be found (if the matter is carefully examined) in the fact that, under the circumstances described, the adequate cause of the law does not cease. For the most potent cause, end and proximate reason (so to speak) of the said law, consist in the righteousness of the act which it prescribes. Therefore, there is no reason why the law should cease to exist.

Finally, as long as the prescribed subject-matter together with the formal reason therefor shall endure, the obligation imposed by the precept remains. For, as St. Thomas has declared (I.-II, qu. 100, art. 9, ad 2), what the legislator purposes to prescribe, is one thing, while the end for which he purposes to prescribe it is another; and accordingly, just as the precept is of itself binding with respect to the former, and not with respect to the latter, even so, conversely, as long as the former endures—and provided that it shall continue to include a reason sufficient to justify the precept, this precept, too, will endure, though its extrinsic end may cease to exist. St. Thomas.

The point may be clarified by means of examples. For though a law on fasting be established for the purpose of mortifying the flesh, and though a community be conceived of which does not need such a means for the attainment of that end inasmuch as it possesses many other means [for the same] or a similar purpose, this law—I repeat—will nevertheless be binding, a fact not open to dispute; but if the act prescribed by it should cease to be an act of temperance, as might occur in a case of extreme necessity, then, indeed, the law would lapse. Similarly, if some law should fix the price of wheat, the binding force of that law would endure, even if all the extrinsic reasons or other advantages thereof should disappear, as long as that price con-
669 tinued to be equitably just in the sense that it did not become manifestly inequitable; but if, on the other hand, the situation should alter to such a degree that the sum fixed would be manifestly unjust, the law would cease to exist. Similar illustrations could be drawn from other situations.

10. Accordingly, one infers that if the adequate end, both intrinsic and extrinsic, of the law in question should cease to exist, then the law itself would cease. However, careful reflection will show that in such a case the end does not simply disappear in a negative sense, but is transformed with contrary effect, since the subject-matter does not retain its virtuous character, but rather becomes vicious, so that it is incapable of serving as subject-matter for a binding law. Evidence confirming this assertion is found in the fact that, under the circumstances described, the binding force of the law

When the adequate end of a law, both extrinsic and intrinsic, ceases to exist, the law itself ceases.

will lapse not only in general but also in particular cases, with respect to the act or the subject-matter involved. Accordingly, it also happens, that in such a case the law ceases *ipso facto*, without any other revocation[1] or declaration [of its cessation]. For it lacks a foundation, nor can its binding force be applied to unsuitable subject-matter.

A common example is offered by laws imposing tributes for certain works or ends. When such a work or end has been accomplished, the law of itself ceases to exist, because the reason for the law then ceases, not merely in a negative sense, but even with contrary effect, inasmuch as the tribute becomes from that moment unjust. When, on the other hand, the intrinsic end does not cease to exist, although the extrinsic ends disappear, then just as the law itself does not *ipso facto* come to an end, even so it is not necessary that this law be abrogated by the prince. For the righteousness of the subject-matter may suffice to sustain the law; unless the latter becomes from some other cause harmful to the state, or intolerable; since in that case there might be another reason creating an obligation to repeal the law, or that law might even come to an end of itself, provided that its harmfulness and oppressiveness are of a general character and excessive in their degree. For such a cessation, as is clearly evident, would be not of a negative, but of a contrary nature.

Furthermore, and lastly, I must note with respect to this [first] assertion[2] that it refers to law in the strict sense of the term. For in so far as concerns precepts laid down by an individual, solely by virtue of the obedience due to him, these may frequently be such that, when their end or cause ceases to exist, the obligation imposed by them also ceases, even though the act prescribed is in some other respect intrinsically righteous, as in the case of fasting or praying. For example, if a superior should prescribe that a fast be observed once a week during a particular month; if it is evident that the precept is imposed because of some special need or occasion; and if this need or occasion comes to an end before the month expires, then we consider that the precept, too, has ceased to exist. For, in the case of such precepts, the whole reason for prescribing, consists in the extrinsic end involved, not in the intrinsic[3] righteousness, although the latter is presupposed. Evidence of this truth is afforded by the fact that the transgression of such a precept is not an act of intemperance, for example, but one of disobedience; whereas we find a different situation in the case of a true law. Such a law aims primarily at the rectitude of virtue under which the prescribed act is classified as if by its very essence.

