MORAL THEOLOGY

A Complete Course

Based on St. Thomas Aquinas and the Best Modern Authorities

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who gathered alms in advance that they might have the means to bestow assistance during a famine which had been predicted (Acts, xi. 27 sqq.).

1686. False Prudence and Avarice.—The sins of false prudence are caused chiefly by avarice. (a) They are sins in which reason plays a great part, though it is not put to a good use; and hence they do not naturally spring from carnal vices or cowardice, which obscure reason. Avarice, on the contrary, reasons much on how it may get and keep; it is shrewd, cunning, deliberate, foresighted. (b) They are sins that have recourse to stealth and secrecy, and thus are unlike pride, vainglory, and anger, which incline to display and openness. But avarice puts utility above considerations of glory or revenge, and prefers to be without fame or to bear with slights rather than lose profits.

1687. Commandments of Prudence.—Prudence is not expressly commanded in the Decalogue, but there are precepts concerning this virtue in other parts of Scripture.

(a) Prudence is not enjoined in the Decalogue, because the ten commandments are concerned with those ends of virtue that are manifest to all, whereas prudence is about the means to practise virtue.

(b) Prudence is commanded in many places of Scripture: "Get wisdom and with all thy possession purchase prudence" (Prov., iv. 7); "Walk in the ways of prudence" (*ibid.*, ix. 6); "Purchase prudence, for it is more precious than silver" (*ibid.*, xvi. 16); "Be ye prudent as serpents" (Matt., x. 16); "Speak the things that become sound doctrine, that the aged men be sober, chaste, prudent" (Tit., ii. 1, 2); "Be prudent and watch in prayers" (I Peter, iv. 7).

Art. 2: THE VIRTUE OF JUSTICE

(*Summa Theologica*, II-II, qq. 57-60.)

1688. After prudence follows justice. This virtue regulates human actions and renders to others their due, and so it has preëminence over fortitude and temperance, which govern the passions and make man virtuous as regards his own acts only

and not as regards his neighbor. The logical order, then, is that justice should precede fortitude and temperance.

1689. Nature of Justice.—In God justice is an attribute in virtue of which He so treats His creatures that they can have no well-founded complaint against Him: "His own justice supported Him. He put on justice as a breastplate" (Is., lix. 16, 17). In man it is goodness towards God or towards neighbors; and it is called in Scripture by various names, such as "justice," "equity," "truth," "righteousness."

(a) In a wide sense, justice signifies the general virtue of holiness, or the collection of all the virtues, as when Our Lord says: "Blessed are they that hunger and thirst after justice (*i.e.*, holiness)" (Matt., v. 6). Holiness, as a supernatural life communicated to the soul, is also called justice or justification: "The justice of God by faith of Jesus Christ, unto all and upon all them that believe in Him" (Rom., iii. 22).

(b) In a strict sense, it signifies the special moral virtue that consists in a firm purpose of the will to give to everyone his due or right: "Love justice, you that are judges of the earth" (Wis., i. 1); "If in every deed you speak justice" (Ps. lvii. 2). In its strict sense the word "justice" is hereafter used.

1690. Definition of Right.—Right signifies originally that which follows a straight course or does not deviate from the true standard, as in the expressions "right ahead," "to be in the right." But in moral matters right has the derived meaning of that which is good, proper, suitable; and in general it is of two kinds, *objective* and *subjective*, the former being the foundation of the latter.

(a) Objective right is that which is prescribed by law, or it is the law itself as the rule and standard of what ought to be done, especially in the relations of men towards one another. In this sense there is a twofold right, *natural* and *positive*, according as reason itself or free will imposes a law (see 286, 296).

(b) Subjective right is that relationship introduced between men by reason of the laws governing their conduct one to another, which gives to one an authority to exercise certain capa-

bilities (*active* right, right properly so-called), and imposes on another the necessity of respecting that authority (*passive* right, duty).

1691. Right properly so called is defined as the moral power of doing or possessing something.

(a) It is a *moral power,* that is, a power created by the moral law giving one a true title and forbidding others to interfere with its enjoyment and use. It is not a physical power, for might does not make right; on the contrary, he who has moral power is sometimes hindered from exercising it by another who has physical power. Nor is it a mere legal power, or capacity to act validly and within human law, but an ethical power that enables one to act licitly before God and conscience.

(b) It is a *power to do* (*e.g.,* to labor) *or to have* (*e.g.,* to own land). The former includes also the moral power to forbear action (*e.g.,* to rest on Sunday), to require that another act (*e.g.,* pay what he owes me), or that he forbear action (*e.g.,* keep off my property); while the latter includes also the power to acquire, to use, to transfer, etc.

1692. Divisions of Right.—(a) By reason of its source, or of the law from which it springs, a right is either *natural* (*e.g.,* the right to life, liberty, pursuit of happiness), *positive-divine* (*e.g.,* the right to receive the Sacraments), *positive-human* (*e.g.,* the right of parishioners that Mass be said for them by their pastor, the right of citizens to vote and to be voted for).

(b) By reason of its term, or of the power which it confers, a right is strict (legal) or non-strict (moral). One has a strict right when something is due one, because it is one's own by a proper and exclusive title (*e.g.,* the right to life and property). One has a non-strict right when something is due one, only because it is something common that is to be distributed and one is a deserving member of the community (*e.g.,* the right to receive an appointment from the government), or because virtue (*e.g.,* the right to receive gratitude for benefits shown) or the perfection of virtue (*e.g.,* the right to be treated with liberality or affability or friendship by others) requires it.

1693. Natural rights are subdivided as follows:

(a) in respect of their object, some rights are *absolute,* as being based on nature alone (*e.g.,* the right of a child to support from its parent arises from natural origin); or they are *relative,* as being based on nature in its relation to concrete and contingent facts (*e.g.,* the right of an owner to private possession of his land arises from the nature of land, which was made to serve man, and from the contingent fact that it cannot serve man as a rule without private ownership);

(b) in respect of their source, some rights are *innate,* that is, they are had from birth by the very fact of human nature (*e.g.,* the right of life in the newborn child); others are *acquired,* that is, obtained in course of time through some contingent fact. Thus, titles to goods of fortune which the owner is the first to possess (original titles) are obtained by occupation and accession; titles to goods obtained from others (derivative titles) are obtained through prescription, inheritance, contract;

(c) in respect to their firmness, some rights are *alienable,* that is, they are such as may be renounced or superseded lawfully, since they are not obligatory (*e.g.,* the right to marry, the right to drink alcohol); while others are *inalienable,* that is, not subject to renunciation or deprivation, as being obligatory (*e.g.,* the right to repel temptation, the right to serve God).

1694. Signs by which Strict and Non-Strict Rights May Be Distinguished.—(a) That to which one has a strict right belongs to one as one's own, and hence it must be determinate or determinable. The right of a beggar to receive some assistance from someone is not a strict right, since it cannot be urged against any particular thing or any individual person; but the right of a creditor is a strict right, since it can be urged against the debtor for a definite amount.

(b) That to which one has a strict right is owed in justice, and hence it may be enforced by legal means, or in case of need by physical force. The right of a child not to be slighted in the distribution of presents made by its parents, the right of a person who has had a falling out with another that the latter shall accept advances for a reconciliation, and the right of a

benefactor that the beneficiaries show signs of gratitude, are not strict rights, because they cannot be enforced in courts of justice; but the right of a laborer against his employer is a strict right, since it can be vindicated by legal means. It should be noted that a strict right is one that is granted as a proper, exclusive and enforceable power by any law, whether natural or positive, and hence the fact that human law will not vindicate a right (*e.g.*, the right arising from a contract naturally good, but legally not defensible, the right of a parent to his child's respect) does not prove that the right is not strict.

1695. A strict right to have or to own is either *in re* or *ad rem.* (a) A right *in re* (real or complete right) is the right to that which one already lawfully has as one's own (*e.g.*, the right that Caius has to the wages paid him by Balbus). (b) A right *ad rem* (personal or inchoate right) is the right to that which one is entitled to obtain as one's own (*e.g.*, the right that Caius has to receive the wages promised him by Balbus).

1696. Legal Enforcement of Strict Rights.—(a) The right *in re* authorizes recourse to a real action (*actio in rem*), that is, to a suit against the thing itself, no matter where it be or by whom it be held, as when one sues to recover one's property through the ejectment of a wrongful possessor; for the thing is immediately and juridically bound to him who has the right, as being his own.

(b) The right *ad rem* enables one to enforce one's claim by a personal action (*actio in personam*), that is, to bring a suit against a definite person on whom one has a claim by reason of contract, domestic relationship, fiduciary position, etc., as when one sues for recovery on account of the non-fulfillment of the conditions of a compact.

1697. The right *in re* to property is either *perfect* or *imperfect.*

(a) A perfect right (right of full dominion) is that which enables one to exercise all the prerogatives of ownership, that is, to dispose at will of an object (*e.g.*, to sell, lend, give away, etc.), to use it (*e.g.*, to occupy a house, to make alterations in it, to tear it down, etc.), and to exclude others (*e.g.*, to put a fence about one's property to exclude the public).

(b) An imperfect right (right of partial dominion) is had when one is restricted as to the right of the disposition of one's goods, for example, when one is forbidden to sell; or when one has the right of disposition without the right of use, for example, when one is forbidden on account of the vows of religion to use property one owns (radical dominion); or when one has the right of use without the right of disposition, for example, when one is forbidden to make permanent alterations in a house one occupies as tenant (indirect or useful dominion); or when one has the other rights of ownership but lacks the right of exclusion, for example, when one may not exclude a neighbor's flock from grazing in one's pasture (ownership subject to servitude).

1698. The Subject of Justice, or the Faculty of the Soul in Which It Exists.—(a) Justice is not in the intellect, for we are not called just because we know a thing rightly, but because we act rightly; (b) nor is it in the sensitive appetite, since a sense faculty does not apprehend the relations between rights and duties; (c) hence, justice is in the rational appetite or will.

1699. The Objects or Subject-Matter of Justice.—(a) The material object of justice (*i.e.*, all those things with which it deals) is remotely the external things which are the objects of exchange and distribution among men, and proximately the actions by which they are exchanged or distributed.

(b) The formal object of justice (*i.e.*, that which it principally intends in dealing with its material object) is that the rights of others, or their inviolable moral power of doing, having or acquiring, may be respected. Justice thus differs from charity. For charity is owed also to self, justice only to the neighbor; charity considers the neighbor as he is one with self and gives him what belongs to self, while justice considers the neighbor as he is distinct from self and gives him what belongs to him.

1700. Since justice is shown not to self but to another, it is not so fully realized when two persons are in some sense one.

(a) Parent and child are especially one, since the child is

from the parent and a part of the parent, and hence the natural obligations that spring from their special relationship pertain to the virtue of filial and paternal piety, which is not strictly justice, but obliges more strictly on account of the greater rights involved. But obligations that spring from relationships that are common (*e.g.*, from a contract between a father and his son) pertain to strict justice; for in these relationships they treat with one another, not as father and son, but as man and man. Employer and employee may also be considered as one, inasmuch as the latter is the agent or instrument of the former, and the same conclusions may therefore be applied to them.

(b) Husband and wife are less perfectly one than parent and child and than master and servant, for neither is descended from the other, and neither is servant to the other. But since they form one conjugal society and the husband is head of the wife, they owe one another stricter obligations than if they were strangers to one another, although those obligations partake less rigorously of the character of justice.

1701. Division of Justice.—Justice is divided according to the rights it respects into *legal* and *particular*. (a) Legal justice (observance of law) is that which is owed by the individual, whether he be ruler or subordinate, to the community of which he forms a part, or to the law and the *common good* of the entire body. (b) Particular justice (fairness) is that which is owed to the *private good* of an individual.

1702. Is legal justice a distinct and separate virtue, or only a general condition found in all virtues?

(a) Practically speaking, legal justice is a general virtue, inasmuch as its desire of promoting the common good will impel a man to observe all the laws and to practise other virtues than justice, such as fortitude and temperance. The law commands us to perform the actions of the courageous man, of the temperate man, of the gentle man, and hence, as Aristotle says (*Ethics*, lib. V, cap. 2), legal justice is often regarded as the supreme virtue, the summary of all virtue, more glorious than the star of eve or dawn.

(b) Essentially, it is a distinct virtue, for it alone moves a

man primarily and directly to respect the rights of the common good as being that greater whole of which the individual is but a part. It differs even from patriotism and filial piety (for these are moved by one's own debt to the source of one's life) and from obedience (for legal justice seeks the welfare of the community even in things that are not commanded).

1703. Comparison of Legal and Particular Justice.—(a) Particular justice partakes more of the nature of justice, for there is a greater distinction or separation between the party who has an obligation and the party who has a right, when the latter is an individual, than when the latter is a whole of which the former is a part. A distinctive characteristic of justice, as said just above, is that it takes account of the independence or "otherness" of those between whom it exists, so much so that only in a metaphorical sense can we speak of justice when only one person and nature is in question (*e.g.*, justice between man and his soul, body, powers).

(b) Legal justice is a more perfect virtue than particular justice or filial piety, since it seeks a higher object (that is, the common good as such) and is more voluntary.

1704. Is the right which the community has to receive from the goods of its members one of legal or one of particular justice?

(a) The right of eminent domain (*i.e.*, the right which the State has over the goods of private persons when they are necessary for the common good) is a right of legal justice, for even without compulsion the citizen should be willing to contribute what is necessary for the community of which he is part.

(b) The right of the members of a government to receive compensation for their services is a right of particular justice, for there is an implicit contract between the rulers and the State that the former will serve the interests of the latter and that the later will pay the expenses of the former, as if both parties were private individuals (see **1708**).

1705. Distributive and Commutative Justice.—On account of the inequality or equality of the individuals between whom it exists, particular justice is subdivided into distributive and commutative, which are distinct species of justice.

(a) That the distinction is well-founded is proved by the fact that this justice—that is, relations towards particular persons—is either the relation of whole to part or of part to part. The former relations are governed by distributive justice, which is defined as the virtue that inclines the ruler, as the representative of the community, to portion out the public goods (*e.g.*, money, honors, offices) and burdens (*e.g.*, taxes), not according to favoritism or personal likes, but according to merits and abilities; the latter relations are governed by commutative justice, which is defined as the virtue that inclines the individual to pay to other individuals what is their due, whether the rights be personal (*e.g.*, the right to reputation) or real (*e.g.*, the right to wages or price). Commutative justice receives its name from the fact that it is oftenest called for in *commutations* (*i.e.*, in exchanges, such as buying and selling).

(b) That the distinction of particular justice into distributive and commutative is specific appears from the fact that the main characteristics of justice (*viz.*, debt owed another and equality between payment and debt) are found in each of these kinds of justice in a way proper to itself. There is a debt in commutative justice when a thing is owed another because he has an individual right to it and it is already under his dominion; there is a debt of distributive justice, when a thing is owed another because he has a community interest in it and a right that it be entrusted to him in view of his merits or abilities.

1706. Thus, the equality observed in commutative justice is arithmetical, or of quantity (*e.g.*, if a horse is worth $100, it is just to pay $100 for it); the equality observed in distributive justice is geometrical, or of proportion (*e.g.*, if one who had an average of 90% in a civil service examination receives a position that pays $90, it is just to give another whose average was 80% a position that pays $80). An indication of the specific difference between distributive and commutative justice is that the same individual may be just in private matters and unjust in public matters. Example: Titus, an office-holder, pays his personal debts faithfully, but he appoints only his friends, whether they be worthy or unworthy, to important honors.

1707. Corrective Justice.—Corrective (*i.e.*, vindicative or punitive) justice is a virtue inclining a public person or a superior, such as a ruler, magistrate, or judge, to inflict on evil-doers penalties adequate to their faults. It is not to be confused with just vengeance or retaliation, which is the virtue that moderates in a private person the desire for punishment of an offense against self, and which is not justice strictly speaking, either commutative or distributive, but only a potential part of justice (as stated below in Article 6).

(a) Thus, corrective justice is elicited by commutative justice, for a punishment is inflicted by a judge in order that there may be equality between the satisfaction made by the evil-doer and the debt owed to another on account of the offense. It aims at redressing an unfairness by taking away so much from the offender and adding so much to the party offended, that both will stand in the same position as before. If the person punished accepts the penalty in the same spirit, he also practises commutative justice.

(b) Corrective justice may be commanded by legal justice, for the judge may intend the punishment for the sake of the common good, as well as of the individual who has been injured.

1708. Different Species of Justice in One Act.—Different species of justice may be present in one and the same act. (a) The same act may be elicited by one kind of justice and commanded by another kind of justice (see **56 sqq.**), as in the examples given just above of vindicative justice. (b) The same act may be elicited by two kinds of justice, as when a debt is owed both in virtue of commutative and of distributive justice. Some think an example of this is found in the payment of government employees, for payment is made by distribution from common funds (distributive justice), and it is owed for services contracted for (commutative justice). But it seems more correct to say that wages for services given the community are due in commutative justice rather than in distributive justice; for in the former justice equality is between what is given and what is received, in the latter between the proportion received by one and the proportion received by another, and government salaries

should be paid on the basis of value received in service (see 1704, 1755, 1757).

1709. The Object of Justice.—The function of a moral virtue is to direct according to moderation all those things that are subject to the free will of man, and can be regulated by reason, namely, the actions of man and the external things of which he makes use.

(a) The actions of man can be understood either in a wide sense, so as to include both those internal affections that are accompanied by notable bodily changes (the passions, such as anger, sadness), and those actions that do not so strongly act upon the body (operations). Every virtue has for its object action in the wide sense, for virtue is defined as a habit that makes the agent good and his action good; but not every virtue has action in the strict sense for its object, since the virtues of fortitude and temperance regulate, not the operations, but the passions.

(b) Operations are of two kinds, namely, internal, by which men do not communicate with one another (such as thoughts and desires), and external, by which men communicate with one another. These latter either have to do with external things (such as land, houses, money, produce, etc.), and we then have such operations as loan, sale, lease and other contracts, or no external thing is introduced, and we have such operations as honor, praise, calumny, etc. All the moral virtues have to do with the internal operation of choice, for virtue is a good election of the will; but there is this difference between justice and the other moral virtues, that fortitude and temperance merely dispose the intellectual appetite for a good choice by the regulation they give to the sensitive appetite, while justice has for its proper act to choose well the means for moderating external operations. As for external operations themselves, these are the objects of justice, but not of the other two moral virtues.

1710. The purpose of the other moral virtues is to regulate man *in himself;* for the passions that are moderated by fortitude and temperance (such as fear and desire) affect primarily their subject and not other persons. The purpose of justice, on the

contrary, is to regulate man *in his relations to others;* for external operations and things directly affect others, either helping or injuring them. But both the passions and external operations have effects and consequent ends that give them new relationships, and hence we may distinguish between the primary object to which a virtue tends directly, and the secondary object to which it tends only indirectly on account of the effects of the primary object.

(a) The primary object of justice is external operations and external things; the primary object of fortitude and temperance is the passions, for justice seeks the good of others, whereas fortitude and temperance seek the good of the agent.

(b) The secondary object of justice is the passions, whenever its principal object cannot be easily regulated without regulation of the passions. Thus, when lust urges to the injustice of adultery or avarice to the injustice of denial of payment due, justice calls on the virtue of temperance or liberality, as the case may be, to moderate the passion opposed to it. Similarly, the secondary object of fortitude and temperance may be external operations, whenever the effect on the subject of the principal object (*i.e.*, the passions) has reactions in reference to other persons. Thus, if fear is moderated by fortitude and desire by temperance, these virtues have external consequences, such as combat against evil, abstinence from food or drink that belongs to others; but if anger is immoderate, it may lead to unjust attack, and if desire is immoderate, it may lead to the injustice of theft of food or drink.

1711. The Golden Mean of Virtue.—The golden mean of virtue is not the same in all the moral virtues (see 154).

(a) Thus, fortitude and temperance regulate the passions for the benefit of their subject, that he may avoid in them the extremes of excess and defect. Hence, the middle way they follow must be determined by reason from a consideration of the subject and his circumstances (*the mean of reason*), and so will vary with different subjects and with individual cases. Thus, in the matter of temperance it is an old saying that what is one man's meat is another man's poison. It would be absurd

to say, therefore, that there is only one middle way of temperance, and that all persons must conform to the same rule as to quality and quantity of food and the time and manner of eating and drinking. On the contrary, the rule here must suit the subject, and that will be moderate which agrees with the health, appetite, duties, manner of life, etc., of the person.

(b) Justice, on the contrary, regulates external operations for the benefit, not of the subject, but of other persons whom they affect, in order that the subject in dealing with others may avoid inequality, which means excess on one side and defect on the other side. Hence, the middle way of justice is discovered by reason from a consideration of external things or acts owed to other persons (*the mean of reason and of the thing*), and so it does not vary with the circumstances of the subject. If the real value of a horse is $100—it makes no difference whether the seller be a prince or a peasant, whether the buyer be rich or poor—the just payment will be $100. Excess will be unfair to the buyer, deficiency to the seller.

1712. Though the mean of justice is determined, not by reference to the person who acts, but by reference to some external thing, it may be that this external thing cannot be evaluated without consideration of the person to whom justice is owed.

(a) In distributive justice this is always the case, for the mean of the thing in distributions consists in equality between relative proportions of distributions and relative merits or abilities of persons to whom distributions are made. Hence, distributive justice must consider the conditions of the person to whom it is owed as compared with the conditions of other persons, in order to observe equality by giving proper shares to all.

(b) In commutative justice, this is sometimes the case, namely, when the condition of a person who has been offended (*e.g.*, that he is a ruler) increases the debt of satisfaction that is owed him; for the mean of the thing in commutative justice is equality between the payment and the debt.

1713. Is observance of the mean of the thing sufficient to make an act just, no matter what may be the dispositions of the subject?

(a) If there is question of material justice, the reply is in the affirmative, for a virtue is said to be exercised materially when its mean is observed. The mean of fortitude and temperance cannot be observed without reference to the condition of the subject (*e.g.*, he is not brave who undertakes a difficult task that is beyond his strength); but the same is not true of justice (*e.g.*, he is just who pays the last penny of a debt though the payment was beyond his means and required a sacrifice).

(b) If there is question of formal justice, the reply is in the negative, for a virtue is said to be exercised formally (*i.e.*, from a virtuous habit) when the motive of the subject and the circumstances are agreeable to reason. Thus, he who performs deeds of valor purely out of vainglory exercises fortitude materially, not formally; and likewise he who pays his debts faithfully, merely in order to avoid the penalties of the law, exercises justice materially but not formally.

1714. Comparison of Justice and the Other Virtues.—The differences between particular justice and the other moral virtues are, therefore, the following:

(a) justice is for the good of another, the other virtues for the good of the agent himself;

(b) justice deals with external actions and things, the others with the passions;

(c) justice follows a mean of the thing, the others a mean of reason;

(d) justice is had materially without any suitability to the circumstances of the agent, not so the other virtues.

1715. While justice is inferior to the theological and intellectual virtues (see **156, 157, 1028**), it is superior to most of the moral virtues that perfect the sensitive or the intellectual appetite. The superiority of justice to fortitude, temperance, and the annexed virtues, such as mercy (see **1207**), is seen from the following reasons.

(a) Legal justice is greater than those other virtues, for, while they pursue the private good of their subject, it seeks the public good. "Great is the splendor of justice," says St. Ambrose (*De Officiis*, lib. I, cap. 28), "which is born for others

rather than for itself, and which aids society and the community. It holds high position, that all may be subject to its judgment, that it may bestow assistance, not refuse responsibility, take upon itself the dangers of others." Moreover, since the law commands us to perform the actions of the courageous man, of the gentle man and of the temperate man, legal justice, as Aristotle says (*Ethics,* lib. V, cap. 2), is often regarded as the supreme virtue, the summary of all the virtues, more glorious than the star of eve or dawn.

(b) Private justice is also greater than those other virtues, since it perfects a nobler power of the soul (*viz.,* the will), and seeks the good, not only of its own possessor, but also of others. Justice too is impartial or blind as between persons, demanding satisfaction, even though a debtor be a monarch, and granting redress, even though an injured party be the humblest or most undeserving of mankind. An indication that justice is nobler than regulation of the passions is seen by Aristotle (*Ethics,* lib. V, cap. 4) in the fact that it is more difficult and rarer: "Many people are capable of exhibiting virtue at home, but incapable of exhibiting it in relation to their neighbor. Accordingly, there seems to be good sense in the saying of Bias, that 'office will reveal a man,' for one who is in office is at once brought into relation and association with others. As then the worst of men is he who exhibits his depravity both in his own life and in relation to his friends, the best of men is he who exhibits his virtue, not in his own life only, but in relation to others; for this is a difficult task."

1716. Two virtues of the sensitive appetite that appear more excellent than justice are courage and liberality, but in reality justice is nobler than they.

(a) Thus, courage seems to be better, because it is more essential to the common good in time of great danger; but in reality justice is more useful to the community, for at all times, whether in peace or in war, it is justice that preserves unity and contentment among the people and promotes courage and devotion to the public welfare.

(b) Liberality seems to be better than justice, because it gives more than is due, while justice gives only what is due. But, on the other hand, justice is of more general advantage, since of necessity liberality must be exceptional and shown only to comparatively few, while justice must be exercised continually and must be shown to all; justice is also more necessary, for one must be just in order to be liberal, and not vice versa, since no one is praised as generous unless he first pays the debts of justice; finally, although liberality gives more than is due and may thus be a greater private benefit, justice without liberality is more serviceable to the common interest than liberality without justice.

1717. Two virtues of the will which some authorities hold to be more important than justice are the virtues of religion and mercy.

(a) The virtue of religion has a nobler object, since it regulates the worship owed to God, while justice regulates the things owed to man; and its obligation is stricter even than that of legal justice.

(b) The virtue of mercy, which is a rational inclination of the will to relieve the suffering or misfortune of others, is held to be greater than justice, because to relieve the distress of the community or of an individual indicates greater perfection than to pay merely what is due to another.

1718. Virtues may be compared, not only from the viewpoint of the objective excellence which they have from their own natures (whereby they are unequal and rank according to the greatness of their objects), but also from the viewpoint of the subjective participation of them in the souls of their possessors.

(a) In a certain sense, all the virtues are equal in their possessor, since all of them alike are related to charity as their perfection (see **1118**), and all of them increase or diminish in like proportions with the growth or decline of grace, which is their root (see **745**).

(b) In a certain sense, too, the rank of the virtues may depart from the order of the dignity of their objects. For the facility and promptitude of exercise of an infused virtue does not depend formally on the infused virtue itself, but on

subjective conditions, such as natural inclination or custom, or on a special gift of God (see **135, 136**); and hence it may happen that a saint shows greater excellence and enjoys greater renown in an inferior than in a superior virtue. Thus, Abraham was singular in faith, Moses in meekness, Josue in bravery, David in fervor and devotion (Ecclus., xlv–xlviii), and St. Joseph is praised as "a just man" (Matt., i. 19).

1719. Injustice.—Just as the word "justice" is taken in a wide sense for holiness or the collection of all the virtues, and in a strict sense for a special cardinal virtue, so likewise the word "injustice" is taken widely as a synonym for any transgression, iniquity, or sin ("He sendeth rain upon the just and the unjust," Matt., v. 45), but strictly for violation of the special virtue of justice ("Hear what the unjust judge saith," Luke, xviii. 6). It is of this latter injustice that we now speak.

1720. Species of Injustice.—Injustice is of two kinds. (a) Legal injustice is a special vice that moves one to despise the common good or to act against it intentionally. Thus, if one steals or overeats merely to gratify a passion for money or for food, there is a certain condition of legal injustice, inasmuch as one violates a law; but if one does these things also or solely to injure the common good, there is a special sin of legal injustice, to be declared in confession. (b) Particular injustice is a special vice against the private good of others that moves one to seek for more than is one's share, or to desire more of the benefits and less of the burdens than equality appoints. Examples: To sell above the just price or buy below the just price (commutative injustice); to show favoritism in the distribution of public offices or burdens, as when a person in authority showers public benefits on his unworthy relatives or friends, and overburdens with taxes those who are not his friends (distributive injustice).

1721. The Theological Species of Legal and Particular Injustice.—(a) From its nature injustice is a mortal sin, for it is an attack on a very great good, namely, the peace and security of society; the very foundations of orderly community life are shaken when injustice is done either to common or to private rights. Moreover, acts of injustice (unlike sins of mere passion), if the matter is serious, offend against charity, the life of the soul; for charity "envieth not, dealeth not perversely" (I Cor., xiii. 4); while injustice injures the neighbor and leads to hatred, quarrels, and separations. Hence, the Apostle says of injustice: "Do not err: neither adulterers, nor thieves, nor covetous, nor extortioners, shall possess the kingdom of God" (I Cor., vi. 10); and Our Lord, speaking of justice, says: "If you would enter into life, keep the commandments" (Matt., xix. 18).

(b) From want of sufficient advertence in the subject (see **173 sqq.**), or from smallness of matter in the object (see **172**), a sin of injustice may be only venial. Thus, if one takes money that belongs to another on account of vincible ignorance due to slight negligence, or if one takes only a small amount that does no serious injury, the injustice is venial.

1722. Rule for Determining the Gravity of Sins of Injustice.—The rule for judging whether the matter of a sin of injustice is great or small, is the quantity of injury it inflicts, or the degree of reasonable unwillingness of the offended person to suffer the injustice; for sins against the neighbor are culpable precisely on account of and in proportion to the harm they do to others. Hence, since every injustice offends either the public or private good, or both, the following acts of injustice are gravely sinful:

(a) mortal sin is committted when injury is done to a private right in a matter of such great moment that the person offended is reasonably and gravely unwilling to sanction the injustice (*e.g.*, cases of calumny, adultery, incendiarism). But if the injury itself is small and the party offended is nevertheless gravely unwilling to suffer it, only venial sin is committed against justice, but there may be a mortal sin done against charity, as when one steals a worthless trinket, knowing that the owner is so unreasonably attached to it that the loss will almost break his heart or will provoke in him violent anger, profanity, etc.;

(b) mortal sin is also committed when injury is done to a public right in a matter so important that the community is with good reason gravely averse to the commission of the injury. This happens when the common good is directly attacked, as

when a citizen rebels against lawful government, or when the peace and security of the community is imperilled because of injury done to a private person, as when one steals a sum that is considerable from a wealthy person, even though the latter will not seriously feel the loss. Hence, an injury to a private person that does not seriously harm him may seriously harm the community, and be gravely sinful on account of the disastrous consequences to social order that would follow if such an injury were not gravely forbidden.

1723. Moral Species of Legal and of Particular Injustice.—These are distinguished according to the main classes of objects or rights that are injured or offended (see 199). Hence, there are the following four kinds of injustice:

(a) injuries to spiritual rights or goods, whether natural or supernatural (*e.g.*, superstition, idolatry, simony);

(b) injuries to internal goods of soul (*e.g.*, lies) or of body (*e.g.*, murder, mutilation);

(c) injuries to external goods, whether incorporeal (*e.g.*, calumny) or corporeal (*e.g.*, theft, fraud).

1724. Accidental Forms of Injustice.—There are also many accidental forms of injustice, that is, variations that do not of themselves change the moral species (see 200).

(a) Thus, as to its manner, injustice is done either positively, by action (*e.g.*, by stealing from an employer), or negatively, by omission (*e.g.*, by allowing another to steal from one's employer). In both cases the same kind of injustice is committed; for example, he who permits theft is just as much a thief as if he had stolen himself.

(b) As to its consequences for the injured person, injustice is either merely injurious or injurious and damaging, according as a strict right is violated without loss (*e.g.*, adultery from which no child is born), or with loss to the injured party (*e.g.*, adultery from which a child is born). The character of the sin is the same in both cases, but in the latter case restitution is due (cfr. 1199, 1200). The loss (*damnum*) that results from violation of a strict right (*injuria*) may be in internal goods (such as salvation, life, health, sanity of mind) or in external goods (such as reputation, money, property).

(c) As to its consequences for the party who does the injury, injustice is either profitable to him (as in the case of unjust taking) or unprofitable (as in the case of unjust damage). The moral species is the same in either case, for the fact that the unjust person gains by his injustice does not make the injury greater, and the fact that he does not gain does not make the injury less.

1725. Injury is not suffered by one who knows and wills an act that is done contrary to his right (Rule 27 of the *Decretals*), for such a one cedes his right. Hence, if a man looks out with a smile while neighborhood boys take apples from his orchard and the latter take this as permission, no injustice, material or formal, is done. But the legal maxim needs interpretation, for the following two conditions are necessary in order that there be a surrender of right:

(a) the party who consents must be able to surrender his right, since, if he is not able to do so, his cession is invalid. Hence, one who kills a person asking for death is unjust to God and to the State; one who commits adultery with a woman whose husband gives permission is unjust to the marriage state and the lawful children; one who strikes a cleric who waived his privilege of canon (*privilegium canonis*) is unjust to the clerical state; one who takes property from a ward with the latter's consent, is unjust to the estate, since the ward has no authority to alienate it. Many of the martyrs, it is true, wished to lose their lives at the hands of persecutors, but this meant only that they consented to the will of God, not that they consented to their own murder by the tyrants, for they had not the right to give the latter dominion over their lives;

(b) the party who consents must really will to yield his right, and hence, if there is error, fraud, fear or violence, the cession is of no effect. Thus, a buyer who through ignorance takes a defective article or pays an exorbitant price, a workman who through necessity accepts less than a living wage, or a man who

yields his purse to a burglar at the point of the revolver, does not surrender his rights, since true consent is wanting. Similarly, when one follows the counsel of Christ not to resist spoliation (Matt., v. 40) or when a saintly person rejoices over injury done him (Heb., x. 34), the intention is not to surrender rights to the unjust, nor to approve their conduct, but to practise heroic virtue by patience, humility, forgiveness, etc.

1726. Internal Injustice.—Does internal injustice (*i.e.*, the intention of injuring another) make an external action unjust?

(a) If the intention makes the external act to be a violation of a strict right, it also makes the external act unjust. Thus, to take a book from another's room is of itself an indifferent action, for there may be no violation of right (*e.g.*, when the intention is to borrow), or there may be such violation (*e.g.*, when the intention is to steal).

(b) If the intention does not make the external act a violation of strict right, even though that act be harmful to the other party, it does not make the external act unjust. Hence, if the other party has no strict right against the external act (*e.g.*, Titus sees the house of Balbus on fire, but he is not hired to take care of Balbus' property, and he gives no alarm in order that the house may burn down) or if the agent has a strict right to perform the external act (*e.g.*, Claudius, a judge, condemns Sempronius, according to law, but his chief intention is the harm he will inflict on the latter), the unjust intention does not make the external act unjust. But in these cases sin, and even grave sin, is committed against charity.

1727. Judgment.—Judgment, or the right determination of what is just and due to others, is the proper act of the virtue of justice, and hence Aristotle (*Ethics*, lib. V, cap. 7) declares that people take their disputes to a judge as to justice personified. Judgment is either public or private. (a) Public judgment is passed by a judge who has the authority to compel disputing parties to abide by his decisions. (b) Private judgment is passed by individuals without public authority concerning the morals or conduct of others.

1728. Since judgment is an act of virtue, it is lawful, and

we find that both in the Old and the New Testament men have been appointed with authority to judge others. Thus, God ordered that judges be chosen in all the cities of Israel (Deut., xvi. 18); St. Paul declares that the judge is the minister of God (Rom., xiii. 4), and from Apostolic times tribunals have been set up in the Church. But certain conditions are required for moral goodness, both in those who ask for judgment and in those who pass judgment.

(a) Thus, those who seek judgment must be actuated by proper motives and must conduct themselves in a virtuous manner. Our Lord in Matt., v, teaches that it is better to suffer temporal loss rather than to contend in judgment from a motive of revenge to the prejudice of one's spiritual good, and St. Paul condemns the Corinthians because they gave scandal by reason of their lawsuits before heathen tribunals and had recourse to frauds and injuries in their litigation (I Cor., vi. 1 sqq.).

(b) Those who pass judgment must have a good intention, must proceed according to law, and must decide according to prudence. If the first condition is wanting, judgment is unjust or otherwise sinful, according as the judge chooses against the right or is merely prompted by some human motive (such as hatred, anger, vainglory, avarice); if the second condition is lacking, judgment, if public, is usurped or illegal; if the third condition is not had, judgment is rash. But it should be noted that the Church has condemned the teaching of Wicliff that office and authority are forfeited by sinners (Denzinger, 595, 597).

1729. First Condition of Righteous Judgment.—The first condition of righteous judgment is that the purpose of the judge be just and sincere. But is it possible for judgment to be righteous if the judge is a bad man—that is, if he is in the state of mortal sin?

(a) If the sin of the judge is public, and judgment is given against a sin of the same character (*e.g.*, if a notorious thief passes sentence on another thief), serious scandal is given; for justice is discredited and an occasion offered for criticism of authority and for lawlessness. But if the sin is not of the same character as the one condemned (*e.g.*, if a notorious thief

passes sentence on a murderer), the scandal is not grave in so far as justice is concerned.

(b) If the sin is not public, it is clear that no scandal is given; and if the judge is moved by the duty of his office and by zeal for justice to condemn even the same kind of sin of which he himself is guilty, he commits no sin whatsoever in so doing (cfr. **1280**). But he is guilty of hypocrisy if he uses the opportunity to pretend a personal righteousness which he does not possess. It is this that Our Lord reprobated in the Pharisees, who, although guilty of many and grave crimes, wished to put to death an adulteress in order that they themselves might thus shine as immaculate. The words, "Let him that is without sin among you cast the first stone" (John, viii. 7), condemn hypocrisy in judges, though they do not require that a judge be free from all sin. But though sinners may act against sin as lawmakers, prosecutors, judges, jurymen, police, etc., they should be admonished by their office to reform themselves according to the words of St. Paul: "In judging another, thou condemnest thyself, for thou dost the same things which thou judgest" (Rom., ii. 1).

1730. Second Condition.—The second condition of righteous judgment is legality, if there is question of judgment in court.

(a) Thus, the judge must have public authority, for, just as laws cannot be made except by public authority, neither can they be interpreted except by the same authority (Rom., xiv. 4). Hence, proceedings that are not held in the proper place, at the proper time, or in the manner prescribed by law are void, and the same is true if a court has not jurisdiction over the parties or over the subject-matter in controversy.

(b) The judge must administer justice according to the law and the usual method observed in courts, since his office is to interpret, not to make law or custom (*jus dicere, non facere*). His opinions as precedents may affect the development and growth of law, and hence he is especially bound to be faithful to general principles that are binding on him. If a statute in its operation is found to impede the just disposition of controversies, judges perform a public service by indicating this

to those who have authority to regulate procedure. If the application of a law would work injustice, no judge can in conscience pronounce sentence according to that law; but there are many cases recognized in jurisprudence in which courts of equity afford relief to rights that cannot be defended or protected in courts of law, and in cases of this kind the judge should be guided by recognized principles of natural justice and the rules of his court.

1731. Third Condition.—The third condition of righteous judgment is that the sentence or decision be prudent or well-founded. Thus, in a judicial process the facts of a case must be examined and the rules of evidence be observed in judging the meaning of the facts. Since rash judgment is a sin committed, not only externally and in public, but also and especially internally and in private conclusions formed about the character or deeds of others, and since it is one of the commonest of sins, it will be well to explain its nature somewhat fully.

(a) It is an internal sin, and so it differs from external acts against the neighbor; but calumny, detraction, and unjust sentence are its outward expressions.

(b) Rash judgment is an internal sin of decision in which something is affirmed or denied mentally about a neighbor, and so it differs from a mere representation or thought. This distinction is important for scrupulous persons who think that mere suggestions against others that flash through their minds are rash judgments. These suggestions are a very common temptation, and, if repelled, are an occasion of merit; they become sinful only when entertained with pleasure.

(c) Rash judgment is a decision unfavorable to another in matters of character or honor. Thus, it differs from favorable decisions (as when without reason one holds that another is virtuous or has extraordinary merit), and from unfavorable decisions on matters other than character or honor (as when one concludes that a neighbor is mentally or physically deficient, and these defects are not connected with depravity nor considered as ignominious), and from unfavorable decisions that relate to sin but are not personal (as when one thinks that an expres-

sion used by an ignorant man is blasphemous, but passes no judgment on the state of conscience of the man).

(d) Rash judgment is a decision that expresses conviction, and not mere supposition. Thus, it differs from the prudential attitude by which one assumes for the sake of security that a stranger is to be distrusted, since he may be dishonest.

(e) Rash judgment is a certain conviction or judgment, that is, one which holds its own view as true and certain and does not consider the opposite of its view as worthy of consideration. Thus, it differs from doubt (that is, a state in which the mind is suspended between the unfavorable view and its opposite, and does not incline to one more than the other), from suspicion (that is, a state in which the mind inclines to the unfavorable view, but does not assent to it as being either probable or certain), and from opinion (that is, a state in which the mind assents to the unfavorable view as being probably true, but admits that it may be untrue). These various forms of mental reaction were treated in **654 sqq.**

(f) Rash judgment is rash, that is, a belief based on insufficient authority, or an inference that is really groundless or not well drawn from premises. Thus, if one judges that one's neighbor is a thief, because this was told one by an honest and well-informed person, the judgment is prudent; but, if one judges this on the word of a person who is unreliable or who has no knowledge of the facts, the judgment is imprudent. Again, if one judges that it is certain that one's neighbor is a thief, because one has evidence that removes all doubt, the judgment is prudent; but if the evidence is merely probable, an opinion based on it is prudent, but a judgment based on it is imprudent. It is not rash to hold that the majority of mankind are lost, or that the present generation is not as good as the generation that preceded, if one has good reasons for such beliefs; but a sweeping and all-inclusive pessimism in such matters is unwarranted.

1732. The reasons for a judgment may be sufficient for something else, but insufficient for the judgment actually formed.

(a) Thus, they may be reasons sufficient for judging that one kind or degree of sin has been committed, but insufficient as regards another kind or degree of sin. For example, if one breaks the lock of another's desk, there is an argument for willful trespass, but this alone does not prove larceny or the intent to steal.

(b) They may be sufficient for doubt and insufficient for suspicion, sufficient for suspicion and insufficient for opinion, or sufficient for opinion and insufficient for judgment.

1733. Rash Judgment.—Opinion, suspicion, and doubt are also rash, if there is no sufficient reason to warrant them.

(a) Thus, if there are no probable reasons for an unfavorable opinion, it is rash to form such an opinion. For example, the mere fact that two men have frequent and whispered conference together does not make it likely that they are plotting evil.

(b) If there are no sufficient reasons for inclining towards an unfavorable opinion or for suspending all assent, suspicion and doubt are rash. For example, the mere fact that a man enters a house when the owners are absent is no reason to suspect him of dishonest purposes, or even to have doubts, if he is of good reputation and enters the house in daylight and in a usual way.

1734. Sinfulness of Rash Judgment.—Rash judgment strictly understood, then, is a firm assent of the mind, based on insufficient data, and given to the view that a neighbor is or has been guilty of sin.

(a) From its nature this sin is mortal, for it consists in a contempt for, and an injury to, what is regarded as one of the chief goods of man, namely, the favorable opinion of him that is entertained by others. It is denounced in Scripture as an injury to the law itself ("He that judgeth his brother judgeth the law," James, iv. 11), and as meriting condemnation ("Judge not, and you will not be judged, condemn not and you will not be condemned," Luke, vi. 37).

(b) From the imperfection of the act or from the lightness of the matter rash judgment may be only a venial sin, as when

unfounded suspicions arise in the mind without advertence to their sinfulness, or when one rashly judges in some small matter (*e.g.*, that another person stole a pin or a cent).

1735. Rash judgment is not mortally sinful in an individual case unless the following conditions are present:

(a) there must be perfect deliberation, that is, full advertence to the judgment itself and to its sinfulness and gravity (see **175**). There is no full advertence to the sinfulness and gravity of the judgment, however, if one does not perceive at least in a confused manner that one is deciding in one's mind without sufficient reason that one's neighbor is guilty of serious sin, and is thereby doing the latter a great injury. But it is not necessary that the rash judgment continue for a considerable time, for the malice depends on the evil done, not on the length of time it has lasted;

(b) there must be serious rashness, for the sinfulness of the judgment rests on its rashness. Hence, if one judges a sin to be certain which is very probable or almost certain, there is no great imprudence and therefore no serious sin;

(c) there must be grave injury and contempt, for in these the malice of rash judgment consists. Hence, if one judges that another is a drunkard and neither the latter person nor others in the same place regard drunkenness as very dishonorable, there is no great harm done. Similarly, if one judges that some indeterminate individual of a multitude or group is a rascal, or that a stranger whom one sees on the street late at night is out on an evil errand, or that an unknown party seen from a distance is on his way to a disreputable meeting, it does not seem that there is great injury done; for one does not greatly resent lack of esteem in others to whom one is not known.

1736. Rules on Perfect Advertence to Rashness of Judgment.—(a) There is perfect advertence when one actually perceives that the reasons for one's unfavorable judgment are very insufficient; (b) there is perfect advertence when one virtually perceives the serious insufficiency of the reasons, that is, when one could and should perceive it, but is vincibly blind to it (see **30, 31**) on account of some passion wilfully indulged,

such as hatred or envy of the person judged. In these cases one judges with negligence and precipitancy in a serious matter (see Imprudence).

1737. Rules on Insufficiency of Reasons for Unfavorable Judgments.—(a) Those authorities for sin are not sufficiently trustworthy whose reliability is of inferior worth (*e.g.*, because they are enemies of the person against whom they speak, or calumniators, or gossipers, or of bad reputation, etc.), or whose story does not merit the credence they claim for it (*e.g.*, because the person against whom they speak is known as upright). If both the authorities for a story and the person against whom they speak are equal in good qualities, there is sufficient reason for doubts, but nothing more.

(b) Those arguments for sin are not sufficient which create for what is concluded only a slight presumption (see **658**), that is, which offer facts that are never, or seldom, or not necessarily causes or effects or indications of sin. Thus, it is rash to judge that a mature man and woman conversing together in a dignified manner and in a public and open place are discussing obscene matters; or that a respectable person whose face is flushed, or whose hand trembles, or who slips on the street, has been imbibing too freely; or that a man climbing into a second story on a frequented highway and in broad daylight is a burglar. This rule may be expressed in other words by saying that reasons for drawing unfavorable conclusions are insufficient when in view of the circumstances and time, place, persons, deed, etc., no prudent person would consider the conclusions as warranted.

1738. Rules on Gravity of Matter in Rash Judgments.—(a) From the nature of the thing ascribed to the other person, only judgments that mortal sin has been committed are grave matter; for only mortal sin is in itself a grave reproach.

(b) From the circumstances of persons or acts, rash judgment of mortal sin may be only venial; for it sometimes happens that certain kinds of serious sins are not considered very ignominious in certain persons or conditions. Thus, in some places it is considered honorable for soldiers or students to have

wounded adversaries in duels; some persons of a rough kind are proud of their proficiency in blasphemy or obscenity; where drunkenness is common, it is not considered as very disgraceful.

(c) From the circumstances of persons or acts, rash judgments of venial sin or of what is not sin at all may be mortal; for to those from whom much is expected slighter defects may be causes of great disgrace. Thus, it is very dishonoring to the parties concerned to think that a prelate is an habitual liar, that a nun visits too often, that a public official is illegitimate or stupid or afflicted with syphilis, and therefore unworthy of his position.

1739. The Moral Species of the Sin of Rash Judgment.—(a) It is a sin against justice, because it infringes the strict right of the neighbor that he be not judged guilty of evil without sufficient reason, and that he be not held worthy of contempt until he has clearly forfeited the right to respect. It is true that judgment as here taken is an internal act, and that it was said above that only external acts form the subject-matter of justice; but internal acts that are referred immediately to external acts, as concupiscence tends to lust and anger to injury, may be classed with these external acts. Hence, internal judgment naturally leads up to external judgment, and so it pertains to justice, just as the desire to steal is unjust and the desire to make restitution is just.

(b) It is a sin against charity, because it does not practise benevolence ("Charity thinketh no evil," I Cor., xiii. 5), and is usually associated with ill-will or envy. He who judges rashly does not love his neighbor as himself, for he does not observe the rule not to do to others what he would not have done to himself.

1740. The moral species of rash judgment is not changed according to the species of sin attributed to another (such as heresy, dishonesty, impurity), and these circumstances of the rash judgment need not be mentioned in confession.

1741. The Moral Species of Rash Opinion, Suspicion and Doubt.—Do the conclusions given above on the theological species of rash judgment apply also to rash opinion, suspicion, and doubt?

(a) Some theologians answer in the affirmative, and argue that the same grave injury and contempt of the neighbor is found in these sins as in rash judgment, and that Scripture makes no distinction between the one and the other. On the contrary, they say, murmurings, detractions, and hatreds are caused oftener by doubts, suspicions, and opinions, since firm and certain judgments are not so often formed; and moreover there is no one who would not prefer to be judged certainly guilty of fornication than to be doubted or suspected of more heinous crimes, such as incest or sodomy.

(b) Other theologians answer in the negative, and argue that suspicion and doubt do not inflict a severe harm, since they stop short of firm decision of the mind and so are incomplete injuries which diminish rather than take away the esteem due to another. But the defenders of the affirmative reply that, while opinion, suspicion and doubt are incomplete as regards assent, they are not incomplete as regards deliberation and consent, and so can be mortally sinful, as is seen in the case of doubts against faith (see **840 sqq.**).

(c) Still other theologians hold that rash opinions, suspicions and doubts are from their nature mortal sins on account of the arguments for the first opinion, but that in actual experience they are usually venial on account of the imperfection of the act (since on account of human frailty doubts, suspicions, or evil opinions of others can easily arise before they are noticed), or the lightness of the matter (for there is rarely one of these mental states without some reason that seems to be at least approximately a justification). But it seems likely that rash judgments themselves are seldom mortal sins, since the conditions for mortal sin are not often realized in them.

1742. The Chief Reasons for Rash Conclusions about the Character of Others.—(a) A first reason is that the person who draws the conclusion is bad himself. Evil-doers are very prone to suspect others of evil, for sin seems so delightful to them

that they think others must find the same pleasure in it: "The fool when he walketh in the way, since he himself is a fool, esteemeth all men fools" (Eccles., x. 3).

(b) A second reason is that the wish is often father to the thought. Thus, if one hates or envies another or is angered against him, even trifles light as air will suffice to make one judge him guilty of sin. Just as love blinds an infatuated lover to the sins or crimes of the object of his affection, so does prejudice give a distorted vision that can see nothing but evil in the object of its dislike.

(c) A third reason for rash views unfavorable to others is long experience in dealing with human nature. Thus, old men sometimes become not merely cautious, which is reasonable, but unduly suspicious. Similarly, those who have encountered many trials or disappointments in life often become cynical and misanthropic, and to them the actions of all their fellowmen appear either evil or at least spoiled by an evil purpose.

1743. Rash Doubts.—Doubt about the probity of others is sinful, when there are no sufficient reason for it; for example, it would be unreasonable to suspend judgment about a man of excellent reputation because a well-known calumniator had spoken against him. But a doubt may be reasonable, as when a person has had a good reputation for honesty but a reliable witness declares that he is dishonest. In such a case should one decide for the innocence or for the guilt of the party called into doubt, or should one suspend judgment on the matter?

(a) It is not lawful to interpret reasonable doubts in a sense unfavorable to another person, for this would amount to rash judgment, since the reasons are sufficient for doubt but not for decision. Hence, it would be wrong to believe that a person of good repute was a thief, because another person of good repute said so.

(b) It is lawful to suspend judgment in case of reasonable doubts, if there is no obligation of deciding one way or the other, for in so doing one does no injury either to one's own intelligence (since the doubt is reasonable) or to the honor of another person (since, as supposed, there is no obligation of judging

positively in his favor). Just as there is no duty of making acts of love of our neighbor on every occasion, neither is there a duty of deciding doubts to his advantage on every occasion, or of having any opinion about him whatever. Some authors do not admit this, but the common teaching is against them.

(c) It is not lawful to suspend judgment, but the reasonable doubt must be resolved in a favorable sense, if there is an obligation or a wish to decide one way or the other; otherwise one would decide in an unfavorable sense and be guilty of rash judgment. This is what is meant by the well-known maxim that doubts about the character of a neighbor should be settled in favor of the neighbor. Hence, if one were in serious danger of forming a rash judgment and could not otherwise overcome the temptation, a suspension of judgment should give place to favorable judgment. It is true that one may be frequently in error by thus judging well of mankind, since man is inclined to evil from his youth (Gen., viii. 21) and the number of fools is infinite (Eccles., i. 15). But it is a less evil to fall into the speculative error of taking a bad man for good than by adopting another course to fall into the practical error of becoming bad oneself by violating a law of prudence, justice and charity; and it is less harmful that many sinners should receive more credit than they deserve, than that one just man should be deprived of the good opinion that belongs to him. Pseudo-Ambrose (*Apol.* ii, *David*, c. 2, n. 5) says that those who judge others rashly often become worse by this act than the persons they judge; and St. Thomas remarks that favorable opinions of others harm no one, whereas unfavorable opinions are a wrong to innocent persons.

1744. The interpretation of doubts in a favorable sense does not mean that one may not take into consideration the possibility of danger or deception and use remedies or precautions. This course is not rash judgment, for even when one judges that another person is good, one knows that the judgment is possibly wrong, and therefore cannot be entirely relied on for external guidance.

(a) It is lawful, therefore, to act as if one did have a bad

opinion of another when there is a possibility of harm that must be guarded against. Thus, a father may forbid his children to keep company with other children, for these latter may be corrupt; an employer may keep his money under lock and key, because servants may be dishonest; a traveller may carry weapons, because the inhabitants among whom he travels may be treacherous. Even though appearances are favorable, one may be on one's guard, for appearances are often deceptive.

(b) It is not lawful, however, to protect oneself or others in such a needlessly conspicuous or offensive manner as to sadden or defame the other party against whom one takes the precautions. Thus, it would be unjust and uncharitable to go about ostentatiously locking safes and drawers whenever a certain person appeared, for this would be equivalent to saying that he was a thief.

Art. 3: THE SUBJECTIVE PARTS OF JUSTICE: COMMUTATIVE AND DISTRIBUTIVE JUSTICE

(*Summa Theologica*, II-II, qq. 61, 62.)

1745. The Three Species of Justice.—The subjective parts of a virtue are those that partake of its essence and that are the subordinate species into which it may be distinguished, as prudence is divided into individual, domestic and political (see **1639**). There are three species of justice, and their division is taken from the threefold relation that exists in a whole.

(a) Thus, legal justice directs the parts to respect the rights of the whole, and it is exercised by all those who promote the common good of a society by fulfilling well the duties which pertain to their position and rank in the society.

(b) Distributive justice regulates the whole in reference to the parts, and it is exercised by all those who seek for such a distribution of the common things of a society as accords with the inequalities of merit and ability of the members. Hence, distributive justice is found not only in the heads of a state, or family, or other body, but also in the subordinates who are content with the fair distributions made by the heads.

(c) Commutative justice orders the relations between the parts, and it is exercised by all who practise fair dealing with their equals, that is, by states with states, families with families, societies with like societies, individuals with individuals; or with those who act as their equals, as when a society acting as a moral person makes a contract with one of its members as another moral person.

1746. Resemblance between Distributive and Commutative Justice.—The general likeness between distributive and commutative justice may be summed up as follows:

(a) they have the same remote matter, since both alike are concerned with external things, persons or works. Thus, things such as goods of fortune may be distributed by the community to its members, or may be exchanged by individuals between them; labors to be performed may be assigned by the community or may be agreed on by private persons through contract;

(b) they have the same general form, since both alike seek to impress equality on the matter with which they deal, by rendering in these things to every one his due, and by making man's actions towards his neighbor to follow the mean of reason and of the thing (see **1711**).

1747. The Special Differences between Distributive and Commutative Justice.—(a) They differ in their proximate matter, that is, in the operations by which use is made of external things, persons or works; for while distributive justice acts through distribution (or division), appointment, or assignment among many, commutative justice acts through exchange, or transfer from one to another between two persons.

(b) They differ in their special form; for distributive justice seeks equality and the golden mean, according to proportion, while commutative justice seeks the same according to quantity (see **1712**).

Distributive justice does not treat parties as equals, but gives to each one according to his personal worth—to the more deserving the superior positions and high salaries, to the less deserving the inferior positions and lower salaries. Commutative justice, on the other hand, treats the parties as equal, and decrees

that debts must be paid and injuries repaired, even though payment or reparation must be made by a good man to a bad man, and that the recompense must equal the difference created between the parties by the debt or the injury.

1748. Commutations of Commutative Justice.—There are various kinds of commutations or exchanges used by commutative justice, but they do not create new species of justice, since they are only accidental modes of the act of giving the equivalent of what one receives. They are classified as follows:

(a) involuntary commutations, which are those in which reparation is made for the use against the will of another of the things, persons, or works that pertain to him. Thus, the property of another is used unlawfully by secret theft and by open robbery; the person of another is injured by murder and wounds; the honor of another by secret calumny and detraction, by open false testimony and contumely; the rights of another to persons are used unlawfully by adultery with his wife, by seduction of his servant, and the like;

(b) voluntary commutations, which are those in which compensation is made for a benefit that one derived with the owner's consent from something that was his, or in which one gives or returns to another what is his. They include the various forms of contracts, or agreements between two parties in which the consent of both to the same proposal is externally manifested and obligation is produced to abide by the terms of agreement.

1749. Forms of Contract.—The chief forms of contract are the following:

(a) gratuitous contracts, which are those that confer advantage on only one of the contractants, or those in which no payment or compensation for his acts or goods is made to one party by the other party. They include unilateral contracts, which produce obligation on one side only (*e.g.*, a promise, gift, testament), and bilateral contracts, which produce obligation on both sides. The bilateral contracts are also known as bailments, or understandings whereby a thing or business is transferred from one person to another in trust, on condition that a return will be made to the owner. They include the following contracts:

loans, in which return must be made of the identical things borrowed (*commodatum*), or of a thing similar in kind (*mutuum*); deposit, in which a thing must be returned after safekeeping (*depositum*); an agency, in which one conducts the business of another with the obligation of making returns, either from express contract (*mandatum*) or from imputed agreement (*negotiorum gestio*). In *commodatum* and *mutuum* the advantage is had by the bailee, in the other three by the bailor;

(b) onerous contracts of certain event, which are those that confer an advantage on both parties, and in which the thing agreed on is certain and definite. They include contracts in which one party transfers ownership to the other (*e.g.*, buying and selling, barter, loan at interest, contracts for annuities, stocks and bonds) or useful dominion (*e.g.*, lease of property, contractor's agreement, hire of labor), and contracts in which both parties transfer rights to a moral person of which they are the members (partnership);

(c) onerous contracts of uncertain event, which are those that confer advantage on both parties, but in which the thing agreed on is contingent and uncertain. Examples are insurance, wager, gaming contracts, lottery, and stock market speculation;

(d) subsidiary contracts, which are those that are made in order to give security to principal contracts to which they are annexed or for whose sake they are made. Such are guaranty and surety, pledge and pawn, and mortgage.