The difference between a law and a precept.

[1] [Reading *revocatione*, in accordance with the Paris edition of 1856, not *recordatione*, the reading of our own Latin text.—Reviser.]

[2] [*Vide supra*, p. 426; the first sentence of Section 9 of this Chapter.—Tr.]

[3] [Reading *intrinseca* for *extrinseca*.—Reviser.]

11. I hold, secondly: that when an act of a neutral character in itself is prescribed by a law for the sake of an extrinsic end, then, if the adequate end of the said law ceases, in a general sense, to exist, the law itself ceases *per se* and *ipso facto*, as does the obligation which it imposes.

A law prescribing an act of a neutral character, for the sake of an extrinsic end, itself ceases to exist when its adequate end ceases.[1]

The reason for this fact is that, in the situation described, the negative cessation of the end is transformed into a contrary effect, inasmuch as it unfits the subject-matter in question for law. This assertion is proved as follows: an act which is in itself of a neutral character can never be prescribed of itself or for its own sake; for an act of that sort, considered as such, is not of itself desirable from the standpoint of righteousness; on the contrary, if it is thus prescribed [for its own sake], it will not be rightly prescribed; moreover, it is still more certain that such an act does not afford subject-matter for law, unless it is prescribed for the sake of some common advantage which it may promote or because of which it may be necessary; but when the end of the law ceases in a general sense to exist, the act in question necessarily becomes useless with respect to the common good; therefore, it becomes for this very reason incapable of being rendered obligatory by human law, and the law itself consequently ceases *ipso facto*. The consequents and the major premiss are quite clearly true in the light of our previous remarks. The truth of the minor premiss, moreover, becomes evident through our hypothesis. For we have assumed that the adequate end for the sake of which the act was prescribed, ceases to exist. Yet it is impossible that this should occur save [for one of two reasons]: either because the good which was the proximate aim of the act in question is no longer advantageous for the common good of the state; or else because the act itself is no longer useful with respect to such advantage. But in either case the act becomes useless and vain from the standpoint of the common good, and consequently ceases to be fit subject-matter for law.

It may be objected that, even though the act be useless with respect to the end sought by the law, it may possibly be useful for the attainment of other ends. My reply is that this [objection] is of an incidental and individual nature, since, in so far as concerned the aforesaid act, the law has had regard only to the aforesaid justification of advantageousness and public benefit, so that consequently, when the justification has been removed, the subject-matter of the law ceases to exist and therefore the law, too, ceases. For even though the act in question may be useful from some other standpoint, the law concerning the act was not established with a view to that [other] end;

[1] [Reading *cessat*, with the Paris edition of 1856, not *cesset*, with our own Latin text; and omitting again, in accordance with the 1856 edition, the final and redundant *lex* of our text.—Tr.]

and accordingly, such utility is not regarded as necessary to the state until a law has been established with respect to the said act and in consideration of the said end.

12. From the foregoing, it follows, first, that a situation of this kind does not require a decree of the prince, in order that the law may permissibly be disobeyed after having ceased in the manner described, since that law fails, *ipso facto*. The sole requirement, then, is that this cessation shall be a matter of clear and public knowledge owing to evidence of a fact generally established throughout the state or community. For, by virtue of the very fact that the law ceases to exist in the aforesaid manner, it is no longer law; consequently, it is not of itself binding; and therefore, in order that its cessation may be effective with respect to the community, it suffices if that cessation is publicly known to the said community. 670

A decree of the prince is not required in order that such a law shall cease to be binding.