1750. The Equality Sought by Commutative Justice.—The equality in quantity sought by commutative justice means that in involuntary transactions the offender must suffer a punishment equal to the injury he offered or must pay a recompense equal to the damage he caused, and that in voluntary transactions one must give the equal of what one receives. But this can be understood in two ways.

(a) Thus, equality may be taken for identity in species, in the sense that the same kind of thing must be taken or returned (*e.g.*, a life for a life, an eye for an eye, a tooth for a tooth). This kind of equality will do in some instances, as in cases of exchange of goods, but as a rule it would not be fair to both

parties. Thus, if a subject strikes a ruler, he is not sufficiently punished if he receives the same kind of blow, for the injury to the ruler is greater on account of his office; when a man steals a cow or a sheep, he is not sufficiently punished if he restores what he took, for he would suffer no loss and the community whose peace he had offended would go without satisfaction (Exod., xxii. 1); if one gives one's cow for another's cow, or if a shoemaker trades his products for the clothes made by a tailor, the exchange may be unfair, since the thing given on one side may be better than that given on the other side.

(b) Equality may be understood as identity in value, in the sense that the thing taken or returned has the same quantity of goodness or excellence as the thing received, no matter how they differ in species. This kind of equality must be observed as a rule both in involuntary and voluntary transactions. Thus, for injury done to merchandise payment is made in money, or vice versa. If equality in value is not possible, because the good for which one owes is on a higher plane than the good which one is able to give, it seems that justice requires one to approximate equality as far as possible, and hence mayhem or defamation should be compensated for by the goods of fortune (see 1802 and 2090).

1751. Restitution.—Justice not only commands that one pay or give back what is due in voluntary transactions, but also that one repair injury which one has caused in involuntary transactions. But the four acts of payment, restoration, satisfaction, and restitution must not be confused.

(a) Thus, payment is the lawful bestowal by one person on another person of something of value in return for some other thing of value. It is clear that payment differs from satisfaction and restitution, since it supposes no act of injustice done.

(b) Restoration is the return to another of his property of which one had just possession, as when a borrower gives back to the lender, or a depositee to the depositor. This also differs from satisfaction and restitution, since it is a voluntary transaction (see 1792, 1796).

1752. Differences between Satisfaction and Restitution.—(a) They differ as to their principle or cause, since satisfaction is due for injury to honor, restitution for injury to goods by unjust detention or unjust damage. Hence, a person who has dishonored another (*e.g.*, by disrespect) is bound to satisfaction; a person who has injured another (*e.g.*, by destroying his goods) is bound to restitution; a person who has both injured and dishonored another (*e.g.*, by adding insults to robbery) is bound to restitution and satisfaction.

(b) Satisfaction and restitution differ as to their term or object, since satisfaction is chiefly concerned with the person to whom amends must be made (as by apology), while restitution is chiefly concerned with the thing which must be given back in itself or in its equivalent.

1753. When Restitution Is Due.—Restitution is the act by which one places another in renewed possession or ownership or chance of ownership of that which is owed to him because it is his by reason of a strict right *in re* or *ad rem;* in other words, it restores the equality that existed before an injury was done to the goods of another.

(a) Thus, restitution is not due for violation of virtues other than justice, because these virtues are not concerned with strict obligations and rights. Repentance and satisfaction are due for all sins, but they are not the same thing as restitution. Hence, one is not bound to restitution if one refused to help with alms a person in extreme need, or if, not being obliged to it by office, one neglected to extinguish a fire or to prevent a robbery. These are sins against charity, not against justice.

(b) Restitution is not due for violations of virtues that pertain to justice but do not confer strict rights, and hence it is only a violation of commutative justice that entails the obligation of restitution. Thus, if one has been surly or ungrateful, no legal right has been violated and no restitution is due.

1754. Does Distributive Injustice Oblige to Restitution?—(a) If only distributive injustice is committed (*e. g.*, if a parent gives his children all necessaries but shows special favor to those

that are less deserving), there is no duty of restitution, for there is no strict claim to special favors. (b) If commutative injustice accompanies the distributive injustice (*e.g.*, if a ruler acts against his agreement to give the best position to the person who passes the best examination), there is a duty of restitution, for there is a strict claim to rights under contract.

1755. Distributive Justice and the Violation of Strict Rights.—Injustice in distribution is frequently accompanied by injustice in transaction on account of some strict right violated, and hence by reason of the latter injustice there will be a duty of restitution (see **1708, 1808**).

(a) Thus, distributive injustice is accompanied by violation of a strict right of society when an unfair distribution is contrary to agreement made with the community (*e.g.*, when one is appointed or paid especially to make fair distributions, or the law or contract expressly imposes this obligation), or when it causes harm to the community which one is bound *ex officio* to prevent (*e.g.*, when one appoints as public physician or surgeon a person who is entirely unfitted for the post).

(b) Distributive injustice is accompanied by violation of a strict right of an individual when it is against contract (*e.g.*, when a person undertakes to select the best statue or portrait presented in a contest, but chooses one that is inferior), or when it inflicts loss on a private person (*e.g.*, when a tax assessor requires more than is due from some persons, or an examiner admits to a school which receives only a limited number an unworthy candidate and thus excludes a worthy one, or a board rejects a worthy candidate as unworthy).

1756. Commutative Justice and Unfair Awards of Prizes.—Unfair awards of prizes in competitions are not violations of commutative justice unless the following conditions are present:

(a) the promise of award must be given as a contract binding in justice, for if the promisor intends only to bind himself in fidelity, the promisee obtains no strict right. Hence, an unfair distribution is not against commutative justice if a competition has not the character of a real contest or of an onerous

compact to reward the person who surpasses his rivals, but is rather an opportunity to compete for the free bounty of the promisor (*e.g.*, if the organizer of an entertainment offers a prize for the prettiest baby), or an encouragement to useful industry (*e.g.*, a first prize for the best garden in a neighborhood). On the contrary, if the promise is part of an onerous contract, the promisor is bound in justice and the promisee obtains a strict right. This is the case when the competition has the character of a real contest, in which the contestants must undergo special labor, preparation, expense or trouble, etc., in order that the award be given to the most meritorious;

(b) the thing promised as subject of award must be the prize, and not merely a claim or right to be considered for the prize. Hence, if an examination is held in order that a number of worthy persons may be listed for future vacancies in offices or dignities, the person who passes as most worthy has no strict right to be given an office or dignity, but only to be considered for it.

1757. Has a person who passes as most worthy in an examination held in order to fill a vacant post a strict right to receive the post?

(a) According to the common opinion he has a strict right, because there is at least an implicit contract to the effect that the position will be given to the most worthy, since the examination is competitive.

(b) According to some authorities he has no strict right, because public positions are not to be regarded as rewards of merit, and the examination is not part of a contract but is only a means used by a superior to assist him in acting according to distributive justice. Nevertheless, even in this opinion an unjust award is a sin, and at times a grave sin, against distributive justice, and may accidentally be joined with commutative injustice (see **1755**).

(c) Under the civil service method, or merit system, of appointment, the appointing official is bound by law to observe the rules of the civil service commission. The usual procedure is for

the commission to submit the names of the three persons highest on the examination list. Position on the list is determined by competitive examination plus preferential points for veterans, experience in jobs, etc. (On the whole the preferential system does not seem to involve any injustice to those who do not receive the preference.) One of the three must be chosen for the first vacancy; for the second vacancy the remaining two, together with the next highest eligible, are proposed. Grave injustice against distributive justice would be done in not proceeding according to the legal method, and some degree of injustice might be done to an eligible who is illegally removed from a list, passed over, etc. Of the three highest eligibles no one has a strict right to the vacant post, but solely the right to be seriously considered.

1758. What should be said of a superior who would promote undeserving persons to ecclesiastical benefices?

(a) As regards guilt, it is a mortal sin to confer a benefice on one who is unworthy, or even (when there is question of a benefice to which the care of souls is attached) on one who is less worthy (see Canon 459, § 1).

(b) As regards restitution, there is an obligation of reparation to the community, when it is made to suffer loss, and of compensation to an individual who is passed over in spite of his strict right (see three preceding paragraphs).

1759. The Obligation of Restitution.—(a) The obligation is both of natural and divine law. Reason itself dictates that everyone should receive his due, and revelation expressly commands restitution, as when it declares that he who has injured his neighbor's field or vineyard must restore according to the damage done (Exod., xxii. 5).

(b) The obligation is both of means and of precept, for without restitution the offender does not obtain pardon from God (Ezech., xxxiii. 13 sqq.; Tob., ii. 20 sqq.). Hence, one who has seriously injured his neighbor cannot be saved unless he actually makes restitution, if he is able, or intends to make restitution when possible, if here and now he is not able to do so. A debtor who makes no effort to make restitution (*e.g.*, one who refuses to deny himself luxuries, to curtail his expenses, to leave

restitution money in his will), cannot be said to have a sincere intention of fulfilling his duty. But it is not true that a person who dies in venial sin on account of restitution neglected must remain in Purgatory till all the restitution is made; for this would make the punishment depend on the negligence of the heirs or on accident.

(c) The obligation is grave if the damage (absolute or relative) and the fault were both grave, for restitution is an obligation of strict justice (see **1753**); the obligation is light if both the damage and the fault were light, for the injury then is light.

1760. Duties of Confessors about the Obligation of Restitution.—(a) As to confession, the penitent is obliged to mention the number of sins committed against the duty of restitution, if there have been many acts of intention not to pay (see **202 sqq.**); but as a rule those who have for a long time continued in sinful neglect of the duty of restitution have committed only one sin thereby, or else they do not apprehend their duty of mentioning the distinct internal acts, and hence confessors are advised not to question overmuch about this.

(b) As to absolution, the penitent lacks true contrition if he is under a serious obligation to make restitution and is wilfully opposed to the performance of this duty at all or at the proper time. Such a one may not be absolved. But the confessor should not admonish a penitent of the duty of restitution, if the penitent is in good faith and the admonition would only do harm. If the obligation of restitution is only light, absolution may not be refused, and prudence will often advise that no admonition about the obligation be given.

1761. There are a number of situations possible when damage done is grave and culpability slight.

(a) Thus, the damage may be entirely involuntary, as when the offender could not foresee it and did not wish it (*e.g.*, Sempronius commits a venial sin by speaking harshly to Claudius, whom he likes, but the latter is so depressed at this that he commits suicide). In this case there is clearly no obligation of restitution.

(b) The damage may be voluntary only interpretatively, as when the offender could not foresee it, but would have willed it had he foreseen it (*e.g.,* Sempronius is glad when he learns that Claudius committed suicide, but would be much surprised if he knew that a harsh word of his caused it). In this case according to some there is a grave duty of restitution, because internal guilt and external damage are present; but others, with greater probability, deny the duty of restitution, for the damage was not caused by the internal sin of hate, which is not effective of itself, nor by the external harsh word, which was an occasion rather than a cause (see **1447, 1763**).

(c) The damage may be voluntary directly, as when the offender wills it in itself (*e.g.,* Titus steals a considerable sum from Balbus, but he is invincibly ignorant and thinks that the wealth of Balbus makes the sin only venial), or the damage done is voluntary indirectly (*e.g.,* Caius is guilty of slight carelessness in guarding his cattle, and they get into a neighbor's garden and cause great damage to crops; Caius foresaw some damage, but he could not have foreseen the actual grave damage that was done). About these cases there are various opinions, which will be given in **1765**.

1762. The Roots of Restitution.—The roots or sources of restitution are usually reduced to two, according to the following two general kinds of injury inflicted on others:

(a) unjust damage, which is the loss inflicted on the goods of another, without advantage to the offender, as in murder or incendiarism;

(b) unjust possession, which is the loss inflicted on another by the possession of his goods without his consent or against his will, to the advantage of the offender, as when a murderer steals from his victim, or an incendiary gets the insurance from the house he destroyed.

1763. Unjust damage that obliges to restitution is only an act (or omission) that is both injurious (being a guilty violation of another's strict right) and productive of loss. Hence the following conditions:

(a) the act must be *objectively* unjust, a contravention of a strict right *in re* or *ad rem* (see **1695 sqq.**), for example, stealing or keeping back the wages due an employee. But it is objectively unjust to deprive another of a non-strict right (*e.g.,* the right of a beggar to an alms) by unjust means, such as force, fraud, calumny, etc. If a neighbor is not hindered from his strict right and unfair means are not employed, there is no objective injustice (*e.g.,* when a merchant improves his place of business and thus draws away customers from a rival merchant);

(b) the act must be *efficaciously* unjust or the true cause of the loss which another suffers, for one is not responsible for what does not proceed from one's act. An act is not efficaciously unjust, therefore, if it is only the occasion of damage (*e.g.,* Titus steals and Balbus imitates him; Claudius steals, and on account of circumstantial evidence not arranged by Claudius, Sempronius is arrested and sentenced to prison), or if it is only a *conditio sine qua non* (*e.g.,* Caius gives whisky to Julius, who needs its stimulation to nerve himself for a crime), or if it is only an accidental cause (*e.g.,* Titus steals a small sum of money from a miser, and the latter, to the great surprise of Titus, becomes insane);

(c) the act must be *subjectively* unjust, that is, culpable and imputable; for one is not bound to satisfy for acts that are inculpable or not imputable (see **97 sqq.**). There must be either theological culpability, that is, the intention to harm another, which is sinful before God (*e.g.,* he who purposely sets fire to his neighbor's barn), or juridical culpability, that is, carelessness which causes injury to the legal right of another (*e.g.,* he who lights a fire near his neighbor's buildings and by his absentmindedness permits the buildings to catch fire).

1764. Some Causes That Remove or Diminish Theological Culpability.—(a) Mental derangement or passion (*e.g.,* great fear or anger) may make an injurious act unintentional and so take away natural liability for restitution (see **40 sqq.**), but the civil law does not always admit the excuse, and after sentence the offender is bound to pay.

(b) According to some authorities, error about the extent of

the harm that is being done, if invincible, excuses from restitution for damage that was not apprehended, as when a thief throws a gem into the ocean, thinking that it is only an imitation gem. But the offender would be held for the entire loss, if sentenced.

(c) Error about the person injured, even though invincible, probably does not excuse from restitution, if the intention was to harm a class (*e.g.*, Sempronius intends to kill Balbus, because the latter is a policeman, but by accident he kills another policeman) or an individual (*e.g.*, Caius intends to kill Titus and by mistake kills Claudius, the twin-brother of Titus).

(d) Error about the thing injured, even though invincible, probably does not excuse from restitution, if the intention was to do damage (*e.g.*, Julius puts poison in a plate in order to kill his neighbor's dog, but the cat takes the poison and is killed).

1765. Restitution for Damages That Are Only Venially Sinful but Seriously Harmful.—(a) When one injurious act is committed (as when through slight carelessness one sets fire to one's neighbor's chicken coop), some deny, but others affirm, the duty of restitution, while still others distinguish according to the full or only partial advertence to the sinfulness of what is done. Of those who hold for restitution, some think that all the damage should be repaired, since all was caused; but others think that it suffices to repair part, since the culpability was limited.

(b) If several injurious acts, which taken singly are slight but taken together are serious, were done to the same person (*e.g.*, a waiter breaking dishes at various times while working for the same proprietor), restitution is due as soon as the sinner realizes the amount of harm he has caused; but it is disputed whether the obligation is grave or light. If the injuries were done to different persons (*e.g.*, a boy breaking windows in many houses in the neighborhood), there is more probably only a light obligation.

1766. Restitution on Account of Law for Damages That Are Only Juridically Culpable.—(a) Before sentence of court there is no obligation of restitution, for it would be too heavy a burden to impose this in view of the absentmindedness of so many persons and the numerous distractions one encounters.

(b) After sentence of court there is an obligation of restitution, for the law which gives the court a right to impose it is reasonable, since juridical fault is often accompanied by theological fault, and moreover men will thus be led to a greater prudence in the care of their own goods and in respect for those of others.

1767. Restitution on Account of Contract for Damages That Are Only Juridically Culpable.—(a) Express contract obliges to restitution even for light fault (*i.e.*, the omission of precautions taken by the more prudent), or most light fault (*i.e.*, the omission of precautions taken by the most prudent only), or, if so stipulated, for no fault at all.

(b) Implied contract perhaps also obliges to restitution for juridical fault, for it seems that equity requires one to make good the losses caused by the absence of a care which the contract took for granted. Thus, if the advantage is with the bailor alone (*e.g.*, gratuitous deposit), ordinary care is expected and the bailee is not held in danger to prefer the bailor's goods to his own; if the advantage is with both parties (*e.g.*, onerous deposit or loan), it seems that more than ordinary care is demanded and that usually the obligor may give preference to his own goods.

1768. Restitution for Careless Discharge of Fiduciary Duties, as in the Case of Physicians, Lawyers, Spiritual Advisers.—(a) If there was theological fault, restitution is due, unless the injured party took the risk upon himself. (b) If there was only juridical fault, it seems there is no natural duty of restitution, since no injustice was done; but a court may oblige to damages.

1769. Two Cases in Which Culpability Seems Doubtful.—(a) When one has *inculpably* done or omitted something from which damage to another can be foreseen, and one has now become aware of the danger (as when Balbus lights a fire on his own property and sees that a change of the wind makes this fire dangerous for his neighbor's barn), one must prevent the

damage, if this can be done without equal or greater damage to oneself; otherwise one must make restitution.

(b) When one has *culpably* done or omitted something from which damage to another was foreseen, but has tried, though in vain, to prevent the damage after the cause was placed, restitution is due if the cause was physical (*e.g.,* Claudius gave poison to Titus, and then moved by remorse gave an antidote, but Titus died), since the party who set the cause in operation is responsible; but if the cause was moral (*e.g.,* Balbus ordered a gunman to beat up Caius, but withdrew the order, and the gunman on his own responsibility then assaulted Caius), restitution is not due when the revocation ends one's influence upon the damage that ensues.

1770. Three Kinds of Unlawful Possessors.—The second root of restitution mentioned above (**1762**) is unjust possession, which includes the acceptance or the retention of another person's goods against the latter's will. There are three kinds of unlawful possessors:

(a) the possessor *in good faith,* who is one that has been invincibly ignorant of the unlawfulness of his possession, but now learns his error (*e.g.,* a buyer who discovers that the horse he purchased did not belong to the seller but was stolen property);

(b) the possessor *in doubtful faith,* who is one that has serious reasons for fearing his possession is unlawful (*e.g.,* the buyer of a horse learns that the seller is known to have sold some stolen property, or that the price he charged for the horse was remarkably small);

(c) the possessor *in bad faith,* who is one that knows his possession is unjust (*e.g.,* a buyer who purchases a horse which he knew had been stolen by the seller).

1771. Obligations of the Possessor in Good Faith in Reference to the Property Itself.—(a) If the property is still in his keeping, he is generally obliged to return it to the owner, for a thing calls for its owner. An exception would be the case in which the possessor can not return the property to the owner without a greater loss to his own property.

(b) If the property has perished, the possessor is generally obliged or not to restitution according as he has been enriched or not by the property; for one person should not be enriched at the expense of another, but property perishes to its owner.

(c) If the property is in possession of a third party to whom the possessor transferred it, he is generally obliged or not to restitution to the third party, on the latter's dispossession, according as he has been enriched or not by the third party's goods; for if he received nothing for the goods, he is clearly bound to nothing, but if he received payment, he must indemnify the buyer who is evicted for lack of title.

1772. Obligations of the Possessor in Good Faith in Reference to the Fruits of the Property.—(a) He must restore the fruits of the thing itself that are in existence, for the thing fructifies to its owner. Hence, he should restore to the owner the natural fruits (*e.g.,* the fruit on the owner's trees) and the civil fruits (*e.g.,* the money received from hire of the owner's horse).

(b) He must restore the fruits of the thing itself which are not in existence, but from which he has been enriched (*e.g.,* the net profit from last year's crops which the possessor has in the bank).

(c) He is not obliged to restore the fruits of his own labor or industrial fruits (*e.g.,* the extraordinary interest derived from the owner's money through the good judgment and energy of the possessor), nor the fruits that he consumed without enrichment (*e.g.,* the vegetables he gave away or wasted).

1773. Rights of the Possessor in Good Faith in Deducting Expenses.—(a) He may deduct for all expenses that have benefited the owner, that is, for all the money he spent in necessary or useful ways in preserving or caring for the property.

(b) He may not deduct for expenses that have not benefited the owner, or which the owner would not have reasonably authorized, such as special beautification of the property. But he may take away such adornments added by him as can be removed without injury to the property.

1774. Obligations of the Possessor in Bad Faith in Refer-

ence to the Property Itself.—(a) If the property is still in his keeping, he must return it to the owner, for a thing calls for its owner. But if the actual possessor had the property from the thief and could not restore it to the owner without serious loss to himself, it is held by some that he could return it to the thief in order to recover his money.

(b) If the property has perished or restitution of it has become impossible, he must compensate the owner, even though he has not been enriched, unless the goods would have perished equally with the owner; for he is then the efficacious cause of the loss. The same principle may be applied to damages through deterioration. The civil law often holds the thief responsible, no matter how the goods perished in his hands.

(c) If the property is in possession of a third party who bought it in bad faith from the possessor in bad faith, the seller is not bound to restitution to his purchaser on the purchaser's eviction, unless there was agreement to that effect; for he who buys, knowing that there is no good title, buys at his own risk.

1775. Obligation of the Possessor in Bad Faith in Reference to the Fruits of the Property.—(a) He must restore the natural and civil fruits, even though the owner would not have obtained them from the thing, but he may keep the industrial fruits.

(b) He must make restitution for the profits lost and the losses suffered by the owner through the unjust deprivation of his property, for these are damages of which the possessor was the unjust and efficacious cause.

1776. Obligations of the Possessor in Doubtful Faith Who Began Possession in Good Faith (Supervening Doubt).—(a) If he does not culpably neglect attempts to settle his doubt, he becomes a possessor in good faith. If the doubt is settled against him, he must restore (1771); if the doubt continues, he may retain possession and prescribe (*i.e.*, acquire ownership through long exercise of ownership rights), for presumption favors the possessor, but he must be willing to restore, should another appear as the rightful owner.

(b) If he culpably neglects attempts to settle the doubt, he becomes a possessor in bad faith. If the doubt is settled against him, he must restore (1800), at least for the time during which his culpability was grave; if the doubt continues and its settlement is impossible through his fault, it seems that he should share ratably with another claimant according to the strength of the respective claims; if the doubt continues and there is no other claimant, it seems that he may act on the principle that presumption favors the possessor.

1777. Obligations of the Possessor in Doubtful Faith Who Began in Bad Faith (Antecedent Doubt).—(a) If the property came to the possessor in doubtful faith without legal title (*e.g.*, by violence), he has the obligations of one in bad faith, for presumption favors the former possessor.

(b) If the property came to him by legal title (*e.g.*, by gift or sale), but from a former possessor of doubtful or suspected faith (*e.g.*, one who seemed to have the property through theft), he must attempt to settle the doubt. Should the doubt nevertheless continue, some think he should divide it with another probable claimant, but others believe he may retain all.

(c) If the property came to him by legal title and from a former possessor in good faith, he must attempt to settle the doubt; but if the doubt remains in spite of his inquiries, he may retain the property in good faith, as long as matters continue in the same state.

1778. Coöperators and Restitution.—Restitution is owed for coöperation in injustice when the coöperator becomes at least partially an unjust and efficacious cause of damage to another. It should be noted that this coöperation may be of a limited kind, as when it extends only to the mode of the damage, or when it is not indispensable to the commission of the injury.

(a) Thus, he who coöperates only as to the mode of injury is probably liable only for that damage which he added to the substantial damage. Thus, if Balbus intended to steal $10, and Claudius persuaded him to steal $20, it seems that the influence of Claudius extended only to the amount of $10.

(b) He who coöperates, but whose assistance is not necessary, is bound to restitution as a coöperator, since he is an unjust

and efficacious cause of damage. Thus, if Caius steals for Sempronius, knowing that, should he refuse, Mercurius would carry out the orders of Sempronius, the readiness to steal on the part of Mercurius does not excuse Caius or make his act any less harmful.

1779. Positive coöperators in injury are bound to restitution when their act is the unjust and efficacious cause of the damage. The principal cases of positive coöperation are the following:

(a) a mandator is a superior who explicitly or implicitly commands an inferior subject to commit an act of injustice, as when a father bids his son to steal. The mandator bids another to act in his name, and therefore he is the principal and not the accessory or secondary cause of injury. He must indemnify both the victim and the agent for losses he caused them; but he is not liable if he effectively recalled his mandate before the damage was done;

(b) an advisor is one who through instruction or persuasion induces another person to commit an injury which is not done in the name of or for the benefit of the advisor himself. He must make restitution both to the person whose injury he recommended and to the person to whom he gave the advice for the damages he brought upon them. Those who give wrong advice in good faith, or who recall their advice before the damage is done, are generally excused from responsibility. Bad example does not seem to be equivalent to bad advice, and he who recommends a lesser evil only because he wishes to prevent a greater one is not an efficacious cause of the lesser evil (see **1502, 1503**);

(c) an implicit advisor (*palpo*) is one who by flattery, excuse, blame, ridicule or other such indirect means leads another to commit injustice against a third party. The implicit advisor is bound to restitution for damages caused or reparation denied through his fault;

(d) a protector or encourager (*receptans*) is one who knowingly and willingly bestows upon a malefactor, as such, security or comfort, in order that the latter may do injury with greater confidence or omit restitution for evil already done. He is bound to restitution for the unjust damage or retention of property caused by him;

(e) a consenter is one who gives his vote, decision, or approval to injustice, or denies it to justice. He must recall his consent to iniquity before evil results from it, and he must make restitution for damages that depend on his conduct;

(f) a partaker in injustice is one who gives assistance in the commission of injustice, positively and physically, by sharing in the injury or in some previous or subsequent act naturally connected with it. If he is a coöperator in unjust damage, he must indemnify the injured party; if he is a coöperator in unjust retention of property, he must give back to the owner the stolen goods received by him (**1774**).

1780. Negative coöperators are those who by their silence or inaction permit an injury to be done or to go unrepaired. They are bound to restitution for the damages caused by them; but it seems that *per se* at least they are not bound to restitution for bribes taken by them or fines lost through their fault.

Their responsibility for damages supposes the usual conditions, namely: (a) they must be the efficacious causes of damage, and hence if their silence or inaction is involuntary, or if outcry or resistance would be useless they are not responsible; (b) they must be unjust causes, that is, there must be an obligation to act owed by reason of strict right, contract, or implied contract. Examples are confessors who culpably neglect to give penitents needed spiritual advice, parents who permit damage to be done by their children who have not the use of reason, voters who absent themselves and thus cause damage they were bound by contract to prevent, owners of animals who sinfully permit their beasts to ravage the fields of another person, doorkeepers who allow thieves to enter a house under their charge, collectors who permit bills to go unpaid. But if the obligation is owed by reason of some other virtue than commutative justice (*e.g.*, one is bound only in charity to turn in a fire alarm when one notices a fire, if one is not the custodian of the house), one sins, and at times gravely, by inaction; but there is no duty of restitution.

1781. The Circumstances of Restitution.—By the *circum-*

stances of restitution are understood the persons by whom and to whom compensation is to be made, the things to be restored, the manner, time and place of restitution.

1782. The persons bound to make restitution are all those who singly or coöperatively commit injustice. But when several commit injustice together, the following kinds of causes of the injustice must be distinguished:

(a) the causes are equal when there is no subordination among the coöperators; they are unequal when one is a principal upon whom the others depend as secondary causes or instruments (*e.g.,* when one hires thieves to steal for one);

(b) the causes are considered as total causes of the injury when they are principal causes, or equal but indispensable coöperators, or conspirators; and perhaps also if they are sufficient causes (*e.g.,* Caius and Sempronius each fire at a neighbor's cow and each inflicts a mortal wound), or if the thing damaged is either not divided (such as a vineyard) or indivisible (such as a painting). In other causes co-operators are considered as partial causes of the injury.

1783. Coöperators in damage are bound to restitution either *in solidum* or *pro rata.*

(a) Thus, they are bound *in solidum* (*i.e.,* jointly and severally) for all the loss when they are total causes of the damage. But the principal cause is bound absolutely, the secondary or equal cause only conditionally, that is, the principal must pay all the restitution himself, the others must pay all only when the principal or other associates fail to do their duty.

(b) They are bound *pro rata* (*i.e.,* each one according to his share) when they are only partial causes of the damage. The obligation of restitution *in solidum* should not be imposed, if it is uncertain, or if the coöperator is in good faith and the admonition would only produce harm.

1784. The order of restitution among coöperators in injury is according to the priority of the obligation of one to that of another, in the sense that one is obliged to pay all and the other is obliged only in the former's default. This order of priority in obligation is in force when many coöperators are bound *in solidum* and when they coöperated in different ways (*e.g.,* one as possessor, another as advisor, another as performer, etc.). The order generally given by moralists is as follows:

(a) the possessor is bound first of all, since he has the goods of another and the goods call for their owner;

(b) the coöperators are bound next in the following order: the originator (such as a perpetrator acting in his own name, or a mandator); the perpetrator acting in the name of another; the others who aided the commission of the act (such as advisors, flatterers, etc.); those who did not prevent or resist injustice.

1785. The obligations of coöperators when restitution in full is made by one of their number, or when condonation of debt is made to one of their number, are as follows: (a) if restitution was due *pro rata,* the other coöperators must indemnify their associate who paid all, or must pay their shares to the injured party who gave condonation only to one of their group; (b) if restitution was due *in solidum,* payment by or condonation to a principal cause frees the secondary causes; but payment by or condonation to a secondary cause does not exempt a principal cause, and the latter is still held either to the secondary cause or to the injured party, as the case may be; payment by or condonation to an equal cause does not exempt the other equal causes.

1786. The person to whom restitution must be made is the person whose strict right has been violated, or, in his absence, it is society. But the following cases should be distinguished:

(a) when the injured person is known for certain and his right is certain, restitution should be made to the injured person or his representatives or successors, or, if this is not possible, to charitable or pious causes;

(b) when the injured person is entirely unknown, if the one who is the cause of the loss is in good faith, his obligations are those of a possessor in good faith; but if he is in bad faith, the common opinion is that he is bound, at least from customary law, to make restitution by giving to the poor or to religion;

(c) when the injured person is partly unknown, the person who is the cause of the loss should make restitution to the best of

his ability. If the doubt extends to only a few persons (say four or five), any one of whom may be the injured person, restitution should be divided in the best way possible among these persons; if the doubt extends to many, but the injured persons were only a few, it seems that restitution may be made by giving to charity or religion either in the place of the injury or elsewhere; if the doubt extends to many, and the injured persons were many inhabitants of the locality, restitution must be made if possible to the injured parties themselves, otherwise to some public cause of the local community.

1787. Order of Preference Among Creditors.—The natural order of preference is to be shown to creditors when the debtor is unable to pay them all.

(a) Those who have a right *in re* (*e.g.*, those whose property is held by the debtor) have precedence over those who have only a right *ad rem* (*e.g.*, those who are creditors from contract).

(b) Creditors from onerous contract or delinquency, it is generally admitted, have priority over creditors from gratuitous contract.

(c) Creditors from delinquency and creditors from onerous contract, according to what seems to be the common opinion, are equal in rights and should be settled with *pro rata*.

(d) Debts that are certain have priority over debts that are uncertain, according to some; others deny this, but admit that the uncertain debts need be paid only in proportion to their probability.

(e) Creditors who are certain are by some preferred to creditors who are uncertain; but others think that payment to the poor, in place of the unknown creditor, is the latter's presumed will, and that it has an equal standing with debts owed to known creditors.

(f) Poor creditors have no just claim to preference over rich creditors; but charity dictates that, when the poor creditor is in distress, he should be given the preference.

(g) Earlier creditors have a preference over later creditors in a real claim, but it is disputed whether this holds also in a personal claim.

(h) The creditor who asks for a settlement sooner has a preference, if the petition is made juridically, and perhaps also if it is made privately.

1788. The order of preference among creditors according to civil law is generally as follows: (a) proprietary creditors (*i.e.*, those whose property is held by the debtor); (b) privileged creditors (*i.e.*, those whose debts have a special urgency, such as judicial expenses, doctors' bills, wages for hired help, living costs, etc.); (c) hypothecatory creditors (*i.e.*, those who have claims against the property of the debtor, in the form of liens, mortgages, etc.); (d) common creditors (*i.e.*, all those who are paid after the previous creditors have been satisfied).

American law contains provisions in regard to dispositions of property made during the four months before bankruptcy is filed, so as to protect the creditors of a person who is insolvent. The property of a bankrupt is placed in the hands of an assignee and allowance is made for the debtor's needs and perfected liens (*i.e.*, charges legally made upon property for debt). The property is then subject to levy by the creditors as follows: maintenance expenses, legal fees, costs of administration, wages of workmen, taxes, debts having priority under Federal or State law.

1789. The "Thing" to Be Restored.—(a) In case of unjust possession, the identical object must be restored, if it has an individual value; otherwise it may be restored in its equivalent. (b) In case of contract, the identical object must be restored, if that is the agreement (*e.g.*, in loan of a chattel, or deposit), otherwise it may be restored in its equivalent (*e.g.*, in loan of money).

1790. The "Amount" of Restitution in Certain Cases.—(a) *When an Object had Various Values during the Time of its Possession in Bad Faith.*—If the change was from an internal cause and was for the better (*e.g.*, the calf stolen by a thief has become a cow), the return must be made in the improved state; if the change was from an internal cause, and was for the worse but would have happened in any case (*e.g.*, the cow taken by the thief has become old), return must be made in the actual state; if the change was from an internal cause and for the

worse, which would not have happened had the object remained with the owner (*e.g.*, a cow taken by a thief has become lame on account of the thief's carelessness), return must be made also for the deterioration. If the change was from an external cause (*e.g.*, the wine taken by a thief has risen and declined in value several times), it seems that practically nothing more can be imposed by way of restitution than the value the object had when taken.

(b) *When Unjust Damage has been Done.*—If the damage was caused positively, the injured person must be indemnified entirely; if the damage was caused negatively, the injured party should be indemnified more or less according to the reasonable expectation he had of the gain of which he was deprived.

1791. The "Manner" of Making Restitution.—The general rule is that it should be made in such a way that the injury will be repaired and the injured person indemnified for his loss. Generally speaking, there is freedom of choice as to various forms in the modes of restitution. Thus, it may be made publicly or secretly, directly or through an intermediary, positively (by payment) or negatively (by cancellation of a debt). It may even be made without the knowledge and intention of the parties.

(a) Thus, the injured party may be compensated, even though he is unaware that he was cheated or that he is being paid back; (b) the offender may restore, even though he does not know he is doing so (*e.g.*, if he pays while intoxicated), and probably even though he has no express intention of doing so (*e.g.*, if he makes a present of $10, and then remembers that he owed damages to the amount of $10).

1792. Second Restitution.—Natural law must be applied to certain cases in which restitution sent through an intermediary perishes on the way through no fault of the debtor. (a) If the debt is owed on account of possession in good faith, the debtor is not bound to a second restitution. (b) If the debt is owed on account of contract, the goods perish to the owner. Thus, if the contract was one of loan, the loss must be borne by the lender; if it was one of sale, by the seller. (c) If the debt is owed on account of delinquency, there is an obligation to a second restitution, unless the injured party assumed the risk of transmission. It is held as probable that the choice of the confessor as intermediary for restitution has the consent of the injured party, and hence that, if the restitution perishes on the way through chance or the fault of a third party, there is no duty of second restitution.

1793. The "Time" When Restitution Must Be Made.—(a) Internal restitution, or the purpose of restoring, must be made at once, that is, as soon as one adverts to the necessity of this resolve. (b) External restitution, or the fulfillment of the resolution, must be made at the first suitable opportunity.

1794. Unjust Refusal to Make Restitution or Pay Bills.—(a) Those who unjustly refuse to make restitution or to pay their bills at the proper time are guilty of mortal or venial sin according to the damage their refusal causes to the creditor. (b) They are not worthy of absolution if there is serious bad faith on their part, as when they have many times broken their promises, or when they refuse to pay even the part or installment which is within their power. (c) They are bound to additional damages for the losses caused by the unjustifiable delay.

1795. The "Place" Where Restitution Must Be Made.—(a) He who is a debtor on account of injury must make restitution at the place where the thing would be were it not for the injury. (b) He who is a debtor on account of possession in good faith should notify the owner where the property is, but he is not obliged to bring it to the owner. (c) He who is a debtor on account of contract must abide by the agreement, or by the statutes that regulate the contract. Thus, in this country the place of delivery in sales is according to law the seller's place of business or his residence.

1796. Burden of Expense or Loss When Restitution Is Sent to the Place of the Creditor.—(a) If the obligation of restitution arises from injury, the debtor is generally bound to pay the transportation and to stand the loss when the goods perish in transit. (b) If the obligation arises from contract, the expenses and losses must be borne according to the agreement.

If nothing was stipulated, it seems equitable that the expenses of transportation be borne by the party who benefits or who requested the contract. According to the Sales Act in the United States, the seller is the loser when goods perish in transit, if a place of delivery had been agreed on; but the buyer is the loser when in pursuance of the contract the goods had been delivered to a carrier for transmission to the buyer (see **1888** d).

1797. The Causes That Excuse Temporarily from Restitution.—These causes can be reduced to two, namely, physical and moral impossibility. (a) Physical impossibility exists when the debtor has not the means to pay and cannot secure them; and it excuses as long as it continues. One who is bankrupt is excused from restitution during the continuance of his insolvency; if he later becomes able to pay, it seems to some that the civil declaration of bankruptcy according to the law of the country releases him from further payment, unless his bankruptcy was fraudulent or due to culpable neglect. (b) Moral impossibility exists when the debtor has the means, but cannot pay immediately without incurring a loss of a higher order (*e.g.*, if he pays the small sum of money, he will lose his own excellent reputation), or without suffering a greater loss in his own goods of the same order (*e.g.*, if he pays the money, he will be reduced to starvation), or without surely bringing on a far greater evil than delay of restitution to the creditor or a third party (*e.g.*, if a stolen weapon is returned to its owner, he will commit suicide or murder).

1798. The Causes That Excuse Permanently from Restitution.—These causes can also be reduced to two general ones, namely, the cessation of the object and the termination of the obligation through the act of the creditor, or of the debtor, or of authority.

(a) Thus, the cessation of the object releases from the duty of restitution whenever the object perishes to its owner, as when it is lost by a possessor in good faith who has not been enriched by it, or even by a possessor in bad faith, if it would have been lost equally by the owner (see **1771, 1774**).

(b) The termination of obligation through the act of the creditor occurs when the creditor freely and lawfully excused the debtor from payment. In some cases condonation may ordinarily be presumed, either on account of the affection of the creditor for the debtor (*e.g.*, in case of debts owed by children to their parents) or on account of the familiar relationship between the parties and the smallness of the debt (*e.g.*, in case of appropriation by servants or employees of some unimportant articles not kept under lock and key), or on account of the indigence of the debtor and the smallness of the damage (*e.g.*, in case of trifling harm to goods of a wealthy person, if there was no great malice and the debtor is very poor).

(c) The termination of obligation is also effected by equivalent payment, which in certain cases is made by payment of the creditor's creditor, or the cancellation of an equal debt owed the debtor by the creditor, and perhaps also by a gift made the creditor by the debtor and equal in value to the debt. Occult compensation by the creditor is the secret taking by him of what he is entitled to when the debtor will not give it of his own accord. This is lawful when the debt is certain, other means of recovery impossible, and the compensation not injurious; but it covers restitution, and hence the creditor cannot accept another payment from the debtor.

(d) The termination of obligation is also effected by the act of competent authority. Thus, judicial declaration frees from the duty of restitution a person who has lawfully and in good faith received certain goods as damages or award; prescription (see **1875**) gives a clear title to property held by adverse possession over a certain number of years, and it frees from the duty of payment, at least in certain cases (though not in the United States); papal composition for good reasons exempts from their obligation those who owe restitution to pious causes or to church property injured by them.

1799. Condonation of the domestic thefts of wives and children of the family cannot be presumed in all cases (see **1903**).

(a) Thus, if the things stolen are articles of food and drink (or tobacco), and were consumed by the members of the family,

there is no duty of restitution, since the father or husband is then unwilling, not so much that these things should be taken, as that they should be taken furtively.

(b) If the things taken do not fall under the class of eatables and are still in the possession of the thief, they should be restored. Hence, if a son steals money from his father in order to have the means for debauchery, he must give back that money.

(c) If the things taken were not eatables, but were of great value and have been consumed or alienated, it will depend on circumstances whether restitution is obligatory or not. Thus, if the father thinks much of the son who took the money and the family does not miss it much, condonation may perhaps be taken for granted; but if the son is not on good terms with his father, or if the theft is very harmful to the family, restitution may be due.

1800. Excuse from Restitution on Account of Doubtfulness of Obligation.—(a) One who doubts positively and in good faith whether or not he did damage to another is excused from restitution if the doubt is about the fact of the damage (*e.g.*, whether his competitor lost business) or about his own culpability (*e.g.*, whether he circulated a calumny about his competitor); he is probably held to restitution *pro rata* of the doubt, if the doubt is about the responsibility of his culpable act for the damage that followed (*e.g.*, whether his calumny or the poorness of the competitor's wares caused the falling off in business); he is probably held to only his share, if the doubt is whether his culpable act was responsible for the whole or only a part of the damage (*e.g.*, whether his calumny caused all the damage, in view of the fact that others were also spreading calumnies).

(b) One who doubts positively and in good faith whether the restitution owed by him has been paid (*e.g.*, whether his fellows in calumny have paid their portions of restitution, whether he has paid a bill for goods or services received) is held to full payment by some, to part (*pro rata*) payment by others, to nothing by others. Some moralists think the presumption favors the creditor, others that it favors the debtor, others that it favors neither and that a compromise is the right solution.

1801. Doubt does not excuse restitution in the following cases: (a) when it is merely negative and the presumption is against the doubter (*e.g.*, when a person knows that he purchased and received goods, but does not know whether or not he paid for them, and has no reason to think he did pay); (b) when it is in bad faith, that is, knowingly or intentionally produced (*e.g.*, when two men simultaneously fire at a neighbor's cow, knowing that it will thus become impossible to determine the author of the damage).

1802. Special Cases.—There are some special cases of restitution for negative injury in thwarting another's prospects, or for positive injury to goods of fortune, of body, of soul, or of spirit.

(a) *For Frustration of Another's Good.*—Restitution is due for keeping another from a good to which he has a strict right (*e.g.*, an office to which he has been chosen, property for which he has paid), or for using force, fraud, bribes, or other unjust means to keep another from a good to which he has a non-strict right (*e.g.*, a position for which he has made application, a gift which another contemplates bestowing on him). The amount of restitution should be calculated according to the previous probability of success on the part of the injured party and the permanent results of the injury.

(b) *For Injury Done to Goods of Fortune.*—Private injuries are spoken of elsewhere (see **1762 sqq.**), and now we consider only injuries that are in some way public. Commutative injustice entailing restitution to the community is committed by damage to public property, breach of contract made with the community, unjust means employed to prevent the government from obtaining its dues, unjust coöperation in any of the aforementioned acts; commutative injustice entailing reparation to individuals is committed when the transgression of a law places an undue burden on a fellow-citizen (*e.g.*, when one unjustly escapes military or jury service and causes a substitute to be called who would not have been called otherwise, or when one unjustly evades one's taxes and thereby certainly causes the taxes of others to be raised). If a tax law is just, it obliges in conscience,

but whether as penal or preceptive, whether in virtue of legal or commutative justice, is a much debated question; and hence the question of sin and of restitution due is not easily settled. Impossibility or a general and admitted custom excuse from restitution (see **2637 sqq.**).

(c) *For Injury Done to Goods of Body or Personal Goods.*—According to one view no restitution is due for merely personal injuries, since the damage cannot be repaired by a good of the same kind as that which was taken away (*e.g.*, the murderer cannot give back life to his victim); but according to another view restitution is due for these injuries, since justice requires that every kind of damage be repaired as far as possible (see **1751** and **2090**).

1803. Restitution for Various Kinds of Damage Done to Persons.—(a) *For Bodily Injury by Unjust Homicide or Mutilation.*—The offender (or his heirs) is obliged to restitution to the victim (or his heirs or dependents) for spiritual loss (such as death without the Sacraments), probably for personal loss (such as pain, facial disfigurement), and for real losses due to the injury (such as hospital expenses, loss of support by the widow and orphans). The spiritual loss is compensated by spiritual goods, such as suffrages for the departed, the personal loss by compensation suited to the circumstances (*e.g.*, money, employment), the real loss by payment of medical expenses, loss of time, support lost by dependents, etc. The offender is not liable for damages of which he is not the unjust cause (*e.g.*, the alms that will be lost by poor persons on account of homicide, since they have no strict right to the alms), or the efficacious cause (*e.g.*, the pay that will be lost by creditors on account of homicide, for as a rule the slayer cannot foresee this), nor for damages which the injured person clearly condones.

(b) *For Bodily Injuries by Fornication or Adultery.*—In case of fornication the offender owes restitution to the person seduced and also at times to the latter's parents, and both sinners are bound to support their illegitimate child. The form of the compensation will depend much on circumstances, but in general it should be either marriage with the person seduced or some kind of pecuniary compensation. It should be noted that a promise to marry, even though it is canonically valid, gives no action to enforce marriage, but even an invalid engagement gives rise to action for unjust material damages, such as loss of chance to marry or loss of money spent in view of the marriage (see Canon 1017). In case of adultery the guilty party or parties are bound to make restitution to the injured husband if an illegitimate child is being reared at his expense, and also to the legitimate children for injuries to their strict rights, as in the diminished inheritance received from their parents on account of the illegitimate child. A child is not obliged to accept the word of his mother that he is illegitimate, but if he is certain about his illegitimacy, he may not take that to which he is not entitled. In restitution for fornication or adultery, care must be taken to preserve the good names of all the parties concerned.

(c) *For Injuries of Soul.*—In case of unjust and efficacious damage to physical goods (*e.g.*, when one by fraud or force administers to another drugs or intoxicants that take away the use of reason or self-control, when a professor neglects his office of teaching or teaches error), restitution is certainly due for any material damages that result, and probably for the personal injury alone. In case of damage to spiritual goods, by inducement to commit sin or by dissuasion from good, restitution is due when the influence exerted was unjust (*e.g.*, by fraud, force, threats), not when it was merely uncharitable (*e.g.*, by advice, persuasion, request, example). Restitution for spiritual damage may be made negatively, that is, by removal of the unjust influence; but if a person who was seduced has in consequence become a hardened sinner, it seems that restitution should be made positively, that is, by counsels, requests, prayers to God, and other prudent means calculated to recall the injured party to a life of virtue.

Art. 4: THE VICES OPPOSED TO COMMUTATIVE AND DISTRIBUTIVE JUSTICE

(*Summa Theologica*, II-II, qq. 63-78.)

1804. The Vice Opposed to Distributive Justice.—Favoritism

(*i.e.*, acceptance of persons, partiality) is defined as "a species of injustice which moves one to distribute the common goods or burdens of society, not according to merit or fitness, but according to some other and impertinent standard.

(a) The *common goods* include offices, honors, functions, while the *common burdens* include taxes, contributions, and penalties.

(b) The common goods of which we now speak are those that *belong to society* and that must be portioned out to its members justly. Hence, there is no question of goods that belong to private persons, which the owners are not obliged to give to others unless it be in virtue of charity or liberality. A rich man is not guilty of acceptance of persons, if he bestows his largesses on those who are less in need or less deserving, but more acceptable to himself; and God is not unjust when he gives unequal graces to those who are equally sinners (Matt., xx. 14, 15).

(c) The right standard of just distribution is *merit or fitness*, as when an applicant is appointed to the post of teacher or superior on account of good character and knowledge. Any other standard which leaves merit and fitness out of consideration is unjust, as when a public official selects for offices or honors, not those who have worked the hardest or who give the most promise, but those who have more money or who are related to himself.

1805. The Sinfulness of Favoritism from Revelation.—In Holy Scripture favoritism is reproved ("How long will you judge unjustly and accept the persons of the wicked?" Psalm lxxi. 2), and impartiality is praised ("Thou art a true speaker and teachest the way of God in truth, neither carest Thou for any man, for Thou dost not regard the person of man," Matt., xxii. 16; "Masters, know that the Lord both of servants and you is in heaven, and there is no respect of persons with Him," Eph., vi. 9).

Distributive justice is commanded in many passages of Holy Writ ("Consider not the person of the poor, nor honor the countenance of the mighty; but judge thy neighbor according

to justice," Levit. xix. 15; "There shall be no difference of persons, you shall hear the little as well as the great, neither shall you respect any man's person," Deut., i. 17; "Thou shalt not accept persons nor gifts," Deut., xvi. 19; cfr. James, ii. 1 sqq.).

1806. The Sinfulness of Favoritism from Reason.—Favoritism transgresses a divine command and substitutes personal will for right in the treatment of subjects by superiors. Hence, it is morally evil, for disobedience is sinful in the high as well as in the low, and violation of rights is unjust whether the rights be of the community or of the individual.

1807. The Gravity of the Sin of Favoritism.—(a) From its nature, favoritism is a mortal sin; for it is a form of injustice (see **1746**), and indeed it is no less damaging than commutative injustice (*e.g.*, theft) and is often accompanied by the latter. (b) From its matter and from the lack of deliberation or consent it may be venial. Thus, if favoritism is shown in a trifling matter (*e.g.*, in conferring a post that is unremunerative and unimportant) or in a small degree (*e.g.*, in preferring an applicant who is only slightly less worthy), there is only venial injustice.

1808. Distributive injustice is also frequently accompanied by commutative injustice.

(a) Thus, a first class of common goods that are distributed are those intended primarily for the common good, and only indirectly and secondarily for the good of individuals, such as public offices, dignities, and benefices. He who distributes these offices unfairly, by appointing unworthy persons, or by appointing the less worthy when he is under contract to appoint the more worthy, violates commutative justice and is held to restitution to the community; but the worthy or more worthy persons slighted had no strict right, and hence no restitution is due them, unless there was a compact with them or unjust means were used to exclude them (see **1755**).

(b) A second class of common goods are those that are intended primarily for the benefit of individuals, such as a fund created for the relief of the destitute or afflicted or pensions

set aside for those who have deserved well of society. He who distributes these goods unfairly is guilty of commutative injustice against private persons, since the goods were destined for them, and they had a right *ad rem* to the goods, and hence to these persons restitution is owed.

1809. Favoritism in Spiritual Matters.—(a) Partiality in granting favors is sinful, and gravely so when the matter is serious. Examples are the grant to the unworthy of the power of Orders or of jurisdiction, the concession of permissions and dispensations to one's friends that are denied to others. (b) Partiality in imposing burdens is also sinful, as when a prelate issues an onerous command, and grants exemption to his friends. But if the thing commanded is obligatory already by reason of law, it should be observed in spite of the favoritism of the prelate.

1810. Who is to be considered as more worthy for appointments in spiritual matters?

(a) The more worthy person is the one who will better serve the common good in the office. Hence, the more pious or the more learned man is not necessarily the more worthy, for another may have greater industry, influence, executive ability, initiative, prudence, experience, etc., and so be better suited to fill the position. But no person should be considered as worthy of spiritual offices unless his moral character is good, and excellence in temporal things does not compensate for negligence in spiritual matters.

(b) The more worthy person is the one who is more available when the appointment has to be made. Hence, the one who is better gifted for the office is not necessarily the more worthy, for another may be better known and it may be impossible to make investigations and comparisons at the moment.

1811. Opinion of the Applicant or Appointee about His Own Fitness.—(a) The applicant need not think that he is worthy or the most worthy; indeed, according to St. Thomas, it would be presumptuous for him to think so highly of himself, and he would thus become unworthy. It suffices, then, that the applicant have in mind only to try for the office, leaving the decision about fitness to the examiner or appointer.

(b) The acceptor who feels that he is unworthy or less worthy is not guilty of injustice; for he is not the judge of his own abilities and may rely on the judgment of those who appoint him. Moreover, he can trust to divine grace and his own efforts to make up for any deficiency or inferiority of which he is conscious. But it seems that, if the appointee were absolutely certain that his appointment was unjust, he would be bound to surrender his office, if this were possible.

1812. Favoritism in Secular Matters.—Do the conclusions in reference to ecclesiastical offices apply also to secular offices?

(a) In both cases distributive justice is violated by favoritism, for the standard followed is not merit or fitness, and thus the more worthy persons are injured. The opinion that civil society has dominion of public offices and therefore the right to distribute them at will, without regard to the merits or fitness of persons selected, is not probable; for civil rulers, like spiritual rulers, should consider themselves as ministers and dispensers only (I Cor., iv. 1), and even if they had dominion over offices, they would be bound to use that power for the benefit of the public for whom they rule.

(b) In both cases also commutative justice is violated in some instances, the offense being either against society or against individuals (see **1755, 1808**). Thus, an official who appoints a subordinate knowing that he will oppress and rob, is responsible and bound to restitution to the victims as being a coöperator in injustice.

1813. Favoritism in Marks of Esteem or Honor Shown to Others.—(a) There is no favoritism if honor and esteem are shown to those who deserve it on account of their virtue or position. Hence, it is not unjust but just to show special marks of veneration to holy persons, and even to those who are not holy, but whose authority or age deserves respect (such as rulers and prelates, parents and aged men).

(b) There is favoritism if honor and esteem are shown to

those who have no genuine claim to it on account of goodness or rank. Thus, wealthy men are worthy of special respect on account of goodness when they employ their riches in useful ways, or on account of preëminence in the community in rank, ability, influence, etc., and he who shows special courtesy or attention to the wealthy for reasons such as these is not a respector of persons. But if mere wealth is worshipped, sinful favoritism is shown, as when a villainous rich man is honored and a worthy poor man is despised, or well-dressed persons are conducted honorably to comfortable seats in church and good persons whose attire is poor are treated with contempt (James, ii).

1814. Favoritism in Judges (Umpires, Arbitrators) and the Like.—(a) In the course of a trial there may be favoritism in matters left to the judge's discretion. This does not happen, however, when the discretionary power is intended for the judge's own benefit (*e.g.*, when on a free day he decides to hear one side rather than the other), but when it is meant for the benefit of the litigants (*e.g.*, when he grants to one side a longer time for preparation of its case than to the other side and for no reason pertinent to the matter at issue).

(b) In the sentence pronounced there is favoritism, if the decision is not based on the merits of the litigants, but on extraneous considerations, such as the fact that one of the parties is a friend or relative of the judge or arbitrator, or belongs to the same political party or business, etc.: "It is not good to accept the person of the wicked, to decline from the truth of judgment" (Prov., xviii. 5). If the arguments are about evenly balanced on both sides, it would be favoritism to decide in favor of one against the other. Alexander VII condemned the proposition that a judge may take money in such a case of doubt to decide for one party (Denzinger, n. 1126).

1815. The Vices against Commutative Justice.—These vices can be classified under two general heads:

(a) the vices committed in involuntary commutations (see **1748**), which include deeds against the person (such as homicide, mutilation, imprisonment) and against property (such as theft and rapine), and unjust words, whether spoken during judicial process (by judges, advocates, witnesses, etc.), or outside of judicial process (such as contumely, detraction, etc.);

(b) vices committed in voluntary commutations (see **1748**), which include fraud and usury.

1816. Homicide.—Life destroyed is either that of an irrational being (*i.e.*, of a plant or beast) or of a rational being. In the latter case we have homicide, which is defined as follows: "an act or omission of a human being that is the efficacious cause (see **1763**) of the death of a human being." A parent who denies his child the food, remedies or climate which it needs and which he can afford commits homicide by omission; a physician who practises abortion commits homicide by act. The following distinctions of homicide have a bearing on its substantial morality (*i.e.*, its lawfulness or unlawfulness):

(a) in reference to the intention, homicide is either voluntary or involuntary, and voluntary homicide is intended either as a punishment or as a defense;

(b) in reference to the slayer, homicide is either the act of a public or of a private person, of a cleric or of a layman;

(c) in reference to the person slain, homicide is either the killing of one who is guilty or of one who is innocent, either the killing of a neighbor or of self (suicide);

(d) in reference to the manner, homicide is either direct or indirect, according as the action from which death results is from its nature (*finis operis*) productive of death or of some other effect. Thus, it is directly homicidal to practise embryotomy (*i.e.*, the destruction of the vital organs of a fetus) or abortion (*i.e.*, the ejection of a fetus at a stage of development when it is unable to live outside the mother), but it is not directly homicidal to give a pregnant woman remedies necessary for her life, although harmful to the fetus; for the object or purpose of the former is to kill, of the latter to cure.

1817. Other distinctions of homicide have a bearing on its added or accidental malice.

(a) A new species of sin is added to that of injustice when other virtues are offended against. Thus, the virtue of piety is violated when the victim is a person to whom the slayer owed

special respect and devotedness, as in parricide, regicide, fratricide, uxoricide; the virtue of religion is offended when murder is committed in a church.

(b) An aggravating circumstance is added by the greater deliberation with which the homicide is planned, or the greater treachery or cruelty with which it is executed (*e.g.*, assassination, death by starvation). Some circumstances, however, may be morally indifferent, such as the fact that the victim is killed by one kind of poison rather than another.

1818. The Killing of Animals (or Vegetation).—(a) In itself, the killing of animals is not sinful; for animals are made for the use of man. Hence, it is lawful to kill, not only harmful animals, such as those that prey on human beings or breed pestilence or destroy property, etc., but also other animals, when their death is necessary for some good purpose, such as the provision of food, clothing or medicine for man.

(b) In its circumstances, the killing of animals may be sinful, and even gravely sinful, as when one kills the animals of one's neighbor (Exod., xxii. 10, 11), or hunts against the law, or injures society by prodigal destruction of animal or plant life, or kills animals in cruel ways. The skinning of animals alive, in order to secure finer-looking furs to satisfy the vanity of women, is an inhuman barbarism of the worst type that should be reprobated by everybody.

1819. When Homicide Is Lawful.—Killing of human beings is lawful in two cases. (a) It is lawful when the common safety requires that the State inflict death for a crime (capital punishment); for just as it is lawful to amputate a gangrenous member which threatens to destroy the body, so is it lawful to remove from human society by death an individual who menaces the safety of the community. (b) It is lawful when the safety of an individual demands that he kill an unjust aggressor (self-defense); for a man owes his first duty to his own life in such a case, and the aggressor in making a deadly attack voluntarily assumes the risk of being killed. It is more correct, however, to say here that it is lawful to defend one's life with resultant death to the offender (as will be explained below, in **1826, 1828, 1834**).

1820. Arguments for the Lawfulness of Capital Punishment.—(a) *Scripture.*—In the Old Testament the death sentence was prescribed for certain more serious crimes, such as murder ("Whosoever shall shed man's blood, his blood shall be shed," Gen., ix. 6); in the New Testament Our Lord recognizes that the power of a judge to sentence to death comes from above (John, xix. 10), and St. Paul declares that princes do not wield the sword without reason, but act as ministers of God when they punish evil-doers (Rom., xiii. 4).

(b) *Tradition.*—The Church has always taught the lawfulness of capital punishment and rejected contrary errors, as in the case of the Waldensians condemned by Innocent III.

(c) *Reason.*—The State has both the duty and the right to promote the common good and to defend it against its enemies, whether by war against external foes or by coercive measures against internal disturbers of the peace. Now, the experience of all the centuries and of all countries has shown that, generally speaking, the lives of law-abiding persons and the general peace are not sufficiently protected unless the supreme penalty be appointed for certain crimes.

1821. Though lawful, capital punishment is not always necessary; for it is a means to an end, and it may be omitted, therefore, when the end can be obtained by the use of other and less severe means.

(a) Thus, a general suspension of the capital punishment is lawful in a community whose members are peaceful and not inclined to violence or other crimes subversive of law and order. Whether such ideal conditions exist today may be doubted, and indeed some countries that abolished the death penalty have found that this proved an incentive to crime and they were forced to restore the former laws.

(b) A particular exemption from capital punishment is lawful, when there are good reasons recognized by law for commutation or clemency. This has been the practice of governments throughout history, and is justified when it furthers the common welfare, or at least shows mercy to a deserving individual without harm to society. But a judge has to condemn when the law and the facts call for condemnation, and the

authority in whom the pardoning power is vested has to use his power prudently, lest he encourage lawlessness.

1822. It is not morally lawful to put criminals to death unless the following conditions are present:

(a) the crime must be external and of such a character that the public welfare requires the supreme punishment, either on account of the enormity of the act (*e.g.*, murder), or on account of its danger (*e.g.*, sleeping at one's post in time of war). Further, the crime must be certain and sufficiently established, for, since the punishment should fit the offense and the law presumes innocence until guilt is proved, no one should be sentenced to death except for a serious and certain crime. The Fifth Amendment to the American Constitution declares that no person shall be deprived of life, liberty or property without due process of law;

(b) the sentence of death and its execution should be performed by those who have public authority for these acts and in the manner required by law. For capital punishment is a means of self-defense used by society, and its use pertains therefore to the representatives of society. Moreover, if private individuals exercised this function, accused persons would not receive the consideration of their rights or the opportunity of defense due them, and the public peace would be overthrown by murders of revenge committed in the name of justice;

(c) the penalty should be carried out in a humane and Christian manner, as is manifest. The convicted man should be allowed time and opportunity to make his peace with God and, if possible, to say farewell to relatives. Slow and agonizing forms of killing are of course entirely wrong, no matter how wicked the criminal who is being executed. The American law and other laws do not permit a pregnant woman to be executed until she has delivered her child.

1823. Unlawful Killing of Offenders.—The killing of offenders is, therefore, unlawful in the following cases:

(a) when the offense is not serious or fully deliberate (*e.g.*, involuntary manslaughter), or when it has not been sufficiently established (*e.g.*, if it is not certain that the supposed victim of murder is dead or that he died from a homicidal act). In civilized countries today the law inflicts capital punishment only for the most serious crimes, and the State has to prove its case beyond reasonable doubt before the punishment can be decreed. But in the past death was often the penalty for horse- or sheep-stealing, or even smaller offenses, and in times of excitement men have sometimes been sentenced to death without a fair trial;

(b) when the sentence of death is not pronounced or executed legally. Those who lynch the perpetrators of heinous crimes are often in good faith, especially if the processes of the law are too slow or uncertain, but since they act without authority, their deed is really murder. The same is true of a husband who kills his wife taken in adultery, of the relative of a seduced girl who kills the seducer, of an officer of the law who unnecessarily or without authorization kills a man sentenced to death when the latter is trying to escape. The State has the right, though, to declare a notorious malefactor outlawed, and thus to give to private citizens the right to take him dead or alive, or to kill him on sight; but it is clear that the exercise of this right is a dangerous remedy and one to be used sparingly;

(c) when the mode of killing or the circumstances are repugnant to Christian feeling. Today capital punishment is generally inflicted in a humane manner, but history records many cruel forms of execution, as when men were hanged, drawn and quartered, or burned at the stake, or put to death amid the jeers and curses of the populace.

1824. Is Tyrannicide Lawful?—(a) If the ruler is a tyrant in act (that is, one who has a lawful title to rule but who abuses his authority), it is not lawful to kill him on account of his misdeeds or crimes, since the subject has not the authority to act in the name of the nation (Rom., xiii. 1 sqq.; I Peter, ii. 18). In case of self-defense, however, as when the tyrant unjustly makes a personal attempt on the life of a citizen, the latter has the right to kill. The Council of Constance condemned the doctrine of Wycliff that every subject has the right to assassinate a tyrannical prince, a doctrine that would make the position of every ruler unsafe, since there are always persons who

think they are victims of persecution. The nation, however, has the right to depose or even to execute a wicked ruler, for government is given to rulers for the benefit, not for the destruction, of the common good.

(b) If the ruler is a tyrant in title (that is, a usurper), it is not lawful to kill him, when he has already obtained peaceful possession; for here again it cannot be said that the killer would have the authorization of the nation. If, however, the tyrant has not obtained possession but is struggling for it, his status will not be that of ruler but of public enemy, and it will be lawful to kill him as an act of war, provided the conditions of a just war are present (see **1384**).

1825. Judges and Executioners in Canon Law.—According to the law of the Church (Canon 984, nn. 6, 7), those who pass the death sentence as judges and the executioners and their immediate and voluntary helpers become irregular (*i.e.*, incapable of lawfully receiving Orders or of exercising their powers). The reasons for this ancient discipline are chiefly two:

(a) clerics are the ministers of Christ, and therefore they should be like their High Priest, whose sacrifice they offer at the altar. Now Christ "when He was reviled, did not revile, when He suffered, He threatened not, but delivered Himself to him that judged Him unjustly" (I Peter, ii. 23). Hence, it is unbecoming that clerics should condemn to death or kill their fellow-men, even criminals;

(b) clerics are the ministers of the New Testament, and therefore they should conform themselves to its spirit of mildness. The divine law itself declares that a bishop should not have private quarrels or inflict blows (I Tim., iii. 3), but the church law goes further and declares that a cleric should not even act as public judge or executioner in capital cases. The Old Testament inflicted corporal punishments and death, and hence we read that its priests and levites put sinners to death with their own hands (Exod., xxxii. 28; Num., xxv. 7, 8; I Kings, xv. 33; III Kings, xviii. 40; I Mach., ii. 24), but the law of Christ contains no sentences of death or of bodily chastisement.

1826. The Right of Self-Defense.—The second case of lawful homicide mentioned above (**1819**) is the killing of an unjust aggressor, not intended by the slayer, but consequent on his defense of his life against the aggressor. This right of self-defense is granted by natural law itself, and has been denied by but few moralists.

(a) Thus, nature inclines man to prefer his own life to that of another, other things being equal, and therefore it authorizes him to defend his life even at the cost of an aggressor's life. Even the brute animals are armed by nature to defend themselves against attack.

(b) The natural law also permits one to perform an act from which two effects will follow, one good and the other bad, provided the good effect alone is intended and there is a sufficient reason for permitting the evil effect (see **104**). In the present case the killing of the aggressor is an evil, while the protection of the innocent party is a good; but it is only the protection that is intended, and the killing is not an extreme measure in view of the greatness of the good that is at stake.

1827. The right of self-defense is also sanctioned by human laws. (a) Thus, church law recognizes this right in the words of Innocent III: "All laws permit one to repel force by force, but the defense must not be immoderate, nor exercised from desire of revenge." According to the Code (Canon 985, n. 4) irregularity arises from voluntary homicide, but this does not include the case of lawful self-defense, although a provisional dispensation must be asked for. A cleric has the right of self-defense, as well as a layman. (b) Civil law also has always admitted the right of a person assailed by another to defend himself, even by killing the assailant, if there is no other alternative.

1828. Conditions for the Exercise of This Right.—(a) The assault must be a true aggression (*i.e.*, an act of violence threatening the life of the person assaulted) and unjust (*i.e.*, an attack made without public authority); (b) the resistance must be true self-defense (*i.e.*, an act used to ward off attack or to make the assailant powerless) and moderate (*i.e.*, the person at-

tacked must not use more force than necessary and he must not intend to kill the assailant).

1829. The person who is killed must be a true aggressor, for otherwise the slayer is himself the aggressor and guilty of unjustifiable homicide. Killing is therefore unjust in the following cases:

(a) when the opponent is not using true violence, as when he merely prays and hopes that you may die or be killed;

(b) when he is not using actual violence, as when he is disarmed or helpless, or when he has only threatened to kill you in the future, or to bring you to the gallows by his testimony or vote.

1830. Must one wait, then, until the aggressor has actually attacked, before using self-defense? (a) One need not wait until physical aggression has started (*e.g.,* until the adversary has fired a shot or struck a blow); otherwise self-defense would very often be futile. (b) One should wait until moral aggression has been shown before proceeding to defense; that is, the other party must perform some external act which according to the judgment of a prudent person at the time and place is one with the act of physical aggression, as when an angry man reaches for a gun or knife, or a desperado advances in a threatening manner.

1831. The aggression must also be unjust or contrary to the right of the person attacked. (a) Thus, if the aggression is just, it is not lawful to kill the aggressor. Hence, it is not lawful to kill an officer of the law who is making an arrest, or guarding a prisoner, or leading him to execution. (b) If the aggression is not just, self-defense is lawful. It makes no difference whether the aggression is formally unjust (*e.g.,* when the aggressor attacks you because he wishes to wreak revenge, or because he fears you), or only materially unjust (*e.g.,* when you are a stranger to the aggressor, but he is drunk, or a dope fiend, or a maniac). Similarly, a son may defend himself against his parent, a subject against his superior, a layman against a cleric, an adulterer against the injured husband, a calumniator against the person calumniated; for authority or personal injury suffered does not give these persons the right to inflict by private authority the punishment of death.

1832. Self-defense must be merely a protection of self against future evil and not a punishment of the aggressor for past attacks, for capital punishment belongs to society, not to private persons. Hence, if an aggressor has taken to flight, or has been disarmed, or knocked senseless, or has begged for mercy, it is not permissible to kill him.

1833. Self-defense must be moderate, for injury or the death of a human being is a thing that should be avoided when possible. (a) Thus, the person attacked must not reply with force at all, if this is possible. He should escape, or call a policeman, or throw the weapon out of the window, etc., if these means will suffice. Some authors excuse from flight those who would suffer disgrace if they ran away from danger, such as those who are pugilists or professional fighting men. (b) The person attacked should use only such force as is necessary, if force must be employed. Thus, if the aggressor can be made helpless by the use of gas, permanent bodily harm should not be done him; if he can be subdued with the fists, knife or pistol wounds should not be resorted to; if wounds will suffice to hold him at bay (*e.g.,* by blackjacking), killing should not be resorted to. In the heat of a fight, however, the person assailed sometimes unintentionally goes beyond what moderation requires.

1834. The intention of the person who uses force to repel an unjust aggressor must be good. (a) Thus, as his end he must intend only the preservation of his own life and look upon the death of his neighbor as a misfortune. (b) As the means to this end he must intend only to stop the attack that is being made, not to bring on the death of the aggressor. Those who are commissioned by public authority to put a human being to death (*e.g.,* the public executioner or soldiers in time of war) may intend these homicides, since they are means to the common good; but the death of one private person is not a means to the good of another private person, and hence it should not be directly aimed at.

1835. The mind of the person who defends himself against

the unjust aggressor must also be free from sinful dispositions, such as hatred and revenge; otherwise he sins against charity. Our Lord reprobated the teaching of the Scribes that it is lawful to return injury for injury in a revengeful spirit, and declared that one should prefer to receive a second blow rather than return a blow for the sake of revenge (Matt., v. 38 sqq.; cfr. also Rom., xii. 19).

1836. When Self-Defense Is Obligatory.—Self-defense is sometimes an obligation. (a) Thus, it is an obligation, if the only factors considered are the life of the guilty aggressor and the life of the innocent person who is assailed; for the life of the innocent should not be sacrificed for the guilty, and charity indicates that the first duty of the person attacked is to himself. (b) It is an obligation, if, on account of circumstances, the person attacked owes it to others to preserve his life—for example, if he is the father of a dependent family, or a public official whose life is very necessary for the welfare of the community, or whose office it is to resist those who menace public security. This is true from the viewpoint of society also, for the world needs the good men it has, while there are too many wicked men already.

1837. Sometimes self-defense is not obligatory. (a) Thus, it is merely optional, when no duty to others commands self-defense and a divine counsel invites one to omit it (see **1169**). Hence, if the assailant is certainly in mortal sin, while the person assailed is certainly in the state of grace, it would be very commendable to die rather than kill the assailant, in order to grant him time for repentance. But a case of this kind is rather theoretical than practical, for how could one be sure that the assailant would profit by the opportunity allowed him of doing penance? At any rate, the sacrifice is optional, for the aggressor is either formally unjust, and hence not in extreme spiritual need, or only materially unjust, and it will be uncertain whether he is in spiritual need or whether, if he is in such need, the respite will be used by him (see **1165 sqq.**). (b) Self-defense is unlawful according to some, if the life of the assailant is necessary for the common good, and the life of the person assailed is not necessary. But this would be a very rare case.

1838. Defense of Neighbor's Life.—The principles on defense of one's own life against an unjust aggressor, even at cost of the latter's life, may be applied to the life of an innocent third party.

(a) Thus, it is necessary to defend the innocent person, even if the aggressor has to be killed, when one is bound to give this protection by natural duty (*e.g.*, because the innocent person is one's child or father and the aggressor is not a relative), or by contract (*e.g.*, because one is a hired bodyguard or policeman).

(b) It is lawful to defend the innocent person, even if the aggressor has to be killed, and even though there is no duty of nature or contract to give this protection (Exod., ii. 12). But it is disputed whether it is also necessary to do this. The affirmative opinion calls attention to the extreme bodily need of the innocent party, the negative to the extreme spiritual need of the aggressor. It is not necessary to risk one's life in order to protect the life of the innocent party, unless the public safety is in peril, or one has undertaken this obligation (see **1169**).

1839. A private individual may defend life at the cost of the life of an unjust aggressor, because he is obliged or permitted to protect the life that has more of a claim on him. He may also defend certain other most important goods that belong to him or to his neighbor, even if need be at the cost of the unjust aggressor's life, because the common good is more valuable than the life of the aggressor, and the defense of those goods is bound up with the common good. Thus, if it were not permissible to defend valuable property even to the extent of killing a burglar, criminals would be encouraged, peaceful citizens would be at a disadvantage, and the public security would greatly suffer. Among the goods now spoken of are goods of fortune and goods of body. It is not always obligatory, however, to exercise the right of extreme self-defense (*e.g.*, in case of violation, provided no consent is given the deed).

1840. Defense of Goods of Fortune Against an Unjust Aggressor.—(a) If the attack is equivalent to an attack on life (*e.g.*, the aggressor wishes to take the last loaf from a starving man or the plank from a drowning man), or if it seems to be

an attack on life (*e.g.*, the burglar enters a room as if he meant to kill), the killing of the unjust aggressor is not unlawful, as is clear from the previous paragraphs.

(b) If the attack is made on goods of fortune only, but they are of great value and actually possessed, the question is disputed. According to some, killing in this case is unlawful, because life is more valuable than property; but the common opinion is that killing is lawful, both because Scripture excuses the person who kills the nocturnal robber (Exod., xxii. 2), and because the public safety is at stake and therefore justifies extreme measures.

(c) If the attack is made only on goods of fortune, and they are not yet possessed (*e.g.*, a legacy one hopes to obtain) or have only a small value (*e.g.*, one gold piece), killing is unlawful; for there is no proportion between external goods that are only hoped for or that are of minor importance and the life of a human being. Pope Innocent XI condemned the teaching that one may use homicidal defense to protect a coin or the prospect of receiving an office.

1841. Defense of Bodily Purity Against an Unjust Aggressor.—(a) If the attack is equivalent to an attack on life, or seems to be an attack on life, self-defense even by killing is lawful, and hence it may be permissible to kill one who is attempting rape.

(b) If the attack is on bodily purity only, but *per actum consummatum luxuriæ*, the question is controverted. One opinion is that killing may not be resorted to, for the aggressor cannot take away purity of soul, and the purity of body that he violates is less good than life. The opposite opinion holds that killing may be employed in self-defense, since bodily purity has a higher value than even notable goods of fortune, especially as violation is usually accompanied by spiritual damage or disgrace of family, etc.; and the public interest demands that such outrages be sternly suppressed on account of the strong inclination of many persons to commit them.

(c) If the attack is on bodily purity only, and *per actum non-consummatum luxuriæ* (*e.g.*, *per osculum vel amplexum*), killing is not justified, but other means of defense, such as blows or wounds, may be used.

1842. Defense of Bodily Integrity Against an Unjust Aggressor.—(a) If the attack is equivalent to an attack on life (*e.g.*, if the aggressor intends to mutilate or wound, but there is danger that he will kill), defense even with resultant killing is lawful.

(b) If the attack is not equivalent to an attack on life, but is very notable (as when a principal member will be lost or the person horribly disfigured), some authorities claim that defense which would cause the aggressor's death is unlawful, because death is too heavy a price to pay for wounds. But against this it may be argued that the loss of limbs or organs is more serious than the loss of money, and, in some respects, is more damaging than violation. The civil law gives a person the right to protect himself in body and limbs, even by killing the assailant when absolutely necessary.

(c) If the attack menaces only a minor detriment (*e.g.*, a black eye or bloody nose), certainly killing is unjustified. But the person attacked may hit harder and oftener than the assailant, if he is able, so that the latter may beware of him another time.

1843. Defense of Honor or Reputation.—When honor or reputation is unjustly attacked, the more perfect course is to bear the injury patiently and to pardon the offense, according to the teaching of Christ. But it is not sinful to defend honor and reputation, just as it is not sinful to defend life, limbs and property. How far may one go in defense of honor or reputation against an unjust aggressor?

(a) If the aggression is merely in words (as when the offender calls the other party a liar, or says that he is illegitimate), it is not lawful to use violence, at least such as would cause death; for there are other and less drastic means of defense that suffice (*e.g.*, to answer the allegations, or even to retort the same epithets against the aggressor), and, unless the violence of even justifiable resentment were restrained, the world would be filled with disorder and homicidal violence. Innocent XI and Alex-

ander VII condemned the doctrine that one may kill in order to prevent the spread of calumny.

(b) If the aggression is in deeds (as when the offender slaps the other person or throws mud or rotten eggs at him), it is not lawful to kill; for here also defense can be made in other ways (*e.g.*, by bringing the aggressor before the court for punishment, or, if this cannot be done, by returning slap for slap, etc.). Innocent XI rejected the proposition that it is lawful to kill the aggressor who gave one a blow and then fled. It is only when the aggressor is continuing his attack, and imperilling the innocent party in life or limb, that the latter may repel the extreme force by extreme force.

1844. Killing of the Innocent.—So far we have spoken of the killing of malefactors and unjust aggressors, which under certain conditions is not sinful. The next subject is the killing of the innocent, that is, of those who are neither malefactors nor unjust aggressors worthy of death.

(a) The killing of the innocent by human authority, if it is done directly and intentionally, is always sinful, whether the cause be a private individual or society. But since God is the Master of life and death, He could command the death of an innocent person, as was done when he bade Abraham to sacrifice his son (Gen., xxii. 12).

(b) The killing of the innocent, if it is indirect and unintentional, is not sinful when there is a serious reason for performing an act from which the killing results; for it is lawful to perform an act from which two effects follow, if the good is intended but the evil only permitted, and there is a sufficient justifying reason (see **103 sqq.**).

1845. Unlawful killing of the innocent is a most heinous crime.

(a) It is an injury to the rights of God over human life, and is forbidden in the Fifth Commandment of the Decalogue: "Thou shalt not kill" (Exod., xx. 13). To judges the special command was given: "The innocent and just person thou shalt not put to death" (Exod., xxiii. 7). The man-slayer destroys

the image of God, a crime so detestable that in Scripture God declares that He will revenge the blood of man, even though shed by a beast (Gen., ix. 5; Exod., xxi. 28).

(b) It is a most grave sin against the individual, for it deprives him of his chief natural good and the means of securing and enjoying many great spiritual goods. If the person killed desired or asked for death, no injustice is done to him, since he waived his right, but uncharitableness is committed, since the neighbor's life should be loved, and the uncharitableness is greater according as the person is more worthy of love. Scripture numbers murder among the sins that cry to heaven for vengeance (Gen., iv. 10, ix. 5).

(c) It is an outrage against society, for such killing unduly deprives the community of one of its members, causes scandal and disturbs the peace. Hence, the law has always inflicted the severest punishment on slayers of the innocent.

1846. Since the end does not justify the means, the following ends do not justify the direct and intentional killing of innocent persons:

(a) the public good does not excuse, for example, if an enemy were to threaten destruction against a city unless it put to death an innocent person who dwelt in its borders. The criminal on account of his lawlessness is an obstacle to the common good, but the law-abiding citizen promotes the common good and it would be harmful to the public peace if he could be put to death without any fault of his own. The State is for the citizen, not the citizen for the State. But if the common safety depended on the sacrifice of one man's life, charity and patriotism would require this man to make the sacrifice spontaneously (see **1169**); that is, he should deliver himself to the enemy, and were he to refuse, it seems the community would have the right to deliver him. Similarly, it is not lawful to kill hostages, even though the enemy has broken faith, or killed one's subjects;

(b) the private good of other individuals does not excuse; for example, it is not lawful to kill a maniac lest he do harm

to those around him, at least unless the conditions of unjust aggression are fulfilled. Similarly, it is not lawful to kill a woman with child, in order to baptize the child;

(c) the private good of the individual himself does not excuse; for example, it is not lawful to shoot or poison those who are mortally wounded or suffering from an incurable disease, or who are old and helpless, in order to spare them suffering. But one may give a person at the point of death a medicine that may hasten the end, if there is good hope that it will cure him and other remedies are futile, for the purpose is not to kill but to cure (see 2485). It is lawful also for embalmers to puncture the heart or sever an artery of a person who seems to be dead, if there are certain signs of his death, for the purpose is not to kill this person, but to free his friends from fear that he is buried alive.

1847. Indirect or Unintentional Killing of the Innocent.—Indirect and unintentional killing of the innocent is lawful (1872) only when there is a reason of sufficient gravity (*i.e.*, one of a value proportionate to the life of the innocent person).

(a) The public safety is such a sufficient reason. Thus, in time of war it is lawful to attack a city, even though the death of many non-combatants will result, or to charge the enemy, even though innocent persons have been placed by the latter as a shield to his front ranks.

(b) Private safety from death is not a sufficient reason, if it does not compensate for the loss, or if it is secured unlawfully (see 104). Thus, if Balbus cannot escape from an unjust aggressor without running down and killing an unbaptized infant or a man whose life is very necessary for the community, the temporal life of Balbus does not compensate for eternal life lost by the infant in the first instance, and the mere private good of Balbus does not compensate for the public good sacrificed in the second instance. Again, if Caius cannot escape from drowning without pushing a shipwrecked companion from the only plank which is insufficient for both, or if Sempronius who has been sentenced to death for crime cannot escape execution unless he kills his guard, the means of securing safety are unlawful.

(c) Private safety from death is a sufficient reason, if it compensates for the loss and is secured lawfully. Hence, if the life of the innocent person is only of equal importance, self-defense against an unjust aggressor by means of flight that will involve the innocent person's death does not make one guilty of homicide (*e.g.*, Titus is speeding in his car in order to escape a pursuer bent on murder and he cannot avoid hitting and killing a cripple who crosses the road). If self-defense is conducted by means of attack, one may use violence against the aggressor (*e.g.*, one may shoot at him, although an innocent person whom he is using as a shield will be killed), but not against the innocent person (*e.g.*, one may not shoot at the innocent person in order to deprive the aggressor of his shield, nor may one hold the innocent person before one in order that he receive the assailant's bullet).

1848. Destruction of the Unborn.—(a) Direct and intentional destruction of this kind is unlawful and is known as *feticide*, when the fetus is killed within the womb, or *abortion*, when a non-viable fetus is expelled from the womb. It is not abortion to hasten the birth of a viable fetus (*i.e.*, one which is about six or seven months old and can live outside the womb), since the child can be kept alive, but grave reasons are required to make it licit, since it presents a risk to the child's life. But to deliver or expel a non-viable fetus is abortion.

Every direct abortion is regarded by the Catholic Church as murder and is penalized with the censure of excommunication (Canon 2550, §1). It might be argued that the direct killing of what is surely a human being is murder, but when does the fetus become a human being? The ancient theory of Aristotle, followed by St. Thomas and most medieval authors, maintains that the embryo did not become human until some time after conception, an opinion that still has great probability physically. Others maintain that animation is simultaneous with conception. Since we do not know the exact moment of animation, the moment of conception must be accepted in practice as the beginning of human life. Probabilism is ruled out in this instance, for there is no doubt about the law and its application: we must not

directly kill what is probably a human being. Accordingly, abortion is considered to be murder. Hence, even in the case of a girl who has been raped—although it is a probable opinion that measures may be taken to remove the semen from her body—it would be gravely sinful to give any treatment which would abort an impregnated ovum.

(b) Indirect and unintentional killing, or rather permission of death, is not unlawful in such a case, when there is a proportionately grave reason, such as the life of the mother. Thus, it is permissible to give the mother a remedy necessary to cure a mortal disease (*e.g.*, medicinal drugs, baths, injections, or operations on the uterus), even though this will bring on abortion or the death of the fetus; for the mother is not obliged to prefer the temporal life of the child to her own life. But the baptism of the child must be attended to, for its salvation depends on the Sacrament, and the eternal life of the child is to be preferred to the temporal life of the mother, if the conditions of **1166** are verified.

(c) Contemporary moral opinion considers that in *tubal pregnancies* (ectopic gestation) the tube itself is in a pathological condition long before rupture of the tube, as experts in obstetrics teach, and hence can be excised as a diseased organ of the human body. As such, the excision of such a tube would be *in itself* a morally indifferent act and, granting verification of the other conditions for the principle of double effect, could be licitly performed. (For a history of the moral question, medical testimony and full argumentation see Chapter X of *Medical Ethics* by Charles J. McFadden, O.S.A.) Some theologians, however, believe that the tube cannot be removed unless it can be proved in each case that a pathological condition, placing the woman in danger of death, exists. The first view is accepted as sufficiently safe to be followed in practice. (See Francis J. Connell, C.SS.R., *Morals in Politics and Professions,* p. 118.)

1849. It is unlawful positively to kill the mother in order that the unborn child may be saved or baptized. When a caesarean section offers the sole chance of saving the mother's life, it is permitted. It is seriously doubtful whether a mother is morally

obliged to undergo the operation in situations where a threat to her life exists. In this case, if baptism in the uterus is possible without increasing the danger to the mother's life, it should be attempted. When a caesarean section does not offer any chance of saving the mother's life, but will directly contribute to her death, the operation should not be performed. One must await the death of the mother and then observe the norm of Canon 746: "Immediately after the death of a pregnant woman, a caesarean section should be done in order that the fetus may be baptized." The procedure to be followed is outlined in medical-ethics books. (See McFadden *op. cit.*, pp. 244 ff.)

1850. Direction in Cases of Doubt, Ignorance, or Error.—(a) In case of doubt, if there are positive and solid reasons for believing that an operation performed to save a woman's life will not be destructive of the life of a fetus, the operation seems lawful; for in doubt, the woman, as the certain possessor of life, has the presumption.

(b) In case of ignorance or error (*e g.*, when a penitent asks whether a certain operation is permissible, or a surgeon in good faith performs an operation that is not lawful), either a truthful answer should be given to questions, or silence should be observed when an admonition would only be harmful (*e.g.*, if to require the Cæsarean operation from a dying mother would have no other result than to make her die in bad faith instead of good faith).

1851. Canonical Penalties for Homicide and Abortion.—(a) Homicide, if voluntary, produces irregularity (Canon 985, n. 4) and subjects the guilty party to exclusion from legitimate ecclesiastical acts or to degradation from the ecclesiastical state (Canon 2354). Moreover, a church is violated by the crime of homicide (Canon 1172). (b) Abortion of a human fetus, when the effect is produced, brings irregularity on those who procure it and also on the coöperators (Canon 985, n. 4). Moreover, those who procure abortion effectively, the mother not excepted, incur excommunication *latæ sententiæ* reserved to the Ordinary, and, if clerics, they are to be deposed (Canon 2350).

1852. Suicide.—Suicide, or the killing of oneself, is, like homicide in general, of various kinds.

(a) Thus, in reference to the intention, it is voluntary or involuntary, according as it proceeds from knowledge and choice, or as it is committed without realization of what is done or without the intention to produce death. Examples of involuntary suicide are a person who is temporarily insane on account of impending calamity and drowns himself, and a person who, attempting to frighten another by pretending to hang himself, actually strangles to death. It would be a mistake to say that no person who commits suicide is free, but no doubt a large percentage of those who kill themselves are not responsible for their act.

(b) In reference to the mode, suicide is direct, if that which is done tends from its nature to the death of the person who does it (*e.g.*, firing a pistol into one's brain); it is indirect, if that which is done tends from its nature to another end (*e.g.*, to struggle with a criminal who is firing a revolver). Direct suicide is committed in many ways, all of which can be reduced to positive (*e.g.*, the eating or drinking of deadly poison) and negative (*e.g.*, the refusal to eat or drink anything).

1853. The difference between direct and indirect suicide is also explained as follows: (a) direct suicide is an act or omission that has but one effect, namely, death (*e.g.*, taking deadly poison); (b) indirect suicide is an act or omission that has two effects, one of which is the peril of death. This peril of death is certain, if death always follows (*e.g.*, jumping from the roof of a skyscraper); proximate, if death usually follows (*e.g.*, jumping from a third- or fourth-story window); remote, if death now and then follows (*e.g.*, jumping from a second-story window).

1854. Sinfulness of Suicide.—Voluntary and direct suicide is always a most grave sin, if committed without due authority (*i.e.*, the command of God).

(a) It is a grave injury against the rights of God, for it usurps His authority, refuses Him the service He desires, spurns the gift He has bestowed, dishonors the image of God (Gen., ix. 6), and destroys the property of God: "Thou, O Lord, hast the power of life and death" (Wis., xvi. 13).

(b) It is an offense against society, for the community has a right to be benefited by the lives of its members, and to receive a return for the protection and assistance it affords them. Moreover, death by suicide is usually felt as a great sorrow and disgrace by the relatives of the departed, and it has a demoralizing effect on many persons of suggestible minds. The fact that the death of this or that man is not felt as a loss by a family or the State, but rather as a relief, is no argument; for if suicide were left to human decision, how many fatal mistakes would be made (see **460**)! Persons valuable to society would rashly kill themselves, fearing in a mood of depression that they were worthless; others who could contribute nothing in material ways would destroy themselves and deprive their fellow-men of an example of fortitude, or at least of the opportunity of showing charity and mercy to the needy.

(c) Direct and voluntary suicide is a sin against the deepest natural inclination, for self-preservation is called the first law of nature (see **298**), and also against that love of self which charity requires (see **1136 sqq.**). Since charity to self is more obligatory than charity to the neighbor, suicide is a more serious sin than other forms of homicide. Nor is it excused by the desire of some good for self. The suicide does not better himself by his act, for, since he has not fulfilled his trust in this life, what can he expect in the next life? He escapes the lesser evils of physical miseries or moral temptations, but he incurs the greater evils of physical death and of moral cowardice and defeat, to say nothing of his punishment in the hereafter.

1855. Coöperation in Suicide.—Coöperation in suicide has the guilt of unlawful homicide. (a) Thus, those who incite, advise, command, or assist another to commit suicide are guilty of moral murder. (b) Those who carry out together a suicide pact are guilty both of suicide and of moral murder.

1856. Permission or Authorization to Commit Suicide.—(a) Divine authority could command or permit suicide, since God has the power over life and death. But whether God has ever

done this is uncertain. Some argue for the affirmative from the death of Sampson, who pulled down the house upon himself saying: "Let me die with the Philistines" (Judges, xvi. 30), and of Razias who killed himself to escape ill-usage (II Mach., xiv. 37 sqq.), and from the acts of certain female martyrs who from love of God or from the desire to preserve chastity rushed to their deaths. But others think that invincible ignorance may explain these cases. The act of Sampson may also be understood as indirect suicide lawfully committed for the public good of his country.

(b) Human authority, according to some authors, could authorize a condemned malefactor really guilty of a capital crime to execute himself; for, they argue, there is little difference between opening one's mouth to swallow poison administered by an executioner and taking it with one's own hands, as was done by Socrates. Others deny that God has given the State the authority to order suicide, and they declare that it is both unnecessary and inhuman to force a condemned man to be his own executioner. Still others believe that the State could command self-execution, at least in necessity, but that such a punishment is so strange, cruel and unnatural that it should be avoided; for, if it is shocking to ask a father to execute his child, much more shocking would it be to ask a man to kill himself. The argument is inconclusive which says that because it is lawful to perform an act preparatory for death, but which is indifferent and would never cause death (such as opening the mouth for poison), it is also lawful to perform the act which inflicts death (such as taking the poison).

1857. Indirect Suicide.—Indirect suicide is committed when one is the cause of an act or omission, indifferent in itself, but from which one foresees as a result that one's life will be lost or notably shortened. This kind of "suicide" is lawful when and if the conditions for a case of double effect are present—in other words, if there is a proportionately grave reason for permitting the evil effect (see **103 sqq.**). The following reasons are considered sufficient:

(a) the public good, for the welfare of society is a greater good than the life of an individual. Eleazar is praised because he exposed himself to death in order to deliver his people (I Mach., vi. 43 sqq.). It is not sinful, then, but rather obligatory for a soldier to advance against the enemy or to blow up an enemy fortification, though it be certain that his own death will result; nor is it wrong for a pastor to go about ministering to his flock during a pestilence, though it be certain that he will fall a victim to the plague. Explorers and experimenters may also risk their lives for the advancement of science;

(b) the good of another suffices for indirect suicide, when he is in extreme spiritual need. Indeed, there may be an obligation of charity to risk one's life for the salvation of a soul (see **1166**). Hence, it is lawful to go as a missionary to a country whose climate is so trying that strangers die there after a few years;

(c) the higher good of self (*i.e.*, the good of virtue) justifies indirect suicide, when there is an urgent reason for exercising a virtue in spite of the peril of death. Thus, for the sake of charity a shipwrecked passenger may yield his place in the life-boat to his parent, wife, friend, or neighbor; for the sake of faith, one may refuse to flee in time of persecution (see **1006**), or may refuse and should refuse to take food or drink offered as a mark of idolatry; for the sake of chastity a virgin, at the peril of her life, may jump from a high window or resist the assailant, although it does not seem that this is obligatory if no internal consent will be given to the rape; for the sake of justice, a criminal in the death house who has an opportunity to escape from prison, may decide to remain and be executed, or a malefactor condemned to die by starvation may refuse to take food secretly brought him; for the sake of mortification, one may practise moderate austerities, as by fastings, watchings, scourgings, hair-shirts, etc., which sometimes shorten life, though generally they lengthen it;

(d) the preferable temporal good of self suffices, that is, one may risk the danger of death to escape another danger that is

more likely to happen or more terrible. Thus, a man in a burning building may leap from a high window, even though death from the fall is almost certain, for death by burning is more terrible; a prisoner who is about to be tortured to death may make a break for liberty if he sees a chance of escape, for death is more certain if he remains. On the same principle, one may engage in hazardous but useful occupations, such as working on high buildings, or as a diver or miner, for it is better to live a shorter time with employment and the necessities of life, and to be of service to the public, than to live a longer time without these advantages. But a worker should not undertake dangerous tasks for which he is unfitted or unprepared, and the employer is bound to safeguard the lives of the workers.

1858. The same reasons are not sufficient in all cases. (a) Thus, the greater the risk of death, the more serious the reason required. Hence, to save the money one has it might be lawful to jump from a second-story window, but not from a higher window when the fall would most likely kill one. (b) The more immediate the danger of death, the more serious the reason required. Thus, to save money one might lawfully enter a quarantined house, but the risk would not be permitted if the house were tottering in an earthquake. (c) The more notable the shortening of life, the greater the reason needed to permit it. Thus, if the practice of a certain mortification or labor reduces the expectancy of life for a few years, a lesser reason suffices than if it reduces the expectancy for ten or more years.

1859. Indirect suicide is unlawful and has the guilt of self-murder when the reason for risking death is frivolous or insufficient or sinful.

(a) Examples of insufficient reasons are found in the cases of persons who engage in occupations or actions that are very dangerous to life or limb but of little public or private value, as when for the sake of performing a feat a man walks a tight-rope, pricks himself with pins and needles, or puts his head into a lion's mouth. But if the performer is very skillful and has no

other means of livelihood, it seems that he may exercise his art for the sake of entertainment.

(b) Examples of sinful reasons for risking death are found in persons who abbreviate their lives by over-eating, drunkenness, habitual indulgence in strong spirits, or immoderate passion of any kind; and also in those who refuse to make use of the ordinary means for the preservation of health (see **1566** sqq.) or of the ordinary remedies against disease (see **1571**). It is not necessary that one be anxious to live long (see **1063**), but it is obligatory to use the normal means for the preservation of life, and those who notably neglect these means are guilty of indirect suicide.

1860. Is it suicidal to refuse a surgical operation pronounced necessary for life?

(a) If the operation is likely to be successful and there is no good reason for refusing it, it seems that one may not refuse it without the guilt of indirect suicide, although one might be excused on account of good faith.

(b) If the success of the operation is doubtful, or if there is a good reason for refusing, one who refuses is not guilty of suicide. Among the good reasons are spiritual ones (*e.g.*, modesty, the fear of falling into blasphemy or despair under the pain are given by some writers) and temporal ones (*e.g.*, the poverty that would be brought upon the patient's family or the hardship that would result for the patient himself).

1861. Canonical Penalties for Suicide.—(a) Those who attempt suicide are irregular *ex delicto* (Canon 985, n. 5). (b) If they die, they are not given ecclesiastical burial unless they gave signs of repentance before death (Canon 1240, n. 3), and, if they recover, they are subject to various penalties (Canon 2350, § 2). (c) If it is doubtful whether a person committed suicide, or was responsible, the doubt is decided in his favor, provided no scandal is likely.

1862. Accidental Homicide.—Accidental homicide is that which happens without any direct purpose to kill. But the following cases should be distinguished:

(a) when the homicide is not voluntary, either in itself or in its cause (see **35, 94**), that is, when the slayer had no intention to kill and could not foresee that death would result from his act or omission;

(b) when the homicide is voluntary only in its cause, inasmuch as the person who kills is guilty of negligence in a lawful thing, or of something unlawful, and death results from the negligence or from that which is unlawful, although there was no direct wish to kill.

1863. *The Case of One From Whose Lawful Act or Omission Homicide Accidentally Results.*—(a) If this person was not guilty of negligence, he is not responsible for the resultant homicide, since it was not voluntary, either directly or indirectly. Thus, if a man who was said to be dead, but who knows nothing about the report, calls at his home and his wife drops dead on seeing him, he is not responsible for her death.

(b) If the person in question was negligent, he is guilty of homicide in a greater or less degree according to the seriousness of his neglect. Thus, a sane man who flourishes a loaded revolver in a crowded room is responsible if the revolver goes off and kills someone present; but a nurse who leaves a sick room for just a moment with the result that her patient falls out of bed and is killed, is only slightly responsible at the most, if there was little reason to expect what happened.

1864. *The Case of One From Whose Unlawful Act or Omission Homicide Accidentally Results.*—(a) If this person was not negligent and his conduct was not dangerous to the lives of others, he is not guilty of homicide; for the death that ensued was not voluntary, either directly or indirectly. Thus, if a thief is driving away carefully with a stolen automobile and a reckless pedestrian gets in front of the car and is killed, the driver is guilty of theft, but not of homicide.

(b) If the person in question was not negligent but his conduct was nevertheless dangerous to the lives of others, he is guilty of homicide; for the death that followed was voluntary indirectly, since he could have foreseen the homicide and should have avoided the conduct. Thus, if a person strikes lightly a

pregnant woman and she suffers an abortion, or if one who is not a surgeon tries to mutilate an innocent person and kills him, he is responsible for the death, since the acts committed remained dangerous to life, no matter how careful the offender may have been to avoid killing.

1865. Moral and Legal Guilt.—The law may hold one responsible for homicide, even though there is no theological guilt (see **1766 sqq.**). (a) Thus, one may be held responsible for the consequence of acts only juridically negligent, as when an automobilist while driving at a speed unreasonable in law, but not in fact, kills a pedestrian. (b) One may be held responsible for acts committed by those subject to one's care or control, as when a man keeps a dog loose not knowing that it is vicious and it kills a neighbor's child, or when he illegally lends his car to a minor, thinking the latter is a good driver, and the minor carelessly runs down a person in the road.

1866. Bodily Injuries.—Injustice is done not only by destroying the life of a human being, but also by harming him in his rights to bodily integrity or well-being. The chief bodily injuries are the following:

(a) mutilation, which deprives a person of limbs or members, without inflicting death;

(b) wounding, which by an act of violence (such as a stab or blow) breaks the continuity of the body, or impairs its strength or beauty;

(c) enfeeblement, which impairs or destroys the health, strength, or comfort of the body in unlawful ways (*e.g.*, by deprivation of necessary food, sleep, fresh air, by communication of infection, by beating, hazing, etc.);

(d) restraint, which hinders the lawful exercise of the bodily powers (*e.g.*, by holding a person against his will, by chaining him to a post, by locking him in a room).

1867. Mutilation. In general, any kind of act which injures or impairs bodily integrity is called mutilation. In the strict sense, mutilation is any cutting off, or some equivalent action, through which an organic function or a distinct use of a member is suppressed or directly diminished. Accordingly, three distinct types

of mutilation are possible: (a) when a part of the body with a distinct function is excised; (b) when a distinct organic function is totally suppressed, without excision of the organ; (c) when the function is directly lessened or partially suppressed.

1868. Morality. (a) *Liceity.* The basic principle governing the morality of mutilation is: Man is not the master of his own life, but only the custodian. Accordingly, neither is he master of his own body. Thus, Pope Pius XII, speaking of the "Surgeon's Noble Vocation" (*The Catholic Mind,* Aug. 1948, pp. 490 ff.), declared: "God alone is Lord of the life and integrity of man, Lord of his members, his organs, his potencies, particularly of those which make him an associate in the work of creation. Neither parents, nor spouse, nor the individual in question may dispose of them at will."

As steward, man has duties toward his body, its health and welfare, according to the norms of reason and the divine law, so that it may be a means of his attaining life with God. Acting in accord with these norms and the end of life, it may become necessary and licit for man to mutilate his body in order to safeguard health or to save his life. The principle expressing the morality of mutilation, known as the principle of *totality* (Pius XII, *Nous vous saluons, AAS* 45-674), may be formulated: Man may licitly mutilate his body only insofar as this is expedient for the good of the whole. In fact, such mutilation is often obligatory, since one must use ordinary means to protect his life and health, and since the part is for the whole. Thus, one would be bound to undergo an operation for appendicitis in order to save one's life.

Although an organ be not diseased, it may under certain circumstances be removed. Thus, a surgeon operating for hernia may remove a healthy appendix, should the danger of adhesions be foreseen that would require a later operation. Nor is it necessary that there be a "present" danger. The words of Pope Pius XII, that mutilations are permissible when required "to *avoid... serious and lasting damage*" (*AAS* 44-782), are suggestive of the liceity of prophylactic operations. (See medical-ethics texts for special cases, such as lobotomy, thalamotomy, experimentation, etc.)

The problem of mutilation involved in organic transplantation *for the benefit of a neighbor* is highly controverted at the present time. Pope Pius XII discussed the legality of corneal transplants from the dead to the living (*The Pope Speaks,* Autumn, 1956, pp. 198 ff.), but he did not touch the matter of transplants from living bodies. In this controversial matter, the following principles seem to be clear:

1) Mutilation for the good of the neighbor cannot be justified by the principle of totality, for the subordination implied in the principle is characteristic of a physical, not a moral, not even the Mystical, body.

2) Minor mutilations, such as skin grafts or blood transfusions, are *certainly* permissible. The speculative basis is still a matter of dispute.

3) It is *solidly probable extrinsically* that organic transplantations may be permitted, possibly out of charity and for a proportionate reason. Some contend, however, that the act of mutilation involved is intrinsically evil and can not be justified by the extrinsic motive of charity.

Mutilation is lawful *by public authority* in punishment of a criminal; for if the state has the right to inflict death for serious crime, much more has it the right to inflict the lesser punishment of mutilation. The expediency, however, of exercising the right must be judged in terms not only of punishment, but also of prevention of crime. Mutilation has no necessary connection (apart from special circumstances) with deterring criminals from further crime.

(b) In other cases mutilation is unlawful; for just as man is not the master of his life, neither is he the master of his limbs, and he commits a wrong against God, society, and the individual if he destroys parts of his body when neither public good nor private safety demands that this can be done.

Thus, mutilation of a criminal performed by private authority is unlawful. Hence, a husband may not mutilate a man who has broken up his home.

Mutilation of an innocent person that it not necessary for his bodily safety is unlawful. Even spiritual good is not a sufficient

reason; for example, one may not castrate oneself in order to escape temptation, for this operation does not take away passion, and, moreover, there are spiritual means which suffice against temptation. When Our Lord says that one should cut off a hand or foot that causes scandal (Matt., xviii. 8), He is speaking metaphorically of the avoidance of the occasions of sin. Much less is temporal good a sufficient reason for mutilation. Hence, a youth may not have his teeth pulled in order to escape military service; a pauper may not have his arm amputated in order to get larger alms; a boy may not be castrated in order to give him a better singing voice; a woman may not have the hysterectomy or other similar operations performed merely to prevent conception; a man may not have the operation of vasectomy performed on him in order to prevent generation.

1869. Morality of Sterilization. Mutilations which frustrate the power of procreation in men and women are called sterilization. Two kinds are distinguished: *indirect,* to remove diseased organs; *direct,* to prevent conception.

(a) Indirect sterilization (also called by many *therapeutic*) is lawful when it is necessary to save life or health. The ethical principle involved is the indirect voluntary or the principle of double effect. Hence, vasectomy may be used to prevent idiocy or death, or to remove or allay physiological abnormalities that bring on certain sexual perversities or disturbances, if it is likely that these evils are imminent or present and that the operation will be beneficial.

(b) Direct sterilization by public authority includes both *punitive* and *eugenical* sterilization. The latter was condemned by Pope Pius XI in *Casti Connubii.* In context the Holy Father was dealing with the false claims made in the name of eugenics that the State might legitimately sterilize those who by reason of hereditary defect might be considered likely to generate defective offspring. This position is vehemently rejected: "Public magistrates have no direct power over the bodies of their subjects. Therefore where no crime has taken place and there is no cause present for grave punishment, they can never directly harm or tamper with the integrity of the body, either for the

reasons of eugenics or for any other reason. St. Thomas teaches this when, inquiring whether human judges for the sake of preventing future evils can inflict punishment, he admits that the power indeed exists as regards certain other forms of punishment, but justly and properly denies it as regards the maiming of the body."

In the same context, punitive sterilization, whether as punishment for crime or as deterrent, was also declared to be unlawful. However, *fascicle* 14 of the *AAS* for 1930 emended the text and seems to have withdrawn the formal condemnation of punitive sterilization, a subject of theological discussion at the time. The matter had not been closed and the emendation had the force of reopening the question.

Theological opinion is still divided as to the liceity of punitive sterilization. Some still maintain that since the state can inflict the superior penalty of death for serious crime, *a fortiori* also the lesser punishment of sterilization. Others deny the liceity, for sterilization does not achieve the essential purposes of punishment; it is not corrective, preventive, retributive, or emendatory. Accordingly punitive sterilization is unreasonable and inconvenient. This latter view prevails among most modern moral theologians. Confirmation for the view is sought in the response of the Holy Office (*AAS* 32-73) that direct sterilization is prohibited by the law of nature. Since punitive sterilization has as its immediate effect, whether as an end or as a means, sterility of the generative potency, it may well fall under the category of *direct* and hence also under condemnation of the Holy Office.

1870. Other Bodily Punishments. — Other bodily harms (wounds, blows, restraint) may not be inflicted except under the following conditions:

(a) there must be sufficient authority. The State, being a perfect society, has greater coercive power, and may inflict penalties that are of a permanent character, such as death or mutilation or wounds (*e.g.,* by branding); and it may impose restraint, not only from unlawful, but also from lawful acts. The family, being an imperfect society, has a limited coercive power, and

hence the father, or those who hold his place (*e.g.*, teachers), may administer corporal chastisements that are not of an irreparable kind to his children (such as beatings, whippings). Other persons may punish or restrain only in case of urgent necessity (*e.g.*, one may hold a stranger who is about to commit murder; one may chastize a neighboring boy who cannot be kept from depredations on one's property in any other way). It is not wrong, however, to inflict moderate bodily hurts, if the other person is not unwilling and there is a reasonable purpose, such as exercise, training in the art of boxing or wrestling, recreation, or mortification;

(b) there must be a sufficient reason for the harm done. The good of the public is a sufficient reason; for example, when a criminal is incorrigible and it is dangerous for him to be at large, it is not unreasonable to give him a life sentence. The good of the individual is also sufficient; for example, when a surgeon has to wound in order to cure, when a father has to use the rod in order to improve the child or to uphold discipline (Prov., xiii. 24, xxiii. 13);

(c) there must be moderation in the harm or pain inflicted. Thus, while children should not be spoiled, nor prisoners pampered, the other extreme of maltreatment or torture must be avoided. It is cruel to box children soundly on the ears, or to push them roughly about, or to tie them up in the dark, as they may suffer permanent injury from such methods. Likewise, it is barbarous to send convicts to a place or prison so horrible that they lose their minds or fall victims to lingering disease, or to inflict excruciating punishments by rack, thumb-screw, prolonged scourgings, etc.

1871. Injury to Health.—Harm unjustly done to the health of others is sinful, and, if the harm is great, the sin is mortal. Examples: (a) Harm to health is done negatively by omission of duty, as when a medical man or physical director does not use sufficient care and a patient thereby suffers detriment to health, or an employer does not see that his factory or place of business is sanitary, or that the work is not too exhausting with the result that employees lose their vigor. (b) Harm to health

is done positively by acts or objects that tend to deprive another of the means to physical well-being (*e.g.*, annoyances, noises that prevent sleep, adulterated food, maintenance of a nuisance which creates suffocating smells or harmful vapors, etc.), or that bring to another the infection of disease (*e.g.*, when a well person is made to live or room with one who has tuberculosis).

1872. Theft and Robbery.—Having considered the injuries to person committed by homicide, mutilation, imprisonment, etc., we shall now take up the injuries to property committed by theft and robbery. Private ownership of property is allowed by natural and divine law, and it is necessary when, as at present, human affairs cannot be well managed under another system. It has its limits, however, since it is subordinate to the public good, and charity requires that those who have the goods of this world share them with those who are in need (see **1210 sqq.**). The chief titles to private ownership are the following:

(a) original titles, which are those by which one takes possession and dominion of goods that have never had or have not now an owner, and these are reduced to two, namely, occupation (*i.e.*, the taking possession of a material thing) and accession (*i.e.*, the union of a material thing with one's property);

(b) derivative titles, which are those by which one obtains dominion, through transfer of right, of the goods that belong to another. These titles are produced by the law itself (as in prescription), or by the law and the free will of man (as in inheritance from testament or from intestate), or by the free will of man (as in contracts).

1873. The Chief Kinds or Ways of Occupation.—(a) *Animals.*—Domestic animals (*e.g.*, dogs, cats) may not be occupied, even though they have strayed from their owner; tamed animals (*e.g.*, bees, pigeons, songbirds) may be occupied only when they have recovered their liberty; wild animals (*e.g.*, birds, foxes, fishes, hares, etc., at large) may not be occupied, unless they are kept in a small enclosure from which they cannot escape.

(b) *Land and Plants.*—These may be occupied only when they have no present owner.

(c) *Treasure-trove.*—This is a deposit of precious movables

hidden away so long ago that it is impossible to discover the owner. According to natural law it may be occupied by the finder, but the civil law sometimes decides that the find must be divided with the owner of the place or with the government.

(d) *Lost Property.*—This embraces those movables which an owner has recently parted with, through accident or forgetfulness, without any intention of giving up his ownership of them, and which are now easily findable, although their owner is not known. The finder is obliged to make reasonable efforts to find the owner. If he neglects to make these efforts, proportionate to the worth of the found article, and is convinced that he might have found the owner, he is considered by some theologians to be a possessor in bad faith and bound to reserve the article for the owner or turn it over to the poor or to pious causes. Having made the effort unsuccessfully, according to natural law, he may use the article as his own. The prescriptions of civil law as to the time interval before he may begin to use the article must be observed.

(e) *Abandoned Goods.*—According to natural law one may occupy goods voluntarily relinquished by the owner (*e.g.*, an old automobile left by the roadside), but the civil law sometimes awards certain classes of goods (*e.g.*, immovables) to the State.

(f) *Vacant Goods.*—According to natural law the goods of one who died without heirs may be occupied; but under the civil law they usually devolve to the State, whether they be movables or immovables.

1874. Principles on Accession.—(a) According to natural law, if the two things united are separable, then each owner should be given his own property; but if the things are inseparable and one is more valuable, the owner of the more valuable part keeps all, but compensates the owner of the less valuable part; if the things are inseparable and of equal value, there is joint ownership.

(b) According to positive law, these natural principles are applied to various cases of accession, whether it be *natural* (as through growth of plants or deposit of land by rivers) or *artificial* (as through change made in a material by labor, or addition of one substance to another). These details are treated in books on law.

1875. Prescription.—Prescription laws (see 1798) are valid in conscience, since they are determinations about property rights made in the interest of the common welfare. But the following conditions are required for acquisition of property through prescription:

(a) the object of prescription must be a thing prescriptible according to natural and positive law. Thus, natural rights and public property may not be prescribed against;

(b) the subject of prescription must be a person capable of possessing, and he must be honestly convinced that he has a right to what he possesses;

(c) the claim of the subject to the object must rest on possession, on apparent title to the property, and on the lapse of the legal time during which possession has been held or ownership has remained undisputed.

1876. Wills.—A will is a declaration made in legal form (*i.e.*, with the solemnities required by law) of the disposal to be made of one's property after one's death. Defects in a will or legacy sometimes operate to take away the moral obligations of observing it.

(a) Thus, if the defect is one of natural law (*e.g.*, a will made under duress), there is no moral right or obligation produced by reason of the gift.

(b) If the defect is of positive law only and makes the will rescindable (*e.g.*, a will not subscribed, as by law required, in presence of the testator), the gift is good in conscience until adverse decision of court.

(c) If the defect is of positive law only and makes the will *ipso facto* invalid (*e.g.*, a legatee acts as witness to a will), the gift is good in conscience, if there is question of pious causes, since property donated to God may not be alienated by human laws. But the Church desires civil formalities to be observed in the making of wills (Canon 1513).

(d) If the defect is positive and *ipso facto* invalidating, and there is question of profane causes, the will is not good in conscience, even before declaration of court.

1877. Contracts.—A contract may be defined as a mutual agreement concerning the transfer of a right.

1. A contract is a mutual *agreement, i.e.,* there must be consent of at least two parties to the same object. An offer made but not accepted is not a contract, for only one party consents.

2. The contractants transfer a *right* which produces in most instances under justice a corresponding obligation of doing or omitting something. Promises, pledges, pacts, etc., while they impose obligations based on truthfulness, loyalty, etc., are not contracts. See 1888 (a).

3. The obligation in justice may be on both sides (bilateral) or only on one side (unilateral), but consent must be on both sides.

The elements of a contract are made up of essentials and accidentals. (a) The essentials include the subject-matter, the parties contractant, their agreement, and the external form that manifests the agreement. (b) The accidentals include bonds, oaths, conditions and modes.

1878. The subject-matter of a contract—that is, the thing or action or forbearance with which the agreement is concerned—must have the following qualities:

(a) it must be something *possible,* for one may not undertake what one cannot perform. Thus, one cannot bind oneself by an accessory contract (such as suretyship), if the principal contract itself is *ipso facto* invalid. But if the impossibility is only moral (*i.e.,* great difficulty), one who knowingly undertakes the arduous is bound to fulfill his promise; if it is only partial, one is held to the part that is possible; if it is culpable, one is bound to repair damage caused the other party through nonfulfillment;

(b) it must be something *disposable,* for one may not transfer that over which one has no right of control or transfer. Thus, one may not contract to sell public property that is *extra commercium,* or property of which one has only the possession,

or goods over which others have a claim (*e.g.,* a debtor may not bestow gifts to the detriment of creditors' rights), or goods not transferable for pay (*e.g.,* payment for a favorable decision by a judge, or property owed to a third party) or for money (*e.g.,* academic degrees, public offices, Sacraments, indulgences);

(c) it must be something *existent and determinable,* for no one wishes to contract for a right that is valueless and illusory. Thus, one may not sell shares of a stock company that has no assets, or an indefinite house or lot or chattel;

(d) it must be something *good and lawful,* for one may not bind oneself to iniquity. If the substance of the contract is good, but a circumstance of it is sinful (*e.g.,* a contract to sell a house in order to spite a third party), the agreement is *per se* valid. But if the substance is evil (*e.g.,* a contract for fornication made with a prostitute), the agreement is null before the performance of the promised sin; but it seems to many that after performance of the sin the promisor is obliged to pay the money promised, unless the law makes the contract void (see 1886 c). If the law merely denies protection to a sinful engagement, or forbids it under penalty, it would seem that after performance of the sin one may follow, as far as strict justice is concerned, the rule that right is with the possessor. In the United States immoral and illegal contracts and those that are opposed to public policy are generally regarded as null, but in some cases the law declares immoral conditions *de futuro* nonexistent and considers the agreement to which they are added as valid (*e.g.,* wills and gifts *inter vivos* in some codes).