Nor does any sufficient reason arise, which would make it necessary to await a decree of the prince. For [such a decree, if] it [were required at all,] would be required either as an instrument of repeal, which is not the case, since the law has passed away of itself; or else it would be required as an authentic proclamation, an alternative which it is also impossible to support satisfactorily, inasmuch as this act of proclamation is not necessary in the nature of things, nor do we find it specifically prescribed by positive law. Moreover, one should not, in this connexion, compare the cessation of a law with the incurring of a penalty. For a penalty by its very nature is violent and is imposed from without, wherefore it inherently requires the action or concurrence of a judge, unless the contrary has been expressly provided by law. Consequently, a penalty is not incurred *ipso facto*, independently of any legal declaration thereof; and even if it were incurred *ipso facto*, that would not prevent the passing of a declaratory sentence regarding the crime, save in cases in which the law does [specifically] preclude such a sentence or in which there is some other manifest [cause precluding it], since there always exists a presumption in favour of the accused to the effect that he is not liable to a penalty until he has been condemned. In such a case, however, the cessation of the law is not a violent occurrence; on the contrary, by means of that cessation the state is restored (so to speak) to its pristine status and liberty, while [the law] gives place to that [free status]; and therefore, there is no necessity for a decree of the sort described, to serve as a declaratory sentence.

It will be objected that [a declaration] is required by way of promulgation, for promulgation is necessary in the annulment of a law that is being revoked by the prince. I reply that the principle involved in this case is different; for revocation depends upon the will of the

prince, which must be revealed to all, whereas the cessation of a law when the cause of the law ceases to exist, depends not upon the prince's will but upon the very fact [that the cause disappears], so that it suffices [in this latter situation] if the bare fact is known to all. For example, if a tax for the purpose of building a bridge has been imposed by law, and if it is a matter of public knowledge that the bridge is completed and no more is being expended upon it, such a situation constitutes a sufficient promulgation of the fact that the tax has ceased to be imposed; and other, similar examples might be adduced. Public and sufficiently certain knowledge, then, of a general cessation on the part of the cause is all that is required [as a promulgation of the law's cessation]. And [, at the same time,] this is a minimum requirement. For I do not think it would suffice [as a promulgation] if [the cessation of the cause] were known to this or that particular individual, since the law does not cease to exist with respect to such individuals until it ceases with respect to the whole community, and since, in order that the law may cease for the community, it is necessary that the cessation of its cause shall have taken place in such a way that the fact can be made manifest to the community and becomes accordingly a matter of public knowledge.

The foregoing, moreover, has reference especially to cases in which the observance of a law is becoming unjust, for in such cases the fact of the law's cessation is more clearly evident. Furthermore, a law may be described as unjust, not only when it causes specific harm, but also when it is wholly useless and unjustified by reason.

13. Secondly, the remarks made above may serve to show how acceptable that distinction is, which some jurists have drawn, between a law made for the purpose of doing away with the ills that frequently follow upon a given fact, and [, on the other hand,] a law made essentially for the sake of some [positive] good and utility. For these jurists hold that laws of the former kind cease to exist, with the cessation of the [possibility of such] ills; whereas laws of the latter kind by no means cease, even though the reason for their utility may do so.

A distinction made by the jurists is examined.

This is the view suggested by the Gloss (on *Decretals*, Bk. II, tit. xxiv, chap. xxvi, word *cessante*, near the beginning [word *causa*, near the end]). Proof with regard to the first class [of laws] is afforded by that text and by the example of an oath, which is prohibited solely because of the danger of perjury and is therefore permissible when that danger ceases to exist. Proof as to the second class, on the other hand, is based upon laws in two chapters of the *Decretum* (Pt. II, causa xxxii, qu. i, can. ii; *ibid.*, qu. vii, can. xxvii), which are in no wise pertinent, since they deal with matrimony, an indissoluble bond to which a different process of reasoning applies. The same distinction is Gloss.

Navarrus. Cajetan.

suggested by Navarrus (in *Summa*, Chap. xvi, nos. 36 and 37) in a passage where he agrees with Cajetan that clandestine marriage may have been permissible (at least, before the Council of Trent)[1] upon the cessation of the possibility of consequent ills that caused its prohibition; while he nevertheless declares that the obligation imposed by a law does not cease to exist [merely] because its end ceases with respect to a particular case, if that end was a good to be acquired through a means prescribed by the law. Navarrus then, speaks in this passage not only of the general cessation of a law, but also of cessation in a particular case, as I have noted above.