1879. Sinful Contracts.—There is no form of contract that may not be made sinful as to its substance on account of the wicked offer or consideration (*e.g.,* sale may deal with immoral objects, labor may be given to criminal projects), but there are certain forms of contract that are particularly open to abuse and hence are frequently associated with evil circumstances or results. Some contracts are often illicit according to natural law.

(a) Thus, a gift is sinful, on the part of the donor, when it is made by an employer for the purpose of seducing a servant,

and on the part of the servant, when it is accepted for the purpose of encouraging the unlawful attentions of the employer; but if the gift is unconditional, there is no obligation in justice to return it.

(b) Borrowing is sinful, when the lender is in greater need, or when one becomes unduly obligated to the lender; lending is sinful when the lender cannot afford to part with the thing loaned, or when the borrower is encouraged in thriftlessness, or when he will make evil use of the thing borrowed, etc.

(c) Wagers are frequently sinful, since many of them are incitements to sin (*e.g.*, a bet that another is afraid to get drunk), or results of sinful motives (*e.g.*, bets made in order to deceive, or to satisfy avarice, or to live without work), or causes of great evils (*e.g.*, destitution of families, frauds, scandal, and corruption).

(d) Gaming is sinful when the form of the sport is objectionable (*e.g.*, the ancient gladiatorial fights in which the combatants killed each other), or when the motives or circumstances are wrong (*e.g.*, to play as a professional gambler so as to avoid work, to play cards all day Sunday, to play for higher stakes than one can afford, to spend time in "gambling hells").

(e) Lottery is sinful when the object is bad (*e.g.*, the raffle of an important office with the risk that incompetent persons may be chosen), or when the circumstances are bad (*e.g.*, if persons are led into superstition or idleness and prodigality).

(f) Speculation is sinful in many instances, since it often brings on a gambling fever that makes the speculator useless to himself and his dependents, and causes poverty and crime.

(g) Pawning of property is often unjustifiable, since it makes persons deprive themselves of necessary property in order to indulge in some useless or extravagant whim with borrowed money.

1880. Illegal Contracts.—For reasons of public policy the positive law puts its disapproval on many of the above-mentioned contracts, at least in certain instances.

(a) Thus, sometimes the law makes a contract unenforceable in court, though the natural obligation is not affected. Hence, if a wager is only denied a hearing before a judge, the winner may keep his gains, and the loser should pay.

(b) If the law merely declares that a contract is illegal, the effect seems to be that the contract retains its natural validity unless the party who has suffered by it wishes to disavow it. As to the sinfulness of such a contract, that depends on whether or not the law is penal or preceptive in intent. Thus, many regard laws that make betting illegal as preceptive under venial sin, while others regard them as punitive only. Other examples of illegal contracts are: gifts made to a judge in connection with a trial; lottery, in Great Britain and the United States; certain games of chance, in some States; and in Canon Law, as regards the clergy, aleatory games for money, speculation and trading (Canons 138, 142).

(c) If the law makes a contract voidable, the effect is that the contract possesses its natural force until adverse decision is given by court. Hence, if a wager is voidable in law, the winner may keep his gains until obliged by a judge to give them up, but the loser is not bound to pay, unless he confirms the wager.

(d) If the law makes the contract *ipso facto* void, the agreement loses its natural force (see 558-560). In most of our States, wagering contracts are illegal and void whether by statute or by judicial decision. In many of these States the statute permits the recovery of the money from the winner or the stakeholder. Gifts offered as bribes are invalid, and those who give or take such gifts are guilty of serious sin and of a criminal offense. In some of our States, certain gaming contracts are also null.

1881. Qualities Necessary in the Parties Contractant.—The parties contractant must have the following qualities:

(a) from natural law it is necessary that they have the use of reason sufficient to understand what they are doing. Incompetent are babies and the insane, and also those who are totally drunk or otherwise temporarily deranged. Less competent are

the half-witted and those who need a guardian in important matters;

(b) from positive law it is necessary that they be not legally excluded. In Canon Law administrators of church property and solemnly professed religious are unable to make certain contracts (Canons 1527, 536). In civil law there are restrictions on the contractual powers of minors, wives, aliens, guardians, and corporations. Persons not yet conceived are not capable in civil law of receiving a donation, and there are many prohibitions against the tender or acceptance of gifts by those who can reasonably be suspected of exercising undue influence or of being subject to undue influence.

1882. Legal Privileges of Minors.—The law grants certain benefits to minors and the like; for example, in some cases they are not bound by a non-executed agreement, while the other party is bound, or in an executed contract they may recover property without restoring or offering to restore the consideration, if they have nothing with which to replace it.

(a) Minors and other persons who are legally incompetent to contract, may avail themselves of the benefits of the law with a good conscience, if they are in good faith; for it is just that the law should protect those who are unable to protect themselves, and those who make contracts with such persons should know that they (the competent parties) act at their own risk.

(b) Minors and other persons legally incompetent may not avail themselves of the benefit of the law if they have acted in bad faith (*e.g.,* if a minor by deceit induced the other party to sell to him).

1883. Qualities Necessary for Valid Consent.—The agreement or consent of the contracting parties must have the following qualities:

(a) it must be *internal,* that is, one must accept in will and not merely in words the proposal or consideration offered by the other party. If one consents only to the form of the contract, the contract is null, and the same is probably true if one does not accept internally the obligations of the contract; if one consents to the obligations, but does not intend to fulfill them, the contract is valid, but unlawful. One who contracts invalidly sins, and is bound in the external forum to keep the contract seriously made, and in the internal forum to repair the damage to the other party by giving true consent or making restitution. One who contracts unlawfully also sins, and is bound to the engagement;

(b) it must be *external,* that is, one must manifest in some sensible way one's agreement to the proposition contained in an offered contract. Silence gives consent only when the contract is favorable to the party who is silent, or when that party should and easily could manifest his lack of consent, if the proposal did not please him. In the case of contracts between parties who are not in each other's presence, the intimation to the offerer of the offeree's acceptance is not necessary for validity, if the contract is gratuitous; but the contrary seems to be true, at least *per se,* if the contract is onerous. We shall speak later (1885) on the legal formalities required in contracts;

(c) it must be *mutual,* that is, there must be a meeting of minds in the same sense, or agreement of both parties to the same thing. Mutuality requires that consent be contemporaneous, that is, that the acceptance of one be given while the offer of the other still holds good. But it does not require that the parties be in each other's presence, or that they contract through direct personal communication, or (at least according to natural law) that the knowledge of the accomplishment of mutual agreement be known to the offerer. The law in the United States generally is that an offer may be withdrawn immediately or after a reasonable time, unless it was made on time for a consideration; and that a contract between the absent begins only on receipt by the offerer of the acceptance of the offeree, if the former stipulated for this, or if the offerer uses one means of communication as his agency and the offeree another. In other cases it begins the moment that acceptance is entrusted to the agent of the offerer;

(d) it must be *free,* that is, it must have the advertence and voluntariness necessary for a human act. If the contract is of grave import, there should be the same kind of delibera-

tion as is necessary for commission of a mortal sin (see 173 sqq.); if it is of lesser import, the deliberation should correspond with the seriousness of the case. But some authors think there should be perfect deliberation in every contract, since the contractants are assuming obligations of justice.

1884. Defects that Invalidate Consent.—The defects that vitiate consent by taking away knowledge or choice render contracts either void or voidable (see 40–55). These impediments are the following:

(a) *error,* which is a judgment of fact or of law in reference to the contract, not in harmony with the truth, but not maliciously caused by other persons. If error is substantial (that is, about the nature of the contract or the nature of the subject-matter of the contract), the agreement is naturally void; if error is only accidental (that is, about features of the contract, subject-matter or co-contractant, that are only incidentally intended), an onerous agreement is naturally valid, but positive law in the interest of freedom will often grant the privilege of rescindment (see Canon 1684, n. 2). But if error cannot be proved, courts will stand for the validity of a contract;

(b) *fraud,* which is error or mistake about a contract caused in one of the parties by the dishonest representations of the other party or of a third person (*e.g.,* when an insurance agent deceives about the benefits, or a policy-taker deceives about his age or health). Fraud exists, then, when there is intention, at least indirect, to mislead, and statements, acts or omissions calculated to mislead; but the usual boasts of vendors and advertisers about the wonderful excellence of their wares are not fraudulent, since the public understands that such talk must be taken *cum grano salis.* The effects of fraud on the value of contracts are the same as those produced by error; but it should be noted that the person guilty of the fraud is bound to make good the losses of the injured party, even though the contract be valid and not rescindable, or though the guilty person be not a party to the contract;

(c) *fear,* which is a disturbance of mind caused by the belief that some danger is impending on oneself or others (see 41 sqq.).

It makes a contract *invalid in natural law,* when it takes away all consent (*e.g.,* when it overpowers the reason, or makes one dissent internally from what is agreed to externally), and probably also when it takes away perfect freedom in a gratuitous contract, or makes one enter into a contract for immunity from an unjust vexation; it renders an act or engagement *invalid according to positive law* in many special cases (*e.g.,* the Canons declare null elections, resignations, marriages, vows, etc., which are made under the influence of fear). Contracts are considered naturally *voidable* if one of the parties unjustly extorts the consent of the other by grave fear, or if a third party intimidates a person into bestowing something through gratuitous contract; and the positive law generally treats agreements entered into under grave fear as *rescindable* (see Canon 103, n. 2). Fear unjustly caused, even though it does not make a contract void or voidable, is at times a reason for the duty of restitution, as when a third party by his unjust threats forces an innocent person to make expensive contracts as a measure of protection, and probably also when a third party directly constrains one to make an onerous contract with a person who knows nothing about the coercion. Fear, no matter how great, does not in any way weaken a contract, if there is consent and the fear is induced by a natural cause (*e.g.,* a storm), or by a human cause acting justly (*e.g.,* an injured man threatening a lawsuit);

(d) *violence* or *coercion,* which is like to fear, the latter being moral force and the former physical force (see 52). According to natural law, violence invalidates a contract, unless we suppose that it is only concomitant, as when Sempronius uses coercion to make Balbus sign a contract which Balbus is really willing to sign. Positive law does not recognize, or will set aside, agreements made under overpowering constraint (see Canon 103, n. 1).

1885. Form of Contract.—The *form* of a contract is the external manner in which, according to the positive law, the internal consent of the parties must be expressed and manifested.

(a) Thus, Canon Law in certain contracts (*e.g.*, engagement of marriage, marriage, alienation of church property) requires specified solemnities under pain of nullity of act.

(b) Civil law in the United States designates various formalities to be used in transfers of property (*e.g.*, that a deed for real estate be written, signed, sealed and attested; that a gift be made by delivery or equivalent act; that certain contracts be in writing; that no contract be of worth unless it be for a consideration, or else be on paper with seal attached). The law has the right to annul informal contracts *ipso facto*, but whether this is the intention in modern codes is a matter of dispute. The practical rule to be followed, then, is that the possessor is to be favored, unless there has been a court decision against his claim. It should be noted, too, that some legal conditions, such as valuable consideration in simple contracts, are required for enforceability, not for validity, and hence a good contract wanting some such condition, though indefensible before the courts, is obligatory in conscience.

1886. The Accidentals of a Contract.—(a) *Bond* is the agreement by the obligor of a contract to pay a certain forfeit to the obligee, if the former does not perform his contract or does not perform it before a certain date. This agreement obliges in conscience, if the promise was seriously made, if the penalty is not excessive, and if the breach of agreement is culpable.

(b) *Oaths* added to contracts have moral effects on the contracts themselves and also on acts contrary to them. As regards the contract, an oath adds the obligation of religion to that of justice, if the contract is valid and irrescindable; and the common opinion is that it strengthens a contract extrinsically, that is, it induces an obligation of religion to keep the promise, if the oath is invalid or rescindable by positive law only and in favor of a private privilege; but an oath in no way strengthens a contract that is naturally invalid or rescindable positively on account of the public good. As regards acts that are contrary to an invalid or rescindable contract that was confirmed by a valid oath, they are sinful, as being irreligious, but not invalid nor unjust (see **2260**).

(c) *Conditions* are accidents or circumstances so added to a contract that the consent or dissent is made dependent upon their existence or fulfillment. An immoral condition, if unfulfilled, takes from the contract all obligation, exception being made for separable parts that are not affected by the immoral clause; but if it has been fulfilled, it seems that there is a moral obligation to pay the consideration promised (see **1878** d).

(d) *Modes* are accidents or circumstances so added to a contract as to qualify the rights or duties of the contractants, or the purpose, matter or time of the contract, but not so as to make the consent dependent on the fulfillment of the thing designated. Thus, if Titus leaves money to Balbus, chiefly because Balbus is his nephew, and secondarily because he imposes on Balbus the obligation of using the money for his education, Balbus in accepting the money accepts also the obligation, but the gift does not lapse if the obligation is not complied with. If a donor adds an immoral mode to his gift (*e.g.*, that the donee use in immoral ways the money left him), this purpose is regarded as non-existent and the gift stands in spite of it. If an agent violates a mode (*e.g.*, he pays $1001 when he was directed to pay $1000) but not a condition (*e.g.*, that he purchase land and not a house), the contract stands.

1887. The Moral Obligation of Entering into a Contract.—(a) There is a duty of justice when one is under public or private engagement to make a contract. Examples are a merchant who opens a store for public patronage, or an auctioneer who holds a sale before invited patrons, or an owner who makes with another person a contract to sell, or a man and woman who make solemn espousals.

(b) There is a duty of charity when a neighbor is in such need that he deserves to be helped, for example, by a loan or by assistance to make a loan: "From him that would borrow of thee turn not away" (Matt., v. 42); "A good man is surety for his neighbor" (Ecclus., xxix. 18).

1888. Every valid contract obliges to faithful performance as a duty of conscience, even though it be unenforceable and without civil obligation. We shall discuss the properties of this obligation.

(a) *Quality of the Obligation.*—Onerous contracts oblige in virtue of commutative justice and under pain of restitution; gratuitous contracts oblige according to some from justice, according to others from fidelity, according to others from fidelity or justice as the obligor intends (see **1692, 1753**). In practice one may follow the rule that a liberal promise or wager or other gratuitous contract obliges only from fidelity with no duty of restitution, unless it be certain that the promisor intended to bind himself in justice. One is responsible, however, for damages resultant on breach of promise. The obligation seems to be one of legal justice only when the thing promised is something on which a pecuniary value cannot be set and consists in compliance with law (*e.g.,* in suretyship or bail for keeping the peace or appearing in court).

(b) *Quantity of Obligation.*—In onerous contracts the degree of obligation depends on the importance of the subject-matter, and hence it is a mortal sin to violate a contract in which a grave right is concerned; in gratuitous contracts the degree of obligation depends entirely, according to some, on the will of the person who liberally binds himself, but others hold that it depends on the importance of the subject-matter.

(c) *Subjects of Obligation.*—The parties to the contracts and those who take their place (*e.g.,* heirs, executors) or who are responsible for the contract (*e.g.,* those who commanded the agreement) are morally bound to fulfill the agreement, while others are bound not to interfere with the fulfillment.

(d) *Objects of Obligation.*—Directly, there is the duty of observing what is contained explicitly or implicitly in the agreement, and indirectly of making good any losses caused by breach of contract. A rescindable contract obliges until it is lawfully disaffirmed by the party who has the right to break it; a quasi-contract imposes on the party who has benefited by the services or expenses of another a moral obligation of making compensation. If a contract transfers ownership (*e.g.,* contract of sale passing title to buyer, *mutuum*), the transferee must bear the risks and expenses of the thing transferred; but if it does not

transfer ownership (*e.g.,* contract to sell, *commodatum*) or has not yet done so (*e.g.,* contract of sale in which title will pass later, on delivery or payment), the transferer has the risk and expense (see **1796**).

1889. Cessation of Obligation.—The obligation of a contract ceases in various ways: (a) by action of the contractants, as when a promisee renounces his right, or each of the parties to a promise has made a gratuitous promise in favor of the other and one refuses to keep his word; (b) by action of law, for example, by prescription, by annulment; (c) by impossibility, as when a thing freely promised has become unlawful or useless, or when the donee of a gift *mortis causa* dies before the donor.

1890. Theft.—Theft is the secret taking of what belongs to another, with the intention of appropriating it to oneself, against the reasonable wishes of the owner.

(a) It is a *taking,* that is, a carrying away of goods. But theft also includes the receiving or keeping of property, since the harm done is the same as when the goods are carried away. Hence, he who does not restore borrowed or deposited or found objects, or who does not pay back a loan, when he could and should, is a thief.

(b) It is a *secret* taking, that is, the property is taken away without the knowledge of the owner or lawful possessor, even though he be present. In this respect theft differs from robbery.

(c) It is the taking of *property.* This includes not only corporeal things (*e.g.,* books, money, jewelry, clothing), but also incorporeal things (*e.g.,* patents, trademarks, copyrights), and even persons if they are looked on as possessions. Hence, plagiarism or infringement of copyright or man-stealing or kidnapping (*i.e.,* the carrying off of another's slave or child) are forms of theft.

(d) It is the taking of property *that belongs to another,* that is, of goods of which another person is the owner, or lawful possessor as usufructuary, guardian, depositary, etc. Hence, one can steal from oneself by taking one's goods by stealth from

the bailee with the design of charging him for their value or of depriving him of their use to which he has a right.

(e) It is the taking away of goods with *the intention of appropriating them* to one's own possession, use or enjoyment to the exclusion of the rightful owner. Hence, strictly speaking, it is not theft to carry away property with the intention of borrowing it for a time or of destroying it; but these are acts of unlawful possession or of unlawful damage. It is obligatory to take an object from another, if this is necessary to prevent the commission of a crime (*e.g.,* to take away and hide the gun with which another intends to kill).

(f) It is *against the wishes of the owner.* This refers to the substance (that is, the conversion of the property to one's use), not to the mode (that is, secrecy with which it is done). Hence, if the owner is unwilling that the property be taken, he who takes it is guilty of theft; if the owner is not unwilling that it be taken, but is unwilling that it be taken without his knowledge, he who takes it in this way sins at least venially, but is not guilty of theft in the strict sense.

(g) It is *against* the *reasonable* wishes of the owner or possessor; for no injury is done if he does or should consent to the loss. The owner does consent if the person who takes the goods is acting according to a general and recognized custom (*e.g.,* when a servant takes things left over from her employer's table, which it is certain the latter does not wish to keep); the owner should consent, if justice forbids that he prevent the taking (*e.g.,* when a starving man is taking food from one who has plenty), or if domestic duty commands that he should give the thing taken (*e.g.,* when a wife takes from her husband's pockets the needed money he denies his family, for a wife and family have the right to receive from the head of the house support according to their station and means). But the owner is not bound to consent to the loss of his goods from the mere fact that he misuses them to his own spiritual disadvantage, or owes them in charity to the taker. Hence, it is theft to take a flask from the pocket of one who drinks too much, or to steal a book from

one who is harmed by reading it, or to filch money from a rich man because one is poor and he will not give an alms.

1891. Unauthorized Use of Another's Funds.—What is the guilt of one who uses for his own purposes the money of another entrusted to him for other purposes?

(a) There is no theft, for it is supposed that the purpose of the user is to make only a temporary loan of the money.

(b) There is an act of injustice, if the permission of the owner cannot be presumed; for the rights of an owner are violated when one converts his property to uses displeasing to him. Thus, if the prospect is that the owner may never get his money back or that he will lose profits by the use made of it, the guilt of unjust damage is incurred, at least in intention (*e.g.,* a depositary uses a deposit to buy stocks on margin, or a company official makes an unauthorized loan instead of investing the amount for the company's benefit).

(c) There is no sin, if the permission of the owner can be reasonably presumed; for to him who willingly consents no injury is done. Thus, if one who is managing the funds of another has the chance to make a large amount of money today by using those funds for himself but cannot get in touch with the owner, the latter's consent can be presumed, if he will suffer no present loss and it is absolutely certain that his funds will be returned tomorrow. But on account of the risk that is ordinarily present, this case would be rare.

1892. Comparison of Theft and Robbery.—(a) They differ in species, for theft contains injustice to an owner in his property, but robbery, which is an unjust and violent taking of what belongs to another, contains injustice both to property and to person. The unwillingness of the owner in the case of theft is due to his ignorance of his loss; in the case of robbery it is due to intimidation or force. (b) They differ in gravity, robbery being according to its nature the more serious kind of stealing; for the robber does a twofold injury, and the owner's unwillingness to be robbed is greater.

1893. Kinds of Theft and Robbery.—(a) There are many

varieties of theft, the differences arising from the circumstances in which the stealing is done. Thus, he who steals from the Church is guilty of sacrilegious theft; he who uses the public goods for his private ends commits peculation; he who takes from his parents practises domestic thievery.

(b) There are also many ways in which robbery or rapine is committed. The following persons are guilty of robbery: pirates, bandits, highwaymen, burglars, usurers, profiteers, venal judges, unmerciful creditors who deprive debtors of necessaries, debtors who escape payment by fraudulent bankruptcy, profiteers, laborers who extort unjust wages, those who force subordinates to contribute graft, and blackmailers. Two forms of robbery are described in Scripture as sins that cry to heaven for justice, namely, defrauding laborers of their wages (James, v. 4) and oppression of the poor, which happens especially when one denies their rights to those who are unable to defend them. The following persons are also classed as thieves: pickpockets, spongers, smugglers, forgers, counterfeiters, embezzlers, and those who misappropriate funds entrusted to them.

In the civil law theft is also known as larceny, and is defined as the unlawful severance of personal property from the possession of its owner. The following kinds of larceny are distinguished:

(α) in respect to the manner of perpetration, a theft is larceny when the property is taken from the possession of the owner by one who had no possession, whether the latter be a stranger or a custodian; it is embezzlement when committed by one upon whom the owner had conferred temporary possession on account of a fiduciary relationship between them; it is false pretence when committed by one who procures permanent possession or ownership through fraudulent representations;

(β) In respect to the matter or quantity stolen, theft is called petit larceny when it falls below a certain sum fixed by the law, grand larceny when it exceeds that sum.

1894. The Sinfulness of Theft.—(a) From its nature theft—and, much more, robbery—is a grave sin; for it is opposed to the virtues of charity and justice, it is expressly forbidden in the Seventh Commandment ("Thou shalt not steal," Exod., xx. 15), and it excludes from eternal life ("Neither thieves nor extortioners shall possess the kingdom of God," I Cor., vi. 10). The thief attacks the sacred right of the individual to his property, and imperils the peace and stability of society itself. Theft is a grave sin, even when it is committed by little and little, as happens when a merchant gives underweight habitually: "A deceitful balance is an abomination to the Lord" (Prov., xi. 1). The proposition that restitution for a large sum taken in parts at different times is not a grave duty was condemned by Innocent XI (Denzinger, 1188). Canonical penalties for theft include exclusion from acts and offices, censures, and deposition (Canon 2354).

(b) From the imperfection of the act theft may be only a venial sin, for example, when the thief is a kleptomaniac and steals without advertence, or when he is invincibly ignorant that the thing taken is not his own or is of great value, or from the smallness of the matter involved (*e.g.*, when the thing taken has little value, or the owner is opposed rather to the stealthy manner of taking than to the taking, or is only slightly unwilling to lose the goods).

1895. Theft of a small amount may be a mortal sin (see **187**). This may happen: (a) on account of the internal or subjective circumstances, as when the thief intends to steal as much as he can or a large amount here and now, or when he intends to steal a small amount here and now but to keep this up every day until he has stolen a considerable amount, or when a child steals a small sum from its parents and falsely thinks that the theft is gravely sinful in itself; (b) on account of external or objective circumstances, as when the amount taken today is small but constitutes, with amounts previously taken, a large sum, or when the thief foresees serious consequences from his act (*e.g.*, that the person from whom the goods are taken will fall under suspicion and be discharged or arrested). It should be noted, however, that the consequences of the theft do

not necessarily make the sin grave precisely as it is a sin of theft (*e.g.*, in the case just given the theft was a venial sin, but the unjust damage was a mortal sin), or even precisely as it is a sin of injustice (*e.g.*, if one steals a picture of small value, foreseeing that the owner will be afflicted beyond measure at the loss, the sin against justice is small, but the sin against charity is mortal).

1896. The determination of the amount that constitutes grave matter in theft or robbery (or in unjust damage) is a very difficult task, because the factors upon which the injury depends are to some extent doubtful and vary in particular cases. Hence, there is a great diversity of opinion among moralists on this subject, and it will frequently be uncertain in an individual case whether a theft is mortally or only venially sinful in itself. But on account of the spiritual and temporal interests that are concerned it is necessary to give at least general rules for direction that will enable one to distinguish between grave and venial theft, and to know when the duty of restitution is serious, when light.

1897. Moralists are in agreement on the following points:

(a) the standard for measuring gravity of matter is not an invariable one, but will differ according to circumstances of times and places. Thus, money has much less purchasing power today than it had before the Civil War, and the same amount will not go so far nor last so long in the United States as in some countries of Europe. Hence, other things being equal, it is less harmful to steal the sum of $10 in 1958 than it was to steal the same sum in 1858, less harmful to steal that amount from an American than to steal its equivalent from a European;

(b) the standard for a particular country and period is to be interpreted morally, not mathematically; for it depends on the opinions or estimates of the prudent, which after all are only approximations and subject to revisions. Hence, it would be absurd to draw such a hard and fast distinction between grave and venial theft—for example, to decide from the amounts alone that he who stole $50 is certainly guilty of mortal sin and fit for hell, while he who stole $49.99 is guilty of venial sin only and not fit for hell. The figures given by moralists for grave matter are averages, and hence they cannot be expected to suit each individual locality or moment or injured person. But, being based on actual conditions, they are serviceable. If a sum stolen is much above or below them, they indicate truly the theological species of the sin; if it is only a little above or below them, they afford a basis for probability, or at least show that there is room for doubt.

1898. Moralists are also at one in measuring the injury of theft by the following considerations:

(a) it should be estimated by the property loss, that is, that theft should be deemed a grave sin which in view of all the circumstances and the common opinion inflicts a notable loss on the owner in his property rights. This is a matter of common sense, for every one can see that it is a very different thing to steal a cent and to steal $100;

(b) it should be estimated by the personal injury, that is, by the unwillingness of the proprietor to suffer the loss. This is also clear, since the unwillingness of the proprietor is one of the ingredients of theft, as was explained above in the definition, and everyone will readily grant that an amount which would be notable if stolen from a stranger, would not be notable if stolen from an indulgent parent.

1899. There are two opinions about the estimation of the property loss.

(a) Thus, an older opinion held that the standard should be an absolute one, that is, that the loss should be determined independently of the wealth or poverty of the person injured, since the financial situation of this person is a purely extrinsic circumstance of the theft. The rich man has just as much right to his $10 as the poor man has to his $10, and it is therefore just as injurious to deprive the former of the sum as it is to deprive the latter. What is a mortal theft in one case is a mortal theft in every case.

(b) A later opinion, which seems to be the common one

today, distinguishes two standards: an absolute one, which fixes one highest amount that is always grave matter on account of its magnitude, however wealthy the loser may be, and a relative one, which proposes a scale of lower amounts that are grave matter on account of the economic condition of the persons stolen from. It is argued that a relative standard should be set up, since the injury of theft is certainly felt more by those who have less means to fall back on; and that an absolute standard is also necessary, since without it the property of the rich would not be sufficiently safeguarded and the peace and order of society would be endangered.

1900. Opinions on the Amounts that Are Grave Matter.—(a) The *older opinion,* according to which there is only one invariable standard for all classes and conditions, regards as grave matter the amount necessary to support for a day, according to his state and obligations, a man whose financial condition is midway between wealth and poverty; for the loss of a day's support is usually looked on as a serious loss, and a standard for all should be taken from the average. This daily support amount may be reckoned from the amount of daily wages or income. In the United States in 1955 the average daily wage was between $14 and $15, but, if only skilled laborers or those who are in moderately prosperous circumstances are considered, the average would be considerable higher. Perhaps it would range between $25 and $30. Or if we strike a medium between the highest and the lowest figures given by the advocates of two standards, we should arrive at approximately $30 or $35.

(b) The common opinion today fixes the absolute amount, which is grave matter even when theft is from the wealthiest person or society as the equivalent of a week's wages for the head of a family living in fairly good circumstances but dependent upon his work for its support. As to the actual amount, authors differ. Thus, Father Francis Connell, C.SS.R., wrote in 1945 in *American Ecclesiastical Review* (p. 69): "To lay down a general norm in view of actual conditions and value of money, it would seem that the actual sum for grave theft would be about $40." In 1946, writing in the *Homiletic and Pastoral Review* (p. 694), Father Joseph Donovan, C.M., stated: "It is hard to see how less than $100 could be absolutely grave with the chances of a higher amount being probably so."* This sum was criticized as being excessive and did not meet with ready acceptance by all moral theologians. On page 127 of the third printing of his *Outlines of Moral Theology* (1955), Father Francis J. Connell, C.SS.R., suggested $75 as a reasonable absolute sum considering the value of money at the time, and, as a practical norm, the sum has been acceptable to most confessors and authors.

Relatively grave matter corresponds with the amount needed to support a worker and his family for a day or, according to some, the amount required for the support of the worker alone. Relatively grave matter would range from about $5 from a poor person on relief, through $20-$35 from skilled laborers and persons in comfortable circumstances, to $75 from the wealthy. The latter sum constitutes the absolute standard. For a general norm to establish relatively grave matter, then, an acceptable procedure is to take the daily earning power or expenses of those who do not belong to the wealthiest classes, but who just barely make a living by reason of their work or charity.

1901. What is grave matter in theft of sacred objects? (a) If these objects have a value that may be measured by money (*e.g.*, the gold or jewels that enter into a reliquary), grave matter is estimated by the material value, just as in profane objects. (b) If these objects have no monetary value (*e.g.*, sacred relics), grave matter is judged from the dignity or rarity of the object. Thus, it would be a serious sin to steal even the smallest splinter from the True Cross.

1902. It was said above (**1898**) that the gravity of theft is estimated, not only by the property loss, but also by the personal loss, that is, the reluctance, unwillingness or sorrow of

*This is not to suggest that the authors cited hold to the "week's pay norm" as the standard. Father Connell, for example, defines the absolute as "a sum which is so large that society would suffer much if it could be stolen without grave sin even from the richest or from a wealthy corporation" (*op. cit.*, pp. 127-128). The interest in citing the authors is to show the precise sums suggested by them at various times regardless of the norm used in arriving at the particular amount suggested.

the owner at the deprivation of his goods. This does not mean that a greater unwillingness on the part of the owner increases the gravity of the theft, if the owner's unwillingness is excessive or unreasonable (*e.g.*, it is not a mortal sin of theft to steal a dollar from a miser, if the miser on account of his love of money feels the loss as keenly as another person in his place would feel the loss of $40). But a less unwillingness of the owner diminishes the injury, and hence increases the amount necessary for grave matter. There are three reasons especially that diminish the unwillingness of the owner at the loss of his property.

(a) Thus, by reason of the persons who steal, the owner is less unwilling when these persons have a greater claim on his affection (*e.g.*, his children or wife), or when custom permits them to some extent a greater freedom than is granted to others (*e.g.*, servants, employees).

(b) By reason of the things stolen, the owner is less unwilling when these are things of less value, like crops, that are produced mostly by nature and are left exposed, such as fruits growing by the wayside, branches and pieces of fallen timber lying on uncultivated land.

(c) By reason of the manner of the theft, the owner is usually less unwilling when goods are taken gradually and on several occasions, or piecemeal, than when they are taken all at once.

1903. The Common Opinion on Domestic Thefts and Grave Matter.—(a) In theft from one's parents about double the usual quantity is required. But in an individual case the parents may be just as unwilling, and with good reason, to be despoiled by members of the family as by outsiders, and in such a case the rule would not apply. Hence, in considering thefts by children one must bear in mind the ability of the family to suffer the loss, the number of the children, the uses to which the stolen goods are put, the liberality or thrift of the parents, the affection or dislike which the parents have for the child who steals, etc. Thus, if poor parents are denying themselves in every way in order to rear and educate a large family, thefts from them are a serious matter.

(b) In theft from one's husband even a greater amount is required. But there are exceptions, as when the husband is especially unwilling to have his property stolen by his wife, for example, when the money she takes is devoted, not to the benefit of the family or other useful purposes, but to vanity or sin, or to the great detriment of the husband or family (see 1799).

1904. Theft from One's Wife or Minor Child.—(a) According to the law in the United States, a wife cannot steal from her husband nor the husband from the wife, but this principle has reference to the common property of which husband and wife are joint tenants (Robinson, *Elementary Law*, § 563). Both husband and wife may have also their own separate property, and in that case either of them is guilty of injustice if he or she damages or takes without leave the goods of the other.

(b) According to American law, the father has the right to the earnings of his minor children who live with him and receive their maintenance from him; but the law gives the father no right over the separate real or personal estate of these children. Hence, a parent would be guilty of theft if he unlawfully took or used the individual property of his child.

1905. The Common Opinion on Thefts Committed by Employees.—(a) If the things stolen are small articles which the employer customarily supplies for his help (*e.g.*, food and drink for domestic servants, pencils and paper for his clerks), the theft is not serious as a rule. But there are exceptions, as when the employee gives or sells to others these articles, or when he uses or wastes them to such a degree that the employer suffers a considerable loss. And one should also consider such circumstances as the great or small value of the services given by the employee, his good or bad standing with the employer, etc.

(b) If the thing stolen is not meant for consumption (*e.g.*, furnishings of the home or office, merchandise of the store, tools or machinery of the factory) or is of a very precious kind (*e.g.*, rare wines or expensive brands of tobacco), grave matter is of the same amount as when an outside person does the stealing. In fact, the guilt of the employee is more serious on account of his abuse of confidence or violation of contract. The property

of employers would be subject to constant risk, if employees were permitted greater liberties than outsiders.

1906. Theft of Things about Whose Loss the Owner Is Less Concerned.—(a) *Vegetation that Belongs to the Public and Is Left Unprotected.*—If these things are of minor importance (*e.g.,* wild fruits or berries, broken twigs, branches, etc., in public lands), it seems that it is not theft to take them, at least when one is poor and a member of the community; for laws against such acts are generally regarded as penal. But one sins, and may even sin gravely, when extensive damage is done to public property (*e.g.,* by cutting down trees, carrying away flowers and plants, injuring shrubs, etc.).

(b) *Vegetation that Belongs to Private Parties and Is Left Unprotected.*—If only a small quantity is taken (*e.g.,* an apple or a bunch of grapes hanging over a public highway taken by a passerby), it seems no theft is done, unless the owner or law expressly forbids. But it seems to be a venial sin to take more (*e.g.,* as much as a hungry person can eat), and a mortal sin to take a quantity whose market value is equal to grave matter.

1907. Travelling Without Paying Fare.—Is it theft to ride in public conveyances without paying the fare?

(a) If one rides without payment or ticket, it seems that theft is committed, unless the company is willing to give a free ride. It may be said that the company suffers no loss on account of one passenger who has not paid for his transportation, since the same number of cars and the same expenses would be required even without that passenger. But since the owners are unwilling to furnish their service gratis, he who takes it without pay is guilty of theft.

(b) If one rides without payment, but uses the ticket of another, there is no injustice if the rules of the company permit this (*e.g.,* A buys a round-trip ticket, but gives the return ticket to B), but there is fraud if the rules of the company and the agreement of the purchaser make the ticket non-transferable (*e.g.,* B uses the half-rate ticket which A had received as a personal privilege from the railroad company).

1908. Small Thefts Which Amount to a Large Sum.—Small amounts stolen may accumulate into a large amount. This happens in the following ways: (a) the thief takes small sums on different occasions from the same person or from different persons, and continues at this until he has stolen a considerable amount; (b) the thief conspires with other thieves to steal on the same occasion from one person or several persons, and, though the sum he steals is small, the sum taken by the whole group is considerable. Similarly, petty damages or vexations may accumulate into a mortal injustice. Thus, if Claudius, aiming to break down the health, sanity, success, reputation, business, etc., of Balbus, plans and carries out a systematic campaign of small injuries daily repeated for years, Claudius is guilty at least in purpose of serious damage.

1909. Small thefts that grow into a large theft are mortally sinful in the following cases:

(a) they are mortally sinful by reason of the previous intention when one steals a little now and a little again, but has it in mind from the outset to steal a total sum that will be grave matter, or when one conspires with others to steal a notable sum, although one's own share will not be a notable amount. In these cases the purpose is to commit a grave injustice, either against an individual (if all is taken from one person) or against society (if portions are taken from various persons), and hence one is internally guilty of grave sin, even though one has not yet performed it externally. Examples are merchants who use false weights and measures, or who adulterate their commodities with small portions of water, etc., and thus make large profits by minute cheating;

(b) they are mortally sinful by reason of the subsequent intention when one had no purpose to steal a large amount, but adverts to the fact that a small theft here and now committed will constitute grave matter if added to previous petty thefts, or that the amount of stolen goods now possessed is large, and nevertheless resolves to go ahead with the theft or to retain the stolen goods. This does not mean that a number of venial sins coalesce into a mortal sin (see **189**), but only that the object of

a sin which is slight in itself becomes serious on account of the circumstance that it is morally connected with previous sins. The last act in a connected series must not be taken singly, but in connection with the acts that precede, as is seen in the violation of a fast or in omission of parts of an hour. In the cases now considered, therefore, grave injustice is actually and purposely done, and mortal sin is committed, even though there was no thought of this in advance.

1910. The case of young men who are educated free of charge in the expectation that they will go on to the priesthood and who do not persevere.—(a) If they act in bad faith (*i.e.*, if they enter the college or seminary merely to get their education, or to avoid work, or if they remain after they have abandoned thought of the clerical state), they are guilty of theft and bound to restitution.

(b) If they are not in bad faith (*i.e.*, if they wish to try out their vocation, or if they begin with the intention to persevere), they are not guilty of injustice. This is true, even though they are rejected on account of idleness or other faults, provided there was no intention to defraud.

1911. In the following cases small thefts which added to others make a large sum seem not to be the cause of grave loss, and hence not mortally sinful:

(a) the small theft of one person following on the small thefts of others, when there is no bond of example, advice, conspiracy, etc., to unite the various thefts; for none of the thieves can be held responsible for the part of the loss caused by the others. Example: Titus, knowing that Balbus has been cheated by various persons to the amount of $9 and that $10 will be a serious loss to Balbus, proceeds to steal $1 from Balbus:

(b) the small thefts of several persons who steal together, and who influence one another only by example; for example is an occasion, not a true cause of the imitator's act (see **1447, 1763**). Example: Sempronius and Claudius go into a store together and find that there is no one around. Sempronius thereupon steals a number of articles and leaves. Claudius

notices this and steals other things, which will make the total loss serious.

1912. Moral Connection between Repeated Acts of Theft.—The moral connection between repeated acts of theft by one person is necessary, as was said, in order that these acts unite into one grave sin. This moral connection does not exist, however, if the series is broken by interruption or revocation.

(a) Thus, the connection is broken by interruption when there is a long interval between small thefts, because thefts that are small and infrequent do not inflict severe loss on individuals or society. This supposes, of course, that there is no intention to practise small thievery habitually in order to become enriched by it, but that one steals now and then as opportunity or necessity occurs, or (according to some) that one intends to steal only small amounts and at long intervals.

(b) The connection is also broken by restitution or revocation. It is clear that, if the thief has given back his former thefts, they should not be computed with later thefts; and it seems also—though some do not admit this—that, if he has sincerely resolved to give back things taken before (*e.g.*, things which are useless for him), there is no moral connection between the past thefts and a theft he is committing now.

1913. Interval of Time between Acts of Theft.—The interval of time that breaks the connection between small thefts cannot be determined with mathematical exactness, but the following rule seems to be accurate enough: thefts combine to form a great theft only when considerable property is taken by degrees, but within such a brief period of time as to be of notable advantage to the thief and of notable disadvantage to the loser. Some moralists think that six months is a long space, sufficient to prevent union between thefts, but that two months is too short a space to prevent the union; others, on the contrary, believe that the amounts stolen should be taken into consideration; and hence that the following intervals between thefts separate them into distinct venial sins without coalescence:

(a) a period of one year between thefts, each of which

almost amounts to grave matter, when the property is kept (*e.g.*, when a dressmaker who has kept not a little of her patron's material of a twelvemonth ago does the same thing again this year);

(b) a period of two months, when the matters are almost grave, but the property is not kept (*e.g.*, when a thief who beat a restaurant out of the price of a very elaborate meal at the beginning of January does the same thing at the beginning of March). But it is hard to see how one could have the habit of stealing in this way and not have the intention of stealing a large amount, for a person who steals what is almost grave matter every two months or so must realize that he will shortly be enriched to a considerable extent by his dishonesty. Moreover, the interval of two months might be needed by the thief for avoiding suspicion;

(c) a period of one month, when the thing stolen falls far short of grave matter (*e.g.*, a meal of simple fare plainly cooked and served);

(d) a period of about two weeks, when the matters are very small (*e.g.*, when a thief takes a few secret sips from a wine bottle on each of his fortnightly visits to a certain house, or carries away some trifling object as a souvenir). These thefts would not surpass five or ten cents a month:

(e) some authors think that one week or perhaps even one day will prevent coalescence between extremely small thefts; and surely there are some paltry objects (*e.g.*, a pin or needle, a match, a small lump of coal, a piece of string) which would not total a large value even after many years have passed.

1914. Species and Number of Petty Thefts that Coalesce into Grave Matter.—(a) If the thefts proceed from a previously formed purpose of stealing by installments a large sum, each of them is a mortal sin, but they do not form numerically distinct sins, unless there was a revocation of the intent (see **214, 215**).

(b) If the thefts did not proceed from a previously formed plan, those that preceded the culminating theft (*i.e.*, the one whose addition makes the quantity grave) are so many separate

venial sins of theft. The culminating theft is a mortal sin, if the thief adverts to the fact that he has now stolen a notable sum; otherwise it is a venial sin. The act, after the gravity of the matter has been noticed, is the initial mortal sin, if it means consent to the grave injustice done (*e.g.*, retention of the ill-gotten goods, intention not to make restitution); it is an additional mortal sin, if it means a renewal of consent to the grave injustice previously done (*e.g.*, the theft of a new small amount with the purpose of keeping it as well as the rest).

1915. Sum Required for Grave Matter in Petty Thefts that Coalesce.—(a) According to one opinion, it is always larger than the sum required for grave matter in a theft of the same amount on a single occasion; for the owner does not feel the loss so much when his goods are stolen in small amounts and at different times. Thus, a man is less unwilling to have $100 stolen from him through pilferings of cents and dollars over a period of a year or two than to have it all stolen from him on one day.

(b) According to another opinion, grave matter for petty thefts is not larger than grave matter for large thefts of the same amount, if the petty thief had the intention all along to accumulate a notable sum. But some who are of this opinion make an exception for the case when the petty thief steals not from one but from several owners, for in this way the loss is distributed and less harm done. Grave matter in this case, they say, is the same as absolutely grave matter.

1916. There are various opinions on the amounts required for grave matter in the case of petty thefts that coalesce. (a) If all the thefts are against the same person, the usual opinion fixes grave matter at one and one-half times or twice the amount fixed for large thefts. Some authors limit this to cases wherein the thief had not the purpose from the beginning to steal a great amount (see **1915**), and some state that the amount for large thefts which is considered is the relative, not the absolute sum. (b) If the thefts are against different persons, some think that grave matter is the same as the absolute matter of one large theft, while others make it one and one-half times or twice that

amount. Here again some moralists limit these increases in the sum for grave matter to cases wherein there was no purpose from the beginning to steal a notable amount.

1917. Theft from Joint Owners.—Is it a grave sin to steal a considerable amount of property that belongs to joint owners? (a) If the amount taken is absolutely grave, the sin is serious for the reasons given in **1898 sqq.**; (b) if the amount taken is relatively grave (*e.g.*, because a community is very poor, or because the owners are only two or three and the individual loss is heavy), the sin is serious; (c) if the amount taken is not relatively grave, as happens when an organization is not poor and has many members or when the loss will be so distributed among the joint owners as to be little felt by them individually, the sin is not serious.

1918. Restitution in Cases of Theft.—(a) Restitution is owed for the property stolen. He who stole a serious amount but gave back part, retaining only what is light matter, is bound under venial sin to restore the rest. Confessors should urge restitution even of small amounts, when possible, in order to deter men from theft, and it may sometimes be useful to require children to seek a condonation from their parents for a similar reason. (b) Restitution is owed also for damage caused by the theft (see **1895**). Thus, if one steals the tool of a poor farmer, which is of little value in itself but which brings on him a serious loss, one is responsible for the loss as well as for the tool.

1919. Cases of Doubt.—(a) *Doubts of Law.*—The rules given by moralists on grave matter in thefts are not to be regarded as certain and authentic, since they are only the opinions of theologians, and have no obligatory sanction from the Church. They are reasonable and well founded, indeed, but in spite of them there will occur cases wherein it is doubtful whether a theft is mortal or venial (see **1896**). It is no disgrace to be ignorant in such difficult cases, for St. Augustine himself admitted that he did not always know where to draw the line. Hence, confessors should not feel obliged to decide with finality in every instance whether the sin committed was in itself grave or light; on the contrary, it will sometimes be necessary to avoid

a definite answer, while calling attention to the sinfulness of all theft and the duty of restitution. But the obligation of restitution should not be imposed as certain, where the doctors disagree.

(b) *Doubts of Fact.*—The application of the rules for grave matter will also be at times very difficult on account of uncertainties about circumstances of time, person, etc. In such cases one must have recourse to the systems for decision in the presence of a doubtful conscience. If a thief does not know from whom he stole, it may be doubtful whether the matter is relatively grave or only light; but the presumption then will be that the loser was a person of average means. Again, when there is a strong likelihood that an owner was not greatly unwilling, one must insist that the thefts cease for the future, but one cannot always impose restitution. If a petty thief does not know how much he stole, or whether all the thefts were from the same person, or whether the intervals between the thefts were great or small, or whether he had the intention from the outset to take a large sum, the confessor will have to form an opinion by questioning the penitent on the time of his last confession, the amounts he generally took, the general frequency of the thefts, etc.

1920. Conversion of Others' Property.—The conversion of property owned by others or held by them may be permitted, or at least tolerated, when the owner or possessor would be unreasonable if he objected as in the following cases:

(a) in extreme necessity, for according to natural law each one has the right to preserve his life by using the temporal things of the earth (see **1571**). In danger of death things necessary for escaping the danger become common property, and no injury is done by the person in danger if he uses the goods of another person to save his own life;

(b) in certain cases when occult compensation is the only way in which one can defend or secure one's right to property, for it is not wrong to take what is one's due, if this is done without harm to the rights of others.

1921. Conditions for Lawful Occupation of the Goods of

Others in Extreme Need.—(a) The occupation must be necessary for securing one's own or another's natural right to some supreme good, such as life or what is almost the equivalent of life (*e.g.*, freedom from cruel restraint, escape from fearful disease). A supreme good is at stake, then, when one is in extreme, quasi-extreme, or most grave need (see **1236**), that is, exposed to the certain or very probable peril of losing life, limbs, liberty, sight, chastity, etc.; occupation is necessary when there is no other way (*e.g.*, by begging) to avert the danger.

(b) The occupation must be made without detriment to the rights of others. Hence, one may not occupy more than is really necessary to escape the danger; one may not occupy at all if the owner is situated in an equal danger (*e.g.*, one may not take the plank from a man in danger of drowning in order to save oneself); one may not retain the thing taken, if the danger has passed (*e.g.*, one who commandeered his neighbor's car in order to escape from a thug must return the car). The neglect to ask permission, however, does not exceed a venial sin and does not impose the duty of restitution, if there is a real reason for occupation. One may not take the goods without permission, if this can be obtained without too much difficulty; nor forcibly, if possession can be had peaceably.

1922. Restitution for Occupied Goods.—Is the occupier bound to restitution for occupied goods that were consumed (*e.g.*, food and drink), if he afterwards becomes able to pay for them?

(a) If the occupier had no prospect at the time of ever being able to pay for what he took, he is not bound to restitution—not because of possession, since the thing has perished, nor because of the taking, since there was no onerous contract, nor because of injury, since he acted within his rights. The owner cannot complain at this, since charity obliges him to give of his own free will to one who is in supreme need and not to expect that the alms be paid back, while justice forbids that he impede the appropriation of what is needed by the person in distress. It seems, however, that a case of this character would rarely happen, and, if it did happen, the more decent thing would be

to pay for what was used. Some moralists think that more probably there would be an obligation of justice to do this, since occupation is lawful only in so far as it is necessary.

(b) If the occupier had the prospect at the time of being able to pay for what he took, he is bound to restitution; for one should not occupy more than is necessary, and, if a loan suffices to tide one over a difficulty, it is not right to expect a gift. Hence, men who raid bakery shops in times of food shortage, are bound to make restitution to the bakers when able.

1923. Occupation in the Case of Merely Grave Necessity.—Is it lawful to occupy in merely grave or ordinary necessity? (a) This is not lawful, for otherwise the doors would be opened to thefts without number, and both the security of property and the peace of the public would be at an end. Innocent XI condemned the proposition that it is permissible to steal in great need (Denzinger, n. 1186). (b) Such occupation is less sinful than to occupy without necessity, and indeed the theft may be only venial if one is in grave need and has vainly sought work or charity to relieve the difficulty as when a poor man who is not able to give his children all the food they need steal provisions now and then.

1924. Occupation of a Large Sum by One in Dire Need.—(a) One opinion holds that even for the sake of avoiding death this is not permissible, for one has no right to extraordinary means for the protection of one's life.

(b) A second opinion maintains that this occupation is lawful, under the conditions given in **1921**; for life is more precious than even a large sum of money, and in such extreme need property right yields to the right to life.

(c) A third opinion distinguishes between the case in which extreme necessity is proximate or urgent (*e.g.*, an unarmed watchman is threatened with instant death if he does not hand over at once the money he has in charge) and the case in which it is only remote (*e.g.*, the doctor tells a poor man that he will die shortly from tuberculosis unless he goes to a more healthy altitude, but the patient is too poor to follow these instructions). In the former case the person in need may take what is neces-

sary (on account of the reasons for the second opinion and also because the civil laws allow this), but he is not bound to do so (on account of the reasons for the first opinion); in the latter case, more probably he has no right to occupation, for this would be prejudicial to the public welfare and is moreover strictly forbidden by civil laws (see **1571, 1253**).

1925. Duty of the Owner towards One in Dire Need.—(a) In charity the owner is bound to come to the aid of the needy person; but, if he neglects this duty, he does not offend justice and is not held to restitution (see **1240, 1753**). (b) In justice the owner is bound not to prevent the needy person from taking or using what he is entitled to; but should the owner do this and the necessity cease, there is no duty of restitution, for the right of the needy person ends with the necessity.

1926. Lawfulness of Receiving Support from a Thief.—Is it lawful for the wife and family to receive support from the head of the family, when he is a thief?

(a) It is lawful when the persons stolen from are not thus deprived of their goods or of the prospect of restitution. This happens when the actual support does not come from the stolen property, and the thief is able to make restitution from other property that belongs to him, or the wife and children earn as much for the family by their work as they receive in support. In this case the family may take from the thief even things that are not necessary for their support.

(b) It is lawful when the persons stolen from are deprived of restitution, but the obligation of restitution has ceased on account of grave necessity (see **1797**). This happens when the support does not actually come from the stolen property, but the thief is unable to make restitution from his own property without depriving his own family who are in grave need. In this case the family may take from the thief only such things as are necessary for them according to their station in life.

(c) It is lawful when the persons stolen from are deprived of their goods, but the right to occupy these goods has arisen on account of the extreme necessity of the family (see **1920 sqq.**).

This happens when the support comes from the stolen property itself. But the family may use only what is really necessary for the relief of their dire distress.

1927. Compensation.—Compensation is of two kinds, strict or legal and wide or extra-legal.

(a) In a strict sense, compensation is counterclaim, or the comparison of the debts of two persons to one another with a view to the cancellation of one or of both debts. This method of extinction of debt is allowed by law in order to reduce the amount and expenses of litigation. It is known as *recoupment* or *offset* when a defendant brings a cross-action against a plaintiff for non-fulfillment by the latter of some part of the contract in controversy, and as *set-off* when the defendant introduces the debt owed to him over against the debts sued for by the plaintiff. Counterclaim is just when no injury is done to one party (*e.g.*, it would be unjust to keep the horse of Titus which you had borrowed, simply because Titus owed you a debt equal to the value of the horse, for the horse might be worth more to Titus); it is legal when recognized by the law (cfr. **1797, 1798**).

(b) In a wide sense, compensation is the summary recovery by a creditor of the thing or the debt owed him by the debtor. The recovery is summary in the sense that the creditor does not go to law, or proceed according to law, but takes from the debtor either openly (open compensation) or secretly (occult compensation) what is owed.

1928. Lawfulness of Occult Compensation.—(a) Ordinarily, or *per se*, it is not lawful; for it contains such evils as disregard of due process of law, scandal, infamy, public disturbance, the menace that the common good will be harmed by frequent abuse, the danger that the debtor will suffer loss through a second payment of the same debt, etc. Innocent XI condemned the proposition that domestic servants may practise occult compensation when they decide that their services are worth more than the salary they are receiving (Denzinger, n. 1187).

(b) Exceptionally, or *per accidens*, it is lawful; for under certain conditions it offends neither public nor private welfare and it is necessary for the vindication of a right. Just as the

natural law gives authority to occupy the goods of another in case of extreme need, so does it justify occult compensation in the special cases just mentioned.

1929. Unlawful Occult Compensation and Restitution.—Does unlawful occult compensation oblige one to restitution? (a) If the compensation is not only unlawful but also injurious (*e.g.*, a servant takes what is not due her under the pretext of compensation), it is not rightly called compensation, but is really theft, and restitution is due. (b) If the compensation is unlawful but not injurious (*e.g.*, a servant takes what is really due her, but she could have obtained it by asking for it), there is no theft or duty of restitution, since the property of another was not stolen.

1930. Conditions Required by Commutative Justice for Occult Compensation.—(a) *Before the Compensation.*—There must be a strict right to the thing taken; for, if there is no such right, one takes what belongs to another against his will, or commits theft. Hence, if an employer has freely promised to make a gift to his servant and then fails to keep the promise, the servant has no right to take what was promised, since it is owed from liberality or fidelity or gratitude, but not from commutative justice. The same applies to a non-necessary heir who has been left nothing in a will, since he had no strict right. It is also unjust to take secret compensation for a debt that has not yet fallen due.

(b) *During the Compensation.*—No wrong must be done to the debtor (*e.g.*, by taking more than is due, by taking an article which the debtor needs for earning his living) or to third parties (*e.g.*, by taking goods deposited by them with the debtor). If possible, compensation should be made from goods of the same nature and kind as those that were taken or damaged, for the debtor should not be forced to part with things he wishes to retain and which are not necessary for the creditor's satisfaction.

(c) *After the Compensation.*—One must avoid injury to the debtor (*e.g.*, the keeping of a payment which is now not owed by him and which one can refuse or return to him) and to third parties (*e.g.*, the casting of suspicion on a servant in order to divert attention from one's act of occult compensation).

1931. Must the strictness of the right be morally certain, or, in other words, must reasonable doubt of fact and of law be excluded?

(a) As to doubt of fact, it must be excluded; for in such doubt the presumption is with the possessor, or at least it is certainly wrong to perform an act that will probably be injurious to another person (see **713**). Moreover, everyone can see that the public good would suffer greatly, if occult compensation were permissible when the existence of a debt is uncertain. Hence, if it is only probable that one sold goods to another person or that another person has not yet paid for services received by him, occult compensation must be avoided.

(b) As to pure doubt of law, the question is controverted. Some think that it also must be excluded, since the possessor should not be deprived of possession unless it is certain that there is a right to do this. Others think that occult compensation may be used in spite of a mere doubt of law, if the doubt concerns only the mode of making the compensation, or if the probability in favor of the creditor is so strong that a judge could conscientiously decide for him against the possessor. Examples of doubts of law here are three cases that are in dispute among authors, namely, whether one may take money as compensation for defamation that will not be repaired by restoration of fame (see **1802, 1803**), whether one may deny reparation for defamation when one has been defamed by the other party and has not received restitution, whether one has rights to a legacy of which one is deprived on account of a mere informality in the document. In these cases the right is held by some authorities to be probable, but the decision in a particular instance should be made only on the advice of a learned and conscientious person, since the matter is very complicated and there is great danger of self-deception.

1932. Some Cases in Which There Is a Strict Right to Compensation.—(a) *Employees* (*i.e.*, servants, workingmen, artisans, officials, etc.) have a strict right when they are injured by the

employer's non-observance of the contract (*e.g.*, the stipulated salary is not paid; unjust subtractions are made from the salary, as by fines for the inadvertent and infrequent breaking of tools, etc., about which there was no agreement in the contract; labors not contracted for are exacted), or when an unjust contract is imposed on them (*e.g.*, they are induced by force or threats to accept less than a living wage; advantage is taken of their grave necessity to wring from them agreement to such a wage).

(b) *Merchants* have a strict right when a debt which they cannot collect is certainly owed them, or when they sold below the minimum just price, because forced to this unjustly, or because they made a mistake in charging. They may compensate themselves by diminishing weights or measurements.

(c) One has a right to compensation who has been condemned under a sentence manifestly unjust, because the law is certainly unjust or because the judge clearly gave a wrong decision in a matter of fact (*e.g.*, he erroneously presumed that a debt had been contracted, or that it had not been paid).

1933. Some Cases in Which There Is No Right to Compensation.—(a) Employees have no right to compensation for subtractions from their salary, if they culpably injure the property of their employer, or if they agreed to such subtractions; nor for the smallness of their wage, if they freely accepted it (*e.g.*, if they regarded it as a favor to be employed, and the employer did not really need them), or if it is made up for by presents, board or lodging, opportunity for good tips, etc.; nor for unusual labors, if they hired themselves out for general service (unless they are asked to perform work of an entirely unforeseen kind, such as a very perilous mission), or if they undertook these labors freely without the knowledge or wish (express or tacit) of the employer.

(b) Merchants have no right to compensation for goods sold by them below the minimum just price, if they freely agreed to sell at that price.

1934. Children and Employees and Compensation.—Some special questions arise for consideration in case of parents who employ their own children, and of employers who are forced to underpay on account of the dishonesty of their help.

(a) Children who work for their parents and who are entitled to a salary, by agreement or from the law, have the same rights as other employees, but injustice against them would be less frequent. In this country the father has a right to the services and wages of his unemancipated child, but the child becomes independent of the father when it reaches the age of majority or when the father relinquishes his right.

(b) Employees who are underpaid because the employer is cheated by his help have the right to occult compensation, if they are forced to take less than a living wage (1932); otherwise this is not permissible, unless it be certain that the employer is not unwilling that the honest employees receive more than their pay. In practice, on account of the great peril of injustice, it is advisable that such workers seek better pay through their organizations or else look for employment elsewhere.

1935. Conditions Required by Legal Justice for Occult Compensation.—(a) Occult compensation must not be used if payment can easily be obtained through suit at law or agreement; for the order of law and the public welfare require that one should not have recourse to the extraordinary means of occult compensation if ordinary means will suffice and not cause notable difficulties. But as a rule it seems this obliges only under venial sin, since ordinarily the departure from normal procedure in this matter is not seriously detrimental to public morals or order; and it does not impose a duty of restitution, since he who takes only what belongs to him does not offend against commutative justice. Indeed, if it is certain that other means will be futile (*e.g.*, because one has not sufficient evidence to win or because the decision would be biased) or harmful (*e.g.*, because great dissensions will be aroused, or heavy expenses incurred in litigation), occult compensation is not even venially unlawful.

(b) Occult compensation, according to law, should not be used by a bailee, for he has a lien for his services and proper expenditures in caring for the object bailed, but not for any other debt the bailor may owe him (Bolles, *Handy Law Book*). This is obligatory at least for the external forum.

1936. Some Conditions Required by Charity for Occult Compensation (see **1165, 1236, 1483**).—(a) *Charity towards the Debtor.*—The creditor should see, when possible, that the debtor suffers no loss by occasion of the compensation. Hence, in order to spare the debtor the evils of a bad conscience in reference to the debt or of a second payment of the debt, the creditor should, if possible, inform the debtor that the debt is cancelled or that payment is not expected.

(b) *Charity towards Third Parties.*—The creditor should, if possible, prevent any trouble or loss to others that might be occasioned by the compensation, such as suspicion of theft that might fall on servants.

1937. The Lawfulness of Open Compensation.—(a) If one's property is being stolen or carried away, it is lawful to protect or recover it by force; for this is only just defense.

(b) If one's property has already been carried away but is still in being and in a safe place, legal justice requires that one seek redress from the courts. But it does not seem a serious fault if one recovers goods by using moderate force, since the property is one's own and the public manner of seizing it enables the law to take cognizance of the case. American law recognizes with certain restrictions the rights of recaption and of entry whereby a person takes possession without legal process of goods unlawfully taken or withheld from him (Robinson, *Elementary Law*, § 239, 240).

(c) If a debt owed to one is denied by the debtor, it is not lawful to take payment from him by force, since this is against the law and productive of scandal and disturbance, and moreover one is not the owner of the goods which one thus takes by force.

1938. Notanda pro Confessariis.—(a) Ante factum, rarissime consulenda est occulta compensatio, tum quia ut plurimum illicita est (**1928**) utpote periculo injustitiæ, scandali, perturbationis plena, tum quia lex civilis non solet eam ut remedium agnoscere sed potius ut furtum habet. Publice de occulta compensatione non expedit loqui, et præstat ut qui privatim de ea interrogentur, etiam datis conditionibus ad liceitatem necessariis, per modum tolerationis tantum annuant.

(b) Post factum, facilius in favorem utentis compensatione judicari potest, in ordine ad restitutionem, sed prudenter, et quasi evasive loquendum, ne praxis ita agendi ut per se et generaliter licita approbari videatur.

1939. Judicial Injustice.—We pass now from injustices committed by deed to those committed by words, and shall consider first unjust words spoken in courts of law and next unjust words spoken in private or outside of legal processes. Judicial injustice will be treated under the following heads: (a) injustice in judges; (b) injustice in plaintiffs or accusers; (c) injustice in defendants; (d) injustice in witnesses; (e) injustice in lawyers.

1940. The Office of Judge.—Judgment is the proper act of justice (**1727**) and therefore when exercised under due conditions it is not only lawful, but virtuous. The exercise of public judgment belongs to the judge, who is a person vested with authority to decide litigated questions in civil or criminal cases.

(a) Thus, in the strict sense, a judge is the official who has public authority to preside over tribunals of justice, in which major matters are tried and a formal procedure is followed, and whose function it is to direct the course of the proceedings and to settle questions of fact or of law that arise.

(b) In the wide sense, a judge is any person who has lawful authority to pass an obligatory sentence in criminal or civil matters. The name may be applied, then, to those who preside over a tribunal in which minor or urgent questions are considered and treated summarily (justices of the peace, police magistrates, etc.); to those who do not preside over a tribunal, but who are attorneys at law appointed as officers of a court to pass on some issue of a pending proceeding or suit (referees); to those who act as assistants of the presiding judge, by determining the truth of alleged facts in civil cases, or the innocence or guilt of an accused in criminal cases (trial jurymen); to those who are chosen, by the parties to the dispute or by a court, as substitutes for the ordinary courts provided by law, to hear and settle, without legal formalities, the matter in controversy (arbitrators).

1941. Classes of Courts.—There are various classes of courts and therefore various kinds of judges.

(a) Thus, according to their relative dignity and jurisdiction there are higher and lower courts, courts of the first, second and last instance.

(b) According to the cases they try, courts are either civil (in which redress of private injuries is sought) or criminal (in which the community prosecutes public wrongs).

(c) According to the law which they use courts are ecclesiastical or secular.

(d) According to the form of procedure used and the remedies applied, courts in the United States are divided into courts of common law, courts of equity, probate, admiralty, and military courts.

1942. Jurisdiction.—Authority is necessary in a judge, for judgment is a binding decision that may be executed by force, and this supposes that he who pronounces the judgment is the superior of the person on whom the judgment is passed. Hence, he who acts as judge when he lacks jurisdiction acts invalidly (unless jurisdiction is supplied, as in common error for an ecclesiastical judge, in Canon 209), and offends against the rights of another judge and of the person on whom he passes sentence. Examples would be secular judges acting in ecclesiastical cases or ecclesiastical judges acting in temporal cases.

1943. The Qualifications of a Judge.—(a) Mentally, he must be endowed with knowledge of the law and with prudence, so as to be competent to pronounce correctly on the questions that are brought to him for decision; for, as being the authorized interpreter and custodian of the law, he is bound by quasi-contract with the community and with those who appear before him to be competent for these offices. If a judge realizes that he is incompetent in these ways, he must either resign his office, or make up for his deficiency by study or consultation with those who are more learned than himself. A juryman, being a layman to the law, is not expected to have the mental equipment of a lawyer; but it is his duty to give his attention to the statements, arguments and testimony and to the instructions of the judge.

(b) Morally, the judge must be a lover of justice, whether commutative, distributive or legal; for the proper office of the

judge is to apply the law to particular cases and to declare officially the mutual rights and obligations of litigants who are before him. He must not be a respecter of persons, one who is moved for or against a man on account of rank, position or wealth, nor one who is swayed by fear or favor, by popular outcry or personal ambition. Not only legal but also commutative justice obliges him to perform his duties conscientiously; for in taking his office he enters into a quasi-contract with the community to execute his functions faithfully and well, and similarly by trying a case he engages that those before him will receive evenhanded justice. A juror should be a conscientious person who is openminded and free from prejudice for or against those on whom he has to vote.

1944. Conduct of a Judge.—A judge must be above suspicion, since respect for the courts is the very life of the State. But there is good reason to suspect a judge who judges in his own case, or in a case in which he will be naturally inclined to favor one side. Hence the duty of abstaining from certain things.

(a) Thus, he should avoid business, social and political activities that will give ground for belief that he uses his office for the promotion of private interests.

(b) He should not act in a case in which his own advantage or the advantage of his friends might appear to conflict with the duty of strict impartiality, as when he has personal litigation in the court, or when a near relative of his is party in a controversy, or when one of the contestants is his personal or political friend or enemy, etc. Canon 1613 of the Code forbids a church judge to act in the case of a person related by blood or marriage in the direct line or in the first and second degrees of the collateral line, or of a person for whom he is guardian or administrator, or in cases in which he had previously acted as advocate or proxy, or from which he stands to profit or lose.

(c) He should refrain from conduct that would tend to arouse doubts of his impartial attitude, such as incivility to counsel or witnesses, unexplained rulings that have the appearance of arbitrariness, private interviews or dealings with one of

the parties before him in ways calculated to influence his action.

1945. Accepting Gifts from Litigants or Others.—May a judge take money or other goods from those whose interests are submitted to him, such as litigants or lawyers in his court or their friends?

(a) If the goods are extorted by threats or pressure or unjust vexation, the judge is guilty of robbery, since he forcibly takes that to which he has no right.

(b) If the goods are given as payment for the judge's services during the trial, the judge sins against commutative justice in receiving payment for services already due, since his salary comes from the community and obliges him to administer justice without charge to those who seek it. Neither is it lawful to take money as compensation for trying one case before another, or for hastening a case, or for giving unusual diligence to a complicated case, or for deciding for one side when the evidence is equal on both sides. But the law could permit a judge to collect his expenses from both parties if the trial necessitated a personal outlay of money (*e.g.*, for travel or hire of assistants) and there was no public fund to defray these costs.

(c) If the goods are offered as bribes, in order that the judge may be influenced to act against justice, it is clear that grave injustice is done both to the community and to the party who is injured.

(d) If the goods are given as free gifts, with no condition attached, some think they may be lawfully accepted, if there is little probability that they will influence the judge (*e.g.*, because they are small or given after the trial has ended). But others hold, and it seems more correctly, that both natural and positive law forbids this. Natural law forbids because of the danger ("Presents and gifts blind the eyes of judges, and make them dumb in the mouth, so that they cannot correct," Ecclus., xx. 31), and because of the mistrust and scandal that will result. It is incorrect to suppose that small gifts and gifts offered after sentence would not have influence, for the contending parties would soon come to vie with one another in making gifts, while judges would begin to think about the gratuities that might be

looked for at the conclusion of a trial. Canon Law forbids all ecclesiastical judges and all who assist in court to accept any gifts whatever that are offered in connection with the trial (Canon 1624), and the civil law provides severe penalties for bribes offered as gifts.

(e) If goods are given as a mere alms or from civility or hospitality (*e.g.*, food and drink such as is usually offered to a guest or visitor), it does not seem unlawful in itself to accept them, but, since there is a danger of suspicion and scandal, even this should be avoided.

1946. Obligation of a Judge to Restore Goods Received in the Above-Mentioned Ways.—(a) If retention of the goods is contrary to the reasonable wishes of the person who gave them, restitution is necessary. Hence, the judge must give back money that was extorted and the payments made by private parties for the exercise of his official duties.

(b) If retention of the goods is contrary to law, restitution is also necessary. Hence, if a judge has taken a bribe, he must give it back, because the agreement is null, and he cannot lawfully keep his part of the compact by acting contrary to justice. The same is true when the law voids the contract whereby he received the goods, or when a court decree obliges him to return a free gift bestowed upon him.

(c) If retention of the goods is not contrary to the will of the giver nor to the law, restitution is not necessary. Hence, if a judge has received a pure gift and no corruption was intended or practised, he sinned in taking it, but the donation was valid and there is no obligation to return it. And even though he has taken a bribe, and in consideration of it has acted against justice, it seems there is no natural obligation to make restitution to the party who gave the bribe, since the latter has received a consideration for his payment, but the judge is held to indemnify the injured party.

1947. Duties of a Judge in the Course of a Trial.—(a) The purpose of the investigation is to discover the truth in the matter before the court, and consequently it is the duty of a judge to give a case the study and attention it deserves.

(b) The method of procedure is intended to secure a fair hearing for both parties and so to expedite business that the litigants will not be harmed by needless delays. The judge should therefore observe the necessary and customary forms of law, while avoiding waste of time and unnecessary interruptions. "It is not the custom of the Romans," said Festus to the Jews who asked him to condemn Paul, "to condemn any man, before that he who is accused have his accusers present, and have liberty to make his answer, to clear himself of the things laid to his charge" (Acts, xxv. 15).

1948. Duties of a Judge at the Conclusion of a Trial.—(a) The sentence must be just, that is, it must be based on the law and the evidence. Even though a judge does not personally approve of a law, thinking it unwise or unnecessary or oversevere, he should nevertheless enforce it; for he is appointed, not to change or reform, but to apply the law, yet so, however, that the spirit is not sacrificed.

(b) Sentence must not be relaxed as a rule, for otherwise the rights of the State or of the party winning the case will be harmed. But there are times when the public good or some other sufficient reason calls for relaxation, and in such cases judges have the power to refrain from passing sentence or to suspend or respite a sentence already announced. The defeated party should be allowed the opportunity which the law grants him for seeking a reversal of the judgment.

1949. Sentence Passed under a Law Manifestly Unjust.—(a) If the law is manifestly opposed to divine or natural law and sentence under it would command the commission of an act intrinsically evil (*e.g.*, cohabitation of those who are not really married, "mercy killing" of the physically or mentally incapacitated, eugenic sterilization of defectives or criminals), the judge should resign rather than give such a sentence.

(b) If the law is manifestly opposed to divine or natural law and sentence under it would inflict a grievous penalty (*e.g.*, death or long imprisonment) on the transgressor of the law, sentence would be unlawful. But if only a light penalty would be inflicted (*e.g.*, a small fine or short confinement), it seems

that sentence might be tolerated; for the person condemned might be considered to yield his rights in such a case for the sake of the public good, which suffers from the loss of conscientious officials. The act of the judge in giving the sentence would be only material coöperation, which is lawful for grave reasons (see **1515 sqq.**).

(c) If the law is manifestly opposed to ecclesiastical law, sentence may be given lawfully, if scandal is avoided and the Church yields her right in the case, as is sometimes done in favor of Catholic judges, lest they be deprived of their positions.

1950. May a Catholic Judge Grant a Decree of Divorce?—Apart from scandal or a positive ecclesiastical prohibition:

(a) The judge may grant a divorce to a couple not married validly although they have had a marriage ceremony recognized by civil law. This would occur in the case of Catholics married before a civil magistrate or non-Catholic minister. Also, when the Church has pronounced a marriage invalid, civil divorce may be granted for the sake of civil effects.

(b) Divorce may be granted if the judge knows that one of the parties will invoke the Pauline privilege.

(c) If the judge is morally certain that neither party will attempt remarriage and that the divorce is being sought merely for the sake of civil effects, he may grant the divorce. In the case of Catholics the consent of Church authorities would be required for this procedure.

(d) If the marriage is valid and it is known that the parties will attempt a new marriage, some consider that a decree of divorce is intrinsically evil, since it but applies a law that attempts, contrary to divine right, to dissolve the marriage bond. Others (and this is the more common view today) distinguish and think that the decree of divorce does not concern the religious obligation of the petitioners, but is simply an official declaration that the state regards the civil effects of the marriage as no longer existing. Under certain circumstances, (*e. g.*, loss of office for refusal to accept a divorce case, loss of prestige, antagonism, etc.), such a decree, in itself morally indifferent, may be permitted.

(e) If there is question of partial divorce (*i.e.*, separation from bed and board) of Catholic spouses, a decree is lawful, the Church consenting, for a reason recognized by ecclesiastical authority, such as adultery.

1951. When Evidence Is Contrary to Personal Knowledge of Judge.—(a) In a civil case, the judge should follow the public evidence rather than his private knowledge; for he acts as a public, not as a private, person. Moreover, the State has the power to transfer property from one to another, when the common good requires this, and the common good requires that civil decisions be based on public evidence rather than on private information. Some moralists deny this conclusion on the ground that it is intrinsically wrong to force a person to pay who does not owe, even though the evidence is against him.

(b) In a criminal case, the judge should follow the evidence rather than his own knowledge, if the evidence calls for acquittal of the accused; for it is better for the public welfare that a guilty man escape than that the judicial order be neglected and a rule admitted that might convict the innocent as well as the guilty.

(c) In a criminal case in which the evidence points to guilt while the judge's private knowledge assures him of the innocence of the accused, the judge must not condemn, if there is any legal way to avoid it. But if the evidence stands and the judge has to pronounce sentence, it is not easy to determine the course that should be followed. According to St. Thomas, the judge should condemn, since he is a public official and must therefore be guided by the allegations and proofs offered during the trial, especially since public order and respect for law depend on the good reputation of the courts. If judges could disregard at will the evidence offered on account of private knowledge they claimed to have, the confidence of the public in the integrity of courts would be shaken, men would take the law into their own hands, and peace and order on which the happiness of the community depend would be at an end. Moreover, the judge is not guilty in sentencing in this case, since he does not intend evil and acts according to the principle of double effect (see 103 sqq.). According to a second opinion attributed to St. Bonaventure, the judge should acquit, since it is intrinsically wrong to condemn to death a person about whose innocence one is certain. According to a third opinion, which St. Alphonsus considers as probable, the judge should condemn in minor criminal cases in which only pecuniary penalties are imposed (for the State has the right to exercise eminent domain in order to safeguard an important public good like that of respect for the law and the courts); but he should acquit in major cases in which personal punishments are inflicted, for society has no right to deprive an innocent person of life or liberty.

1952. When the Judge Is the Unjust Cause of Damaging Evidence.—In some cases the judge may be the unjust cause of the evidence that convicts an innocent man, as when the judge has committed a crime and thrown suspicion on the accused (Dan., xiii), or when the judge has moved others to testify falsely against a man he knows to be innocent.

(a) One opinion holds that the judge would be obliged to condemn, on account of the reasons just given for the opinion of St. Thomas, if the judge were unable to overcome the evidence. But those who hold this add that this is purely speculative, for in a concrete case there would be many ways by which the judge could extricate both himself and the accused from the difficulty.

(b) Another opinion says that in no case could the judge of the present hypothesis condemn. Those who favor this opinion declare that St. Thomas is to be understood only of the case in which the judge is not the cause of the unjust accusation; for one who has culpably placed a cause of damage is bound to remove that cause before it acts, if this is possible, and in the present instance it is possible for the judge, if all other things have failed, to free the innocent person by testifying for him, or even by acknowledging his own guilt.

1953. Practical Conclusions about the Three Controverted Opinions Given Above in 1951.—(a) In a case tried according to Canon Law, it seems that the opinion of St. Thomas should

be followed, since Canon 1869, n. 2, declares that the ecclesiastical judge must not give sentence unless he is certain about the matter of the sentence, and that his certainty must be derived from the acts and proofs of the trial.

(b) In a case tried according to civil law, it seems that the whole controversy is today very often of little practical importance; for court decisions are now frequently left to jurymen, and these men must either have no private certainty before they are admitted to their office (as is the case in the United States), or they have the obligation of using private knowledge in casting their vote and of communicating it to fellow-jurors during the deliberations (as is the case in some other countries). Hence, the moral question whether it is lawful to decide according to private knowledge against the public evidence largely disappears. But when a case of the kind now considered does occur, the position of the civil law also agrees, it seems, with that of St. Thomas: "Neither the judge nor the jury can consider a private fact of which they have a merely personal knowledge, however important may be its bearing on the issue, unless it has been brought to their attention by evidence properly produced in open court" (Robinson, *Elementary Law,* § 334). But the lightest penalty allowed by the law should be imposed in such a case. If a judge were privately certain that a jury verdict was unjust, he could offer his own testimony or appeal to the pardoning power.

1954. The principle that a judge must be guided only by his public knowledge applies also to other officials who are required to follow the results of a public investigation, but not to those who are required to act according to their best knowledge, whether public or private.

(a) Thus, public knowledge must be the guide of those who are ministers of a court and on whom it falls to execute its decrees; for they are the instruments and subjects of the president of the court. If they have private information of a material and relevant kind, they should disclose it as witnesses.

(b) Private knowledge that is opposed to and more reliable than public knowledge must be the guide of those who are supposed to act according to the most trustworthy knowledge they have. Hence, a superior who has the power to make appointments to office should disregard the votes of his advisors, if he can prove that they are wrong in their opinions about a nominee for office. He may confirm or annul their choice according to his honest conscience.

1955. When Guilt Is Doubtful in Criminal Cases.—In a criminal case or a case in which punishment is inflicted, if the guilt of the accused is *doubtful,* the sentence should be for acquittal; for no one should be condemned unless his guilt is morally certain (see **1728 sqq.**).

(a) Thus, according to Canon Law, an ecclesiastical judge who is not certain that sentence for the plaintiff will be just, must declare that the latter has not established his case and must dismiss the defendant, though exception is made for cases that have the favor of law (such as marriage, liberty, testaments, Canon 1869, n. 4). Canon Law places the burden of proof on him who makes an assertion, and it rules that the defendant is to be acquitted if the plaintiff or accuser fails to prove, even though the person on trial says nothing (Canon 1748).

(b) According to the civil law the rules on evidence also favor the accused in cases of doubt. He must not be held guilty unless the State has proved affirmatively and beyond reasonable doubt every material allegation in the indictment. In capital cases the evidence of guilt must be equivalent in weight and conclusiveness to the direct testimony of two competent and reliable witnesses. A reasonable doubt in the mind of a juryman is one for which he can give himself an adequate and satisfactory reason (Robinson, *Elementary Law,* § 608).

1956. Doubt in Civil Cases.—In civil cases, if it is uncertain after the investigation for whom the decision should be given, the following rules seem to be just:

(a) if the parties are unequal in claim, the decision should be for the one whose claim is more weighty; for the judge is appointed by society to investigate the truth of a controversy and to decide according to the merits of the case. Thus, decision should be for the party whose arguments are of at least equal

strength but who has legitimate possession (for "possession is nine points in law"), or whose case enjoys the favor of the law (*e.g.*, in Canon Law, the cases of widows, wards, minors), or for the party whose case is stronger and more probable. Innocent XI condemned the proposition that a judge may decide for the side whose arguments are less probable (Denzinger, n. 1152);

(b) if the parties are equal in their claims, some think that property in dispute should be equally divided between the contestants, others that the parties should be persuaded to compromise, or, if this is impossible, that the decision may be given for either one of them. But if positive law regulates the manner of proceeding in such a case, its provisions should be followed. Thus, in Canon Law, if a judge is in doubt as to which one of two competitors has possession, he may grant it to both of them indivisibly, or he may command them to deposit it with a sequester, pending the settlement of the dispute (Canon 1697).

1957. What should be decided when the defendant has possession with probable title and the plaintiff has more probable title?—(a) If the possession is not certain, or not certainly legitimate, decision should be for the plaintiff, for uncertain possession does not create any presumption of right and hence the more probable case prevails.

(b) If the possession is certainly legitimate, the common opinion is that decision should be for the defendant; for certain possession is not overcome by more probable, but only by certain arguments for the plaintiff. Some authors, however, believe that the judge should decide for the plaintiff, since possession prevails only when the arguments are of equal strength on both sides; or at least that he could decide for him, since it is probable that the plaintiff by presenting a more convincing case has sufficiently established his right to eject the defendant.

1958. The Standard by Which a Judge Should Weigh the Evidence.—(a) When the proving force of an argument is settled by the law itself, the legal rule should be followed. Thus, in Canon Law certain kinds of proofs are expressly declared to be demonstrative (*e.g.*, a public instrument not contested, Canon 1816), while other proofs are held to be insufficient or only of

partial value (*e.g.*, certain kinds of testimony, Canon 1756). Likewise in civil law public documents are *prima facie* evidence, oral interpretation of a written document which contradicts its language is not admitted, etc.

(b) When the proving force of an argument is left to the discretion of the judge, he must follow his conscience, that is, he must sincerely and impartially decide to the best of his ability the value of the argument, whether it is decisive, or likely, or weak. Thus, in judging circumstantial evidence a juryman must use his own common sense and intelligence in determining whether the premises are doubtful or the inference illogical; in estimating testimony a judge must bear in mind the quality of the witnesses and the character of their testimony.

1959. The Moral Obligation of a Judicial Sentence that Is Certainly Just.—(a) It is binding in conscience; for it is merely the application of law to a particular case, and law obliges (see **377**). (b) It obliges in virtue of legal justice when the case is only penal, and hence he who is fined by court is held as a duty of obedience to pay the fine; it obliges in virtue of commutative justice when the case is about a strict right, and hence if the court requires an heir to pay a legacy, the latter must make restitution for neglect of this duty (see **1728**).

1960. The Moral Obligation of a Judicial Sentence that Is Certainly Unjust.—(a) If the sentence is unjust because it is the application of an unjust law, it produces no obligation in those cases in which the judge cannot lawfully apply the law (see **1949**); for an unjust law does not oblige in conscience *per se*, but only *per accidens* (see **377, 461**). (b) If the sentence is unjust because it is not based on the law or the evidence, or because the trial was not conducted fairly, it produces no obligation *per se*, but there may be an obligation *per accidens*, as when scandal or great public disturbance will otherwise result. Hence, one who through plain injustice is deprived of an inheritance has the right to occult compensation (see **1928**), while the other party is bound to restitution of the inheritance (unless he is in good faith or has prescribed) and also to damages, if he went to law in bad faith.

1961. The Moral Obligation of a Judicial Sentence in Case of Doubt.—(a) If the doubt is about fact or law, not about the right of the judge to give sentence (see **1955 sqq.**), the sentence may be safely followed; for it is the office of the judge to settle doubtful matters, and to promote the common welfare by ending litigation. Thus, in doubtful criminal cases the judge sometimes acquits a guilty man, and in doubtful civil cases he sometimes awards property to one who has no right to it; but these sentences are not unjust, since they are based on rules which long experience has shown to be necessary for the public welfare.

(b) If the doubt is about the justice of the sentence, there is an obligation of conscience to observe the judgment, since the presumption favors the judge. Were this not so, the authority of tribunals of justice would be at an end, for almost everyone who loses a case thinks that he has been treated unjustly. But one may enter an appeal, where this is allowed by law.

1962. When a Judge Is Bound to Restitution.—A judge is bound to restitution when he causes unjust damage to the community or to litigants (see **1762 sqq.**), and hence he must either recall his unjust act, or repair to the best of his ability the harm done. But the conditions for unjust damage must be verified (see **1763**).

(a) Thus, the judge's act must be objectively unjust, that is, in violation of a strict right under commutative justice. This happens when he conducts the trial unjustly (*e.g.*, when he neglects the essential procedure, tries without an accuser, and the like) or when he passes unjust sentence (*e.g.*, condemns without proof of fact or crime, or in spite of evidence for innocence, votes for acquittal when there is no reasonable doubt of guilt, imposes penalties that are insufficient or excessively severe, or awards property to one who to his knowledge has no right to it).

(b) The judge's act must be efficaciously unjust, that is, it must be the real cause of the loss sustained by the other person. Hence, there is no duty of restitution if loss does not result (*e.g.*, if the party who is in the right wins in spite of unfairness on the part of the judge), or if loss cannot be traced to the judge's action (*e.g.*, when a judge is not entirely impartial in his charge to the jury, but his words do not influence them, as they would have given an unfair verdict anyway).

(c) The judge's act must be subjectively unjust, that is, the judge must be seriously responsible for the damage on account of his culpable ignorance, negligence, or malice. Even though he has made mistakes through excusable inadvertence or error, he becomes seriously responsible for damage, if, foreseeing it, he does not do what is in his power to avert it (see **1769**).

1963. When a Judge Is Not Bound to Restitution.—A judge is not bound to restitution, however, for violations of virtues other than commutative justice.

(a) Thus, charity is offended, but not justice, if the judge has personal hatred against a person before him, but does not permit this to influence his conduct or decisions.

(b) Legal, but not commutative, justice is offended, if the judge is negligent about exemplary damages, provided the common good does not suffer; for there does not seem to be any strict right to the fine before sentence has been given. This is disputed, however, by some moralists, who hold that the judge is under contract with the community in this matter, and hence that he offends commutative justice, if he is habitually and to notable amounts indulgent about fines.

1964. Kinds of Accusation.—From injustice committed by judges we pass now to that committed by accusers. It should be noted that there are two kinds of accusation: (a) extrajudicial accusation is that which is brought before a superior in order that he may correct or restrain, without recourse to judicial process, a subject who is delinquent. This is evangelical or canonical correction, which was discussed in **1293, 1289**; (b) judicial accusation, with which we are now concerned, is that which is brought before a judge, in order that redress may be obtained through judicial process against an accused person.

1965. Judicial accusation is also made in two ways. (a) The accuser sometimes does not act as one of the two antagonistic parties, and does not assume the burden of proving his accusation. He makes an official complaint or denunciation, and then

drops out of the case, leaving it to the magistrate or other officer to examine whether a process should be instituted and the informer summoned as a witness. (b) The accuser is sometimes one of the two antagonistic parties during the process, and he then assumes the burden of proving his accusation. In Canon Law there are two kinds of processual accusers, the actor in civil cases and the accuser (an official known as the *promoter justitiæ*) in criminal cases. In American law, the accuser in cases of private wrong is known as the plaintiff; in cases of public wrong he is the District Attorney or public prosecutor.

1966. The Duty of Judicial Accusation or Denunciation.—(a) If a wrong has been committed which is directly prejudicial to the common welfare (*e.g.*, treason, counterfeiting, banditry), there is an obligation to make accusation, for each member of society is held to come to its assistance when its peace and order are endangered, and this is done by coöperating with the tribunals of justice. Duty to one's family also requires that one prosecute, when this is necessary in order to protect its members against some great evil.

(b) If a wrong has been committed which is not immediately prejudicial to the common welfare, there is not *per se* an obligation of accusation; for the purpose of accusation is to obtain punishment or the correction of a wrong—an end that should not be waived when the common good is at stake, but which may be waived when private interests are concerned. But *per accidens*, or by reason of circumstances, there is often an obligation of denouncing or accusing private wrongs.

1967. Cases in Which There Is a Duty of Making Complaint about Private Wrongs.—(a) Such complaint is obligatory in virtue of commutative justice, when by reason of his office, oath, or function a person is under contract to accuse violators of the law; and hence serious negligence in such a person entails the duty of restitution for any damage caused through his fault. Examples here would be a watchman who fails to report thefts, a man serving on the grand jury who does not vote for an indictment when he should, a prosecutor who is careless. The obligation is grave when the danger or injury to the common good is serious.

(b) This complaint is obligatory in virtue of legal justice, when there is a positive precept of the law which requires that accusation be made. The civil law rarely obliges to this as a duty of conscience, but there are a number of cases in Canon Law in which it is a duty of conscience to denounce (*e.g.*, when there has been a *sollicitatio ad turpia*).

(c) This complaint is obligatory in virtue of charity, when without serious inconvenience one can thereby save a neighbor from a grave evil, such as unjust sentence of death or infamy: "Deliver them that are led to death" (Prov., xxiv. 11); "Rescue the poor, and deliver the needy out of the hand of the sinner" (Psalm lxxxi. 4).

1968. Is a Malefactor Bound to Accuse Himself?—(a) As a rule, he is not bound to confess guilt, either explicitly or implicitly, for this is too much opposed to natural inclination, and hence is not demanded by law (see **552**). This seems to be true even though an accused has unjustly declared himself innocent, and has not been questioned further or has been acquitted; for legal justice obliges the accused to give a true answer only when he is being questioned (see **1978**). In Canon Law those who would sustain damage from their own testimony are not bound to take the witness stand, and hence persons who reasonably fear that their evidence will subject themselves or their relatives to infamy, vexation or other disadvantage cannot be forced to testify (Canon 1755, n. 2). In civil law one may not be convicted on one's own testimony alone, unless the confession was voluntary, that is, made neither under fear, nor with the hope of favor, nor as the result of any species of coercion (Robinson, *Elementary Law*, § 608).

(b) In exceptional cases, one would be bound to accuse oneself, namely, if there were a grave and urgent necessity of the community which outweighed the loss that would follow from self-accusation (see **1576, 1577**). Self-accusation is also a duty when one is the gravely culpable cause of the punishment of an innocent person, if there is no other lawful way of freeing him, and the self-accusation will not bring on one a much more serious evil than that which the innocent person suffers.

1969. Ethical Conditions for Lawful Accusation or Denun-

ciation.—(a) There must be no injury to the common welfare. Hence, if the order and peace of society would be disturbed by the accusation of a crime which was private and from which no further damage could be anticipated, it would be better to leave this occult crime unpunished rather than bring on greater evils to the public.

(b) There must be no injury to private welfare. Hence, if the accuser does not believe that his accusation is just, or if he knows that there is no suitable evidence for his charges, or if he is excluded by law from making an accusation (*e.g.*, when his knowledge has been derived from the confessional or in other confidential ways), it would be unjust to accuse; if the offender offers to make full satisfaction for a private wrong and has already amended, or was not accustomed to commit such wrongs, or if the loss he will suffer from the accusation will be far in excess of the wrong he has done, it would be uncharitable to make formal accusation (see **1200, 1201**).

1970. Persons Who May Not Act as Accusers.—Generally speaking, the following persons are naturally incapable of acting as accusers: (a) those who are guilty of greater misdeeds or who are infamous, since it is unbecoming for them to accuse; (b) those who are enemies of the other party, since they are swayed by spite or revengefulness; (c) those who are near relatives of the other party, since it is unnatural for them to attack their own flesh and blood.

1971. In Whose Favor May One Denounce a Private Wrong?—(a) One may denounce it in one's own favor, for one is not obliged to sacrifice one's right to redress, and hence accusation is permissible (see **1199**). Those who are considered as one person with the injured party may accuse for him, such as parents, husband, wife, children.

(b) One may denounce a private wrong in favor of an innocent third party, as when an innocent person is being harassed by oppression, even though one can defend him only with notable inconvenience to oneself (see **1967**).

(c) One may denounce a private wrong in favor of the guilty party himself, as when he is guilty of offenses that are harmful only to himself (*e.g.*, drunkenness, impurities), if he has a bad reputation already or his delinquencies are manifest.

1972. Accusation and Fraternal Correction.—Whether obligatory or permissible accusation should be preceded by a fraternal correction is controverted among moralists. But perhaps the two opposite views may be reconciled as follows:

(a) *per se*, that is, in view of the purpose of accusation (punishment, vindication of justice, example), there is no duty of previous fraternal admonition, since the purpose of the admonition is the amendment of the wrongdoer (see above, **1289, 1293**);

(b) *per accidens*, that is, in view of the circumstance that there may be hope of correcting the wrongdoer and of averting evil, and that punishment may not be very necessary to the public welfare, previous fraternal correction for secret delinquencies may sometimes be a duty of charity.

1973. Unjust Accusation.—Injustice in accusation is committed in the following ways: (a) injury is done the accused when a crime is falsely imputed to him through malice (calumny), or through a too great readiness to believe rumors (rashness); (b) injury is done the community if one whose duty it is to conduct a prosecution makes only a sham attack or colludes with the defense (prevarication), or if without good reason he abandons the prosecution (tergiversation).

1974. Cessation of Duty of Accusation.—The duty of accusation ceases: (a) when accusation is found to be unjust, for example, when the prosecutor discovers the accused is really innocent, etc. (see **1969**); (b) when accusation is found to be useless, for example, when one discovers that the authorities are already aware of the fact about which one intended to give information, or when one perceives that the charge cannot be substantiated.

1975. The Defendant.—The party who is required to make answer to the charges of the plaintiff or prosecutor is known as the *defendant* or the *accused*. We shall now speak of the ways in which he may be guilty of injustice, and shall consider the following cases: (a) the defendant in civil cases; (b) the accused in criminal cases who is innocent; (c) the accused in

cused in criminal cases who is innocent; (c) the accused in criminal cases who is guilty.

1976. The Duties of the Defendant in Civil Cases.—(a) *Before Sentence.*—If the cause of the plaintiff is clearly just, the defendant as a matter of justice should recognize the claim and withdraw from the case. But a defendant may take exception to arguments offered by the plaintiff which, though actually valid, are not juridically made.

(b) *After Sentence.*—If the cause of the plaintiff is clearly just but loses in court, the defendant is obliged in conscience to pay the claim, even though the plaintiff does not appeal the case; he is also obliged in conscience to indemnify the plaintiff for the expenses of litigation, if the latter lost the case on account of unjust means employed by the defendant.

1977. The Duties of One Who Has Been Arrested on a Criminal Charge.—(a) If the accused person is innocent, he may take to flight or even offer positive resistance, provided he does no injury to those who attack him, and public scandal or disorder does not result from the resistance. This is according to natural law, which permits one to use self-defense against unjust aggression; but since the positive law requires the accused to submit to arrest that is not manifestly unlawful and empowers the officers to employ force against those who resist, it seems that generally the accused should permit himself to be taken under protest, if he cannot escape.

(b) If the accused person is guilty, he may take to flight, since he has not yet been sentenced as guilty nor officially deprived of his liberty; but he may not offer resistance to those who are sent to apprehend him, since their aggression against him is not unjust. The accused person, if not yet convicted, may even use indifferent means to escape from prison, such as sawing his way out or eluding the vigilance of the guards; but he may not employ sinful means, such as bribery of officials.

1978. Duty of the Accused to Plead Guilty, if Questioned by the Judge.—(a) If the accused is innocent, he may not plead guilty, as is clear. If to escape most grave evils he did plead guilty, he would be guilty of lying (if under oath, of perjury), but not of self-defamation; for, as the owner of his reputation, he has the right to sacrifice it in order to escape greater evils. Neither would he be guilty of suicide, according to some, if the death penalty were the consequence of the confession; for his purpose would be to avoid what he dreaded more than death.

(b) If the accused is guilty, he must reply truthfully, if the judge has the right to ask the question; for if the judge has the right to question, the accused has the obligation to answer, even though unpleasant things will befall him in consequence.

(c) If the accused is guilty, but the judge has no right to ask about his guilt (that is, if the judge does not question juridically or according to law, or if he questions from a false presumption of guilt), or if the accusation cannot be proved juridically, the accused is not obliged to answer. He may keep silence or evade the truth, but it is not lawful to lie.

1979. Legal Right of a Judge to Question a Prisoner about His Guilt.—(a) According to older legislation a judge had this right, and could enforce it by torture, when the common good was involved and the guilt of the prisoner was likely on account of infamy or manifest indications of crime or half-proof of guilt. In itself, this practice was not opposed to natural law and had some good results; but it was open also to many abuses. Some moralists teach that a judge cannot impose a grave obligation of confessing guilt in capital or similar cases, if the accused has otherwise a hope of escape and no great evil is likely to befall the common interests by reason of an acquittal. They argue that human law cannot oblige so rigorously as a rule.

(b) According to modern civil legislation the right of exacting a confession is denied to a judge. Thus, according to American law no person may be compelled "in any criminal case to be a witness against himself" (Constitution, Article V). In American law the plea of not guilty is not a lie, even though the accused knows that he is guilty, for, as everyone understands, the plea means either that one is innocent or that one is using the privilege of not confessing. Neither is it considered a lie to say that an unprovable charge is a calumny, for an accusation that cannot be proved juridically is juridically a calumny.

(c) The general law of the Church rules for ecclesiastical

processes that, when the judge questions the parties-litigant, they are obliged to answer and to confess the truth, unless the question is not legitimate (*e.g.*, questions about irrelevant or privileged matters, or questions made in a captious or leading manner), or the answer would incriminate the parties themselves (Canon 1743). Neither is an ecclesiastical judge permitted to put an accused in a criminal case under oath to tell the truth (Canon 1744). An instruction of the Holy Office of 1866 required that the guilty party in a case of solicitation should confess, but the instruction was directive rather than preceptive. Particular law (*e.g.*, the statutes of a Religious Institute) might perhaps prescribe confession by an accused, but most Constitutions of Religious Institutes bind only under penalty, and, as for the rest, an ecclesiastical superior could at most advise, but could not impose, confession by an accused.

1980. Rights and Duties of Accused in Conducting His Own Defense.—(a) *In Reference to Judge or Attorneys.*—The accused, if questioned, may not conceal the truth by lies, ambiguities, or half-truths, since these are evil means, nor may he use evasion if he is lawfully interrogated. But if the question put to him is unlawful, he may evade an answer. It is commonly held that lies told in giving testimony or evidence are not necessarily mortal sins, as there may be no perjury committed or grave harm done another by reason of them (*e.g.*, when an innocent man "doctors" a paper and thereby without harming anyone escapes from an unjust sentence).

(b) *In Reference to the Opponent or His Witnesses.*—The accused has the right to disclose secret but real crimes of the accusers, when this is an exercise of his legal right of taking exception to the witnesses as incompetent, or of his natural right of clearing himself of the charge against him. It makes no difference whether the evidence of the accusers is true or false, whether given according to the order of law or not. But he must not go beyond the limits of moderate self-defense (see 1826). Innocent XI condemned the proposition that it is probable that calumny may be used without mortal sin as a defense of one's justice or honor (Denzinger, n. 1194).

1981. If the accused objects secret crimes of the opposition, he must beware of injustice or uncharitableness. (a) Thus, it is unjust to disclose crimes that cannot be proved, or that are irrelevant (*e.g.*, it may be irrelevant to prove that the person who testifies that the accused committed murder is himself a fornicator, but it would be relevant to show that this witness is a liar, or dishonest, or an enemy of the accused), or that need not be revealed (*e.g.*, if the witnesses' testimony can be overcome by showing that the witness is weak-minded or under obligations to the opposition, it is not necessary to defame him). (b) It is uncharitable to disclose a crime, if the witness will suffer far more from this defamation than the accused would suffer from the testimony. If, however, the witnesses are giving false evidence of their own accord, they take the risk of revelations by the defense.

1982. Rights and Duties of an Accused Who Has Been Found Guilty.—(a) *Appeals.*—It is lawful to appeal from a sentence that is unjust (whether because of the innocence of the accused, or of the illegality of the process), because appeal is a means of self-defense granted to the innocent. It is not lawful to appeal from a sentence that is certainly just, merely in order to cause delay or to defeat an adversary; but one may make an appeal when there are just reasons (*e.g.*, in criminal cases the hope of getting an easier sentence or of prolonging life, in civil cases the discovery of new proofs, or of probable arguments against the sentence given). But one who has pledged his word not to appeal from the decision of an arbitrator should abide by his promise, and there is no appeal from the final decision of the highest court, which in the Church is the Roman Pontiff (Canon 1880), and in the State the Supreme Court.

(b) *Escape from Prison.*—If the sentence was unjust, it is lawful to escape, unless the means employed are intrinsically evil (*e.g.*, killing of guards), or the results will be more harmful than continuance in prison (*e.g.*, the overthrow of public order, the too great risk of the attempt to escape). If the sentence was just, there are various opinions on the lawfulness of flight. Some think it is never lawful, because a just sentence is a pre-

cept of authority and should be obeyed; others think that flight is lawful in graver cases (*e.g.*, when the prisoner has been sentenced to death or to life imprisonment, or when the conditions of prison life are unbearable, because human law cannot impose as a normal regulation what is too difficult for human nature); still others think that flight is always lawful, because the court sentence is that the prisoner be forcibly confined, not that he remain in prison voluntarily. But one is not necessarily bound to escape (see **1857**).

(c) *Resistance to Sentence.*—If the sentence is unjust, resistance is not unlawful *per se*, because one has the right of self-defense against unjust aggression (Ezech., xxii. 27). Hence, if one were condemned to execute oneself (*e.g.*, by taking poison), the common opinion is that the sentence would be unjust (see **1856**), and therefore not obligatory. If the sentence is just, even though it be a capital sentence, resistance is not lawful, for the judge who duly pronounces sentence on a guilty man has the right to obedience (Rom., xiii. 1–5).

1983. Jail-Breaking and Restitution.—If one does not sin by jail-breaking, is one bound to restitution for the damages connected with the escape?

(a) If the damages are not caused by, but only follow accidentally on the flight (*e.g.*, escape of other prisoners, dismissal of guards), there is no obligation to make restitution for them; for the flight would not be the efficacious or the unjust cause of such damages.

(b) If the damages result from the flight as from their efficacious and unjust cause, there is an obligation of restitution (see **1763**), as when a prisoner, in order to escape, does needless damage, or damage out of all proportion to the evil from which he seeks to escape. But ordinary property damage, such as a hole cut in a wall, does not seem unjust, if there is no other way to get out.

1984. Reliability of Witnesses and Testimony.—A *witness* in court is a person who declares during a judicial proceeding that he knows some statement, deed or omission in reference to the matters at issue. The testimony of witnesses has proving

force only in so far as these persons appear to have knowledge of the matters on which they testify and appear to be truthful. Hence, certain kinds of witnesses and certain kinds of testimony are unreliable.

(a) Thus, a witness is unreliable either through his own fault (*e.g.*, if he is regarded in his community as below the standard in truthfulness, or has the reputation of being a calumniator) or without his own fault (*e.g.*, if his powers of observation or his memory are subnormal, or he is devoted or hostile to or dependent on one of the contending parties). It is a duty, indeed, to presume good of a person in whom the opposite does not appear, if he is the only one whose interests are concerned; but when there is danger to a third party, one must be on one's guard (see **1744**). Hence, St. John admonishes not to believe every spirit (I John, iv. 1).

(b) Testimony is unreliable because of the number of the witnesses (*e.g.*, one witness is often legally insufficient to prove, especially in graver matters), or the quality of their evidence (*e.g.*, because in substantial points a witness contradicts himself or is contradicted by his co-witnesses, or because there are signs of collusion or conspiracy), or the counter-evidence of the opposition.

1985. Obligation of Freely Appearing as a Witness.—(a) There is an obligation of commutative justice to offer testimony, if one is under contract to do this, as when one is hired as a detective or agent to gather evidence against lawbreakers.

(b) There is an obligation of legal justice to testify, even at the cost of serious inconvenience, if the testimony is necessary for averting a serious evil that threatens the common welfare. A person who knows of a plot against the peace of the State should bring this to the notice of the authorities, even at the risk of his life. But a person who knows that a crime has been committed, is not bound to give witness about it, if the escape of its author will not be a serious detriment to public or private welfare (*e.g.*, if one knows that an apparent case of suicide was really a homicide committed by accident).

(c) There is an obligation of charity to testify (but not at

the cost of serious inconvenience), if the testimony is necessary for averting a serious evil that threatens a private person. A person who can prove that the evidence which is about to hang an innocent man is false should testify for the accused, unless the testimony will bring an equal evil upon himself.

1986. Obligation of Appearing under Lawful Citation to Give Testimony.—(a) He who avoids citation (*e.g.*, by flight into another jurisdiction, by concealment of his person when the subpœna is being served), more probably does not violate legal justice by this act, since a precept that has not been received cannot be violated. (b) He who disregards citation offends legal justice, since the summons to appear has a claim on his obedience. But it does not seem that he violates commutative justice, unless the party for whom he could testify has a strict right to the testimony.

1987. Obligation of Witness to Answer Truthfully.—A witness who is questioned legitimately (*i.e.*, by one who has the authority to question him) and juridically (*i.e.*, according to the form and order prescribed in law) is obliged *per se* to answer according to the truth as he knows it, for one is bound to obey a superior when he gives a lawful command. But there are exceptions to this rule *per accidens*, that is, when a higher law exempts one from the necessity of divulging a certain matter, or when the question asked refers only to what one knows juridically. In all these cases the witness may answer that he does not know, for he has no knowledge that he may, or should, or must use.

(a) Thus, the natural law permits reticence when a revelation would work notable damage to the witness or those closely related to him, for the command of a superior does not oblige under such great inconvenience. This supposes, of course, that the revelation is not required in order to prevent a great harm to the commonwealth or a far greater harm to a private person than that which threatens the witness. A person who knows that he will be assassinated if he testifies against a powerful criminal is not ordinarily bound to make the sacrifice. Canon and civil law excuse witnesses from making disclosures that would expose them to prosecution or penalties (see Canon 1755, § 2, n. 2).

(b) The natural law commands reticence when a revelation would be injurious to divine, public or private rights.

1988. Matters Regarding Which a Witness Should Not Testify.—There are certain cases in which natural law forbids a witness to make known a fact about which he is questioned.

(a) A witness may never testify to matters known to him only from Sacramental Confession, for to break the seal of confession is an injury to the rights of God. In an ecclesiastical process a priest may not testify from Sacramental knowledge, even though he has the penitent's permission (Canon 1757, § 3, n. 2).

(b) A witness may not testify as a rule to matters that are known to him only in a confidential way, such as the communications between lawyer and client, physician and patient; for the public interest as well as the interest of individuals requires that generally there be security against defamation for those who give their confidence to others, especially if they are in great need of professional assistance. Privileged communications are recognized both in Canon Law (Canon 1755, § 2) and in civil law. But knowledge obtained as a secret may be used when this is necessary in order to avert a great evil that threatens the public welfare or the welfare of an innocent person, whether this person be the giver of the secret, or a third party, or oneself; for to oblige to secrecy in these cases would be to throw protection around crime. Thus, a lawyer may make disclosures of confidential knowledge, if this is necessary in order to defend himself against the false accusations of a client, or to prevent a crime which the client intends to commit.

(c) A witness may not testify to matters about which he has unjust knowledge (*e.g.*, by wire-tapping, by unjust coercion, by intoxicating another person, by reading private papers without permission), for, as the knowledge was unjustly acquired, it cannot be justly used (see 2420).

1989. There are also certain cases in which a question refers only to what the witness knows juridically, or in which

he is called upon to answer according to the mind of the questioner.

(a) If the witness is asked to state what he knows about a case, he is not obliged to mention what he merely thinks or what he is uncertain about; and if he is asked what he has heard, he is not obliged to state what was told him by persons of poor authority.

(b) If he is asked whether the accused was to his knowledge guilty of a crime, he is not obliged to mention an act of the accused that was unlawful but done in good faith. But in a civil case, in which inquiry is made about juridical faults, the witness should testify even to the existence of delinquencies in which there was no element of theological fault.

(c) If he is the only one who has knowledge of a delinquency and it will be certainly useless for him to testify about the matter without corroboratory evidence, it seems that he may keep silence about what he knows. But if the testimony of one witness is sufficient according to law, then the witness should speak of the facts known to him.

1990. Sinfulness of False Testimony.—When we speak of false testimony, we mean testimony which the witness knows to be false.

(a) By reason of his false oath, the witness is guilty of perjury, which is a grave sin against the virtue of religion.

(b) By reason of the injury done by the testimony, the witness is guilty of injustice, which from its nature is a grave sin. In the Decalogue (Exod., xx. 16) false testimony is forbidden among the sins against justice: "Thou shalt not bear false testimony against thy neighbor." Legal justice is offended, since false testimony is an act of disobedience to lawful authority, and usually commutative justice is also violated, since by false testimony one of the litigants as a rule suffers loss.

(c) By reason of the deliberate falsehood, the witness is guilty of lying, which, however, is not always a grave sin.

1991. It may happen then, though rarely, that false testimony is only a venial sin, for example, when the witness is not under oath and he gives false testimony in a matter of small importance, or without full deliberation on what he is saying, or when he forges or corrupts a document to supply for another that has been lost and from which his certain right could be proved.

1992. Obligation of Witness to Make Restitution.—The obligations of restitution by a witness on account of failure to perform his duties properly are as follows:

(a) if the witness has not sinned against commutative justice, there is no obligation of restitution (see **1753**). Hence, if he has evaded testimony to which he was bound in legal justice or charity alone, he is guilty of sin, but he is not held to restitution. Similarly, if he has given false testimony and thereby deprived the State of a fine under a penal law, or saved a guilty party from punishment, he has sinned against legal justice, but is not obliged to make good the fine or pay damages;

(b) if the witness has sinned against commutative justice, materially but not formally, he is not the gravely guilty cause of damage, and hence is not obliged from justice (but there may be an obligation from charity) to make restitution (see **1764**). But if he perceives that his testimony was materially or venially unjust and will cause serious damage, he is obliged to recall his testimony, or in some other suitable way prevent the damage, if this is possible (see **1769**);

(c) if the witness has sinned against commutative justice formally, he is the efficacious and culpable cause of the damage that results, and hence is bound to restitution, unless there is an excusing cause (see **1797 sqq.**). Thus, if false testimony, or testimony about matters which the witness had no right to disclose, has led to the death sentence for an innocent man, the witness who gave that testimony must retract, even at the risk of his own life; for in equal danger the rights of the innocent have the preference. Again, if Titus by false testimony has saved Balbus from paying damages for injury done to public property, Titus must make restitution for the loss caused, if Balbus will not make reparation.

1993. Is a witness guilty against commutative justice when he unlawfully conceals facts and damage results thereby to another person? (a) If by concealment is meant the destruction

of evidence (*e.g.*, the burning of a will or letter or forging), the witness or other person responsible is guilty of a positive act of commutative injustice and is bound to restitution. (b) If by concealment is meant silence about material facts that the witness is lawfully called on to disclose, distinction has to be made between the witness who is not obliged from contract to give evidence and the witness who is so bound. The former witness is a negative coöperator and sins against legal justice and charity; the latter witness is a negative coöperator and sins against commutative justice (see 1780).

1994. Payment of Witnesses.—Is a witness permitted to accept pay for giving true and lawful testimony?

(a) For the testimony itself a witness may not accept pay, for he is bound to tell the truth freely, just as the judge is bound to dispense justice freely.

(b) For the expenses he incurs and the time he loses by reason of his assistance in court, he may accept pay; since, as St. Paul says, he who does a service for another is not required to meet the expenses of the service (I Cor., ix. 7). Both Canon and civil law make allowances for suitable compensation to be granted to witnesses (see Canons 1787, 1788). But if a witness receives compensation in excess of what is allowed by law, the court and the adverse party have a right to be informed of this.

1995. Lawyers.—Lawyer is the general term used to designate all those who are versed in the law and who give assistance to others in legal ways during lawsuits or apart from them.

(a) Thus, apart from lawsuits a lawyer may act as legal adviser, giving instruction, information or direction on rights and duties under the law.

(b) During a lawsuit he advises about the case (jurisconsult) or carries on for clients the prosecution or defense in a court of justice. The lawyers who attend to only the more mechanical parts of a suit are sometimes called attorneys, in distinction from counsellors or counsel, who argue and plead in the court-room, but generally "attorney-at-law" and "lawyer" are synonymous terms. The counsellors are known in England as barristers when they conduct cases in superior courts; they are called solicitors

in chancery, and advocates in Roman law. Canon Law distinguishes between the advocate who defends, and the procurator who represents, a litigant: the former argues for his client by invoking the law in his favor; the latter acts merely as the representative of his client and is restricted by his commission.

1996. The Qualifications of Lawyers.—(a) The mental and moral requisites are competency in the knowledge of their profession and devotion to justice, morality, the constitution, and law (see 1943). A lawyer should be zealous for the dignity and reputation of the bar and loyal to associates, but not afraid to take action against practices that are detrimental to his honorable profession.

(b) The legal requisites for practising as a lawyer vary with the place or government. In Canon Law, it is necessary that an advocate be a doctor or expert in ecclesiastical jurisprudence, that he be twenty-one years of age, duly approved, etc. (see Canons 1657 sqq.).

1997. The Duties of a Lawyer in Introducing Cases.—(a) He may not stir up litigation, as a means of bringing himself occupation and gain. *The Catechism of the Council of Trent, Translated into English with Notes* (Joseph F. Wagner, Inc., New York City, 1923), p. 475, denounces this practice as among the chief violations of the Tenth Commandment. Among lawyers it is regarded as unprofessional, and at common law it is an indictable offense.

(b) A lawyer may not take or assist an unjust cause—one, namely, that is in opposition to moral or positive law, as when a party comes to him with the request that he conduct a spite case whose purpose is to harass or oppress an innocent person. He who defends injustice is a coöperator, and is therefore guilty (see 1779). But if a case has a good foundation in law, the lawyer is not bound to inquire into the subjective dispositions or the conscience of the client in the matter, and he may take the case even though he does not know that the client is in good faith.

(c) A lawyer should not refuse a just cause, merely because the person he is asked to assist is indigent or not in favor. Com-

mutative justice does not oblige him to offer his services to one in need of them; but there is a duty of legal justice to give his best efforts if he is appointed as counsel for a poor person, and also at times a duty of charity to do this if he is asked for legal help by one who is in need.

1998. The precept about works of mercy, being affirmative, does not oblige for every instance, but only when the due circumstances of time, place, opportunity, etc., are present. Hence, a lawyer is not obliged by charity to devote himself to every deserving case that is presented to him (see **1227**). (a) Thus, as to place, charity does not require that one go about looking for the needy, but that one help those who are at hand. (b) As to time, charity does not require that one take care of future needs, but that one help those who are in present distress. (c) As to persons, charity does not require that help be given to all alike, for some have a greater claim on one's charity than others (I Tim., v. 8). (d) As to need, charity does not command that help be given those who can easily help themselves, or who can obtain it from third parties who are better fitted to bestow it.

1999. Charity does not oblige to works of almsgiving, if the inconvenience to the donor is out of proportion to the distress from which the donee is rescued (see **1158**). The inconveniences that correspond with the various degrees of distress are thus explained by theologians:

(a) if distress is extreme (*e.g.*, a prisoner is about to be sentenced to death unjustly), a proportionate inconvenience is, according to some, a grave loss, or, according to others, the loss of at least a part of the necessaries of one's state (see **1231, 1251**);

(b) if distress is very grave or grave (*e.g.*, an accused man will be sentenced unjustly to a long and harsh imprisonment), the loss of goods without which one's state of life cannot be maintained so becomingly is, according to one opinion, not excessive; but, according to another view, any notable loss or inconvenience is excessive;

(c) if distress is ordinary (*e.g.*, an accused will be unjustly sentenced to a small fine), the loss of goods that are purely

superfluous is, according to some, a proportionate inconvenience, but others think that only such assistance need be given as will cause no inconvenience whatever, such as advice or other service given during spare times.

2000. When Is a Cause to Be Regarded as Unjust?—(a) In civil cases the suit or defense is unjust when it clearly has no moral right. A lawyer who recommends litigation in a case of this kind is unjust to the adverse party, if that party loses; he is unjust to his client, if the client loses and is thus put to unnecessary expense. Generally speaking, a Catholic lawyer ought not to accept a divorce case. The lawyer's position is different from that of a judge. Occasionally a judge cannot refuse a case without serious inconvenience to himself (see **1949, 1997**); the lawyer, however, is free to accept or refuse these cases. The general prohibition is founded on the fact that in this country most divorce cases are means to an invalid remarriage. Some theologians argue that since it is the remarriage, not the divorce, that is intrinsically evil, a lawyer might accept a divorce case for a very grave reason, *e.g.*, to relieve desperate financial conditions. In practice, however, owing to the danger of scandal, the exception would be rare.