14.[2] But, as a matter of fact, and formally speaking, there would seem to be no difference [between the two classes of laws in question]. For if a law is laid down for the purpose of avoiding certain ills, the object of that law is the warding off of the ills. Accordingly, the same reasoning applies to the cessation of that object, and to other cases, whether in general or in particular. And therefore, the only possible difference is a material one, so to speak. For a law established solely 671 for the purpose of avoiding certain ills, does not as a rule prescribe any act for its own sake and because of its [essential] goodness, nor does such a law prohibit any act because of its [essential] evil; rather [is it established] in order to avert an occasion for evil; and under these circumstances, when the object [of the law] lapses in a general and negative sense, it lapses with contrary effect, also, since the act in question becomes vain and unfitted to be the subject-matter of law.

Thus we have elsewhere remarked [*De Voto*, Bk. IV, chap. xviii, sect. 4],[3] in connexion with a vow to abstain from entering a certain house (a vow taken in order to avoid an occasion [of evil]), that when this occasion ceases to threaten, the vow is no longer binding. For in such a case, abstention from entrance into the house is a matter of indifference and has no religious significance. The same reasoning, then, will apply in due proportion with regard to a law.

To be sure, a law which prescribes a given act both for its own sake and also in order to promote some good end does not immediately lapse when that end ceases to exist, since in the act itself there may persist the intrinsic righteousness which is the [partial] cause of its prescription. If, on the other hand, [this intrinsic virtue] is not found to exist in the act—which is, on the contrary, of an essentially indifferent nature—then, certainly, we must come to the same conclusion regarding the law which prescribes such an act in order to achieve some good, and the law prohibiting an act in order to avoid some evil. This is sufficiently clear from the foregoing discussion.

[1] [A decree of the Council of Trent, usually referred to as *Tametsi* (Session XXIV, chap. i), invalidated clandestine marriages.—Tr.]
[2] [This Section is incorrectly numbered '41' in the Latin text.—Tr.]
[3] [Not included in these *Selections*.—Tr.]

Conversely, when a law which prescribes or prohibits anything for the purpose of avoiding an evil, does involve subject-matter that is good and advantageous in itself apart from the avoidance of the evil—in that case—the said law would not lapse, even if the necessity for avoiding the ill should cease to exist. For all our remarks in connexion with the first assertion would be applicable in such a situation.

A distinction which should be carefully considered.[1]

With reference to this point, careful consideration should also be given to the following distinction: whether a thing is prohibited because of the peril [inherent in it], or solely because of its [possible] future effect. For ordinarily a prohibition is laid down on account of a danger which is inherent in the prohibited action itself, so that, even though it is clear and certain that there will be no future effect—that is to say, none of an injurious nature—nevertheless, the obligation and effect attendant upon the obligation will not cease to exist, since the act remains always inherently capable of causing the harm in question, a fact which I have discussed at greater length in the preceding Book.[2]

Consequently, the example of clandestine marriage, adduced by Cajetan and Navarrus, is not in my opinion acceptable. For peril is so bound up with that act as to be inseparable therefrom both in general and in particular, and therefore, the obligation imposed by that prohibition never lapses, since it is an unquestionable fact that one ought to guard against all evils. Accordingly, in the sense that marriages made in these days in the presence of the parish priest and of witnesses may be clandestine because of failure to publish the banns in accordance with the prescription laid down in the *Decretals* (Bk. IV, tit. III, chap. iii, § 1), such marriages are illicit, even when the object of the precept prohibiting them ceases, in a negative sense, to exist; unless other legitimate causes present themselves, giving rise to a judgment by *epieikeia*,[3] to the effect that the precept regarding that incidental rite is not binding on a given occasion and at a given time. It is thus, indeed, that Navarrus [*Summa*, Chap. xvi, nos. 36 and 37], finally seems to explain the example in question.

Cajetan. Navarrus.

15. Thirdly, the foregoing incidentally does away with a difficulty, the solution of which was postponed in the preceding Chapter for this context, a difficulty relating to the precept of fraternal correction. The obligation imposed by this precept ceases, even in a particular case, upon the cessation of the hope that correction will be beneficial and, accordingly, through a negative cessation of the reason for the law; so that, in view of the fact that this hope does ordinarily cease

A statement as to when the obligation of fraternal correction lapses.

[1] [The Latin subheading, partially illegible in our own Latin text, should read: *Distinctio diligenter notanda*.—Tr.]
[2] [Bk. VI, chap. xxiii, which is not included in these *Selections*.—Tr.]
[3] [i.e. equitable interpretation. *Vide*, Bk. II of this work, Chapter xvi, *supra*, p. 309, note 1.—Tr.]

in general, we are [apparently] obliged to say, that the precept in its entirety ceases to exist.