Exceptions which are possible include cases where divorce is sought for a marriage that is invalid *coram ecclesiam*, *e.g.*, civil marriage of Catholics, or simply for the settlement of civil effects where no danger of remarriage is involved. In all cases involving Catholics, the lawyer should bear in mind the necessity imposed upon Catholics by the Third Council of Baltimore to consult ecclesiastical authorities before seeking civil separation from bed

(b) In criminal cases the prosecution is unjust if the accused is clearly innocent. But the defense is not unjust, even though the accused is known to be guilty, for both natural and positive law give the accused a right of defense, and hence he may choose or may be given an advocate, in spite of his guilt.

2001. Duty of a Lawyer When the Justice of a Cause Is Doubtful.—(a) In a civil cause, the lawyer may act, whether for the plaintiff or for the defendant. He may even take a case whose justice seems less probable, for the purpose of the trial

is to settle the doubt, and not infrequently the cause that seemed doubtful or less probable at the outset is vindicated by the examination. Some moralists distinguish for cases in which the doubt is one of fact between the defendant and the plaintiff: if the former's case is less or equally probable, they say, one may take it, but not so if this is true of the latter's case.

(b) In a criminal case, when life, reputation or other grave issue is involved, the common opinion is that a lawyer may not prosecute if the case of the people is doubtful or less probable, but he may defend, as was just said, even though he is certain that the accused is guilty. The office of the prosecutor is not necessarily to secure a conviction, but to see that justice is upheld, while the office of the defender is to take care that an accused person is deprived of no right or protection that he should have under the law.

2002. If a lawyer through ignorance takes an unjust case, thinking it just, he is excused or not excused according to the character of his ignorance (see **28, 249**). (a) Thus, antecedent ignorance excuses from sin and restitution; (b) concomitant ignorance excuses from restitution, but not from sin; (c) consequent ignorance excuses from neither sin nor restitution, if it is crass or affected, but it diminishes responsibility, if it is only slightly sinful.

2003. Duty of a Lawyer Who Discovers that a Case Is Really Unjust.—(a) A lawyer who took a case in the belief that it was just, but discovers that it is really unjust, owes it to himself to abandon the case, for he cannot honorably coöperate with iniquity. The same principle applies, if a client insists upon unjust courses in the support of his case, even though the cause itself be just.

(b) The lawyer owes it to his client in the hypothesis we are considering to preserve the latter's confidence inviolate (see **1988**). He should endeavor to persuade the client to abandon the case; but since the client's case is unjust, he may not recommend a compromise, except perhaps in reference to expenses.

2004. Lawyer's Duties towards Client.—Since every contract depends on the mutual consent of the contractants, and

since the purpose of the person who retains a lawyer is to receive honest advice and assistance and to give in return a fair compensation, it follows that the lawyer's duty to a client is to give what is thus expected and not to exact more than this deserves.

(a) Before the case the lawyer should be perfectly *candid* with the client as to the advisability of litigation or of the employment of himself as counsel in the case. If there is a reason why he would be a less desirable advocate in the case, he should speak of this, so that his consultant may have freedom of choice. He should also study the question presented to him, and give his honest opinion on the strength of the case. If a fair and amicable adjustment outside of court can be made, the lawyer should recommend that this be done, and if it is not clear which party is right, he should advise a compromise.

(b) During the case the lawyer should be *faithful* to the interests of his client and *diligent* in the affairs for which he is engaged. Loyalty demands that the advocate give his undivided devotion to his client (*e.g.*, he may not give assistance to the adverse party, he may not receive gifts or compensations from that party; see Code, Canons 1666, 2407), and that he respect the client's confidences (*e.g.*, he may not use to the client's disadvantage the information given him). Diligence requires that the lawyer use his best ability and efforts to the end that the client, no matter how poor or unpopular or persecuted, may receive all the remedies or defenses that the law grants him, and that his case may be terminated with all possible speed.

(c) After the case he should be *honest* in his charges and *true* to the confidence that was reposed in him. The compensation for the lawyer's services should be just, that is, a fair return for what he gave. The amount of the fee should be fixed, therefore, by such standards as the law or custom, or by the value of that which the lawyer devotes to the case (*e.g.*, his time and labor, his loss of other employment or prospects, the risk he takes in undertaking the case), or of that which the client receives (*e.g.*, the amount which he gains, the benefit he receives). The wealth of a client does not justify an excessive charge, but the poverty of the client makes it a duty of charity

at times to lessen the charges or to make no charges at all (see **1236–1239**). It is clear that a lawyer should not compensate himself from the client's business contrary to the latter's just wishes.

2005. Lawyer's Duties towards Other Parties.—The duties of the lawyer to his client do not exempt him from certain duties to other persons who have a part in the trial; for he is responsible to his own conscience and cannot act on the principle that he must win at any cost, or that the client takes all the blame for anything dishonorable that is done.

(a) Thus, respect is due to the judge and politeness to the opposite party, his lawyers and witnesses. Abusive language and improper personalities, therefore, should not be resorted to, and customary courtesies should be shown.

(b) Truth and fair dealing are due to those to whom or against whom the pleading is directed. It is contrary to truthfulness to cite statutes or decisions that are no longer in force, to misquote laws, testimony or the language of opponents, to assert as a fact what has not been proved, to introduce false witnesses or documents, to coach clients or witnesses in untrue stories, to resort to quibbles or sophistry, etc.; it is unfair to attempt to gain special favor from a judge or a jury, to make improper statements or remarks with a view to influencing the jury or the bystanders or the public; to conceal the arguments upon which one relies until the opposition has no opportunity to reply; in a word, to practise any of the tricks of pettifoggery.

2006. Concealment of Truth in Presenting a Case.—Is concealment of the truth in the presentation or defense of a case sinful?

(a) If concealment is not unjust or mendacious, it is lawful. Indeed, a lawyer should conceal such facts as would be harmful to his own case (*e.g.*, incidents that are really of no moment, but that would create prejudice against his client), or as he has learned in confidence. This is not unjust, since the opposite party has no right to the knowledge, and it is not deception, since it does not cause but merely permits others to draw erroneous conclusions. Neither is an advocate bound in justice to point out to the opposition matters favorable to their case, of which they are ignorant or which they do not notice.

(b) If concealment is unjust or mendacious, it is unlawful. Thus, if a lawyer discovers that serious fraud has been practised or that the court or the opposition has been harmfully imposed upon, he is unjust if he takes advantage of this through silence. Similarly, a prosecutor is unjust if he suppresses facts or testimony or papers that would establish the innocence of an accused person.

2007. The Sinfulness of Introducing False or Corrupted Documents.—(a) Truthfulness is sinned against by this practice, whether the document be entirely fictitious or a copy substituted for an original that has been lost, or an authentic instrument has been changed or interpolated (see **1980 a, 1991**).

(b) This practice is also against legal justice, since the law requires that no misrepresentations be made about the evidence produced. Indeed, this is a very serious matter, for, if it were ever permissible to tamper with documentary evidence, a way would be opened to frauds innumerable to the great detriment of the public.

(c) Commutative justice is offended by this form of dishonesty, if the cause defended is not certainly just; for the opposite party, since justice is perhaps on his side, has the right that he be not defeated by untruthful means. But if the cause defended is certainly just, there is not *per se* any violation of commutative justice, since the adverse party is not deprived of anything that is his, but is rather prevented from doing injustice; *per accidens,* though, there might be commutative injustice (*e.g.*, if the use of a forged exhibit was known to be risky and did actually lose the case for a client).

(d) Charity to self is violated by this deception, since a lawyer should not value his client's interests above his own conscience, reputation and prospects.

2008. When a Lawyer Is Bound to Restitution.—(a) Unjust damage obliges to restitution (see **1763**), and hence a lawyer must indemnify his client or the opposite party for the losses either one suffers through his unjust conduct. The client has a

right to restitution if he was put to unnecessary expense because his lawyer did not tell him the case was hopeless or too risky, or if he lost a case because the lawyer was very incompetent or negligent or helped the opposite party, or if he was injured in his reputation or prospects by the violation of his confidences. The opposite party is entitled to restitution if he lost a right or was condemned because the lawyer unjustly took the case against him, or if he suffered other injuries because the lawyer employed foul means to his disadvantage. If a lawyer acts as the mandatary of his client in the use of injustice, the duty of restitution rests primarily on the client and secondarily on the lawyer (see **1783**); if the lawyer alone is guilty, he is responsible for all the damage done. There is no duty of restitution if only legal justice is violated (*e.g.*, if some deception is practised in order to win for the side that is in the right), or if charity is wronged (*e.g.*, if one refuses to take the case of a person who is in need).

(b) Unjust possession also obliges to restitution (see **1770**), and hence a lawyer who appropriates goods of his client against the latter's right, or who charges exorbitant rates for his services, or who drags out a case for lucre's sake, or who has not refunded when he withdrew from a case, should restore his ill-gotten goods. If the amount of a fee is settled by law, an attorney who takes more than the legal sum does not necessarily incur the duty of restitution. All will depend on the character of the law, whether it is penal or preceptive, and if preceptive, whether it obliges in virtue of legal or of commutative justice.

2009. Unjust Words.—We shall now take up the injustice that is done through words spoken outside of a judicial process, or the classes of verbal injustice that are not peculiar to courts, but are committed on all sorts of occasions, public and private. The principal sins here are distinguished according to the different injuries intended by the sinful speaker, and are as follows:

(a) sinful words that signify or effect in another person the evil of guilt, thereby depriving him of benefits that are connected with virtue. Some evil speakers deprive their neighbor of tributes that are paid to virtue by others, such as honor (injury by *contumely*), fame (injury by *defamation*), friendship (injury by *whispering*); while other evil speakers deprive a person of the tribute of virtue paid by his own conscience, namely, self-respect and peace of mind (injury by *derision*);

(b) sinful words that signify or effect against another person the evil of punishment. The words are known under the general name of *cursing*.

2010. Contumely.—Contumely is unjust dishonor shown to a person in his presence.

(a) It is *unjust*, and hence those are not guilty of contumely who speak words that are not honorable to persons deserving of reproof (*e.g.*, in Luke, xxiv. 25, Our Lord calls the two disciples "foolish and slow of heart"; in Gal., iii. 1, St. Paul addresses the Galatians as "senseless"). Similarly, it is not contumelious to call another person by a name that sounds somewhat disrespectful, if this is done in banter or pleasantry and will be taken in good part by the other and do no harm. Thus, to send a comic valentine or good-naturedly to ridicule some of the spectators at a farce is not contumelious as a rule, since most persons are not galled by these gibes, nor are the jokes taken seriously as a rule by the public. But care must be exercised both in serious and playful rebukes to keep within moderation. St. Augustine declares that even in corrections one should use reproachful terms sparingly and only in case of great necessity.

(b) Contumely is *dishonor*, and so it is distinguished from injurious words that offend some other right (*e.g.*, detraction offends reputation). Honor is an external manifestation of the respect felt for another's excellence or superiority in some natural or supernatural perfection given by God, such as virtue, authority, nobility, rank, wealth, etc. Contumely, therefore, is either negative, as when one ostentatiously refuses to show another the honor due him (*e.g.*, the salute or title or deference which custom allows him), or positive, as when one manifests signs of disrespect (*e.g.*, names derogatory to virtue or intelligence, or which mean that the person addressed is vile and contemptible).

(c) Contumely is shown to another *in his presence*, that is, it is an affront directed to his person immediately (*e.g.*, the

mockery of Eliseus by the little boys near Bethel, in IV Kings, ii. 23), or mediately (*e.g.*, the dishonor of David's ambassadors by the Ammonites, in II Kings, x), or at least to his knowledge (*e.g.*, the enemies of St. Paul in Phil., i. 17, who spoke of him insultingly in the expectation that their words would be carried to him).

2011. Are all persons deserving of honor? (a) If honor be taken in its strictest sense for reverence shown to a person who is one's superior in some good quality, or for veneration for the proper excellence of mankind (*viz.*, virtue), then honor cannot be shown except to those who are more exalted than oneself or to those who are virtuous. (b) If honor be taken in its wider and more usual sense for respect for a good quality, natural, moral or supernatural, in which a neighbor is more worthy at least than some others, then honor can be shown to every rational creature (except the damned, who are irretrievably wicked and outside the pale of friendship); for there is no one, however bad or lowly, in whom there is not something that deserves respect. St. Paul exhorts Christians to be beforehand in honoring one another (Rom., xii. 10), and he urges that each esteem the other as better than himself (Philip., ii. 3).

2012. Various Forms of Contumely.—(a) By reason of the signs used or the external form it takes, contumely is either in words (*e.g.*, the names "thief," "lunatic," "bastard") or in deeds that are equivalent to word (*e.g.*, offensive cartoons or caricatures, insulting valentines or postcards, "poisoned pen" letters, lampoons, scurrilous or opprobrious gestures or acts, sardonic grins, mimicry).

(b) By reason of the thing signified or the contemptible quality that it ascribes to another contumely is also distinguished into *reproach*, which accuses another of sin (*e.g.*, of drunkenness), *revilement* (*convicium*), which ascribes to another either a fault or its consequences (*e.g.*, drunkenness or imprisonment, or diseases of alcoholism), *taunting* (*improperium*), which twits another with misfortunes or inferiority (*e.g.*, his lowly origin or poverty or the favors one formerly showed him).

2013. Manner of Confessing Contumely in the Sacrament of Penance.—(a) Circumstances that are of an essential kind, that is, those that change the species or add a new species, must be mentioned (*e.g.*, the fact that contumely was blasphemous or calumnious or scandalous or directed against a cleric or parents). (b) Circumstances that are merely accidental, such as those given in the previous paragraph, need not be mentioned, for they are merely various ways of committing the same sin of contumely.

2014. The Sinfulness of Contumely.—(a) From its nature contumely is a grave sin of injustice, for it robs one of honor, which is more prized than any other external possession, since it is a testimony to virtue and to the esteem of fellowmen honestly earned. Hence, men will often sacrifice health or wealth or life itself to save honor. He who calls his brother a fool is deserving of hell (Matt., v. 22), and the contumelious are classed with those who are delivered over to a reprobate sense (Rom., i. 30). But, as sins of the tongue are imputable only in so far as they express the mind of the speaker, contumelious words are gravely sinful only when they proceed from a direct purpose to inflict serious disgrace (*e.g.*, Titus applies to Balbus an epithet that is not regarded as very abusive, but his purpose is to manifest his supreme contempt), or from an indirect intention to effect this (*e.g.*, Claudius jokingly addresses Sempronius by a very disgraceful title, not meaning any great harm, but knowing that Sempronius will feel this deeply or that in the eyes of the bystanders he will be greatly dishonored).

(b) From the imperfection of the act or the smallness of the matter, contumely is made a venial sin. Thus, if one who is suddenly carried away by anger or who is not thinking of what he says calls another person a very vile name, there is not sufficient advertence for a grave offense; and if one who is acting with full deliberation addresses another in language that is only slightly disrespectful, there is not sufficient harm done to constitute a mortal sin.

2015. The gravity of the matter in contumely depends, not only on the character of the signs of disrespect, but also on the persons concerned.

(a) Thus, the less the respect which the offender owes the offended party, the less the offense. Hence, for a subordinate to call his superior a liar or an ass is a more grievous fault than for a superior to give the name to his subordinate.

(b) The less authoritative the word of the person who utters contumely, or the less evil animus that attaches to his speech, the less the dishonor and the sin. Thus, fishwomen were once notorious for vituperation, but little attention or weight was given to their words. A person of that character, then, might commit only a venial sin by a very abusive word, whereas a person of more respectable character would sin mortally by using the same expression. Similarly, when parents or teachers berate their subjects as fools, blockheads, dunces, etc., there is generally no bad spirit behind these exclamations, and hence the use of such expressions is not very sinful, even when correction is not being made.

2016. Is the gravity of contumely lessened by the fact that the offended person feels the injury less?

(a) If the contumely is felt less because the dishonor itself is less, the gravity of the sin is of course lessened, for example, if the person offended is less deserving, or the person who offends is not taken seriously (see **2015**).

(b) If the contumely is felt less only because the person dishonored is very meek and patient, the gravity is not lessened, but is rather increased (see **1725**). If the person offended does not feel the injury at all (*e.g.*, because he is very thick-skinned or is very fortunate), less damage is done, but the wrong remains; otherwise, theft from the rich could be excused on the plea that they will not miss what is stolen.

2017. The Causes of Contumely.—(a) Pride is sometimes a cause, inasmuch as those who consider themselves better than others are quick to express the contempt they feel for others, if they hope that this will add to their own glory (Prov., xi. 2). But a proud person will just as often disdain to revile those whom he despises.

(b) Foolishness (see **1621**) is sometimes a cause of contumely, for the foolish man speaks without thinking as he should

or without caring what damage his words may cause (Prov., xx. 3). Hence, those who speak abusively to others merely in order to raise a laugh among the bystanders, little caring about the disrespect they show, cannot excuse themselves on the plea that it was all a joke.

(c) Anger is the usual cause of contumely, for the angry man seeks to show his revenge in some open and manifest way, and there is no easier or more ready means to this end than bitter, scornful or jeering words. Hence the danger of contumelious reprimands given by superiors. The subject will be enraged by the hard names applied to him, and the superior in his wrath will easily go to extremes, even of mortal sin, on account of the language he uses (*e.g.*, exaggerated invective) or on account of circumstances (*e.g.*, the scandal given).

2018. The Duty of Bearing with Contumely.—(a) As to the internal disposition, one should be ready and willing to suffer insults without making any answer to them, if this is necessary. For the precept of patience requires that one be prepared in mind to tolerate injuries and to give place to wrath, should the circumstances at any time call for such restraint. In this sense Our Lord spoke when He commanded that one turn the other cheek to the striker (Matt., v. 39), and He practised His teaching by making no reply to the insolence of those who were implacable or who only sought material for accusations.

(b) As to external conduct, one should repel contumely when there are good and sufficient reasons for this course, and hence Our Lord protested against the unlawful blow given Him in the court room, and which the judge should have reprimanded (John, xviii. 23). He also refuted those who decried Him as a blasphemer, or glutton, or demoniac, or political disturber. But if no good end will be served by self-defense, or if greater evils will follow from it, no answer should be made. One should be more desirous to possess the right to honor and fame—*viz.*, virtue and a worthy life—than to possess honor and fame themselves, for goodness is always a blessing, but prosperity is not unfrequently a real misfortune. Indeed, Our Lord says that

to be persecuted, reviled and calumniated places one in the same class as the good men of the past (Matt., v. 11).

2019. The Chief Reasons for Resistance to Contumely or Detraction.—(a) The good of the offender, in order that his boldness be subdued and that he be deterred from such injuries in the future, is a sufficient reason. Hence the words of Proverbs (xxvi. 5) that one should answer a fool, lest he think himself wise.

(b) The good of others is another reason, in order that they be not demoralized by the vilification of one whom they have looked up to as an example and guide, especially if silence will appear to be a sign of weakness or carelessness or guilt. Hence, St. Gregory says that preachers should answer detractors, lest the Word of God be without fruit.

(c) The good of self is a third reason for replying to contumely, for to enjoy the respect and esteem of others helps many a good person to act worthily of the opinion in which he is held, and it restrains many a sinner from descending to worse things than those of which he is guilty. Hence, Eccl., xli. 15, admonishes that one take care of a good name, and Prov., xxii. 1, places a good name above wealth.

2020. The Duty of One Who Answers Contumely or Detraction.—(a) The spirit of the answer should be that of charity, not that of revenge or of unquiet or exaggerated anxiety about personal honor or fame; otherwise one becomes like to the offender (Prov., xxii. 2). A person would sin even by silence in the face of contumely, if the spirit behind his non-resistance was malicious (*e.g.*, if he intended to enrage the other party the more by disregarding the attack).

(b) The manner of the answer should be moderate, and the reply should not go beyond the bounds of reasonable self-defense (see **1833**). It is lawful to deny the charge, or by retort to turn the tables on the assailant, or to sue him for slander or libel; but it is not lawful to challenge him to a duel or to utter calumnies (see **1843**).

2021. The Duty of Making Restitution for Contumely.—(a) If contumely is not contrary to commutative justice, there

is no duty of restitution. Hence, dishonor that is purely negative, such as the refusal to uncover on meeting a clergyman, does not oblige one to make restitution, for the omission is contrary to the virtue of observance or reverence but not to commutative justice. The case would be different, however, if negative dishonor were so marked or noticeable as to be equivalent to positive disrespect, as when at the entrance of a distinguished personage all in the room arise except one man who remains seated and gives a bitter look at the newcomer.

(b) If contumely is contrary to commutative justice, restitution is due. All agree that commutative justice is violated when contumely becomes vilification, or when an insult is committed in the presence of onlookers with the purpose of making the offended person seem contemptible in their eyes. But there are two opinions about the case when contumely is merely revilement, or an insult offered when there are no others present and the purpose is to make the offended person appear vile in his own eyes.

2022. Opinions on the Duty of Restitution for Revilement.—(a) One opinion holds that injury is done, not damage, and hence that satisfaction is owed rather than restitution. Further, it is held that satisfaction is penal and so not obligatory (except out of charity) before judicial sentence.

(b) Another opinion says that damage is done as well as injury, since men regard an insult, even though offered in private, as an unjust deprivation of a great good. Satisfaction of a very humiliating kind, such as the begging of pardon on bended knees, as being penal, can await an order from authority, but the ordinary forms of reparation, such as expression of regret or request for forgiveness, should be made without any such order (Matt., v. 24).

2023. What Kind of Reparation Should Be Made for Contumely?—(a) In general, the rule is that contumely should be repaired by a bestowal of the same kind of goods as those of which the offended party was deprived; and hence dishonor is repaired by honor, disrespect by respect. The injured party should be aware that reparation is being made, or at least that

honor is being shown him. If by reason of contumely one is responsible for other damages that followed (*e.g.*, if one foresaw that one's affront would lead to money losses, enmities, quarrels, bloodshed, etc.), one is duty bound to make good these losses also.

(b) In particular, the honor that should be offered in atonement is generally an apology, for this is both satisfaction for the wrong done and a token of esteem. At times, according to some, more is required, for if the insult was very gross, a mere request for pardon is perhaps not sufficient; on the other hand, less may suffice, as when the indignity was slight. Many authors hold that a respectful apology is sufficient reparation for any contumely. Among the lesser forms of restitution for dishonor are signs of friendship, courteous greetings, a pleasant chat, an invitation to call at one's home, a dinner or toast, a eulogistic speech, etc.

2024. The Manner of Making Apologies.—(a) They should be made with at least as much formality as accompanied the insult. Hence, if the injury was public, the acknowledgment of error should also be public. (b) They may be made either personally or by intermediary. If the guilty person cannot very well appear before the offended person, he may send his regrets by letter or through a representative.

2025. Since the gravity of contumely depends on the relations between the parties and other circumstances, an apology is not always necessary.

(a) Thus, if the offender is an inferior or an equal, an apology should be made for a serious insult, at least when the offended person insists on it. Thus, a cheerful salutation by a child does not atone for a vile name applied to his father. If an inferior dishonors a superior through ignorance, he makes amends by acknowledging his ignorance and showing respect, as was done by St. Paul (Acts, xxiii. 5).

(b) If the offender is a superior, an apology is never necessary, lest by abasing himself he lose the prestige which his office should have. Hence, if a father has used harsh language to his child, it would not be seemly for him to ask the child's

pardon, but he should show some mark of kindness to heal the wound.

2026. Cessation of Obligation of Restitution.—The obligation of restitution for contumely ceases in certain cases (see **1797, 1798**). (a) Thus, impossibility excuses, as when one cannot make reparation without renewing an old feud that has been buried and forgotten. (b) Forgiveness by the offended person excuses. The offended party forgives the debt expressly when he says or shows that he does not care to have an apology; he forgives implicitly, when he retaliates by an equally injurious action, defends himself by retorting equal contumely on his adversary, or obtains equivalent satisfaction from a court of justice.

2027. A confessor should not impose the duty of an apology in certain cases.

(a) Thus, if this command would be harmful, it should be omitted, as when a penitent is in good faith and would be put in bad faith by the admonition. (b) If this command is not necessary, it should be omitted, as when the duty of an apology has ceased for one reason or another. In the case of children who speak or act disrespectfully to their elders, it may at times be taken for granted that the elders, especially the parents, do not expect an apology for trifling cases of disrespect. But, on the other hand, it may often be advisable to require such children to apologize for their rudeness, in order to cure them of it.

2028. Defamation.—Defamation (backbiting) is the unjust blackening of the reputation of another person by secret words.

(a) It is *unjust*, that is, it has no reasonable motive to justify it. Defamation differs from just revelation of secret faults.

(b) It is a *blackening* or besmirching, that is, a taking away or lessening of fame. Defamation casts a shadow over or totally obscures the brilliance of a good reputation.

(c) It is against *reputation*, that is, against the favorable opinion and report of the public on the virtue and character or other good qualities of a person. Thus, it is defamation to say that an individual is a drunkard, or that a professional man

is incompetent, if these persons are not known to have such defects. If a person has no reputation here and now, except a bad one (*e.g.*, a criminal who has just been convicted and sentenced to prison, a loafer who is often seen intoxicated on the streets, a woman who is often heard peddling scandals), it is not defamation to speak about the true and public faults of this person; nor is it sinful to speak thus if there is some suitable reason (*e.g.*, to discuss a murder trial that is being reported in the papers, or to tell a humorous incident that will do no harm). But those who uselessly or harmfully discuss the known weaknesses of their neighbors are sinners called gossipers or fault-finders.

(d) It is against the reputation of a *person*, that is, of an individual possessed of right. The party offended by defamation can be a natural person (*i.e.*, a rational being, whether infant or adult, high or low, rich or poor) or an artificial person (*i.e.*, a society, group or collection of individuals endowed with reason); he can be either a living or a deceased person, for death does not destroy the soul nor take away the right to reputation.

(e) It is against the reputation of *another*, that is, defamation as now used is a sin of injustice, and one cannot be strictly unjust to oneself; but "self-defamation" may be used in a wider sense to designate a sin opposed to charity (see 1575 sqq.).

(f) It is accomplished by means of *words*, that is, by oral communication or its equivalent. One can defame, therefore, by word of mouth, by deaf and dumb language, by writing, by a gesture, by silence, or by a look.

(g) It is done by words or signs that are *secret*, that is, by words or signs expressed before others but in the absence of the person who is defamed, or at least when he is thought to be absent (backbiting). The defamer is like the thief who wishes to do harm but does not wish the victim to know the author of the harm.

2029. The Differences between Defamation and Contumely.—(a) They differ in their purposes, for the defamer intends to hurt another in his reputation before the public, while the contumelious man intends to hurt another in his honor, either in his own eyes or in those of others. (b) They differ in their manner of procedure, for defamation is behind the back, contumely before the face, of the party who is injured. The defamer has some respect for his enemy, for he fears to face him and resorts to undermining, but the contumelious sinner despises his enemy and shows it by insulting him to his face.

2030. Various Forms of Injury to Good Name.—(a) By reason of the intention, the injury is either defamatory (as when derogatory things are said about another behind his back) or contumelious (as when derogatory things are insultingly said to him in his presence). Hence, there can be injury to reputation that is not contumelious (*e.g.*, the secret spreading of a rumor that Balbus is a drunkard); there can be contumely that is not injurious to fame (*e.g.*, the addressing of Balbus as a drunkard when no else is by, or when those present know already that he is a drunkard), and contumely that is injurious to reputation (*e.g.*, when one calls Balbus a drunkard before others who thought he was a sober man).

(b) By reason of the purpose, defamation is willed either explicitly or implicitly. In the former case the defamer expressly intends the blackening of his neighbor's reputation; in the latter case he intends something unnecessary, such as mere indulgence of levity or talkativeness, though the blackening of his neighbor is foreseen. Explicit defamation is regularly a mortal offense, implicit defamation a venial one; but the degrees of sinfulness may be changed, if the former sin causes slight, or the latter sin serious damage.

(c) By reason of the injury done defamation is either detraction or calumny. Detraction blackens a reputation by revealing faults or defects that are real; calumny (slander) injures reputation by stories that are untrue. A common form of calumny is a mixture of truth and falsehood (e.g., when a historian ascribes to a villain, in addition to real crimes, faults of which the latter was innocent), or of half-truths that convey the impression of what is untrue (*e.g.*, when a historian narrates that a certain character killed a man and does not give the background or causes of the

killing, such as provocation, challenge, mistake; or when a biographer tells of the crimes of his subject and glosses over the virtues, or makes no mention of his amendment).

(d) By reason of the means used defamation is either direct or indirect. Direct defamation is more open and positive; indirect defamation is rather concealed or negative. There is also the distinction of slander (which is oral) and libel (which is written or printed). Libel is more grievous, since it has a permanence that is not found in spoken words.

2031. Examples of Indirect Defamation.—(a) Faint praise is a subtle mode of defamation, as when one says of an absent person that he has not committed murder yet, or that like everyone he has some good points, for to the listeners this indicates that the speaker does no hold a high opinion of the person discussed.

(b) Silence is also at times a hidden form of defamation, as when Titus says to Balbus that the absent Caius is good and Balbus out of malice answers: "Let's talk about something else; we must be charitable"; or when Sempronius falsely declares in company that the absent Claudius is to the knowledge of Julius a depraved character and Julius, who is present, makes no protest against the misrepresentation.

(c) Depreciation is defamatory, as when one says that a person who is being discussed is not as pious or reliable as is commonly believed, or that there is great room for improvement, or that he is much better now than in times past, or that there is another side to the picture, or that he is good, but . . .

(d) Denial of good qualities is defamatory, when it lessens the esteem in which a person is held. The good qualities here referred to are those that render a person distinguished or commendable among his fellows: chiefly these are moral qualities (*viz.*, virtuous habits, dispositions and acts); secondarily, natural and internal qualities (such as learning, quickness of mind, experience, strength and health of body, and in women, beauty); finally, natural and external goods (such as wealth, famous ancestry, able assistants in business, or the excellent merchandise supplied, etc.).

2032. Examples of Direct Defamation.—The following are examples of direct defamation:

(a) sinister interpretation, as when one states that words or acts of a neighbor that were good or at least open to a good interpretation, were dictated by greed, ambition, pride, etc.;

(b) unjust revelation (detraction), as when one reveals secret faults or crimes;

(c) exaggeration, as when one magnifies a venial into a mortal sin, an exceptional or indeliberate fault into an habitual or deliberate sin; or when one distorts a sin of one species into a sin of another and far more heinous species, or accuses a whole class or body of men because one of their number has fallen. Those who add their own little detail or circumstance to a defamatory tale as they pass it along are proverbial examples of exaggeration: "Fama crescit eundo";

(d) false accusation (calumny) is the worst kind of defamation. Innocent XI condemned the proposition that one may probably use calumny without serious sin as a defense of one's own justice and honor (see Denzinger, n. 1194).

2033. Direct defamation is committed either by plain words or by insinuation. (a) Examples of defamation by innuendo are those ambiguous expressions or half-veiled accusations that arouse suspicion and often do more injury than plain accusations. Thus, to say with a laugh or in an ironical tone that a certain person is human, or broadminded, or prudent may be equal to volumes of abuse, since the words can have a bad meaning as well as a good one. Similarly, such expressions as, "What I know about him is not to be told," "I know what no one would believe," etc., may be taken for slurs on character. (b) Examples of defamation by plain speech are all those innumerable statements which, either in general terms (*e.g.*, that another person is a scoundrel, a villain, a reprobate) or in specific ones (*e.g.*, that another person is a blasphemer, a thief, a liar), tend to blacken the good name of a neighbor.

2034. Good Repute or Fame.—Good repute or fame is of various kinds. (a) Thus, by reason of its object, good reputation is either negative or positive. A negatively good reputation consists in the absence of any unfavorable opinion or belief about a person, while a positively good reputation is the common judgment in favor of a person's worth. (b) By reason of

its relation to the real character of a person, it is either true or false. Thus, if a man is regarded by the community as honest, his reputation is true when he is really honest, but it is false when he is in fact dishonest. (c) By reason of its degree, it is either ordinary or extraordinary. Ordinary good repute is that which every person needs, and it consists in the public belief that an individual is trustworthy and competent in the affairs and duties that pertain to his state or occupation. Extraordinary fame is that which is not necessary, such as the celebrity which a person enjoys for unusual ability as a statesman, orator, financial expert, mathematician, or for virtue that is far above the average.

2035. The Right to Good Reputation.—(a) Those who are absolutely unknown (*i.e.*, both as to their identity and their character) have no right to reputation, since reputation attaches to one who can be named or described, and hence it is not defamation (though it might be rash judgment) to say that a stranger who passed on the street and was lost in the darkness must have been a criminal.

(b) Those who are known by sight or name, but who have not as yet shown what they are, have a right to a negatively good reputation, for a man should not be considered evil until his conduct has given ground for unfavorable judgment (see **1727 sqq.**). It is not defamation to say about an unknown family that has moved into a locality that we do not know what kind of people they are, but it is defamation to say that they are likely undesirable.

(c) Those who are known in a place and who have already acquired a good name there have a right to a positively good reputation; for, if the reputation is true, it is a good which they have honestly acquired; if it is false, it is a good of which they are in possession, and possession itself is entitled to respect.

2036. Sinfulness of Detraction.—The civil law does not generally punish slander if the slanderer can prove that his statements are true, but this does not make veracious defamation morally lawful. God detests and punishes crimes (*e.g.*, fornication) of which human law sometimes takes no account. The

harmfulness of veracious defamation is both public and private.

(a) *Defamation Does Public Harm.*—The peace and order of the community would be seriously disturbed, if it were lawful to attack reputations simply because one was persuaded that they were unfounded: the person detracted would be hampered in his official business and social relations, innocent persons would be blackened as well as the guilty, and the friends and relatives would suffer with the person detracted.

(b) *Defamation Does Private Harm.*—The peace and security of the individual would be uselessly assailed. Reputation is profitable both in spiritual and temporal ways, and it is therefore a ruthless act to rob a person of it, when he has done nothing in public to forfeit it and its possession by him is harmful to no one.

2037. Right to True and False Reputation.—There is, nevertheless, a difference between the right to a true and the right to a false reputation.

(a) Thus, the right to a true reputation is an absolute and universal right, one which does not cease in any case, for truth and justice demand that one should not represent as evil a person who is really good. This right applies to an extraordinary, as well as to an ordinary reputation.

(b) The right to a false reputation is a relative and limited right, one which ceases when the common good on which it rests no longer supports it (*e.g.*, when it cannot be maintained without injustice). Moreover, there is no right to an extraordinary reputation, if it is based on false premises, for the common good does not require such a right, and hence it is not detraction to show that the renown of an individual for superior skill or success is built up on advertising alone or merely on uninformed rumor.

2038. Sinfulness of Gossip or Criticism about Real and Known Defects.—(a) It is not unjust, *per se*, since it does not take away fame, that being non-existent. (b) It is sinful, if there is no sufficient reason for it, but not mortally sinful *per se*, since grave harm is not done to the reputation of one whose reputation is already bad. The sin committed is usually that

of idle talk or of uncharitableness, by reason of the disedification offered the listeners, or the malice that prompts the speaker, or the sadness that is caused to the person gossiped about. Gossip is dangerous, since it prepares the way for detraction, as detraction prepares the way for calumny.

2039. Moral Species of Defamation.—(a) Moralists agree that wrongful defamation is a sin against justice and charity. It violates justice, since it infringes a right which is not less strict than that of proprietorship over goods of fortune; it violates charity, since it is opposed to friendship and love of neighbor. They also agree that other species of sin can be added to defamation (*e.g.,* infidelity, as when one denies that Christ was sinless, or blasphemy, as when one defames a Saint).

(b) Moralists disagree on the question whether certain forms of defamation are distinct sub-species or only degrees of one lowest species. Some hold that detraction and calumny are distinct species, because calumny adds mendacity to defamation; others say that detractions about specifically different sins are distinct kinds of detraction (*e.g.,* that it is one species of sin to say that a neighbor is a drunkard, and another species to say that he is a thief, and the reason is that the reputation for temperance is a different thing from the reputation for honesty, etc.); still others hold that defamation of parents and other immediate relations is a special form of defamation, as being contrary to piety. There are, on the contrary, theologians who reject all these distinctions and hold that the difference between defamations is only one of more or less, since all of them have the characteristic note of attack on reputation, which is one right. Hence, just as the stealing of a cow and the stealing of a cat are only greater and lesser forms of the sin of theft, so likewise calumny and detraction, etc., are only major and minor degrees of the sin of defamation (see **2012, 2013, 2115**).

2040. Species of Sins of Defamation.—Since the species of sins must be particularized in confessions, the question of the distinction between defamations has practical importance. The common opinion on the line of action to be observed seems to be as follows:

(a) the penitent is obliged as a rule in serious matters to tell whether his defamation was simple detraction or calumny. The reason for this, according to some, is the specific difference between these two sins; according to others, the reason is that otherwise the confessor cannot know whether the sin was mortal or venial, or what restitution is to be imposed. As to detraction of parents or superiors, it seems that the quality of the person detracted should be mentioned, if there was any incitement to disrespect or disobedience;

(b) the penitent is not obliged to mention the sins or defects he ascribed to the person he defamed. Nor should the confessor inquire about this unless it is necessary in order to know what was the gravity of the sin or what kind of reparation should be enjoined (cfr. **2013**). Moreover, questions about what was said might easily lead to a disclosure of the name of the person defamed, and thus the confessional would be turned into a place of defamation.

2041. The Numerical Multiplication of Defamations.—(a) They are multiplied when there are many sinful acts about distinct objects; for example, when Balbus calumniates Caius today as a thief and Claudius tomorrow as another thief, there are two calumnies (see **209**).

(b) Defamations are multiplied when there are many sinful acts about the same object; for example, when Balbus calumniates Caius today as a thief and repeats the same calumny tomorrow, there are two calumnies. But if Balbus begins his story today and does not finish it till tomorrow, there is one calumny (see **214, 215**).

(c) Defamations are multiplied when there is one sinful act about many distinct objects; for example, when Balbus calumniates by saying that the two worst thieves he knows are Caius and Claudius, there are two sins. But if Caius and Claudius are regarded as a unit (*e.g.,* if they are the firm of Caius and Claudius), there is one sin. A like calumny would be that Caius came from a dishonest family (see **216–219**). If Balbus calumniates Caius before ten persons, he does not commit ten defamations, it seems, but ten scandals, since the ten form a body in

the matter of fame, but are individuals in the matter of example. If Balbus calumniates by saying that Caius has broken all of the ten commandments, there may be ten calumnies or but one calumny, according to the intention and the effect (see 217, 218).

2042. The Theological Species of Defamation.—(a) From its nature defamation is a mortal sin, and hence the Apostle declares (Rom., i. 29, 30) that detractors are hateful to God. In the first place, it inflicts an atrocious injury on the public welfare, sowing everywhere hatreds, dissensions and disorders—so much so that detractors are rightly called an abomination to mankind (Prov., xxiv. 9).

(b) From the smallness of the matter or the imperfection of the act defamation may be only a venial sin. Criticism of others is a vice so widespread that almost all mankind (even pious persons) would be involved in continual mortal sins, were it not for the fact that sins of speech are frequently the result of ignorance, thoughtlessness, or sudden passion (James, iii. 2 sqq.), and that the things said are frequently of no great harm to the person criticized.

2043. The gravity of the harm done by defamation is well expressed by St. Bernard when he says that defamation at one blow inflicts a mortal wound on the person defamed, on the defamer himself, and on the listener.

(a) Thus, the person defamed is robbed and often irreparably of a good name, one of the most esteemed of possessions; he is deprived of many spiritual and temporal opportunities, and is frequently dragged down to social and moral ruin, and even to suicide. Scripture says that the tongue of the detractor has the sharpness of a razor, and it compares him to an arrow dipped in poison, and to a biting serpent.

(b) The defamer destroys his own good name, at least in the sight of God, for he defiles his own soul with guilt; he disgraces himself before others, since it is well known that defamation is the vice of those who feel themselves inferior or guilty. And, worst of all, his sin is seldom repented of or repaired by satisfaction, since the defamer is generally too proud, hateful, jealous or revengeful to acknowledge his error, or is so blind that the thought of the harm he has done and of the grave obligation of satisfaction never crosses his mind.

(c) The listener is scandalized and contaminated by what he hears, his ideals are shattered, his respect for virtue or religion is destroyed, and he is encouraged to continue the work of the defamer.

2044. Comparison of Defamation with Other Injuries against the Neighbor.—(a) Defamation is less sinful than injuries to internal goods, and hence homicide and adultery, which are opposed to the good of the body and of life itself, are graver sins than defamation.

(b) Defamation is less sinful than injury to higher external goods perpetrated in a contemptuous manner, for defamation being secret does not add insult to injury. Hence, just as robbery is more offensive than theft, so is contumely more sinful than defamation.

(c) Defamation is more sinful than injury to lower external goods, such as lands and money, for fame along with honor approaches spiritual things on account of their relation to virtue, whereas wealth is of the order of corporeal things. Hence, the Scriptures teach that a good name is more important than great riches (Prov., xxii. 1), more enduring than thousands of vast and precious treasures (Ecclus., xli. 15).

2045. It should be noted that the foregoing comparison is based on the nature of the sins compared, for by reason of circumstances the order given may be reversed; for example, a slight indignity is less serious than an outrageous calumny, the theft of thousands of dollars is far more sinful than the circulation of a ludicrous story that is harmful, but only in a slight degree, to the reputation of a neighbor (cfr. 220 sqq.).

2046. Rule for Determining the Seriousness of Defamation.—The rule for determining whether the matter of defamation is serious or not is the amount of harm done by the defamation, and hence not one but several factors have to be considered.

(a) Thus, the defect ascribed to the neighbor has to be considered, for some kinds of defects (*e.g.*, littleness of body or

prodigality) are less disgraceful than others (*e.g.*, dwarfishness of mind or soul or niggardliness), and it is more harmful to reveal one mortal sin than to reveal a hundred venial sins.

(b) The person defamed is to be considered, for imputed defects that are not harmful to one person may be harmful to another (*e.g.*, the charge of being a toper might be considered praise among persons of gay or rough habits, but it would be regarded as disgraceful among serious and refined persons).

(c) The person who defames is also to be considered, for little attention is paid to the talk of some, but much weight is given to the slightest words of others. Indeed, some persons' condemnation is equivalent to praise.

(d) Finally, the persons before whom the defamation is spoken are to be considered, for everyone knows that it is much more harmful and dangerous to speak ill of others before certain ones than before others (cfr. **1461, 1462**).

2047. The Harm Done by Reason of the Defects Revealed.—(a) If the defects are natural imperfections of soul or body that do not connote moral stain or turpitude, and if no great detriment is caused by revelation (*e.g.*, to say that another person is deaf, hunchbacked, a beggar, or dense), disclosure is not in itself serious, or even sinful; for little or no harm is done, and the defects are of such a character that they can be readily discovered by observation. But if the defects are very ignominious or harmful, defamation is a grave sin (*e.g.*, to say that a very distinguished person is illegitimate, or of a mixed race, or that his immediate relative was a criminal).

(b) If the defects are related to moral stain, but do not imply it, revelation of them is not a grave sin, provided no great loss is caused by it (*e.g.*, to say that a person is scrupulous about himself, or has certain peccadillos or human imperfections). If a shortcoming is usually understood as a propensity rather than as a fault (*e.g.*, quick temper, high-strung disposition, pride, closeness with money), there is little if any harm done by speaking of it. But if the defects mentioned are such as imply or insinuate actual moral lapses (*e.g.*, to say that a person has a venereal disease and the cause is unknown, or that he has delirium tremens or morphinism, or is of a very passionate nature), the revelation is defamatory and more or less sinful.

(c) If the defects are moral, he who reveals them is guilty of sinful defamation. But the harm done by the imputation of moral guilt is greater in some cases and less in others. Some sins are more disgraceful from their degradation (*e.g.*, carnal sins, see **224**), and from this point of view it is worse to accuse a neighbor of gluttony or sexual irregularity than of pride. Some sins (*e.g.*, solicitation, sodomy) are especially heinous in the eyes of the law and produce legal infamy, because they are more harmful to the public or more subject to public contempt (see Canons 2320, 2328, 2343, 2351, 2356, 2357). There are also some defamations that are less harmful to reputation, but more damaging to material prosperity (*e.g.*, it is usually more hurtful to the prospects of a person in business to be charged with incompetency, dishonesty, or carelessness than to be charged with religious indifference or impurity). Finally, there are gradations in the malice of the same kinds of sin (see **197**), as in the angry thought, the angry word, the angry deed, in tipsiness and drunkenness, in occasional and habitual lying, etc.

2048. Is it sinful to narrate the secret faults of another, if at the same time one tells of his repentance and amendment? (a) If the infamy remains in spite of the remarks about a change of life for the better (as is generally the case), the narrator is guilty of sinful detraction. Thus, it is very harmful to one in an exalted position if it is given out that he was at one time bibacious, but succeeded in thoroughly curing his appetite. The same principle applies to those who praise in one matter and detract in another (*e.g.*, by stating that a person is very learned, but also very dishonest). (b) If the infamy does not remain, because the atonement is so extraordinary as to make the hearers think little or nothing about the fault, the narrator is not guilty of sinful detraction. Thus, it is not detraction to narrate that a saint was so grieved over a lie he told that he did lifelong penance for it, or that a person who was once lukewarm—a thing that is quite common—has in later years become fervent in an uncommon degree. But the stigma

'that attaches to uncommon sins or carnal sins is hardly overcome by the mention of repentance, unless the person spoken of is already long dead or is one from whom very little is expected.

2049. The Harm Done by Reason of the Person Defamed.—(a) Serious faults are sometimes attributed to certain persons without serious sin, because, on account of the life led by these persons or the notoriety they have already achieved, they suffer no serious detriment when defects *like* to those already known are charged against them. Thus, if it is well known that a person keeps company with a fast set or consorts with a tough gang, he suffers little if one reveals that he uses profanity, gambles, drinks to excess, etc.; and if it is known that a person has these vices, he is not harmed much by mention of a particular instance or by the additional report that he has been arrested for cheating and disorderly conduct. But the case is different if defects *unlike* those already known are charged (*e.g.*, if one says of a person known as a liar that he is also a thief), unless the person spoken of has so black a name as an all-around cheat that no new crime charged to his account can give a deeper dye to his reputation.

(b) Light faults or acts that are not sinful in themselves are sometimes matter of grave defamation when spoken of certain persons, namely, when so much is expected from these persons that even minor defects are serious blots on their fame. Thus, to say that a layman is a confirmed liar or loves the opposite sex might be only a venial sin or no sin at all, but the same statements about a grave cleric would be seriously defamatory.

2050. Defamation supposes that the party who is injured is in possession of a good name. But it is possible that the same individual who enjoys a good name in one place or time, has a bad name in another place or time. Hence, a number of special cases on defamation present themselves for consideration.

(a) Thus, there is the case in which a person who has a good name here is juridically infamous elsewhere; that is, he has lost his good name elsewhere through a final and valid sentence, conviction, or confession made in a public trial (see Canon 2197).

(b) There is the case in which a person who has a good name here is actually infamous elsewhere, that is, his crime is known to so many persons there that it is morally impossible to keep it secret or excuse it.

(c) There is the case in which a person who has a good name now was in bad repute formerly; that is, his bad name of the past has been forgotten or has been obliterated by many years of good living.

2051. Meaning of the Expression "Infamous in a Certain Place."—(a) The place referred to is either a closed community (*e.g.*, a monastery, a college, a family) or an open community (*e.g.*, a village, a neighborhood, a parish, a town, a city); (b) the notoriety referred to is either universal (*i.e.* known to all the community), or general (*i.e.*, known to the greater part of the community), or sufficient (*i.e.*, known to so many and such talkative persons that the whole community will shortly be made to share in it). A crime known only to one or two, or to a small circle of Christian-living persons, is not notorious.

2052. Number of Persons Who Are Required for Sufficient Notoriety.—(a) Some authors assign certain definite figures for this purpose—for example, in a closed community of thirty or a hundred members a fact is notorious if known to seven or fifteen; in a neighborhood of forty persons, if it is known to eight individuals from different families; in a village whose population is one thousand, if it is known to twenty here and there; in a town of five thousand people, if it is known to forty here and there.

(b) Other authors hold that no invariable rule can be given, but that in each case the matter has to be determined by a prudent judgment based on the character of the crime, the quality of the guilty person and of the persons present at the time, the publicity of the place, etc. Thus, if the crime was committed in some central spot from which news was quickly disseminated, a smaller number of spectators would make a deed notorious in the surrounding territory.

2053. Publicity of Commission or Report.—Actual infamy or disrepute is produced either by the publicity of the crime or by the publicity of the report.

(a) Thus, a crime has publicity in its commission when it was done in a public place (*e.g.*, on the street, in a public room) or in a private place but before a considerable number of persons, or when its indications were publicly given (*e.g.*, by a confession, by maintenance of a suspected woman in one's home), or when it was submitted to public notice or judgment (*e.g.*, the acts of one in public office, the words of one who delivers a public address, the deeds of one who boasts about them).

(b) A crime has publicity in its report, when it is widely known, whether due to the talk of the people, or to presumptions or suspicions.

2054. Revelation about a Person Who Is Juridically in Disrepute Elsewhere.—(a) This exposure is not contrary to commutative justice, according to the common opinion, for the condemnation deprives the criminal of his right to fame (as regards the matter in which he is found guilty) in all places, and it is often to the interest of the public to know who has been convicted of crime elsewhere. Exception should be made for the case in which a trial is conducted secretly in order to spare the reputation of the condemned, as when a corporation expels one of its members after a hearing and an unfavorable vote (see 2057).

(b) This revelation is contrary to charity when it deprives a person without reason of the good fame which he possesses and which he would not otherwise have lost; for we should love our neighbor as ourselves. Example: Balbus served a term in jail in the town of A, on account of drunkenness. He then moved to the distant town of B and by his good conduct built up an excellent reputation. Claudius from A arrives and maliciously spreads around the news that Balbus had been once in jail for drunkenness. Claudius sins gravely against charity.

2055. Revelation about a Person Who Is Actually in Disrepute Elsewhere.—If the person in question will in all likelihood soon lose the reputation he has here, the following cases must be considered:

(a) if the disrepute is based on the publicity of a misdeed, the revelation is not opposed to commutative justice; for he who sins publicly thereby resigns his right to reputation as regards all those persons and places to which knowledge of his delinquency is likely to arrive. The revelation is against charity, however, if there is no sufficient reason for it; but since the news would be soon brought hither from other sources, no great harm is done and no serious sin committed by the revelation;

(b) if the disrepute is based on public rumor and the rumor is unjust, revelation, according to some, is opposed to commutative justice, since it is nothing but a continuation and extension of the original injury. Others hold that, unless one knows the rumor to be false, revelation is not unjust in this case, since, as is supposed, the revealer was not the author of the rumor, and those to whom he spoke would have learned it shortly even without him. Of course, if the person about whom the revelation is made suffers some considerable damage by reason of the early loss of his good name, the person who makes the revelation unnecessarily is guilty of serious sin. And rumor should never be represented as an established fact.

2056. If the revelation is made about one who is actually in disrepute elsewhere, but who is in little danger on that account of losing the good name which he has here, opinions differ regarding the extent of the guilt.

(a) Some hold that revelation in this case is a grave sin against charity, since in a serious matter it saddens a neighbor, and thus violates the rule of love to do unto others as we would have them do unto us; and others add that it is also a grave sin against justice, if the party spoken against is solicitous about his fame, since it deprives him without reason of a great good to which he is entitled on account of undisturbed possession.

(b) Others hold that this revelation is not a grave sin, either against justice (since the right of the community to know about crimes that were committed elsewhere prevails over the right of the individual) or against charity (since charity does not oblige under grave inconvenience).

(c) Others again distinguish between different cases. Thus, some say that, if the crime in question is one that is very detri-

mental to the public (*e.g.*, murder, treason, white slave traffic, scandalous impurity), the opinion under (b) is true; whereas, if it is one that is not of that character (*e.g.*, drunkenness in a private person), the opinions under (a) are true. Some also distinguish in the case of non-pernicious delinquencies between those that are notorious elsewhere by reason of the public way in which sin was committed and those that are notorious only on account of rumor; in the former case, they say, the manifestation is not unjust, for, although public good does not call for it, the guilty person himself has forfeited his right by the public manner in which he sinned; but in the latter case it may easily be unjust (see previous paragraph). The mere fact, however, that a fault which contains no threat to the public welfare was committed in a public manner does not seem to be a sufficient reason for manifestation (*e.g.*, when it will injure a man in earning a living or in supporting his family), and we believe that one who speaks of such a fault without necessity sins against charity, if not against justice, and that the sin is often mortal.

2057. Notoriety in a Closed Community.—Notoriety in a closed community is not absolute publicity, and hence the conclusions just given on absolute publicity do not apply to closed communities.

(a) Thus, if a fault is actually notorious in a closed community, the members may speak about it to one another, if there is any sufficient reason for this. Hence, if the majority of the members of a religious house know about a fault that has been committed there, it may be divulged to one who is in ignorance about it for his instruction or warning. Similarly, servants in a house may tell other domestics about faults which are commonly known in the house.

(b) If a fault is notorious in a closed community but not outside, the members as a rule may not speak or write about it to outsiders without injustice, for generally speaking there is no reason arising from necessity or utility for such a revelation. Moreover, the community itself suffers in repute from such disclosures, since outsiders will be impressed with the thought that the community has wicked members or is lax, and that there is

a lack of unity among them. To carry stories from one monastery or house to another (even of the same Order) is a form of detraction to outsiders, according to St. Alphonsus.

2058. Revelation about a Person Formerly in Disrepute.—When the revelation concerns one who was in disrepute formerly, but who has a good name now, either because his crime has been forgotten or because he has lived it down, a distinction must be made between juridical and actual notoriety.

(a) If the former disrepute was juridical notoriety, the revelation of it is not unjust, since condemnation pronounced in a court of law gives the right to others to make the sentence known in any place or at any time; but more probably it is mortally uncharitable, if made without necessity, since it harms the other person or his family in the reputation which he has honestly recovered, thus depriving him of a good most useful to him and hurtful to no one else.

(b) If the former disrepute was actual notoriety only, the revelation is uncharitable, according to all, since it does not observe the golden rule of doing to others as we would be done by. Many hold that it is also unjust, since an obliterated crime is the same as an occult crime, which cannot be divulged without injustice (see 2067). Moreover, the person who has built up for himself a new reputation has a right to it, and by the revelation of the old reputation this right is infringed, inasmuch as his present good name is also lost or made useless. It should be noted that the common good sometimes makes exceptions, and thus it is not forbidden to historians to make revelations about happenings that throw a new and unfavorable light on the youth or earlier years of persons no longer living (see 2072 sqq.).

2059. Case in Which the Name of the Person Defamed Is Not Given.—(a) If there is nothing to indicate the individual and no reflection is cast on a body to which he belongs, *per se* no sin is committed. Hence, if one says, "A certain person whom we shall call Balbus stole a sheep," there is no defamation in the narrative, even though a real happening is described. Similarly, if one says that in the city where he is speaking there are many criminals, or that even among his numerous

auditors there are doubtless some who are living in mortal sin, there is no defamation.

(b) If there is something to indicate the individual meant, or if reflection is cast on a body to which the individual belongs, sin is committed by the remarks. Hence, if the narrative about Balbus and the stolen sheep went on to describe incidents so that the hearers could easily perceive that Balbus was a person known to them, this person would be injured in his fame. Again, if one states that in a certain city which one names 90% of the married people are addicted to drunkenness, or that the party who was guilty of some scandalous act was a member of a Religious Institute, harm is brought directly upon individuals or damage is done to societies. It is true that an organization is not really discredited by the misdeeds of one of its members, but in popular opinion very often the disgrace of one is the disgrace of all.

2060. Defamation of Deceased and Legal Persons.—(a) Defamation of the dead, whether they be long or only recently dead, is sinful *per se,* since the departed are capable of a glorious or inglorious memory, and it is reasonable that one should wish one's good name to be respected after one's death, both for one's own sake and for the sake of others. Hence the saying, "De mortuis nil nisi bonum." But *per accidens* it is not sinful to make revelations about the dead when this is necessary for historical truth (see **2072 sqq.**). Defamation of the dead in itself is less sinful than defamation of the living, since the dead have less need of a good reputation; but circumstances may be such that one who defames a dead person does serious harm and commits a mortal sin.

(b) Defamation of legal persons is also sinful *per se,* since these bodies possess along with other rights of natural persons the right to a good name. Public esteem is very necessary for them, and they are protected in their enjoyment of it by the laws. Thus, it is injurious to state that a certain Religious Order or monastery or diocese is relaxed, or that a certain business corporation is not well managed. But *per accidens* it is not sinful to make revelations about organizations, when there

is a sufficient reason for the revelation (see **2067**). For example, if a political party is preying on the citizens, or if a mercantile house is practising frauds, the common good would require one to make these facts known. Neither is it sinful to mention faults or defects that are notorious, for example, that a certain government is warlike, that a certain people is backward, that a certain group is devoted to erroneous principles or practices (Tit., i. 12).

2061. The Harm Done by Reason of the Person of the Defamer.—(a) The person of the defamer increases the harm when his authority is greater. A person who is supposed to be better informed (*e.g.,* one who reports that he was an eyewitness of the event he narrates), or who enjoys a better reputation for truth (*e.g.,* one who is in an official position, or who is thought to be honest and disinterested), does more harm by defamation than another whose authority is weak.

(b) The person of the defamer decreases the harm when his authority is less. Hence, those who give out unfavorable reports about others with reservations (such as "perhaps," "it is not impossible," "it seems so, but I would not swear to it," etc.), and also those whose weight as authorities is light (such as talkative, lightminded, envious, gossipy, or untruthful persons), do less harm than persons who are held in higher repute. The confessor should not let these defamers off easily, however, since many of them act on the principle that if enough mud is thrown, no matter how foolish the charges, some of the mud will stick.

2062. One of the commonest forms of defamation is the narration of some crime or defect at second hand, as when the defamer introduces his remarks as follows: "They say," or, "It is reported," or, "I hear," etc.

(a) The mode of defamation here lessens the sin when it weakens the effect of the story upon the hearers. Hence, if one says that the talk of the town is that Claudius is a heavy drinker, and the listeners gather from this only that there is a vague rumor which cannot be traced to any source or be confirmed by any fact and which is therefore unreliable, the harm is less.

(b) The mode of defamation here does not lessen the sin

when it does not weaken the impression of the story; on the contrary, it increases the sin when it adds strength to the story. Hence, if one says that Claudius is said to be an excessive drinker, and if from the phrasing the listeners will understand that the report originated with very good authorities, or that it is based on general knowledge of the public, the harm is greater. Justice is violated if the narrative itself inclines the hearers to sinister thoughts or suspicions, for then the narrator causes the harm; charity alone may be violated if it is only the character of the listeners (*e.g.*, their suspicious or frivolous minds or their own guilt) that engenders in them evil opinion, for then the narrator only occasions the harm (cfr. **1447, 1464**).

2063. The Harm Done by Reason of the Listeners.—(a) The quality of the listeners makes a difference, since it may cause the person defamed to suffer more or less readily in their eyes (*e.g.*, if they are suspicious, or prejudiced, or credulous, or guilty themselves, they will more easily believe evil about others) or in the eyes of others (*e.g.*, if the listeners are newsmongers or enemies of the person defamed, the spread of the defamatory story is more certain). The loss itself may be greater or less on account of the character or position of the listener (*e.g.*, loss of reputation with a friend or a virtuous person is felt more, loss of reputation with customers or employers is more damaging, etc.).

(b) The quantity of the listeners also makes a difference, since it is more harmful, other things being equal, to be defamed before several than before one. Hence, the fact that many persons are present when the defamation is uttered is an aggravating circumstance of the sin. Whether it multiplies the sin numerically, so that one commits as many sins of defamation as there are persons who hear and are impressed, is a disputed point. Those who hold for multiplication argue that the defamed person has a distinct right to his reputation with each person present; those who deny multiplication contend that the right to reputation is a single object, since reputation is the opinion of others, whether they be many or few. This latter view seems to be more common, and its practical bearing is that a penitent need not mention the number of persons before whom he defamed his neighbor (see **217**).

2064. Is the malice of defamation aggravated by the fact that the listeners are peculiar and think the defect mentioned is far more serious than it really is?

(a) If only the harm to reputation is considered, it does not seem that the over-strict notions of the listeners increase the sinfulness of defamation; for the harm to reputation is to be measured by the common opinion, not by the singular ideas of certain persons. Example: Sempronius tells that Balbus wastes a little time in telling humorous incidents and reading detective stories. The small group of auditors think that this is one of the blackest of crimes.

(b) If other harms are taken into account, the peculiar ideas of the listener may add to the sinfulness of defamation. Thus, if a young person of delicate conscience will be scandalized at hearing that Caius plays cards, or if older listeners will be led by this remark to take their trade away from Caius, the sins of scandal and of unjust damage are added to defamation. Defamation often destroys in the listener all faith in humanity, or all belief in religion.

2065. Detraction to One Discreet Person.—Is detraction a mortal sin, if the revelation of a serious sin is made without sufficient reason but to only one prudent and discreet person, who will neither divulge the information, nor be influenced by it to the harm of the party spoken against?

(a) If the purpose of the speaker is to inflict serious injury on his neighbor, mortal sin is committed, since the gravity of the sin is measured by the malevolence of the will.

(b) If the purpose of the speaker is not to inflict serious injury, but only to indulge his love of talk, levity of mind, etc., the gravity of the sin depends on the actual harm that is done; for one wills indirectly the harm connected with one's acts, even when one does not desire it directly (see **102**). Hence, if the harm is in fact serious, mortal sin is incurred by the detractor, unless he is excused from it by the imperfection of his deliberation or consent. How much harm, then, is done in this

case? Most moralists, it seems, think grave harm is done, since the loss of good name with one prudent man is generally more distasteful than its loss with many light-minded persons. Some moralists, however, dissent from this view, and hold that the harm done is small. They argue that the loss of good name with one prudent person (exception being made for the cases when he is the one person whose esteem is prized above that of all others, or when the crime revealed is an enormous or very degrading one) is not a great blow to reputation, since reputation consists in the opinion of many persons, and since a prudent man will be inclined to help rather than harm one who has been defamed in his presence. The advocates of the first opinion appeal also to the analogy of contumely and rash judgment, for these two sins are grave, even when the loss of honor or good opinion is in respect to one person only. But their adversaries deny the assumed parity: for, while contumely includes the purpose to injure and rash judgment includes the imputation to another of a defect of which he is not guilty or not known to be guilty, the detraction now considered is innocent both of design to injure and of calumny. Both opinions are probable, but the former seems to be more common and more likely.

2066. Belittling a Person to Himself.—It is not impossible to belittle a person to himself, for example, to make him believe that he is illegitimate, that he is regarded with contempt by others, that his ability is mediocre or his character defective, etc. Is this defamation, or is it sinful?

(a) To lower a person in his own estimation is not defamation in the strict sense of the word, since defamation is properly an injury to the reputation that one has with one's neighbors or with the public, not to the opinion one has of oneself. This sin belongs rather to derision (see **2106**).

(b) To lower a person in his own eyes is sinful or not sinful according to the purpose intended or the means employed. Thus, if a parent, wishing to correct the pride or presumption of his son, gives the latter a true picture of his failings or limitations, the act is one of virtuous correction. But if an envious person,

wishing to produce a sense of inferiority in another, deprives the latter of rightful peace of mind and of reasonable confidence in self, charity and justice are violated and there is a duty of restitution.

2067. Disclosing Matters Detrimental to Third Party.—In what cases is it lawful to disclose to others matters that will be detrimental to the reputation of a third party?

(a) If the communication is false, it is never lawful, no matter how important the reason; for the end does not justify the means. It is sinful, therefore, to resort to calumny as a defense of one's own reputation or dignity (see **2035, 2036**).

(b) If the communication is truthful and the matter is already well known to the persons addressed, there is no defamation, unless the communication makes these persons strongly convinced, whereas they had been rather uncertain before, or reveals to them some important detail about which they had been in ignorance.

(c) If the communication is truthful, but the defects are secret and unknown to the parties addressed, there is defamation, unless the person whose defects are revealed has lost his right to good name on account of the right of another person which has precedence and cannot otherwise be upheld (cfr. **2035**). In this latter case there is no obligation to maintain silence, neither from justice (since the lesser right must yield to the greater right) nor from charity (since this virtue does not oblige at the cost of great inconvenience). Thus, Our Lord made known to the Apostles that the Pharisees were hypocrites (Luke, xii. 1; Matt., xvi. 6), and St. Paul told Timothy that Alexander and Hymeneus had neither faith nor a good conscience (I Tim., i. 20).

2068. Rights that Have Precedence over a False Reputation.—(a) The public good is to be preferred to a false reputation, for the public welfare is the ground for the right to such reputation, the subject himself being unworthy of the good name he bears (see **2037**). It is right, therefore, to denounce criminals or conspirators to the proper authorities, or to testify against them. Employers have the duty to discuss together the

failings or imperfections of their employees that interfere with the business; subjects should manifest abuses about which they are asked in a canonical visitation; students in a college should give information about companions who are depraving the morals of the student body or exercising an evil influence on the other residents, etc.

(b) The private good of innocent parties may be preferred to the fame of one who enjoys a false reputation. One may reveal secret defects for one's own defense; for example, a person whose life, honor or property is being unjustly attacked may reveal sins of the guilty in order to deter them or weaken their authority; a person who has been injured by his superior or another party may speak of this to a friend for the sake of obtaining consolation, or to a confessor, a lawyer or other adviser for the sake of obtaining counsel or assistance. One may also reveal secret defects for the protection of others; for example, one should put unsuspecting persons on their guard against seducers, impostors, quacks; one should reveal impediments that stand in the way of a marriage, or should warn a young woman that the man to whom she is engaged is a criminal or diseased; one should make known the true author of a crime for which an innocent person is about to suffer; one should tell the truth to inquirers about the incompetency of servants or other persons whom one has employed.

(c) The higher good of the person whose faults are revealed may also be preferred to the lower good of his false reputation; for it is to his interest that his higher good be promoted, even at the expense of an inferior good. It is lawful to tell parents about the misdeeds of their children (*e.g.*, that a daughter is involved in a scandalous liaison), in order that the latter may be corrected; or to speak to the friends of wayward persons about the misconduct of the latter in order that prayers may be said for their conversion.

2069. Unlawful Attack on Another's False Reputation.—If the false reputation of another is not the unjust cause of a loss that is feared, it is not right to deprive him of his good name. Examples: (a) It is not lawful to accuse a person who is about

to be promoted to some office or dignity of which he is worthy, if the motive of the accusation is to secure the honor for oneself or one's friend; otherwise ambitious persons would be encouraged to practise spying, manufacturing of evidence, etc., and the public peace would be greatly disturbed. (b) It is not lawful to accuse a person who is giving one no offense, if the motive of the accusation is to distract attention from oneself or to make oneself shine by the comparison.

2070. Conditions that Justify Revelation of Another's Defects.—In revealing defects on account of some necessary good, one must observe the conditions for an act of double result (see 103).

(a) Thus, the action itself must not be evil, and hence one may not break the seal of secrecy to which one is bound (as will be said in the next Article in discussing violations of secrets), nor make use of knowledge unjustly acquired, nor reveal more or to more persons than the case demands, nor reveal anything, if a warning to the offender will suffice (see 1286).

(b) The good result must be intended, and the evil result of detriment to fame must be only permitted. Those who assign pious motives (pity, zeal, sincerity) for talk against a neighbor, but who are really actuated by hatred, revenge, ambition to defeat a rival, or other like passion, sin on account of their wrong intention. A hypocritical form of defamation is practised by some persons exteriorly devout, who under the pretext of asking prayers for their neighbor's conversion spread stories about those whom they dislike.

(c) The reason for permitting the evil must be sufficiently weighty. Hence, the good result intended must be one that is likely to follow on the revelation, and it must be of some importance; for it would be cruel to throw away a neighbor's good name on the mere possibility that a considerable good would be secured, or on the certainty that only a slight benefit would be obtained. It does seem, however, that the good which is hoped for must be of an equal dignity with the good of fame, since the innocent and the guilty party are not on the same footing, and furthermore all admit, for example, that the fame of an

employee who is stealing from his employer is not to be preferred to the goods of the employer. In doubt about the seriousness of the evil following on revelation, the innocent party is to be favored.

2071. Revelations about Public Officials or Candidates for Public Office.—(a) These are lawful when the public good calls for them (*e.g.*, when a man has used corrupt practices in order to be elected, or when he is incompetent, or when he has been guilty of malfeasance in office), and the conditions of the previous paragraph are observed.

(b) These revelations are unlawful when the public good suffers from them (*e.g.*, when the safety or dignity of society itself would be injured by attacks on the head of government), or when the due conditions are not observed (*e.g.*, when one resorts to personalities about a deserving public official, or practises muckracking because of mere prejudice or partisanship). The law permits fair comment on public persons or works, but it also grants an action for criticism that contains unfair aspersions of personal character or unjust accusations about public conduct.

2072. Revelations about Historical Personages.—(a) These revelations are not lawful unless there is a proportionate reason that justifies them. For historians there are sufficient reasons to narrate impartially the crimes as well as the virtues of those who appear in their pages. These reasons are: the nature of history as a record of facts and causes ("the first law of history is that it dare not tell any untruth, that it fear not to tell any truth," Leo XIII); the rights of the persons who are treated in the annals (*e.g.*, it is often impossible to understand the deeds of one character in history or to do him justice unless the secret crime of another character is revealed); the rights of the readers (*e.g.*, the reader has the right to know that the persecutors of religion have been wicked in their personal lives). The historian, therefore, may search for material bearing on the lives and deeds of historical personages of the past, he may collect similar material relating to current events, he may narrate defects or delinquencies of the past that were unknown or

forgotten. But matters of a purely private character that have no bearing on public events do not belong, according to some moralists, to the legitimate province of the historian; for otherwise there would be an end to the rights of the dead over their fame. Moreover, there is the risk of calumny and of violation of elementary justice, since the historian is a self-appointed judge and the person condemned is not able to defend himself.

(b) These historical revelations are not lawful unless the conditions mentioned in 2070 are observed. Thus, a historian should not write down details that were told him in confidence by a person long since dead; he should not be swayed either by unreasonable likes or unreasonable dislikes in the expression of his views; he should not publish what will cause harm rather than good, such as circumstances in the lives of persons recently deceased which, if revealed, will be detrimental to living persons.

2073. It is not always easy to determine whether more harm is likely to result if the persons whose glory is dimmed are high in public esteem on account of the prestige of their office or their great exploits. Much will depend on circumstances and on the author's manner of treatment.

(a) Thus, *per se*, or from the nature of things, it does not cause greater harm to narrate truth about the imperfections of great men, for only error or prejudice or evil has reason to fear the truth. The inspired Scriptures themselves deal candidly with the public failings of personages who were high in religious or civil position, for example, the hesitation of Moses, the infidelity of Aaron, the fall of King David, the disobedience of the prophet Jonas, the denials of Peter, the doubts of Thomas, the treason of Judas. These histories are not harmful, but, on the contrary, contain most useful lessons of instruction, warning and direction.

(b) *Per accidens*, or on account of special conditions, it may be more harmful to write of the failings of the great (cfr. 1001). Thus, the class of persons for whom one is writing may be immature (*e.g.*, a textbook of history for children would give scandal if it spoke openly of sexual crimes), the conditions of the time may be unfavorable (*e.g.*, a new historical production

might lead to injury to some class of persons at a time of great prejudice against them), the total effect of a book may be bad (*e.g.*, chronicles of scandals, historical biographies or novels or plays written in a seductive manner). The class of modern writers known as "debunkers," whose aim it is to destroy all hero-worship, offend against truth and ideals by the prominence they give to evil, while the so-called psychological historians are frequently purely subjective as well as immoral.

2074. Revelations about Persons Who Figure in the News of the Day.—(a) If the matters revealed are of a public nature, the lawfulness or unlawfulness of the revelation will depend on the reasons for it and the manner in which it is given. In discussing political affairs, a newspaper has the right to call attention to mistakes and faults of public men, since the freedom of the press in this respect is a protection to liberty and to progress, and those who enter public life implicitly consent to criticism of their conduct; in reporting the news, a newspaper has the right to speak of murders, robberies and other public crimes that have been committed, since the common good requires that the authors of public offenses be known as such. But if this kind of news is disserviceable in any instance to the order, peace, or dignity of the community, or if the news is obtained in unjust or dishonorable ways, or if the motive is merely to gratify curiosity, to indulge prejudice, or to make money, the newspaper management is morally guilty, even though it may be legally within its right. Yellow journalism and "tabloidism" are reprehensible because they are injurious to the minds and morals of their readers on account of the undue prominence given to crime, even of the most disgusting sort, and the appeal made to sense and emotion rather than to thought.

(b) If the matters revealed are of a private nature, the morality of the revelation has to be judged by the principles given in **2067 sqq.** It would be wrong to make a practice of spying into the private life and affairs even of public persons merely to add interest to one's columns; but if there is some really important advantage to the public or to a private person that will be served, and if the other conditions are observed

(see **2070**), one may publish even private defects that are real and certain.

2075. Injustice in Professional Critics.—(a) Injustice is done by professional critics (such as book reviewers, dramatic and art critics, and the like) to the persons who rely upon their opinion, if there is a compact with them to give a competent and unbiased judgment and the compact is not lived up to by the critic with resultant damage to the client (see **1793**). If there is no compact, the critic is nevertheless guilty of deception and uncharitableness, if he performs his office carelessly (*e.g.*, by eulogizing a worthless book or play or picture).

(b) Injustice is done the person criticized, if his work is undervalued purposely (*e.g.*, because the critic is jealous, or in an ill humor or is hired by others to dispraise), or if uncalled-for personalities are indulged in at the expense of the person's fame. A carping critic may by the stroke of the pen spoil the work of years, and hence ignorance does not excuse those censors who practise wholesale and unfair denunciations (see **905**).

2076. Coöperation in Defamation.—Not only the defamer sins, but also those who coöperate with him. Among the cooperators with defamation are those who give orders for defamation, those who show how it can be done, those who protect defamers, and those who participate in defamation by directing the conversation to a certain subject or by joining in the criticisms. The most ordinary form of participation in defamation is that of the listener, for no one defames successfully unless he has a sympathetic listener. Those who listen to detraction in such a way as to consent to what is said share in the guilt of the detraction. This happens as follows:

(a) the listener consents *directly* to defamation when he spurs the speaker on (*e.g.*, by saying, "Tell us about So-and-So," by insincerely praising an absent person in order to excite dispraise, by nodding approvingly, cheering, or smiling, by showing great marks of favor to those who bring him news against others or of disfavor to those who refuse to do this), or when he rejoices internally at the defamation he hears, because he hates the victim:

(b) the listener consents *indirectly* to defamation when he does not spur the speaker on nor approve of what is said, but omits to stop the defamation or to protest against it, when he could and should do one or the other of these things.

2077. Sinfulness of Direct Consent to Defamation.—The listener who consents directly shares in the guilt of the defamer according to the words of St. Paul: "They who do such things (detractors, etc.) are worthy of death, and not only they that do them, but they also that consent to them that do them" (Rom., i. 32). Indeed, St. Bernard says that it is not easy to say which is more deserving of condemnation, to defame or to listen to defamation. But we may distinguish as follows:

(a) he who spurs the defamer on is more guilty than the defamer. This listener sins against the detractor whom he scandalizes by inducing to sin, against the detracted whom he deprives of his good name. Thus, he is both uncharitable to the detractor and unjust to the detracted, and is the moving cause of all the harm that is done (cfr. **2065**);

(b) he who hears the defamer willingly may be more guilty internally than the defamer, since his hatred of his neighbor and his love of injustice may be more intense; but externally his sin is less, since, as is supposed, he is not bound to resist the defamation and he does not give any coöperation to the external injustice. He sins against justice affectively (*i.e.*, in wish), but not effectively (*i.e.*, in word or deed).

2078. Persons Who Listen from Curiosity.—What of those listeners who hear defamation willingly, not because they approve of the harm or evil that is being done, but because they are unusually curious or the speaker is unusually interesting?

(a) If these listeners could and should stop the defamation, they consent to it indirectly by their silence and thus are guilty (cfr. **2079**).

(b) If these listeners are not able or are not bound to stop the defamation, some would nevertheless hold them guilty of grave sin, since they wish to hear something only because the knowledge will give them pleasure, knowing all the while that this knowledge cannot be had except at the expense of the good

opinion they have of a neighbor. But the general view is that in this case there is no grave sin; for the listener does not approve of the moral evil (he is interested only in the graceful or eloquent or witty manner of the speaker, or the strangeness of the things related, or he is only concerned to hear the latest news, cfr. **234**), and what he hears does not cause the lowering of his neighbor in his own opinion. But here it is supposed that the listener in no way encourages the defamation and that he is not bound to stop it. Curiosity about things that do not concern one is, however, a venial sin.

2079. Sinfulness of Indirect Consent to Defamation.—The listener who consents indirectly to defamation by not impeding it as he should is also guilty of sin, and in Scripture his conduct is strongly forbidden: "Have nothing to do with detractors" (Prov., xxiv. 21); "Hedge in thy ears with thorns, hear not a wicked tongue" (Ecclus., xxviii. 28).

(a) It is commonly admitted that the listener in question sins doubly against charity, and grievously if the defamation is seriously harmful; for he sins against the detractor by refusing to give a brotherly correction (see **1258 sqq.**), and he sins also against the one detracted by refusing to raise his voice in behalf of the absent who cannot defend himself.

(b) It is also commonly admitted that, if the listener is the superior of the defamer or of the person defamed, he sins more gravely, since he is specially bound to correct his subject who is detracting in his presence, or to defend his absent subject who is being defamed. If the listener is a private person not responsible for the defamed person's reputation, he does not sin against justice by his indirect consent to the defamation. Indeed, the inferiors or equals of the defamer rarely sin gravely by their neglecting to oppose his defamatory remarks.

2080. Guilt of Superior Who Consents to Defamation.—Is the superior who indirectly consents to defamation of a non-subject by a subject guilty thereby of injustice?

(a) As regards the spiritual injury (*i.e.*, the guilt of sin incurred by the defamer), the superior is guilty of injustice towards his subject, if by reason of his office or contract he is

bound to correct faults and neglects to do so. Thus, a bishop or pastor is supported by his people, and there is at least an implied agreement that he will direct them in spiritual matters and reprove their faults. Hence, it seems that a spiritual superior of this kind is unjust, if he fails to correct a subordinate who carries defamatory tales to his ears.

(b) As regards the temporary injury (*i.e.*, the detriment to fame incurred by the person maligned), all depends on whether the superior is bound by reason of his office or contract to prevent injury to non-subjects by those who are his subjects. If the superior exercises his authority in the temporal order and has an agreement with those not subject to him to protect them against defamation by his subjects, he is bound in justice to abide by his agreement. But the common opinion is that a superior in the spiritual order is not responsible *ex officio* for the fame or other temporal welfare of those not subject to him.

2081. Is the superior who indirectly consents to defamation of a subject guilty thereby of injustice?

(a) If the superior has authority in the temporal order, he is unjust by his inaction, in so far as law, custom or agreement hold him to prevent the defamation of his subject. Thus, a guardian entrusted with the care of his ward's reputation is unjust if he makes no effort to prevent defamation of the latter.

(b) If the superior is in the spiritual order, some believe that he is unjust by inaction, since fame is closely connected with spiritual goods, being necessary for moral influence over others and useful for personal perseverance in virtue. But others—and it seems more commonly—deny this, and state that the relation between fame and spiritual goods is only accidental.

2082. Circumstances Which Lessen Guilt of Indirect Consent.—Indirect consent to defamation is often only a venial sin. (a) Thus, by reason of the lightness of the matter, as when only trivial defects are mentioned by the defamer; (b) by reason of insufficient reflection, as when the listener is distracted in mind and does not clearly advert to the sinfulness of the words he hears; (c) by reason of insufficient consent, as when the failure to stop or protest against the defamation is due to

slight laziness, to bashfulness, or to fear of the speaker, at least when the defamation is not extremely harmful to fame or other good, or gravely slanderous.

2083. Inaction in the Face of Defamation.—Inaction in the face of defamation of a third party is sometimes no sin at all.

(a) Thus, there is no sin when one is *unable* to act (*e.g.*, when a slanderous speech is being delivered by a person in authority who will not suffer any interruption to be made), or is unable to act with any success (*e.g.*, when the attempt to correct would provoke worse defamation, when the listener is too unskilled to refute or remonstrate). Scrupulous persons should not attempt to correct, since they are not suited for this. Their attempts to defend an absent person would generally make them ridiculous, and would often be unjust to the person whom they suspected of defamation.

(b) There is no sin when one is *not obliged* to act (*e.g.*, when interference will expose one to very serious evils, when the defamation is not grave or is not taken very seriously, when the listener is uncertain whether the speaker is really guilty of defamation or whether he himself is bound to intervene). It is sometimes unwise to interrupt a defamatory story, for many such story seems to promise dire disclosures at its beginning, but when heard to the end is seen to be an affair of no importance or to contain little that is new or startling or credible.

2084. Ways of Opposing Defamation Made in One's Presence.—(a) Positive resistance is made by a command to the defamer to be silent, or by refutation of his words if they are false, or by a rebuke if his words are true. This mode of correction is generally required if the listener is the superior of the defamer, and is sometimes suitable if he is the latter's equal.

(b) Negative resistance is made by leaving the company, by having no share in the conversation, by changing the subject, by showing displeasure or at least gravity in one's looks or acts: "The north wind driveth away rain, as doth a sad countenance a backbiting tongue" (Prov., xxv. 23). This mode of resistance is usually the proper one for an inferior, and as a rule is found more satisfactory even between equals (see **1267**).

2085. Restitution for Defamation.—Restitution for injuries committed is necessary (see **1759**), and hence it is required of the defamer. In the language of Scripture (Prov., xiii. 13), he that speaks ill of his neighbor obliges himself for the future. The two injuries to be repaired are: (a) the unjust taking, that is, the fame of which he has deprived his neighbor; (b) the unjust damage, that is, the detriment to fame or the losses that resulted from the defamation (such as failure to obtain or keep a position, decline of business, etc., which were foreseen at least in a confused manner). It is clear there is no duty of restitution, if in spite of talk against a neighbor he suffered no loss (*e.g.*, if the listeners gave no heed or credence to the talk).

2086. Gravity of Obligation of Restitution.—The obligation of restitution for defamation is grave or light according to the degree of injury done, and the grave obligation binds even at the expense of serious inconvenience, the light obligation at the cost of small inconvenience. But the following points should be noted:

(a) the injury is not necessarily grave if the defect imputed to another is grave, for many circumstances have to be considered (*e.g.*, blasphemy is a serious charge, but it would not be very harmful to a man publicly known as very impious, see **2053 sqq.**);

(b) the injury is not necessarily slight if the defect imputed is slight, for circumstances may make the injury considerable (*e.g.*, it is not very defamatory to say that a woman is very talkative, or unable to speak or spell correctly, but this would be very damaging if it lost the woman a very lucrative position as secretary).

2087. Conditions Which Entail Duty of Restitution.—Restitution is not obligatory unless one is the unjust and efficacious author of the damage (see **1763**). Hence, disclosures unfavorable to the reputation of others entail the duty of restitution only when the following conditions are present:

(a) the detriment to fame or other loss must be unjust objectively, and hence those who have a just reason for exposing the vices of others are not held to restitution;

(b) the detriment must be unjust subjectively, and hence one who in good faith speaks of a neighbor's sin, thinking that it is true and public, whereas it is false or secret, is not bound to restitution, if he discovers his error after the results of the defamation have been removed (see, however, **2102**). But if he discovers his mistake while the neighbor is still under a cloud because of the report, he becomes from that moment responsible and subjectively unjust, if he does not take steps as far as he conveniently can to correct the error (see **1769**);

(c) the detriment must be due to one's act as to its efficacious cause, and hence one is not bound to restitution if a listener understands one to disparage when in fact one has not disparaged.

2088. Coöperators and Restitution.—Those who coöperate in injustice are also held to restitution (see **1778 sqq**), and hence the following are bound to indemnify a defamed person:

(a) positive coöperators are held to restitution, such as those who command, counsel, or encourage defamation. The same is true of those who share in a defamatory conversation or who merely listen, but by their questions, or show of interest or approval, induce the defamer to continue, or to speak with more assurance;

(b) negative coöperators are also held to restitution, if they were bound in justice to resist or impede defamation. This will apply chiefly to a superior who does not prevent, as he should, the defamation of his subject or community, whether by a subject or a non-subject (see **2080 sqq.**).

2089. Circumstances of Restitution.—We shall now speak of the circumstances of restitution for defamation: (a) the persons bound to restitution besides the defamer, namely, his heirs, the listeners, etc.; (b) the persons to whom restitution is to be made; (c) the manner of making restitution; (d) the time for making restitution (see **1781 sqq.**).

2090. Restitution for Defamation to Be Made by an Heir of the Defamer.—(a) For the injury to fame, it seems that the heir is not bound, since the duty of restitution of fame is a personal one, that is, an obligation to perform an act of retrac-

tion or apology, not an obligation to pay compensation (see **463**). But some hold that defamation may be satisfied for by pecuniary compensation (**1750, 1802**), and that, if the injured party should insist on this kind of compensation for the infamy suffered, the heirs would be obliged to pay it.

(b) For the damages resulting from injury to fame the heir is bound, since restitution for losses is a real one and rests upon the property or estate of the deceased. But those who are in good faith are sometimes to be left undisturbed, lest they become guilty of formal sin.

2091. The Persons to Whom Restitution for Defamation Is to Be Made.—(a) To the person defamed restitution of fame is owed, and this is true even when the person is already dead. Just as one who dishonors the dead by desecrating their tombs or their remains owes it to their memory to make reparation, so one who defames the dead owes it to their reputation to make restitution. In fact, the heirs may be bound in conscience to insist upon this restitution, and it seems they cannot condone it, since it is not their own fame that has been hurt.

(b) To the listeners restitution is not owed, since no injustice was done them, but reparation for scandal given them may be obligatory. And, since justice to the person defamed requires retraction or other reparation, the defamer must recall his words before the persons to whom he addressed them. Hence, if defamation appeared in a journal, the honorable reparation should also appear in the same journal and with the same prominence given it as was given the offensive remarks.

2092. Responsibility of Defamer for Spread of Defamation.—Is the defamer bound to recall his words to the wider audience that learned them from his first listeners?

(a) If the defamer is not responsible for the spread of his talk beyond the circle which he addressed (*e.g.*, if he imposed strict silence upon his listeners or had good reason to think that they would keep his remarks to themselves, and his words nevertheless leaked out), the common opinion is that he is not held to reparation before the subsequent listeners.

(b) If the defamer is responsible for the spread of his talk

(*e.g.*, if he gave his listeners permission to quote or repeat, or if he knew well that they would carry his words far and wide), he is bound to reparation before the later listeners, in so far as this is possible, especially if he was guilty of calumny. Whether he or his listeners have the first duty of restitution will depend on the relationship in their coöperation (see **1784**). If he can do nothing better, he should admonish his listeners to retract before their listeners.

2093. The First Way of Making Restitution for Defamation.—(a) If the defamation was by *calumny*, the defamer (and also the propagator) must take back his words, admitting that what he said was untrue. If necessary, he should also make affidavit to this effect, or even admit that he lied. The reason is that the innocent party has a greater right to his fame than the guilty party. But the defamer is not obliged to confess his own malice, when this is not necessary, and it may suffice to say merely that his former statement was not correct.

(b) If the defamation was by *detraction*, the defamer cannot truthfully say that his words were false, and he must counteract directly or indirectly the effect of his defamation by something favorable to the person he has injured. If the listeners will not be confirmed in their belief by his explanation, the defamer should explain to them that his statements were unjust, that he had no right to make them, that he wishes them to regard as unsaid all that he said, etc. (direct revocation). If this cure would be worse than the sickness by strengthening the belief of the listeners that the defamation was true, the defamer should be silent about his former statements. But he should so honor or praise the person defamed that others will be led to believe, not that restitution is being made, but that the former good opinion they had of the person defamed was correct (indirect revocation). Thus, if the defamer knows that the injured person has reformed, he may call attention to and emphasize the virtues he now has; if the defamed person has still the same failing, he may be excused, when possible, or praised for the good qualities he does possess, or he may be spoken of in general terms of esteem; if the listeners have been led to dishonor the

person who was detracted, the defamer may show special signs of esteem or confidence to the latter, etc.

2094. Other Methods of Making Restitution.—If the listeners will not be impressed by any of the methods of satisfaction just indicated, what should be done?

(a) If, in the case of calumny, the listeners are unwilling to accept the formal statement that the defamation was untrue, the defamer is obliged to nothing more. For the slanderer has done all that is possible to change the erroneous view of the listeners, and the bad opinion they have of their neighbor must now be attributed, not to the defamer, but to their own wickedness or stubbornness.

(b) If the listeners cannot be properly impressed by the direct or indirect revocation of detraction, the defamer, being unable to make honorable compensation by restoration of fame, should make a profitable compensation by the bestowal of a benefit that will in some way be commensurate with the good of reputation and be acceptable to the other party. Thus, if the person defamed is satisfied with money or something measurable in terms of money, he should be given damages; if this kind of compensation is of little use or is not esteemed (few persons of honor would take money alone as pay for a lost reputation), he should be given some other good which in his own judgment and that of a prudent man is more nearly an equivalent for the good of which he has been deprived. An apology is not sufficient, since the begging of pardon does not restore what was taken; neither is it generally advisable, because the admission to another that one has been secretly defaming him and is now sorry for this may lead to quarrels and hatreds rather than to forgiveness and peace.

2095. Legal Reparation for Defamation.—One who has been sentenced by a lawful judgment of court to reparation and penalty for defamation is obliged to obedience, but if the satisfaction decided on by a jury is excessive or meager, it can be set aside by the court. In Canon Law (Canon 2355) one who has been convicted of defamation may be sentenced: (a) to satisfaction; (b) to damages; (c) to suitable penalties, even to suspension or removal from office or benefice.

2096. The Time When Restitution for Defamation Is to Be Made.—(a) It should be made as soon as possible, for the longer it is delayed the greater the injury that is suffered, since defamation becomes harder to correct as it progresses, or at least has a longer life when it is not corrected early. But prudence will sometimes dictate that one await a psychological or favorable moment for a retractation. (b) Restitution should be promised before absolution is given, and, if there is a well-founded doubt about the sincerity of a promise, the confessor may delay absolution until restitution has been made.

2097. Cessation of Duty of Restitution.—The duty of restitution ceases, at least temporarily, in certain cases (see 1797 sqq.), and hence one who has been guilty of injustice through defamation is sometimes excused from reparation. (a) Thus, one is excused temporarily on account of impossibility; (b) one is excused permanently on account of the cessation of the other party's good name or the termination of one's own obligation.

2098. Excuse from Restitution on Account of Impossibility.—(a) Physical impossibility excuses, for example, when one does not know who the persons were before whom one detracted, or cannot recall who the person was whom one defamed. But in this case the defamer should at least make satisfaction by praying for the person whom he defamed, or by having Masses offered for him.

(b) Moral impossibility excuses from restitution, as when the defamer will suffer a far greater loss than he inflicted on the person defamed (*e.g.*, if the defamer cannot retract without losing his life, or a reputation which is far more valuable than that of the obscure person who was defamed). But if the defamer has subjected the injured party to the peril of death, or if he has calumniated an innocent man, he must make satisfaction even at the peril of his own life or at the cost of his own fame; for the right of the innocent prevails over that of the guilty defamer.

2099. Excuse from Restitution on Account of Cessation of Other Party's Good Name.—The defamer may also be excused from restitution on account of cessation of the other party's good name through another cause, as when the secret defect

first made known by the defamer becomes public from another source.

(a) The detractor is excused from the duty of restoring reputation, since the person he defamed has now independently of the first defamation lost his right to reputation (see 2053 sqq.).

(b) The detractor is not excused, however, from payment for damages which the defamed person suffered from the first defamation or for expenses which it caused him. Some moralists hold him obligated also for some compensation for the infamy suffered before the crime became public through others.

2100. Excuse from Restitution on Account of the Termination of Obligation.—(a) The act of the defamed person ends the obligation, when, without injury to others, he expressly or tacitly condones the offense; for he has dominion over his own fame, as he has over his own money or lands. Thus, it may often be presumed that parents overlook the restitution owed them by their children for criticisms made by the latter.

(b) The act of the defamed person also ends the obligation, according to the common opinion, when he has inflicted an equal injury by defaming his defamer and is unwilling to make satisfaction for the injury; for though it is unlawful to repay evil with evil, and though one damage does not cure another damage, he who will not pay a creditor cannot insist that the creditor pay him an equal debt. Thus, if Titus has burned the barn of Claudius and Claudius then burns the barn of Titus, and neither will pay damages, the debts neutralize each other, if the losses are equal. The same principle applies in defamatory recriminations.

2101. Right of Defamed Person to Condone Injury.—The person defamed has the right to condone the injury, if it is only personal to himself, but he has not always the right to condone the injury when the defamation causes harm to others.

(a) Thus, the defamed person would sin against justice and his act would be invalid, if he forgave the debt of restitution despite the fact that his own fame was necessary for the fame of others (*e.g.*, when a monk loses his good name, the monastery

is also disgraced), or was necessary for the fulfillment of duties owed by him in justice to others (*e.g.*, when a prelate, priest or public official loses his good name, the good influence he should exercise over his subjects is ended). This conclusion is probable.

(b) The defamed person would sin against charity, but his act would be valid, if he forgave the debt of restitution despite the fact that his fame was necessary for the fulfillment of charitable duties owed to others, or that his silence in the face of defamation would cause great scandal (*e.g.*, when a preacher loses his reputation, his words do not move, and thus he is unable fruitfully to accomplish works of charity by instructing the ignorant, etc.).

2102. Excuse from Restitution When Reputation Has Been Recovered.—The obligation of restitution for defamation also ceases when reputation has been recovered without any act on the part of the defamer; for it is clear that one is not bound to give back that which is already had. But restitution may be due, nevertheless, for damages incurred, and some think that compensation (*e.g.*, apology, honor, praise) should be made for the injury of infamy that existed before the good name was regained.

The usual ways in which reputation is recovered without the act of the defamer are: (a) by overthrow of the defamation, as when the facts against it become manifest, or when witnesses prove its falsity, or when a tribunal declares it a criminal libel; (b) by oblivion, as when a misdeed of years ago has faded entirely out of the public memory. If the defamer is uncertain whether his past defamations have been forgotten, he has to act with great prudence; for, if he makes inquiries the memory of the defamations may be awakened, while if he says nothing, the defamations, because never corrected or retracted, may break out anew. He should consider the circumstances, therefore, and treat the defamed person as he would wish himself to be treated in a like case.

2103. Whispering or Tale-Bearing.—Whispering (*susurratio*), also called mischief-making and tale-bearing, is a speech

unfavorable to another person secretly made with the purpose of breaking up a virtuous friendship.

(a) It is *unfavorable* speech, that is, the whisperer says something to his listener that will turn the latter against the person spoken about. The thing attributed to the absent person may be either something evil or something that is only seemingly evil, but in either case it will be something displeasing to the listener. Whispering, therefore, does not necessarily include defamation.

(b) It is *secret*, that is, the whisperer speaks privately, and usually in the way of confidence to the person whose mind he wishes to impress. Often, however, he goes now to one of the friends, now to another, speaking in different senses to each, to make his work doubly effective. This kind of whisperer is known as double-tongued: "The whisperer and the double-tongued is accursed" (Ecclus., xxviii. 15).

(c) It is aimed at the *breaking up of a friendship*, that is, the whisperer intends to destroy the feeling of respect and affection which his listener has for the absent person, or even to instill into the listener's mind a feeling of disrespect and dislike for the absent person. Whispering, therefore, is incomplete when it ends a friendship, and complete when it makes enemies of those who had been friends and sows discords and quarrels: "A passionate man kindleth strife, and a sinful man will trouble his friends, and bring in debate in the midst of them that are at peace" (Ecclus., xxviii. 11); "When the talebearer is taken away, contentions shall cease" (Prov., xxvi. 20). Whispering, then, differs from simple defamation, whose purpose is to steal away fame, for the mischief-maker intends to steal away friendship.

(d) It is directed against a *virtuous* friendship, for there is no sin but rather an act of charity in the effort to end a sinful or harmful friendship, as when a parent tries to keep his daughter away from a wicked man with whom she is infatuated, or his son away from a disorderly set whose companionship appeals to the youth (see **1353**).

2104. The Sinfulness of Whispering.—(a) *Theological Species.*—Whispering is from its nature a mortal sin, since it is hateful to God (the soul of the Lord detesteth "him that soweth discord among brethren," Prov., vi. 19), and deprives man of the boon of a virtuous friendship, the greatest of external goods. "A faithful friend is a strong defence, and he that hath found him hath found a treasure. Nothing can be compared to a faithful friend, and no weight of gold and silver is able to countervail the goodness of his fidelity. A faithful friend is the medicine of life and immortality" (Ecclus., vi. 14–16). Whispering is a greater sin than contumely or defamation, since honor is less esteemed than friendship, and reputation is only a means to friendship.

(b) *Moral Species.*—Generally, whispering is a sin against justice on account of the unjust means (*e.g.*, force, fraud, lies, detractions) to which it resorts; but from its nature it is only a sin against charity, for the injured party has no strict right to friendship, which is a free relationship that may be terminated at will by either of the parties.

2105. Circumstances Which Affect the Species of Whispering.—Is the species of whispering changed by circumstances?

(a) The theological species is changed when the sinful act is imperfect in malice (*e.g.*, when the whisperer had not reflected well on the evil that would be caused by him), or when the harm done is slight (*e.g.*, when no enmity was caused and the friendship broken up was not strong or important to the friends). It is not a small matter, however, to destroy friendships that are very necessary, such as the friendship between husband and wife, between parent and child.

(b) The moral species is not subdivided, for, though there are different kinds of friendships (see **1111**), whispering is not directed against the special features, but against the general character common to all of them, namely, unity of soul and mutual affection. Hence, the whisperer is not obliged to mention in confession whether the friendship he broke up was based on utility, or pleasure, or virtue. It is clear, however, that a new species may be added to whispering. Thus, he who separates husband and wife, intending to secure the wife for himself,

is guilty also of adultery; he who separates a business man and his patrons, intending to attract the trade to himself, is guilty also of theft; he who separates ruler and subjects by his whispering, is also guilty of sedition, etc.

2106. Derision.—Derision is a jest that reproaches another with some defect or evil in order to put him to confusion.

(a) It is a *jest,* that is, it is spoken in fun and consists in making the defects of another person the object of laughter or amusement. Thus, it differs in manner from contumely, detraction and whispering, which are spoken seriously.

(b) Its purpose is the *confusion* of the person ridiculed, that is, it intends to take from him the good opinion that he is entitled to have of himself and the peace of conscience that he enjoys. Thus, it differs in object and purpose from the other injurious words hitherto considered (see **2009**). The intention to put another person out of countenance by ridicule is either formal or material, according as the purpose before the mind is to disconcert that person, or only to have one's joke, though one sees that this will mean shame and suffering for the victim of the joke.

2107. Distinction between Derision and Jesting.—Moderate jesting at another's expense is not derision, nor sinful, if it is justified by a reasonable motive. (a) Thus, a serious motive for jesting at another is fraternal correction. To ridicule a person who is making a fool of himself is often the best way to correct him, for many persons are less moved at being called wicked than at being called absurd. Similarly, a satirical rebuke sometimes serves to abash a person who has an exalted opinion of himself. In such cases a truth spoken in jest is an act of charity to a sinner. (b) A playful motive for jesting at another is recreation. The good-natured exchange of banter about trivial defects between persons who enjoy this give and take is a reasonable form of amusement in itself; indeed, it pertains to the virtue known as *eutrapelia.* But some persons who enjoy a jest at the expense of another are extremely sensitive to ridicule and fly into a rage if fun is poked at themselves, or even if they suspect that someone is laughing at them.

2108. Even jesting whose purpose is good may be sinful on account of the offensive or immoderate way in which it is conducted (see **2010**). There are three general forms of jest, but they do not constitute distinct species of sin when jest is unlawful, since the difference between them is accidental as far as morality is concerned.

(a) Thus, jest of the mouth is one that is made by words or laughter.

(b) A jest of the face is made by the expression of the countenance (*e.g.,* by wrinkling up the nose, sticking out the tongue).

(c) A jest of act, or practical joke, is some trick played on another, horseplay, and the like.

2109. The Sinfulness of Derision.—(a) When the derider makes light of a grave evil, he commits a mortal sin, for he shows grave contempt towards the person derided, treating the latter as if he were entirely worthless—one whose misfortunes were matters for joke. Indeed, derision is a more serious injury than contumely, for the contumelious person treats the evil of his neighbor as something serious, whereas the derider makes sport of it and is thus more insulting. In Scripture grave punishment is threatened to deriders: "God shall scorn the scorners" (Prov., iii. 34). But if an evil grave in itself is commonly looked upon as light on account of the inferior condition of the person who has the defect (*viz.,* because he is an infant or an idiot), there is no grave sin of contempt.

(b) When the derider makes light of an evil that is really light, there is no contempt shown, but there may be serious embarrassment caused to the person derided. For the peace of a good conscience is a great blessing ("Our glory is this, the testimony of our conscience," II Cor., i. 12; "A secure mind is like a continual feast," Prov., xv. 15), and that which disturbs it can be a serious distress and harm. If the butt of the joke does not take the matter much to heart, the sin is venial. But should he suffer great mental pain or disturbance on account of the ridicule, the quality of the sin is disputed. Some think that mortal sin is committed, if the derider foresees the serious

evil that will ensue; but others hold that the sin is venial, since it is the over-sensitiveness of the person derided that accounts for his great discomfiture of mind.

2110. The gravity of the sin of derision is increased by the object against whom it is directed; for the greater the reverence due a person, the greater the injury shown by making a mockery of him.

(a) Thus, the worst form of derision is that which is directed against God, and it is not distinct from blasphemy. Hence, Isaias (IV Kings, xix. 6) calls the deriders of the God of Israel blasphemers, and St. Luke (xxii. 64, 65) says that the soldiers who gave Our Lord a mock coronation spoke in blasphemy.

(b) Next in gravity is derision of parents, and Scripture declares the special horror of this sin: "The eye that mocketh at his father, let the ravens of the brooks pick it out and the young eagles eat it" (Prov., xxx. 17).

(c) Finally, there is a special enormity in derision of saintly persons, for virtue deserves honor, and those who dishonor it deter men, as far as in them lies, from cultivating or esteeming it.

2111. Cursing.—Cursing in general is the speaking of evil for some person or thing, that is, in order that the evil spoken may befall him or it. Thus, it differs from contumely and derision, which are the speaking of evil to another, and from defamation and whispering, which are the speaking of evil against another. Cursing is also different from prediction of evil, and some passages in the Imprecatory Psalms, though couched in terms of malediction, are prophecies of the future, rather than curses. An example is Psalm cviii, which foretells the fate of the traitor Judas. Cursing is expressed in two ways:

(a) imperatively, when one pronounces with authority that punishment is to be inflicted or evil visited upon some person or object. In this way God decrees eternal or temporal penalties against sinners, judges sentence criminals, and the Church anathematizes the contumacious;

(b) optatively, when one who has not the power or authority to command punishment, expresses the wish that misfortune or evil of some kind may overtake a person or thing. Examples

are: "Bad luck to you," "May you break your leg," "The devil take you," "God damn you." A curse made in the form of a prayer is called an imprecation.

2112. When Cursing Is Not Sinful.—Cursing a person is not sinful when the evil which is ordered or wished is not intended as to the evil that is in it, but as to some good; for so the intention is directed to good, not to evil.

(a) Thus, evil may be ordered on account of the good of justice that is in it, as when a judge decrees capital punishment, which in its physical being is an evil, but morally is the vindication of justice and therefore a good. Some of the curses made by holy men in the Bible are of this character: they proclaim the just sentence of God, as when Elias called down fire from heaven upon his persecutors (IV Kings, i), and Eliseus cursed the boys that mocked him (IV Kings, ii. 24); or they express the submission of the human will to the just decree of God: "And the Levites shall pronounce with a loud voice, 'Cursed be he that abideth not in the words of this law,' and all the people shall say, 'Amen'" (Deut., xxvii. 14, 26).

(b) Evil may be desired, if the intention takes in only the good of public or of private utility that is contained in it, as when one hopes a jury will find a dangerous criminal guilty, if one has in view, not the sufferings or death of the criminal, but the safety of the community. It is right, therefore, to wish confusion and defeat to the enemies of religion, of the Church, or of one's country; it is lawful to pray God to visit a sinner with sickness that he may thereby be reformed or prevented from harming others. But in wishing evils one must remember that it is not always lawful to do what one wishes may happen in some lawful manner, nor is it lawful to wish a greater evil as a means of escape from a lesser evil (see **1308 sqq.**).

2113. Sinfulness of Cursing.—Cursing a person is sinful when the evil ordered or wished is intended precisely as it is the hurt or loss of this person.

(a) From its nature this sin is mortal, since it shuts out the curser from heaven ("Neither cursers nor extortioners shall possess the kingdom of God," I Cor., vi. 10), and it is essen-

tially opposed to charity, being the natural expression of hatred (see **1296**). But, other things being equal, optative cursing is less serious than defamation, for it is less harm to another to wish him evil (*e.g.*, that he be defamed) than to inflict that evil on him.

(b) From the imperfection of the act or the lightness of the matter, cursing becomes at times a venial sin. The act is imperfectly deliberate when one curses in a sudden fit of temper; it is imperfectly intentional, when one curses in fun or from habit and does not really wish that the evils pronounced should be fulfilled. The curses, "Go to hell," "God damn you," are usually not meant or understood to express a wish that the person addressed be consigned to eternal punishment. Hence, they are generally in themselves venial sins only. But it should be remembered that venial curses of this kind may become mortal by reason of scandal (*e.g.*, when parents habitually address such curses to their children, or other superiors to their subordinates), or by reason of irreverence (*e.g.*, when children curse their parents). The matter of a curse is light when the evil spoken is harmful only in a small degree (*e.g.*, to wish that a person may lose a small sum of money).

2114. Rules for Deciding as to Gravity of the Sin.—Persons who have expressed a grave curse against a neighbor are sometimes in doubt whether there was enough ill-will in the curse to make it a mortal sin. For such doubts theologians give the following rules:

(a) if the reason for doubting is that after the curse one cooled off and hoped that no evil would happen to one's neighbor, mortal sin was committed during the curse, but the bad disposition quickly passed away;

(b) if the reason for doubting is that one is not sure about the state of mind one was in during the curse, a good index of that state of mind will be the feeling one has towards the person who was cursed. Thus, if one is well disposed towards that person, the presumption is that the curse was not meant except as an expression of anger; but if one is hostile to that person, the presumption is rather that the evil in the curse was really

intended. If one is indifferent as regards the person whom one cursed, the presumption will follow what one is accustomed to desire in one's curses, whether that be to give forceful expression to displeasure or to manifest a malevolent hatred.

2115. Circumstances Which Change the Moral Species of Cursing.—There are certain circumstances of person and objects which change the moral species of cursing, and which must therefore be mentioned in confession.

(a) Thus, by reason of difference in the persons cursed the species is changed, for where special love or reverence is owed a special sin is committed by hatred or irreverence. The gravest curse is that against God, which is the sin of blasphemy (see **887 sqq.**). Next in wickedness is the curse against one's parents, which is a sin of impiety.

(b) By reason of difference in the evils that are desired, the species is also changed, since the essential malices of the will and of the deed are the same (see **90, 242**). In this respect cursing differs from contumely and detraction, for in these sins the evils spoken are not pleasing, but rather displeasing to the speaker (see **2103**). Hence, he who wishes death to his neighbor commits murder in his heart, he who wishes loss of property is a thief at heart, etc. But if one curses a neighbor in a general way, without mentioning any particular evil, one sins by hatred.

2116. Numerical Multiplication in Sins of Cursing.—(a) By reason of the specific difference in the evils wished (*e.g.*, death, disgrace, poverty), one is guilty of several sins by one and the same act; for, though the act is physically one, it is morally many, as was said in the previous paragraph. But some authors add that only one sin is committed if all the evils wished are united in the mind as expressions of the one sin of hate or as means of the one purpose of injury (see **217**).

(b) By reason of the different persons cursed, one is also guilty of several sins by one and the same act, or at least is guilty of one sin that is equivalent to many; for he who curses a whole family or group, formally and expressly intends evil to each member, and thus he differs from a thief who steals from

many persons, but does not will individual injuries (see 218).

2117. The Cursing of Evil.—(a) It is not sinful to curse evil as such, that is, to wish that sin or wrong may be defeated. Hence, it is lawful to pray against the evil spirits, the enemies of God and man. But it is sinful to curse any creature of God, even though he is among the lost, for the nature of every creature is good, since it comes from God.

(b) It is not sinful to curse evil tropologically, that is, to curse a creature of God that is taken to represent evil, as being its cause (*e.g.*, Job cursed the day of his birth, the beginning of many evils), or location (*e.g.*, David cursed Mount Gelboe, the spot where Saul and Jonathan were slain), etc. But it would be a sin to curse these creatures of God in themselves.

2118. It is not sinful to curse an irrational creature on account of its relation to man, if there is a sufficient reason to curse man himself (see **2112**), either on account of the good of justice (*e.g.*, when God cursed the earth as a punishment on Adam, when Christ cursed the fig-tree as a sign of the curse on Judea), or on account of the good of utility (*e.g.*, when one wishes that the liquor ordered by a drunkard may be lost).

2119. Unlawful Cursing of an Irrational Creature.—(a) It is unlawful to curse an irrational creature, considered precisely as a creature of God, for in so doing one reflects on God Himself, and incurs the guilt of blasphemy.

(b) It is unlawful to curse an irrational creature, considered precisely in relation to man, if there is no just cause to curse man. Thus, if one wishes that a neighbor's cattle may die, intending only the harm that will be done the neighbor, one is guilty of sinful cursing (see **2113**).

(c) It is unlawful to curse an irrational creature, considered precisely in itself, for such an act is vain and useless. Those who curse the inclemency of the weather, the infertility of the soil, the stubbornness of mules or other animals, the uselessness of a tool, etc., do not generally speaking commit a grave sin, since they intend only to voice their impatience with conditions that are displeasing.

2120. Murmuring.—Murmuring is the expression of unjust discontent or complaint by inarticulate sounds or by secret words.

(a) It is *unjust*, and so it does not differ essentially from the sins of speech given above. If it is an injustice to honor, it is reducible to contumely; if it is an injury to fame, it pertains to defamation, etc. The injustice of murmuring results either from the thing complained of (*e.g.*, a child murmurs against the just orders of its parents), or from the manner of the complaint (*e.g.*, a subordinate complains against an unjust order, but angrily, contemptuously, or uselessly).

(b) It is made by inarticulate sounds (*e.g.*, by whistling, grunting), or by secret words (*e.g.*, in whispered, inaudible manner). This is an accidental difference between murmuring and other vocal sins.

2121. Fraud.—Having discussed the various kinds of injustice that are committed in involuntary commutations, we now pass on to the study of those injustices that are done in voluntary transactions (see **1748**). These vices can be reduced to the following:

(a) injustices perpetrated against a person who is entirely unwilling (*viz.*, theft and robbery), as when one steals an object that had been entrusted to one as a pledge or loan, or compels another, by fear or violence, to sign a contract unfavorable to himself and which he does not wish to agree to. It is unnecessary to speak of theft and robbery in contracts, since the same principles apply to them as to theft and robbery outside of contracts (see **1890 sqq.**);

(b) injustices perpetrated against a person who is partly willing, since he consents to a contract, but is also partly unwilling, since unfairness or fraud is used against him. These injuries are of two general kinds: *fraud*, a sin committed in buying and selling and other contracts in which payment is made for some valuable consideration; *usury*, a sin committed in the loan of money in which payment is made for something that is nonexistent.

2122. Definition of Fraud.—By fraud (see **1677–1679**) we here understand any unlawful conduct on the part of one party

to a contract that puts the other party under a disadvantage in agreeing to the contract (*e.g.*, misrepresentations about the excellence of merchandise), or that takes away the equality that should exist between the parties (*e.g.*, an excessive price charged for merchandise; see 1750). The contract of sale is the type of all onerous contracts (see 1749), and to it all the others, whether certain or aleatory, can be reduced, for in every one of them there is a thing that is purchased (*e.g.*, in aleatory contracts the hope of securing some prize), and a price that is paid for the object of purchase. Hence, it will suffice to speak of the frauds that are committed in sales, and the same principles that govern these can be applied to other kinds of contract.

2123. Two Kinds of Injustices in Sales.—Equality between the buyer and the seller requires that each give the other a good equivalent for what he receives. Hence, the injustices committed in sales are reducible to two kinds: (a) injustices in the prices charged or paid; (b) injustices as to the goods furnished or taken.

2124. Injustice Regarding the Price.—Sin is committed in reference to the price charged as follows:

(a) by fraud, when one of the parties uses deception against the other party in order to charge more or pay less than is fair; for one who is party to a contract has the right that no lying or trickery be used against him, a contract being an agreement to which knowledge and consent are requisite;

(b) by overcharge or underpayment; for sale has for its purpose the mutual advantage of the buyer and seller, and hence one of them should not be overburdened for the advantage of the other, but the burdens and benefits should be equally distributed. Hence, it is unjust to sell an object for more than it is worth, or to buy it for less than it is worth.

2125. The Criteria of a Just Price.—(a) The constitutive norm of a just price is not merely subjective, that is, the fairness does not depend on the arbitrary wishes or on the special needs of the contractants, or on some monopoly which controls the prices; it is objective, that is, founded on the value of the thing sold, its capacity to be of benefit and satisfaction to its possessor, its rarity, the amount of labor put into its production and care, etc.

(b) The manifestative norm for commodities that are in common use (such as the necessities of life and the more usual luxuries) is the common judgment expressed either in law (legal price) or in the free custom of buyers and sellers at a particular place and time (market price); for objects that are not in common use and that have no settled price (*e.g.*, rare archeological finds, ancient documents or paintings) the norm is the prudent and free judgment of the parties, or the decision of an expert chosen by them.

2126. The Obligation of Observing Prices Settled by Law or Custom.—(a) The legal price (*e.g.*, in some countries the prices on government monopolies, such as tobacco and salt), which in modern times is rare, is ordinarily obligatory in virtue of commutative justice, since its disregard harms one of the parties to the sale. But in exceptional cases the price may for reasons of equity be no longer obligatory (*e.g.*, when the lawgiver does not insist on its observance).

(b) The market price is ordinarily of like obligation, and for the same reason. But it should be noted that the current price allows of some latitude, since the common estimate does not agree on exactly the same figure, and hence there is a highest, a lowest, and an average price. Injustice is done when one sells above the highest market price, that is, when one charges a sum notably in excess of that charged by others at the same place and time; or when one buys below the lowest market price, that is, when one pays a sum notably less than that paid by other buyers. St. Alphonsus gives as a rule that when a commodity is valued at 5, it may be sold for 6 or bought for 4; when valued at 10, it may be transferred or acquired for 12 or 8; when valued at 100, it may be exchanged for 105 or 95.

2127. When the Market Price May Be Disregarded Without Injustice.—In some exceptional cases one may disregard the market price without injustice, if there are reasons that justify this.

(a) Reasons that rest on the matter of the contract are that

the thing on sale has increased or decreased in value (*e.g.*, the merchandise is of extraordinary excellence or rarity), or that the contractant would lose or risk loss from the sale itself by keeping to the market price (*e.g.*, the buyer would by his purchase deprive himself of money that could be used more profitably in another transaction; the article if sold would have to be replaced by the seller at a higher price; the vendor by waiting can make a better sale later; the object which a person wishes to purchase is especially prized by the owner and cannot be duplicated). In these cases, however, the vendor should give notice to the buyer that for special reasons a higher price is being asked, so that the latter may have the choice of going elsewhere, if he prefers.

(b) Reasons that rest on the manner of the contract are that certain exceptional forms of sales are justified by law or custom and do not violate basic justice. Auction sales are of this kind, and, if the conditions of aleatory contracts are observed so that the risk will be equal on both sides, it is not unfair to take a price above the highest current price or to bid and buy below the minimum price.

2128. If the reason for the increase is the accommodation of the sale itself to the purchaser, because he specially prizes the article, does it justify an increase above the market price?