B. Medina. Ledesma. Covarruvias.

To this statement, B. Medina [on I.-II, qu. xcvi, art. 6], Ledesma [*Theologiae Moralis*, Pt. II, chap. iv] and Covarruvias [on *Decretals*, Bk. IV, *De Sponsalibus et Matrimoniis*, Pt. II, § 9, no. 8 and *ibid.*, Bk. III, tit. xxvi, chap. x, no. 9] reply that the law of fraternal correction was laid down for the private good of individuals, and therefore may lapse with respect to individuals whenever the end thereof ceases in a particular instance, even though it be merely a negative cessation; whereas this is not the case with respect to laws whose end is general and universal, such laws, for example, as the precept on fasting and others of a similar nature.

To tell the truth, however, I do not sufficiently grasp the meaning of this distinction, nor its rational basis, since all laws exist for the sake of the common good, though this good may be sought and attained, not directly in connexion with the community, but in connexion with individual cases. For the law of fasting is of this nature, being directed to the good of the Church, yet its utility applies to individuals. And so it is that the precept of fraternal correction, too, is a common precept, while its fruit is nevertheless sought among individuals and in particular cases. Accordingly, there is no difference [in this respect] between the two precepts.

Ledesma.

Wherefore, it is easier to reply—as Ledesma also (*ibid.*) briefly indicates—that, in fraternal correction, no part is played by *epieikeia*, nor by a cessation of the obligation involved, resulting from the cessation of the object [of the precept]; for this is an affirmative precept, not continuously binding, nor is there a specified occasion on which it binds, and without this specification, *epieikeia* (as I have above remarked) can play no part. Thus, the obligation imposed by the affirmative precept of fraternal correction does not cease to exist, when there is no hope of fruitful results; rather, this obligation—which is in itself indefinite—is simply not definitely laid down for that occasion, since right reason dictates that it is not binding then, inasmuch as the time is not advantageous, nor is the subject properly adapted. Even so, the precept of almsgiving binds one to succour the needy; and nevertheless, if that succour should be harmful, or if it 672
should be clear and certain that the person in need would not profit by the alms, the precept would fail to be binding, not through a process of cessation nor through *epieikeia*, but because such an occasion would not be one for which the precept in question—being a natural precept, not merely one of positive law—is binding. And I must add that in so far as the reason for the precept can be said to cease in such a case, it ceases not merely negatively, but also by contrariety; for under these circumstances correction would not be an act of virtue, but would

be idle, useless, and possibly harmful, rather than beneficial, to one's neighbour.

16. Finally, from the foregoing remarks, it will be easy to dispose of the reasons for doubt laid down at the outset [Sect. 4, *supra*, p. 422].

The first of these turned upon the objection that the preceding discussion apparently led one to conclude that no difference exists between the general, and the particular cessation of a law, when such a cessation is due to the fact that the object [sought by the law] has ceased in a purely negative sense and proportionately, that is to say, in general and in particular; a conclusion which would nevertheless seem to be opposed to the commonly accepted opinion already set forth. The inference is clearly true, because a law never ceases to exist generally as a result of a purely negative cessation of its object; rather must this object cease in a contrary sense, at least, in the sense of becoming a useless act and consequently unfit to be the subject-matter of a law; and if the object does cease thus in a particular case, the obligation imposed by the law will also cease in that particular case; therefore, [. . .]

[To this objection,] I reply that the difference consists in the following facts: when the adequate object of a law ceases in the manner already described, the absolute reason for establishing the law will cease in consequence, since this cessation of the object is necessarily attended by the loss of all utility for the purposes of law, on the part of the subject-matter; whereas, on the other hand, if the general object of the law persists, even though it may cease with respect to a particular act, the reason for a general law will endure unimpaired, that reason which has regard, not for individual occasions, but for what occurs most frequently; so that, even if the said object ceases negatively in a particular case, the act prescribed does not become useless, nor does the reason for establishing the law cease by contrariety in that case, since this general reason may impel one to the act, for the sake of the general good and of conformity to the said law and to the whole body [under that law], as has been explained in the preceding chapter.

The difference between the cessation of a law in general, and its cessation in particular.

17. As to the second reason [for doubt—Sect. 4, *supra*], relating to the will of the prince, a reply is easily drawn from our previous remarks. For when the reason for a law ceases in general, the law is rendered useless by that very cessation, and its subject-matter becomes incapable of causing a just obligation; so that the will of the legislator must necessarily cease in consequence, partly because he has willed to impose a binding obligation justly and to such an extent as is licitly possible (no other presumption being acceptable), and partly because, once the subject-matter of the law has changed, he would not be able

to impose such an obligation [through that law], even if he did so will. And if it is assumed (an additional point which was brought up in connexion with this same argument) that when the first reason ceases to exist another reason takes its place, as is ordinarily held to occur in the case of taxes, the reply to this is that the first law has ceased to exist, and no other law has been made. Consequently, if the prince wishes to make the act in question obligatory on the basis of a new reason that arises, it will be necessary for him to legislate anew, or promulgate his wish to this effect; otherwise, and merely by the force of that earlier law alone, his subjects cannot be bound.

As to the third reason [for doubt—Sect. 4, *supra*, p. 422], either this constitutes a proof of the first assertion [Sect. 2, *supra*, p. 420], if, when the extrinsic end of the law ceases to exist, its subject-matter still retains a righteous character and is of itself advantageous for the common good; or else, if this same reason is applied to the occasions when the object of the law ceases absolutely, we deny that it is possible for the law to be obeyed licitly under such circumstances, since such obedience would be a vain and idle action; and even if the act itself could be performed with rectitude, owing to some other and specific benefit sought by the agent, that is too extrinsic and incidental a consideration to result in the perseverance of the original law, which did not impose any obligation to act in that manner or for the sake of that end. Neither can such a non-observance of the law—which has now manifestly and publicly ceased to exist—be attended by moral ills; just as such ills need not be feared in consequence of the non-observance of a law that is manifestly and publicly unjust, from which greater ills would result if, on the contrary, the observance thereof were obligatory.

18. Finally, it is possible to form in accordance with what we have said as to the total cessation of a law, a judgment regarding the cessation of a given part of a law, in so far as that part relates not to a particular person or case but to a whole community.

A law may be rendered useless in regard to one of its parts, and not in regard to another part.

For a law may prescribe many things or comprise various members, and may become useless in regard to one of these factors while it does not become useless in regard to the others. And in such a case, the same judgment applies to this part, whose reason has ceased to exist (provided that it is separable from the remainder of the law), as that which applies to a law in its entirety [when the reason therefor disappears]. For the same argument holds [in the two cases]. In fact, that law, which seems to be a single unit, is actually multiple, and thus it is that one of these various laws ceases to exist without a corresponding cessation of the others. If, on the other hand, a law should embrace many factors in such a way that they were mutually inseparable and that there existed a practically indivisible

obligation, since the good involved [depends on] the whole cause, and evil would result from defect [in the observance of any member[1]—if, I say, the law were of this sort]—it would be necessary to consider carefully the question of whether or not a whole law becomes unjust or useless, or more harmful than beneficial, on account of a defect in one of its parts. If this is the case,[2] the law as a whole will cease to
673 exist. But if, despite that defect, the law remains just, and more beneficial than harmful, it will not cease *ipso facto* before being repealed.

We must also take into consideration the fact that if a law is to cease in an absolute sense, it is necessary that the reason for the law cease in a general sense, permanently. For if that reason seems to lapse thus for a limited time only, then the result will be a suspension of the obligation imposed by the law, rather than the extinction of the law itself; because the latter becomes useless or unjust, not absolutely, but merely for that temporary period. Accordingly, a limited cause [of cessation] produces a limited effect, so that the law is suspended, but not extinguished.

When is a law said to be suspended, but not abolished?

[1] [Suárez is here applying rather loosely the principle that regulates human actions. The morality of an act depends on object, motive, and circumstances. That an act may be good, all three determinants must be not opposed to rectitude. If any one of the three is evil, the act is evil. The principle is enunciated, *Bonum ex integra causa, malum ex quocumque defectu*.—Reviser.]

[2] [A free translation of *& tunc*.—Tr.]