(a) If the article has become of greater value to many because of its own worth, the market value has also risen, and one may raise one's price; but if its greater value to many is due only to public distress, as in time of war, it would be a cruel form of injustice known as profiteering to raise the price exorbitantly.

(b) If the article has become of greater value to one person only, the seller may not raise his price for that reason, since the special worth the article has is not inherent in it, and hence it may not be sold by the owner as if it were his own possession. If, however, the purchaser wished to add something as a free gift, there would be no objection to his doing so. The same principles apply to the purchase of an article at less than its value, for the sole reason that ready money has special value for the seller.

2129. Unjust Sales Based on Ignorance of Real Value.—There are also cases in which an object is purchased at an unjust price because its true value was unknown to the contractants or was hidden.

(a) If the value was unknown on account of substantial error (*e.g.*, a woman buys paste ornaments, thinking they are genuine diamonds), the contract is invalid; if it was unknown on account of the individual error of a contractant (*e.g.*, a woman buys a diamond of great value for a few dollars, because the seller did not know the value of the jewel), the contract is unjust; if it was unknown on account of public error reflected in the current price (*e.g.*, an art dealer buys at a low price a masterly painting, because his superior judgment enables him to recognize in it qualities which others did not perceive), the contract is both valid and just. It is also lawful to buy at the present prices when one knows from sources that one can honorably use that the objects purchased will soon rise greatly in value, for one is not bound to share with others one's personal knowledge.

(b) If the hidden value is no man's property or is abandoned (*e.g.*, a man buys a field in which he, but not the owner, knows that a treasure is concealed, or he buys a goose and finds gold pieces in its stomach and cannot discover how they got there), the buyer is entitled to acquisition; but if it has an owner who can be discovered (*e.g.*, a man buys a coat in a second-hand store and discovers a large quantity of money in bills sewed inside the lining, and is able to trace back the coat to its former wearer, if he tries), the buyer is bound to restitution.

2130. Obligation of Restitution on Account of Unjust Prices.—(a) *Unjust Possession.*—If there was bad faith without fraud, the seller should restore the difference between what he received and the highest current price, the buyer the difference between what he paid and the lowest current price. Overcharges or underpayments in conventional prices should be compensated for according to a reasonable standard, such as the decision of the experts.

(b) *Unjust Damage.*—If there was bad faith and fraud with

resultant damages to one of the parties, the losses should be made good, even though the just price itself was not violated by excess or defect (see **1762**).

(c) *Nullity.*—If there was good faith on both sides, there is no obligation of restoration, unless we suppose substantial error, lack of proper consent, conditional agreement, etc., which make the sale null or rescindable (see **1725**).

2131. Injustice Regarding the Thing Sold.—Having spoken of the injustices committed in reference to the price, we shall now treat of the injustices committed in reference to the thing sold. The contract supposes that the thing sold be of a certain character, and hence injustice is done if one of the parties wilfully misleads the other about that character.

(a) Thus, the species of the thing sold enters into the contract, and so it is unjust to deceive another person about the nature of the thing that is being sold (*e.g.*, if the seller gives inferior substitutes or adulterated goods to those who desire the genuine and pure article, or if the buyer deceives an inexperienced merchant into thinking that the high-grade clothing material he has for sale is low grade).

(b) The quantity of the thing sold is also a part of the contract, and it is unjust to take advantage by giving less or taking more than is agreed on: "Thou shalt not have divers weights in thy bag, a greater and a less, neither shall there be in thy house a greater bushel and a less" (Deut., xxv. 13, 14).

(c) The quality of the thing sold belongs to the contract, and hence there is fraud if one of the parties deceives the other about it (*e.g.*, if the horse sold is sickly or slow, when he is supposed to be healthy and speedy).

2132. Defects in the Thing Sold.—If there are defects in an article sold, but a fair reduction in the price is made on account of the imperfection of the article, there is no injustice in the price. But the seller is unjust, nevertheless, if he conceals the defects in spite of a contrary condition in the contract, for he injures the buyer by leading him into an agreement against his will.

(a) There is an indicated condition when the buyer inquires

whether there are defects in the article, having the intention to take nothing that has any considerable defect. In such a case if the seller conceals even an accidental defect (*i.e.*, one that makes the article less suitable for the buyer), the contract is null on account of lack of consent, or at least, as others think, it is rescindable on account of the fraud practised. But if a defect is inconsiderable, the contract, unless it is expressly stipulated to the contrary, is good and lawful, for there is hardly anything that has not some small defects.

(b) There is an implied condition when the buyer makes no inquiry, but there is a substantial defect (*i.e.*, one that makes the article dangerous or unsuitable for the purchaser), and this defect is hidden, either because it is of a kind that would escape most persons, or because the purchaser is inexperienced or unable to perceive it for himself. Since every person who buys intends to get something useful, there is no consent and the contract is invalid, if one is given something harmful (*e.g.*, corrupted or poisonous food instead of good food), or something entirely useless to him either for service or for sale (*e.g.*, a lame horse instead of a sound horse for one who deals in race-horses).

2133. Circumstances in Which Defects Need Not Be Revealed.—Fairness of price being supposed, the seller is not unjust in not calling attention to defects in the thing he sells, if the buyer does not ask about defects and there is no implied condition that the seller should volunteer the information. This happens as follows:

(a) if the defect is hidden, but only accidental, there is no condition that the seller shall point out the defect, for the understanding is only that the buyer shall receive something serviceable at a fair return for his money. Nevertheless, most merchants wish to please the public and will take back or exchange an article that is not satisfactory;

(b) if the defect is open, but accidental, there is no condition that the seller shall instruct the buyer about things that the latter can and should observe for himself; for it is supposed that the buyer will exercise ordinary care and prudence in making purchases, nor is the seller paid for supplying this, nor

for assisting the buyer to make good bargains. Thus, if a man were to buy a one-eyed horse, because he had not examined the horse, he should blame his own negligence, not the silence of the seller, for his bad bargain.

2134. Definition of Trading.—Trading (*negotiatio*) in the strict sense is the purchase of an object with the intention of selling it unchanged at a profit. If any one of the conditions mentioned in this definition are lacking, there is trading in a wide sense. (a) Thus, trading includes *purchase,* and hence he who sells the produce of his own farm or vineyard is not strictly a trader; (b) there must be an *intention of reselling* the thing bought, and hence there is trading only in a wide sense if one buys an article for one's own use but, finding it unsuitable to that use, sells it to another person; (c) the object must be sold *unchanged,* that is, in the same form in which it was received, otherwise there is not strict negotiation, as when one buys colors and canvas and makes them into a picture; (d) the object must be sold at *a higher price* than was paid for it, and hence it is not trading in the strict sense to let a customer have an article for just what it has cost oneself.

2135. The Morality of Trading in the Strict Sense.—(a) In itself, trading has the appearance of evil, inasmuch as money-making may be an encouragement to avarice. But in reality profit as an end is morally indifferent, neither good nor bad, and all will depend on the ultimate reason for which one engages in business. He who makes the whole purpose of his existence the acquisition of gain is a materialist, but he who has some higher end, such as public benefit or private maintenance, is virtuous in his aims. (b) For clerics, trading is forbidden by Canon Law (Canon 142), and the reason is that clerics should be free from the distractions and dangers of commerce, so as to devote themselves entirely to their own spiritual duties (II Tim., ii. 4).

2136. Usury.—The sin of usury is committed in two ways. (a) Usury in the strict sense is the taking of interest by reason of intrinsic title (*i.e.,* on account of the use) for money or other fungible loaned on condition that it be restored in kind (*mutuum*). This is unjust since it exacts payment for that which is non-existent, that is, for use, as a distinct value, of a fungible

whose only value is in its use (see Aristotle, *Politics,* Bk. I, Ch. 10, 1258b 2-8; St. Thomas, *Summa Theologica II-II,* q.78, a.1). This was the opinion of most medieval theologians based on the fact that money was solely a medium of exchange. Interest was permitted, however, on the grounds of extrinsic titles, *e.g.,* compensation for the expense of a transaction (*damnum emergens*), the loss of opportunity to make good bargains (*lucrum cessans*),

(b) Usury in the wide sense, which is all too common, is the taking of interest for a fungible loaned at *mutuum,* where there is an extrinsic title (*e.g.,* the loss or inconvenience suffered by the lender) for the interest, but the rate charged is unjust, exceeding that fixed by law or that which is fair and reasonable (see Canon 1543). This is unjust when the lender takes more than his loan is worth; it is uncharitable when the lender does not demand more than the worth of his loan, but does exact what is due in a heartless manner. Examples of usury in the wide sense are the acts of loan sharks who take advantage of the distress of the poor to make them pay enormous interest for small loans, or who hold the debtor to the strict letter of the argeement at a great loss to him.

In recent years a new concept of usury in the wide sense has emerged. It is based upon the fact that in modern times the function of money has changed. In ancient times it was solely a medium or measure of exchange that could not be turned easily into capital. With the emergence of the capitalistic system, opportunities for investment increased, and money assumed the role of a factor of production. Money assumed a new value and function: it became virtually productive, and so today money does fructify. To place money, then, at the disposal of another to be employed in profitable ventures constitutes an economic service and, as such, is worth its price as any other service. This price of money constitutes modern interest, which seems to differ radically from the old contract of interest and to be more one of hire or lease. So viewed, interest, or the price of money, is determined in the same way as the price of any other service; the unjust price, or usury, is an excessive price. This is the modern concept of usury.

2137. Principles Obligatory in All Forms of Contract.—The principles of equality and honesty that are morally obligatory in sales and loans at interest are also obligatory in other forms of contract. The following are examples of equality.

(a) *Gratuitous Contracts.*—Obviously these contracts do not require equality in respect to recompense, since their nature is that no recompense is given for what is received. But in other ways equality must be observed. Thus, there must be mutual consent, offer on one side and acceptance on the other; there must be mutual respect, for each must honor the gratuitous promises made to the other; there must be a return of the same thing in quality and quantity as was borrowed, unless this would mean (as in *mutuum*) a loss to the borrower, etc. Moreover, the fact that all the advantage is received by one party is balanced by the fact that this party must bear the ordinary expenses and is held to special care himself, but cannot exact special care in the other party. Thus, a borrower has all the advantage from a loan, and he is obliged to use extreme care in using the lender's property, while a depositor has all the advantage from the contract of deposit and cannot demand more than ordinary diligence of the depositary in guarding the goods left with him.

(b) *Aleatory Contracts.*—Aleatory contracts, or *contracts of chance,* are concerned with some uncertain event whose outcome depends upon luck or skill or a combination of both. The chief forms are betting, lottery and gaming (all are considered as *gambling*), to which must be added *insurance* and *market speculations.* All of these are indifferent in themselves and obtain their morality from circumstances. However, gambling, besides conforming to the requirements of contracts in general, must observe some special conditions to guarantee its lawfulness:

1) The outcome should be objectively uncertain and not a "sure thing" to be truly a contract of chance. While the contractants may be subjectively certain of winning, neither may so manipulate the matter as to exclude the other's chance of winning. Should one insist upon betting against another's assurance of a certain outcome, he is making a gift, hardly a bet.

2) Each must stake what belongs to himself and is not needed for satisfying other obligations, *e.g.,* supporting one's family, paying creditors, etc. Failure to observe this condition leads to many sins of theft or negligence. Should a person gamble with money belonging to another, *per se* he has a right to the winnings under the title of industrial fruits. However, if it would be impossible for him to restore in the event of a loss, the wager is void and the winnings must be restored to the other player, since the amount bet could not be lawfully won by the other contestant.

3) A reasonable proportion should be observed between what is bet and the probable winnings, and all betting should offer a fair chance of winning. Equality is not necessary, but odds and handicaps should be offered by the favored side. However, the odds may be waived by other bettors.

4) Honesty must prevail to exclude fixing the outcome or an unlawful style of play. The conventions of each bet or game establish the norms of cheating. Thus, hidden cards, marked cards, false dice void a bet. But running a horse solely to "tighten him" or "round him into shape" without full effort to win is expected in horse racing. Winnings through cheating must be refunded.

5) The loser must pay. Since civil law forbids many forms of organized gambling, the question arises whether a wager that has been outlawed constitutes matter for a valid contract that must be fulfilled. If the law is purely penal, the contract is valid and the obligations ensue; if it is a law that binds morally, then the contract is invalid, and the loser probably need not pay, but has acted sinfully in gambling.

Although not sinful in itself, gambling is so open to serious abuse that it has been strictly regulated by civil laws which bind in conscience.

Insurance is reduced to the category of contracts of chance, although its purpose is different from gambling, for it is concerned not with an uncertain good, *i.e.,* to make money quickly, but with an uncertain evil, *i.e.,* to avoid loss. In many instances an individual who does not take out insurance gambles more than one who does.

Conditions Requisite for Validity. The special conditions requisite for the validity of an insurance contract are founded upon its aleatory nature. This involves especially that the matter of the contract is in some way outside the control of both insured and insurer and beyond their power, both legal and moral, to govern beforehand. From this follows the second essential condition, that there be some risk for both parties. Some moralists today maintain that many insurance contracts are unjust to the insured by reason of defect of proportionate risk on the part of the insurer. They argue that the insurer avoids all risks and makes increasing profits annually whenever insurance is on such a large scale that the use of statistical tables favors the insurer. The fact that insurance companies are listed among the most wealthy corporations lends credence to the argument and explains why some moralists favor the insured in cases of restitution not involving fraud on the part of the beneficiary. Other moralists insist that such injustice can not be proved, that high profits are owing to increased efficiency and better service, that premiums are adjusted when it becomes apparent that they are out of proportion to the risks involved by the insurers.

On the part of the insurer is required the ability to pay indemnities occurring at the normal rate, but not to cover all at once. His right to the premiums is correlative to the obligation to pay the stipulated indemnities, while his liabilities are based upon probable losses occurring successively. In regard to the insured, his basic obligation is to make an honest and complete disclosure of the risk involved. Moral cases, for the most part, are concerned with error, innocent misrepresentation, and fraud on the part of the insured. Both the natural and civil law indicate the effect of these elements on an insurance contract.

The natural law invalidates a contract in which consent of one or both parties arises from substantial error concerning the nature or the matter of the contract—in insurance, the risk involved. In general, then, whenever the error of the insured is such that he would not have contracted had he known the facts, the contract is invalid, even if the error was due to innocent non-

disclosure or misrepresentation on the part of the insured. In such cases, the innocent insured has no right to the indemnity owing to the invalidity of the contract; he has, however, a natural right to all premiums paid out, since no contract is involved and the insurer has no claim to them. In case of fraud, at least after judicial decision, the insured would have no right to the premiums and must also recompense the insurer for expenses sustained.

Error is considered accidental and as not invalidating in natural law when the insurer, knowing the facts, would have issued a policy, but at a higher premium. In this case the beneficiary may accept the indemnity, but must return the difference in the amount owed in premiums.

A special case of substantial error involving a disease unknown to the insured and undiscovered or undiscoverable by the insurance company doctors is considered by moralists as not invalidating a contract in natural law. It is argued that the insurer must assume such risks and that the insured intends to cover such unknown conditions. Moreover, an invalidating clause concerning such a contingency may be considered penal in nature and obligatory only after the sentence of a judge.

Insurance contracts and the civil laws governing them are so complicated that expert legal knowledge is required to understand the legal status of many insurance cases. However, a few dispositions of the civil law which differ from the tenets of the natural law should be kept in mind by the priest or confessor in dealing with the matters. Two favor the insurance companies over the insured:

1) when fraud or misrepresentation lead to *accidental* error, the contract is declared void or voidable;

2) innocent non-disclosure or misrepresentation in good faith leading to accidental error also render the insurance contract voidable or perhaps even void. It is probable that the beneficiary in such cases might be permitted to claim the benefits due him according to the naturally valid contract, since these civil law dispositions are contrary to the conclusions of the natural law. He

would be obliged, however, to restitution for damages caused by his fraud or misrepresentation committed with grave theological fault.

One prescription recognized by civil law and in some places made mandatory favors the insured, the convalidating or incontestability clause. The insurance company recognizes the validity of the policy after a specified period of time has elapsed, even in cases involving fraud on the part of the insured. If the contract prior to the time was voidable, the company loses its right to contest its validity; if the contract was void, it becomes convalidated. By terms of this clause, the natural-law obligation to restore by reason of fraud ceases and the beneficiary may lawfully keep the insurance money.

Obligations Arising after the Policy Is Issued. 1) The insured must pay the premiums at the times and according to the terms stated in the policy.

2) The insured must not increase the risk assumed by the company. Concretely, in cases of property insured, the insured is bound in commutative justice not to deliberately destroy or damage the property covered by the policy under penalty of losing all rights to compensation. Compensation could be claimed, however, if the damaging or destructive action was only *theologically right.*

3) He must not claim or accept indemnity for articles not damaged; he must not submit a claim beyond a just estimate of the real damage. Some moralists maintain that a claim may be made for a higher amount with the intention of getting a just value after the insurance adjustor has made his investigation and lowered the estimated value. The adjustor's estimate, even if higher than the insured estimate, may be accepted provided no means have been taken to prevent a full and free examination of damage.

Operations on the stock market and similar markets are primarily contracts of buying and selling; they become contracts of chance when they assume the quality of speculation, *i.e.*, gambling on future changes of prices. It is generally conceded that such contracts are not morally wrong in themselves and follow

the laws of betting. Additional justification is added on the ground that such transactions in many instances supply the capital required for large-scale operations, future deliveries, etc. Occasional dissenting voices insist that certain aspects of such transactions, *e.g.*, dealing in future values of wheat, rye, and other commodities, are immoral since they tend to determine prices independent of the real value of the products, the laws of supply and demand, etc. However, the arguments seem to involve more abuses controllable, if not actually controlled, by marketing laws and civil laws rather than any immorality in the operations themselves.

(c) *Onerous Contracts.*—These contracts require that there be equality between the recompense and the thing received. Thus, in a lease the lessor must not charge excessive rent, and the lessee must pay the rent faithfully; in a contract of labor, the employer must pay a fair wage (that is, one that at the minimum will meet the primary needs of the worker and his family to live in frugal comfort, and which will moreover equal the special value of the service given; for a complete treatment of the theology of the just wage, see Fr. Jeremiah Newman, "The Just Wage," *Theology Digest,* Vol. 2, Spring 1957, pp. 120-126, and "A Note on the Living Wage," by Edward Duff, S.J., in the same issue), and the laborer on his part must give a fair day's work as to quantity and quality; in partnership, the members must divide the profits and loss according to a reasonable distribution; in guaranty, pledge, and mortgage, justice requires that the burden assumed be not out of proportion to the benefit that is received.

2138. Fraudulent Contracts.—Examples of fraud in contracts are the following:

(a) in gratuitous contracts, a donee who by false representations obtains a gift, a lender who fails to make known to the borrower defects or dangers in the thing loaned;

(b) in onerous contracts, a landlord who conceals defects from one who is renting a house, members of a business concern who keep back information from partners or who give out false statements in order to entice investors, creditors who conceal

their knowledge about the unreliability of a man for whom surety is given them;

(c) in aleatory contracts, in a pure wager, a person who bets on a thing supposed to be uncertain but about which he has certain information, or who knows that he will be unable to pay should be lose, or who will allow no odds though he knows that the probabilities are in his favor; in gaming, a player who pretends to be ignorant in order to inveigle another person into a game of skill, or who does not observe the rules of the game, or who fixes the cards or dice for himself in a game of chance; in lottery, a drawer who manipulates the lots so as to favor some of the players, etc.

Art. 5: THE QUASI-INTEGRAL AND POTENTIAL PARTS OF JUSTICE; THE VIRTUE OF RELIGION AND THE OPPOSITE VICES

(*Summa Theologica,* II-II, qq. 79-100.)

2139. The Quasi-Integral Parts of Justice.—The integral parts of a virtue are certain functions necessary for the perfect use of the virtue; for example, memory, perception, docility and quickness are needed for the fullest exercise of prudence (see **1648 sqq.**). These parts are called here "quasi-integral," so as not to be confused with the properly integral parts, or divisions of quantity, in a material composite. In its first use "integral part" is spoken of bodily things; in its derived use of incorporeal things (such as virtues). The two previous articles treated the subjective parts of justice; the present article will begin with a consideration of the integral parts and the opposite sins.

2140. The integral parts of justice are expressed in the words of Psalm xxxiii. 15—"Turn away from evil, and do good"—for the perfectly just man will both establish the equality of justice by giving others their dues, and will preserve that equality by refraining from injuries.

(a) Thus, these integral parts are acts of virtue, and hence the avoidance of evil here is not a purely negative attitude; it includes a positive repudiation by the will of all wish to harm

others, and it is exercised especially when one is attacked and yet refuses to resort to injustice.

(b) These integral parts of justice are also distinct, one from the other. The other moral virtues regulate the passions by bringing them to the moderation that lies midway between two evil extremes, and hence in respect to those virtues to turn away from evil is the same thing as to do good. But justice regulates human operations and external things both by reducing them to due equality and also by avoiding that which upsets the equality, and thus in the matter of justice it is one thing to do good, another thing to avoid evil.

(c) These integral parts of justice are also special, that is, they are distinct from other virtues. For, while every virtue turns away from evil and does good, the two acts we are now considering do these things with the express purpose of fulfilling justice. Thus, he who observes the commands and prohibitions of the law in order to render to God and the common good their dues, is perfect in general or legal justice; he who gives to other individuals what is owed them and also avoids doing them injury, is perfect in particular justice. To the two integral parts of justice are opposed the two sins of transgression and omission (see **35–39**).

2141. The Potential Parts of Justice.—The potential parts of justice, that is, its annexed virtues, are those good habits that are subsidiary to justice, partaking in some degree, but not entirely, of its nature or activity. We saw above (**1664 sqq.**) that wise deliberation and wise decision belong to prudence, inasmuch as they are concerned with the government of conduct by reason, but that they fall short of its principal act, which is wise direction, and hence they are counted as potential parts. In like manner, there are a number of virtues which must be assigned to justice, since they regulate man's will towards others, but which must be considered as its potential parts, because they do not share in one or the other of the two remaining essential notes of strict justice, namely, that a return is given which is equal to a debt, and that the debt is owed or account of a strict or legal right (see **1692**).

2142. In the following enumeration are given the chief potential parts of justice in which there is a strict debt, but not an equal repayment.

(a) Thus, to God man owes whatever honor and veneration he manifests, but with all his efforts man can never pay to God a worship that is equal to the debt. Thus, man cannot sufficiently thank God for His benefits: "What return can I make to the Lord for all that He has done for me?" (Psalm cxv. 12). The virtue of religion, therefore, is a potential part of justice.

(b) To parents children cannot make a full return for the benefits of life and upbringing, and the same may be said of one's country: "A due return is out of the question in honors paid to the gods and to parents . . . but a person is considered to be virtuous if he pays such regard as lies within his power" (Aristotle, *Ethics,* lib. VIII, cap. 16). Hence, the virtue of piety is also a potential part of justice. In exceptional cases, however, a child may make an equal or even a greater return to his parents for the benefits received from them; for example, by saving his father from death he makes an equal return for the benefit of life, and by converting his parents to the faith he gives them spiritual life, which is more valuable than the natural life he received from them.

(c) To men of virtue we are unable to make a sufficient return for the good they do us by their instruction and example, and hence the honor we show them is less than the benefit we receive from them. The virtue of reverence (*observantia*) is then a potential part of justice.

2143. Degrees of Moral Debt.—The remaining potential parts of justice are those in which there is not a legal debt, which is enforced by some law, but a moral debt to which one is obliged from the decency or the greater decency of virtue. There are, then, two degrees of moral debt.

(a) A moral debt is more urgent, when without its fulfillment one cannot keep to the decency of virtue, that is, one cannot preserve the character of a virtuous man. Thus, if a moral debt is considered from the side of the debtor, he is obliged to show himself in words and deeds to others what he really is, has been, or intends to be (virtue of truthfulness); if the debt be viewed from the side of the creditor to whom some recompense is owed, there is the duty of gratitude to him for his benefits and of punishment for his injuries (virtues of gratitude and vindication). These parts of justice just mentioned are readily distinguishable from acts that pertain to general or particular justice and that are owed as legal debts. Thus, truthful testimony on the witness stand is a legal obligation, for the person who questions has a strict right to hear the truth; but veracity in social intercourse, or the habit of speaking the truth to others, is a moral obligation, one imposed by God but not enforced legally. Compensation for services bestowed according to contract is a legal duty, and the debtor can be compelled to pay; but thankfulness for gifts or other benefits is only a moral duty, and generally laws do not take account of ingratitude. Punishment of a delinquent by public authority is an act of commutative justice; but punishment meted out by a private person in self-defense, who appeals to the law or who forcibly but lawfully repels an injury, is an act of a virtue annexed to justice.

(b) A moral debt is less urgent, when without its fulfillment one can preserve virtue, but not the more becoming or more perfect course of virtue. The chief examples here are the virtues of friendship or affability and of liberality. To treat others in a friendly manner and to make oneself agreeable in company is suitable, not chiefly because of any benefits one has received from others, but because one is better for this oneself and by it the ways of life are made easier for all. Likewise liberality is not due, but it shows a better disposition as to money and other temporal goods to be willing to distribute them to others willingly and generously. Without friendship and liberality the peace and harmony of social intercourse may be maintained, but with them it is maintained more easily and receives an added grace and distinction.

2144. Epieikeia.—The above-mentioned potential parts of justice are adjuncts of particular justice. There remains one more virtue to be noted, that of epieikeia or equity, which pertains to legal justice. This is a subjective part of justice, since

it is the superior function of legal justice, guiding it to follow what is substantial right, and preserving it from the danger of mere legalism or over-strict interpretation or application of written law (see **358**). With this, the crowning virtue of justice, the enumeration of its parts is brought to a close.

2145. The Virtue of Religion.—We shall now proceed to treat of the various parts of justice in the order in which they were given above (**2142–2144**), beginning with the virtue that renders to God His due. Religion (holiness) is defined as "a moral virtue that disposes us to offer to God the worship and honor that belong to Him as the supreme Author of all things."

(a) Thus, religion is *a moral virtue,* for, though it tends towards God, it is not numbered among the theological virtues, but among the moral virtues, being one of the potential parts of justice.

(b) It is an *inclination,* that is, it is a habit of the soul or the exercise of that habit in some act. The acts of religion are either elicited by it or commanded by it, according as they are its own proper activities and proceed directly from it and are directed immediately to God (*e.g.,* acts of adoration, sacrifice, prayer), or belong to some other virtue employed by religion for the honor of God; for example, to visit the widows and orphans in their tribulation is an act of mercy, to keep oneself unspotted from this world is an act of temperance, but when used for the honor and glory of God these acts are also acts of religion (James, i. 27).

(c) It is paid to *God,* that is, being an act of justice, it renders to another what is His due. Religious honor given the saints or sacred images refers to God, for whose sake they are venerated.

(d) It is paid to God as the *Supreme Being,* that is, just as we are bound to tend to God and to serve Him, because He is our Last End, so are we bound to honor Him, because He is our Maker and Ruler.

(e) It offers to God the tribute of *worship,* that is, some internal or external work done in acknowledgment of God's Majesty and with the purpose of impressing the worshipper or others with the sense of His greatness, or it is the sense of that greatness.

2146. Religion as a Moral Virtue.—(a) Religion takes its rank among the moral, not among the theological, virtues. A theological virtue has the Last End for its immediate object or subject-matter (*e.g.,* faith is concerned directly with God, since it believes Him and in Him), and has no mean of virtue (*e.g.,* faith cannot go to extremes by believing God too much); whereas a moral virtue has the means to God for its immediate object (*e.g.,* justice is concerned directly with the actions we owe to others) and it must observe the golden mean (*e.g.,* justice must pay the just price, neither more nor less, and at the proper time, place, and to the proper person, etc.). Now, it is clear that religion has for its immediate object the due performance of worship, although God is the person for whose sake it is offered and His excellence the foundation of its necessity; and also that one must observe moderation in worship as to circumstances of place, time, etc., although it is impossible to be extreme in the quantity or fervor one gives to worship, since even the best efforts will fall short of the honor God deserves (Ecclus., xliii. 33).

(b) Religion is the greatest of the moral virtues, since the person in whose favor it is exercised is God Himself, and its obligation is correspondingly stricter than that of the other virtues. General and particular justice are owed to creatures, but the claim of a creature is much less than that of God. There is no contradiction in making religion a part of justice and then preferring it to justice, for it is more correct to speak of the integral and potential parts of virtues as quasi-parts, since they are called parts only from analogy to parts that are found in material or living things, though they are not similar to those parts in all respects (see **1647, 1648, 2139**). Neither does the fact that religion cannot pay in full make it inferior to justice, since in matters of virtue good will take precedence over the ability to pay. Since religion is the supreme moral virtue, irreligion is the chief offense against the moral virtues (*e.g.,* malicious blasphemy is worse than injustice or intemperance).

2147. Superiority of Religion as a Virtue.—Religion, therefore, is superior to the following virtues: (a) it is superior to legal justice, the chief of the moral virtues that deal with human and natural good; (b) it is superior to humility, the chief of the moral virtues moderative of the passions; (c) it is superior to mercy, the greatest of the virtues that relieve distress, for religion is offered to God, not for His utility, but for His external glory and our benefit; (d) it is greater than repentance, for it honors God, while repentance only disposes or prepares for satisfaction to His honor; (e) it is greater than large external offerings made to God without spirit, for "obedience is better than victims" (I Kings, xv. 22); that is, the internal acts of religion (reverence and devotion) are of more importance than external acts of worship conducted with great pomp or magnificence but without the inner reverence, the obedience or other dispositions pleasing to God.

2148. Necessity of the Acts of Religion.—(a) The internal acts (devotion and prayer) are chiefly necessary, for these are exercised by the soul, and it is through them that the external acts are made truthful: "God is a spirit and those who adore Him must adore in spirit and in truth" (John, iv. 24).

(b) The external acts (adoration, sacrifice, etc.) are also necessary to man. God does not need these acts (Psalm xlix. 13), it is true, for no creature can add to the glory God has from Himself. But man needs the elevation and perfection which he receives from communication with the Supreme Being, and, as he is not all spirit, he must employ symbols and ceremonies to arouse, hold and strengthen the affections of his soul. Hence, although the ceremonial law of the Old Testament was abolished by Christ (see **342**), the Christian religion recognizes the need of ceremonies, as is plain both from the Scriptures and the teaching and practice of the Church at all times. In the New Testament we read that Our Lord used vocal prayer, prayed on His knees, and made use of sacred hymns; and like external acts of religion are ascribed to Sts. Peter, Paul, and Stephen (Luke, xxii. 31; Matt., xxvi. 39; Acts, ii. 42, vii. 59, ix. 40). Public worship is also a necessity on account of the nature of the Church as a visible society.

2149. The Internal Acts of Religion.—These internal acts are offerings made to God of the worship of the soul itself, and they may be reduced chiefly to two: (a) devotion, which is the offering of the will and the highest act of religion, since from the will the other acts arise; (b) prayer, which is the offering of the intellect; for in prayer the thoughts of the mind rise to God as an oblation made to Him.

2150. Definition of Devotion.—Devotion is defined as "the will to give oneself readily to those things that pertain to the divine service." We find an example of it in Exod., xxxv. 21, where it is said that the multitude offered first fruits to the Lord with a most ready and devout mind. One who is devoted to another is strongly attached to that other's interests, and so one who is devout is zealous for the service of God.

(a) Thus, devotion is an act of the will, that is, an offering of oneself to the service of God, the Last End. But devotion will be found in other acts in so far as they are done under the will's impulse, such as prayer, adoration, sacrifice. The looks, gestures, and voice of those who pray or take part in services of divine worship are influenced by internal devotion, and so become fitting expressions of honor shown to God and an inspiration to beholders.

(b) Devotion contains a *ready willingness*, that is, the devout person is quick to choose the divine honor as a purpose, quick also to select and to employ suitable means for this purpose. The great model of this is Our Lord, who declared that His very food was to serve His Father (John, iv. 34).

(c) Devotion is exercised in things that pertain to *the divine service*, that is, to the worship or honor of God. Thus, he who offers himself to God intending the offering as an act of spiritual union or friendship exercises the virtue of charity, while he who forms the intention of doing good in order to glorify God exercises devotion. But devotion and charity are not separated, for charity inspires devotion and devotion nourishes charity.

2151. Devotion should not be confused with emotion, spiritual consolation, or pious exercises known as devotions.

(a) Thus, emotion or pleasure of a non-religious kind is not devotion, though sometimes mistaken for it when the emotion

or pleasure is of an elevating kind and occasioned by religious exercises. Neither esthetic joy (*e.g.*, over the music, the ceremonies, the architecture of the church), nor literary pleasure (*e.g.* over a sublime passage of Holy Writ or a charming liturgical composition), nor intellectual satisfaction (*e.g.*, over the refinement and culture imparted by religious truths), is necessarily joined with that strong attachment to God and inclination to do His will which is the soul of devotion.

(b) Spiritual consolations are sometimes called devotion, but they are not the same thing as the devotion we now speak of. Substantial devotion with which we are now concerned is in the will and consists in the strong inclination to praise and honor God, whereas accidental devotion is rather in the sensible appetite and consists in a feeling of sweetness or elevation in exercises of piety which sometimes reacts upon the body, as when a devout person weeps for joy at the thought of God. Substantial devotion is essential and should be maintained, even though there is no feeling of attraction or fervor. An example of this is furnished by Our Lord, who prayed earnestly during the agony in the garden and the desolation on the cross. Accidental devotion is not of itself evil, nor useless, and it may be desired and prayed for; but it is dangerous for those persons who are puffed up by it, or who become inordinately attached to it, or who are disposed to mistake it for substantial devotion, for, like the consoling vision of Thabor, it is passing and is not an end in itself.

(c) Devotions are various forms of external cult shown to God, Christ, the Blessed Virgin, the Saints, celebrated shrines, etc., whether of a liturgical or a popular, of a public or a private kind. Examples are the Forty Hours' Devotion, novenas, consecrated days and months, the use of scapulars, medals, etc., pilgrimages, and the like. All these devotions that have the approval of the Church are good and useful in themselves. But devotees often made a bad use of them, substituting devotions for devotion and the non-essential for the essential, as when religion is made to center in pictures or music or a sentimental attachment for some favorite Saint. Persons who multiply external observances may be without the least degree of real devotion.

2152. External and Internal Cause of Devotion.—The external cause of devotion is God, who by grace bestows the will of serving Him gladly, and therefore the Church prays God to bestow upon us the disposition of piety and devotion, and to increase in us devotion unto salvation. But there is also an internal cause, namely, mental prayer or consideration of divine things, for the will follows on the intellect. Hence, it is impossible to animate external acts of worship with true devotion, unless one practises daily or frequent mental prayer. The subjects of mental prayer that promote devotion are reducible to two:

(a) one should think on one's own weakness (sins, dangers, temptations, etc.) and one's need of God, for this serves to remove the impediments to devotion. Those who would be devoted to God must free themselves from presumption and self-confidence in the spirit of the pilgrim going up to the Temple who said: "I will raise my eyes to the mountains from which help cometh to me" (Psalm cxx. 1);

(b) one should think on points that will excite the love of God, such as the thought of His goodness, the memory of His benefits, the mysteries of the life of Christ; for these considerations by inspiring charity will thereby indirectly introduce devotion to God. "It is good for me to cling fast to God and to place my hope in the Lord," said the Psalmist, after he had thought over the blessings received from Providence (Psalm lxxii. 28).

2153. Prayer.—Prayer can be taken in various senses. (a) Thus, in the widest sense prayer is any act of religion or a holy life. St. Augustine says that a good life is the best of all prayers, and the command of Christ that we pray always has been understood to mean that we should always follow good. (b) In a less wide sense, prayer is the raising of the mind to God, in order to praise, adore, thank Him, etc. The motive of veneration here present distinguishes prayer from mere thoughts about God as when one studies or discusses theo-

logical subjects to satisfy curiosity or to impart information. (c) In its strict sense, prayer is the asking for suitable things from God. By suitable things are meant such as are lawful and becoming, and hence it would not be a prayer, but a mockery, to ask God for help to accomplish sin or for miracles in trivial matters. We are now considering prayer in its strict and less wide senses.

2154. The Psychology of Prayer.—(a) Prayer in its nature is an act of the reason, for it is a conversation or communication with God. It belongs, however, not to the speculative, but to the practical reason, since it is not a mere process of apprehension, judgment or reasoning, but the arrangement and presentation of requests, plans, etc., before God with a view to their acceptance by Him. By prayer, then, we do not understand thinking on God, as in meditation and contemplation (though these are known as mental prayer), but speaking to God.

(b) Prayer in its origin is an act of the will, for the practical reason presents before God only such things as are desired by him who prays. Prayer is the interpreter of desire. Indeed, God may take the will for the request and grant what has not yet been asked: "The Lord heard the desire of the poor" (Ps. ix. 17); "Before they cry I shall hear them" (Is., lxv. 24). Moreover, prayer should spring out of an inclination towards God Himself and a desire for union with Him (Ps. xli. 1. 2; Ps. xxvi. 4).

2155. The Necessity of Prayer.—(a) Prayer is not necessary on God's account, as though He needed to be informed of our wants, or could not be happy without our homage, or might be induced to change His plans; (b) it is necessary for our own sakes, for, although God could and sometimes does grant favors unasked, He wishes that ordinarily we should have the double benefit of the prayer and of the favor given in answer to the prayer. God could grant the crops of the fields without human cultivation, or even tools and finished articles without human invention or labor, but man would then lose the fruits that belong to labor of mind and body. Prayer is most beneficial, even when unanswered: it attracts man to perform his basic duty

of honoring his Creator, to keep in use his spiritual powers, and to exercise the necessary virtues of faith, hope and charity; it gives him the privilege of speaking directly with God and with Christ and of asking for what he desires—an intimacy that must in time correct and elevate man's whole spiritual life; then prayer is a pouring out of the heart to God the Heavenly Father, and this will afford relief in times of misfortune or peril.

2156. The Duty of Prayer for all Adults.—(a) Prayer is necessary from divine precept, as is declared in many passages of Scripture. Thus, we are commanded to watch and pray (Matt., xxvi. 41), to pray always and not to faint (Luke, xviii. 1), to ask and to knock (Matt., vii. 7 sqq.), to pray without ceasing (I Thess., v. 17), to watch in prayers (I Peter, iv. 7). In the Mass the Lord's Prayer is prefaced with the words: "Commanded by salutary precepts and admonished by divine instructions, we make bold to say: Our Father, etc." There is, however, no divine precept of vocal prayer or as to the use of the form of words given by Christ, but one must pray at least mentally and in the manner indicated by Christ.

(b) Prayer is also necessary as a means (see **360**), at least generally speaking; not that God could not save man without prayer, but that He has made it an indispensable condition, as is true also of Baptism, without which salvation is not conferred. This is the common opinion and it rests on strong arguments. Thus, there are certain necessary goods (such as perseverance) that cannot be had except through prayer, and there are certain necessary duties (such as the acts of faith, charity, and religion) that are not exercised apart from prayer. Then, there is the teaching of the Church and of the Fathers and Doctors that prayer is needed in order to observe the Commandments (Council of Trent), that no one is assisted who does not pray (Gennadius), that prayer is to the soul what breath is to the body (St. Benedict), that he who prays will certainly be saved, while he who prays not will surely be lost (St. Alphonsus).

2157. Times and Frequency of Prayer.—As to the times and frequency of prayer, in fulfillment of the obligation, there are the same opinions and conclusions as for the acts of faith, hope,

and charity (see 929 sqq., 1095–1097, 1593 sqq.). On this point we may conclude as follows:

(a) directly, or by reason of the precept of prayer itself, there is a duty to pray at the beginning of the moral life, frequently during life (whether daily, weekly, monthly, yearly, etc. cannot be precisely determined; but there is no practical difficulty, since those who devoutly hear Mass at the times commanded comply with the duty of prayer), and also in danger of death. At the outset of the moral life the reason and will should turn to God, and this is prayer at least in the widest sense; during life prayer should be frequent and continuous according to the words of Scripture; at the hour of death, prayer is necessary, since we are specially bidden to ask for perseverance till the end;

(b) indirectly, or by reason of some precept distinct from that of prayer, prayer is necessary whenever one needs to have recourse to God to fulfill some command or avoid something prohibited. Thus, one should pray at Mass, for according to church law Mass must be heard devoutly; one should pray when a dangerous temptation assails one, or when there are great calamities, especially of a public character, for according to the precept of charity one must help oneself and others in difficulties.

2158. Practical Corollaries about Prayer with Reference to Confession.—(a) Practical Catholics, that is, those who comply with the precepts of the Church, but who accuse themselves of neglecting morning and evening prayers or grace at meals, cannot be judged guilty of sin, even of venial sin, on account of this neglect; for there is no common precept directly obliging to such prayers. But there may often be a venial sin for other reasons, as when the omission is due to a spirit of lukewarmness, or when indirectly there is a duty to pray at those times for special reasons, such as daily needs or temptations. We do not agree, then, with the opinion that omission of morning and evening prayers, especially when it is habitual, is never sufficient matter for absolution.

(b) Unpractical Catholics, that is, those who have been away from Mass or the Sacraments contrary to the laws of the Church

as habitual transgressors, and who say nothing about their neglect of prayer, should be questioned whether in all the years of absence from their duties they have also omitted all prayers. For, if this be the case, they have sinned against the duty of prayer. Morning and evening prayer and grace at table should be earnestly recommended to all, because these are customs that have come down from the earliest times, and also because those who disregard them often come to neglect all prayer, or at least expose themselves to dangers or to the loss of precious graces.

2159. To Whom May Prayer Be Offered?—Only God may be addressed as the Bestower of favors ("The Lord giveth grace and glory," Ps. lxxxiii. 12), but the Saints may be prayed to as intercessors before God ("The smoke of incense of the prayers of the saints ascended up before God from the hands of the angel," Apoc., viii. 4). Hence, the Church asks God to have mercy on us; it asks the Saints to pray for us. It is lawful privately to invoke the prayers of an infant who died after baptism, of a soul in Purgatory, and one may ask the prayers of those who are still alive, as St. Paul frequently does in his Epistles. There is no command that we pray to the saints, and hence one who did not pray to them would not be guilty of grave sin *per se;* but there would be grave sin, if their intercession was neglected on account of contempt, and venial sin, if one failed to call on them (especially on the Blessed Virgin, the Mediatrix of all graces) on account of negligence about one's own spiritual good.

2160. The Persons for Whom Prayer Is Offered.—There is an obligation of charity to pray for ourselves and also for others, for we should ask for the things that we are obliged to desire (see 2161). This duty is taught in Holy Scripture (*e.g.,* Our Lord prayed for Peter; St. Paul asks for the prayers of his Churches; St. James, in v. 16, admonishes us to pray for one another that we may be saved); also in the creed and liturgy of the Church, for we profess belief in the communion of saints, and offer Masses and suffrages for the living and the dead. One should pray for enemies in common prayers that are offered for all, and in special prayers for them in particular, when there

is a special reason, such as their grave necessity or the scandal that would be given if one refused to join in a special prayer for one's enemy (Matt., v. 44); but one may not pray for the success of the evil projects of an enemy, and one is not obliged to make special prayers for him apart from necessity (see 1151). For the excommunicated one should pray in private prayers—and also in public prayers, when this is permitted by the law, as in the services of Good Friday and under certain conditions in Masses (Canon 2262). For sinners prayers should be said, unless they are already lost. The souls in Purgatory are also to be prayed for, although the obligation does not seem grave, since it is not certain as to any particular soul that it is in need of our prayers. As to the blessed, one may pray for their canonization or accidental glory, not for their essential glory, which they already possess.

2161. Things that May Be Prayed for.—(a) *Evils.*—One may never pray for moral evil, even of the slightest kind, and it would be a grave irreverence to beseech God to become our helper in the commission of sin. As to physical evils, one may not ask them as evils or for their own sake; but it is lawful to pray for them in the larger sense in which they are goods. Thus, for oneself one may ask from God sickness, poverty or death, in so far as these ills are means of correction, improvement, merit, penance, or escape from sin; for an enemy one may ask that God restrain him, even by the use of temporal misfortunes, if this be necessary to keep him from sin.

(b) *Indifferent Things.*—One may not desire an indifferent thing, if there is no moral purpose to justify it (see 83). Hence, one may not ask God for the gratification of idle wishes (*e.g.*, that one win a game in which the only purpose in gain), but it does not seem that there is grave irreverence in so doing.

(c) *Temporal Goods.*—These may not be asked for from a primary intention, since we must seek first the kingdom of God and His justice (Matt., vi. 33), which are more important; neither may we ask for any determinate temporal thing unconditionally, since we are uncertain whether it will prove beneficial or harmful. But temporal things may be asked for from a secondary intention (that is, in so far as they are means that assist us to attain spiritual goods) and conditionally (that is, under the proviso that they will prove spiritually beneficial). Thus, the Church prays for protection against storms and disturbances, and asks for good weather, abundant harvests, peace, etc.

(d) *Spiritual Goods.*—Eternal salvation and the means thereto we should pray for as the principal objects of our desire and should ask for them unconditionally; for God is our true End, and the things that lead to Him cannot be harmful to us. Miracles may be asked for, but it is wrong to beg God for privileges that are reserved for others (*e.g.*, to sit at the right hand of Christ in glory).

2162. The Qualities of Prayer.—(a) As to its manner, prayer is either unaccompanied or accompanied by external acts of worship, such as bodily gestures or speech. But not infrequently the thoughts are voiced in words, and we then have what is known as vocal prayer. Prayer made by a private person for himself or others may be internal; but public prayer that is offered by the ministers of the Church in the name of the Church should be vocal, since it should be manifested to the people for whom it is being offered. But the use of words or other external signs is advantageous even in private prayer, since it excites greater devotion in a person and is a help to attention.

(b) As to persistence, prayer is continuous or interrupted. Prayer should be continuous if there is question of its cause, which is prayerfulness of spirit, or desire of salvation; and in this sense may be understood the words of Scripture that command us to pray always (Luke, xviii. 1; Eph., vi. 18; I Thess., v. 17). But if we speak of prayer itself, it is impossible to pray unceasingly in this life, as there are many other things that have to be done and rest is a necessity.

(c) As to quantity, prayers are lengthy or brief. Our Lord rejected the belief of the pagans that the efficacy of prayer depends on many words (Matt., vi. 7), but He did not forbid long prayers, since He often spent nights in prayer. The rule about the length of private prayers is that one should pray for such

a space of time as is favorable to devotion, and should cease from prayer as soon as it becomes tedious; similarly, public devotions should not be so lengthened out that those present become wearied and inattentive. The Fathers of the Desert were wont to offer many brief but ardent ejaculatory prayers, fearing that prayer long drawn out would fall away from the fervor of intention with which it began. But, if devotion continues, prayer should not easily be broken off.

2163. The Confidence Requisite for Successful Prayer.—(a) Confidence must exclude doubt or distrust in reference to God or prayer itself: "How shall they call on Him whom they have not believed?" (Rom., x. 14); "Let not that man (that wavereth) think that he shall receive anything of the Lord" (James, i. 6, 7).

(b) Confidence does not exclude doubt about one's own dispositions ("It is not for our justice that we present our prayers before Thee, but for the multitude of Thy tender mercies"); on the contrary, the prayer of the Pharisee was not heard, because he trusted in himself (Luke, xviii. 9). Neither does confidence in prayer mean that one may ask unconditionally for temporal things (see **2161** c).

2164. Intention and Attention.—Attention is the voluntary application of the mind to that which is done, or the consideration or advertence of the mind given to an act. It differs from intention, which is an act, not of the reason, but of the will, consisting in the purpose to perform an act. Prayer requires both intention and attention.

(a) There must be intention, for prayer in its origin is an act of the will and it pertains to religion only because of the devotion by means of which it is elicited. A man who, while reading aloud from a novel, recites the words of a prayer contained in the novel, does not pray, for his intention is pleasure or instruction, not worship. And even one who says or answers prayers attentively during services does not really pray if his motive is not one of religion. (b) There must be attention, for prayer is of its nature an act of the mind (see **2154**). A parrot

or a phonograph is not said to pray when it repeats the words of the Our Father or Hail Mary.

2165. The Intention Required in Prayer.—(a) An actual intention is had when one either expressly or implicitly wills to offer a prayer, as when one says internally: "I will now say a prayer," or when without such express act one deliberately performs that which is a prayer, making internal acts of faith, reciting the Rosary, reading from a prayer-book, etc. This kind of intention is necessary at the beginning of prayer, and is the best that may be had during the course of prayer.

(b) A virtual intention is had when one is occupied in prayer on account of an actual intention previously formed and not retracted, but here and now, on account of human weakness, one is thinking of indifferent things impertinent to the prayer and its purpose. This kind of intention continues unless withdrawn directly by contrary intention or indirectly by the performance of acts inconsistent with prayer. Virtual intention suffices during the course of prayer, for a continuous and uninterrupted actual intention is humanly impossible. The more the mind struggles to keep the thought fixed on one object alone, the more do other thoughts arise to distract, as experience proves.

(c) An habitual intention is had when one is occupied in prayer, not on account of any actual intention previously formed, but on account of a propensity or inclination resulting from previous acts. This is not properly an intention and it does not suffice for prayer, since with it the acts performed do not proceed actually or virtually from any determination of the will. Thus, a person who is asleep or intoxicated is not said to pray when he mechanically repeats well-known words of prayer, for his will has no part in those words, any more than the will of the somnambulist has part in the dangerous walks he takes.

2166. The Attention in Prayer.—(a) By reason of its object, attention is external or internal, according as the mind is taken up only with the externals of prayer (*i.e.*, the exclusion of external acts inconsistent with prayer and the proper bodily pos-

ture) or with the things internal to prayer (*i.e.*, the words, sense and purpose of the prayer). Internal attention is called verbal or superficial when it is directed only to the words, as when a person who does not understand the meaning of a prayer says it carefully so as not to mispronounce the words; it is literal, when it is directed only to the sense, as when a person who says a very obscure prayer pays close attention so as to follow its meaning; it is spiritual, when it is directed to the purpose of prayer (*i.e.*, the worship of God by an act of religion), or to the objects of prayer (*i.e.*, eternal salvation or the means thereto, such as grace and the virtues, the mysteries of religion, etc.).

(b) By reason of its subject, attention is either perfect or imperfect. Perfect attention excludes every distracting thought, even such as are involuntary; imperfect attention excludes voluntary but not involuntary distractions.

2167. Acts that Exclude External Attention.—What external actions are inconsistent with external prayer and exclusive of external attention?

(a) Those acts exclude external attention which either from their nature (on account of the great mental application they demand) or from the weakness of a person's mind (for it is not everyone who can like Julius Cæsar think on several things at the same time) make it impossible to have recollection in prayer when those acts are being performed. Acts of this kind are reading about other matters, painting, writing, carrying on conversation with those around, boisterous laughing, etc. But if the one who prays engages in these acts inadvertently (*e.g.*, if a person reciting the Breviary does not notice that he is giving considerable attention to an inscription or advertisement on an adjacent wall), the distraction is merely involuntary and inculpable.

(b) Those acts do not exclude external attention that either not at all or only in slight measure interfere with internal recollection in prayer. Such acts are slow walking, riding, looking about at the scenery, picking a flower now and then, dressing,

undressing, bathing, combing the hair, etc. The Church prescribes certain prayers to be said while the priest vests for Mass, and it was an old rule among the monks to join labor and prayer.

2168. When External Attention Is Sufficient.—Is external attention sufficient in prayer when internal attention is voluntarily excluded?

(a) In public prayers external attention is sufficient as to a number of effects. Thus, in the administration of the Sacraments the want of internal attention in the minister does not make the Sacrament invalid, since the Sacraments produce grace *ex opere operato;* in public suffrages the indevotion and distraction of the priest do not deprive the beneficiary of the impetratory fruit, since the public prayers are offered in the name of the Church itself; in the Divine Office merely external attention suffices to fulfill the positive obligation, according to many, because it is not certain that the Church requires more.

(b) In all prayers mere external attention is insufficient for the personal effects of impetration, merit and satisfaction. For to pray with willful indevotion is not an act deserving of remission, reward and a favorable answer, but rather of punishment ("Before prayer prepare thy soul and be not as a man that tempteth God," Ecclus., xviii. 23); it is disrespectful to God and therefore cannot claim the benefits of an act of worship.

2169. The Kind of Internal Attention Required in Prayer.—(a) The minimum that suffices for the personal benefits of merit and impetration is the verbal or the literal attention, and the imperfect attention that is mixed with some unwilled distractions or mind wanderings. Indeed, a person who intends to pray well, but whose whole prayer is a continual distraction in spite of his efforts to be recollected, does not lose, but rather by reason of his good will and effort increases, his merit. But for spiritual refreshment there must be freedom from distraction; for, just as a student gets no mental nourishment from a lesson if his mind is many miles away, and a listener gets no instruction from a discourse spoken in a foreign language (I

Cor., xiv. 4), so one who prays with an absent mind loses the devotion and joy that are afforded by actual communion with heavenly thoughts.

(b) The maximum that should be aimed at in prayer for the greater blessing it brings is the spiritual attention fixed on the presence of God and the perfect attention that keeps away as far as possible the interruption from any vain, perverse or extraneous thoughts.

2170. Distractions.—Just as certain external acts exclude external attention, so also certain internal states exclude internal attention. These latter are known as distractions, and may be defined as internal acts or omissions opposed to the nature or purpose of prayer, but performed during prayer.

(a) Distractions are either *acts* or *omissions*. Thus, a person who slumbers lightly or is partly asleep during prayer is inattentive or wanting by omission; while the person who thinks out plots for stories or plays during prayer time is distracted or wanting by commission.

(b) Distractions are sometimes opposed *to the nature of prayer*. To the nature of vocal prayer belong the words and the sense, and hence, even though one is rapt in meditation, there is no vocal prayer if words are mispronounced or left out or so changed or transposed as to make nonsense or no sense, though negligence about a word here and there does not necessarily exclude superficial attention. Those who from long familiarity with forms of prayer are able to repeat them automatically, with no thought about the words or their meaning, direct or mystical, are not distracted if their thoughts are on the motive of prayer. But it would not be fitting to observe no order in these matters, for example, to dwell always on the glorious mysteries during passiontide prayer and on the sorrowful mysteries during paschal prayers.

(c) Distractions are sometimes *opposed to the purpose of prayer*. The purpose of prayer itself is the union of the mind with God, while the purpose of the one who prays is the special good to which he directs his prayer. Union with God is necessary above all in prayer, and though it need not be expressly

thought on, as was said above (**2169**), yet there must be no thought in the mind contrary to it. Thoughts, desires and imaginations are contrary to the end of prayer when they are not means to that end (*e.g.*, sinful thoughts, idle thoughts, thoughts on lawful occupations or affections that have nothing to do with the prayer), or when they are means to that end but are perverted to a purely natural use (*e.g.*, when verbal attention is made an exercise in voice culture, or literal attention a grammatical study, or attention to the purpose of prayer means that one is speculating on foolish questions about divinity or thinking on the money, food, or clothing, for which one is praying as if they were the ends of prayer). Scrupulous persons make attention itself a distraction, for they worry all during prayer lest their thoughts be wandering, and so they are thinking about themselves rather than about the words, meaning or purpose of prayer.

(d) Distractions occur *during prayer*. Hence, an interruption is not a distraction, as when one who is praying is called to attend to some business or leaves off prayer for the moment to make a note of some important thought that came to mind. Neither is the breaking off of prayer a distraction, as when one starts to pray but feels so distracted or unwell as to give over for the time being the attempt to pray.

2171. Voluntary and Involuntary Distractions.—(a) Voluntary distractions result in the first place from purpose, as when one who is praying deliberately dozes at intervals when he feels drowsy, or deliberately turns over in his mind the points of an address he intends to give; they result in the second place from negligence, as when the person who is praying does not expressly wish to be inattentive, but hurries through his words with no pains to keep his thoughts on what he is doing or why he is doing it. Those who rarely speak or read about divine things, but give themselves much to foolish reading or talk, prepare for themselves many distractions, unless they counteract this by special aids to recollection, such as pictures or prayer books.

(b) Involuntary distractions are those that result neither from purpose nor from carelessness, but from human weakness.

Thus, a person who is troubled with scruples or with a severe headache or nervous strain, who is worn out bodily or much worried mentally, or who is surrounded by noise or disturbance, is often physically unable to concentrate his mind for any length of time, no matter how much he may desire to do so. Indeed, St. Thomas says that it is hardly possible for anyone to say an Our Father without some distraction, and many persons are distracted against their will by every slight sound or movement that falls under their notice.

2772. Sinfulness of Distraction in Prayer.—(a) Involuntary distractions are not sinful, since one is not bound to the impossible. Hence, a penitent who has nothing except these distractions to confess may not be absolved, since there is no matter for absolution in his confession.

(b) Voluntary distractions are sinful, since, though one is free to address God at any time, one is bound to do this in a respectful manner and in spirit and in truth, as God requires. Communion with God is by means of the mind, and it is disrespectful to turn the mind away to other things when the communion has been sought. Besides, lip service is displeasing to God, just as burnt offerings were not acceptable when made without love. But the sin is of its nature only venial; for the intention to pray, together with the essential moral goodness of the act, is retained, and the defect consists in the circumstance that the intention is executed remissly (see **78**).

2173. When is voluntary distraction a grave and when a venial sin? (a) It is a venial sin when one says a non-obligatory prayer, even with the express will to be inattentive, and also when one says an obligatory prayer (such as the Divine Office) with distractions due to carelessness, but without abandonment of the intention to pray. (b) It is a mortal sin when one indulges in distractions from contempt, and also when one says an obligatory prayer with distractions that last during a notable part of the prayer and that are deliberately entertained.

2174. Distractions during Divine Office are the absence of the attention which the Church requires under grave sin for satisfaction of the canonical obligation. There are two opinions

about the kind of distractions that make recitation insufficient and gravely sinful.

(a) According to the older opinion, internal attention is required, but it seems that generally those who maintain this view do not hold that internal distractions alone deprive the Office of its sufficiency. Thus, they state that one who has had voluntary distractions may consider that he has fulfilled his duty, unless he is certain that he also adverted to his state of distraction and did nothing to end it.

(b) According to the opinion of many modern authors, external attention suffices. Hence, in this view mortal sin is incurred by notable defect in external, but not in internal attention.

2175. The External Acts of Religion.—We proceed now to those acts of religion which are performed in an outward manner. But it should be noted that just as devotion and prayer find external expression (as in vocal prayer), so the external acts of religion should proceed from internal devotion. The outward religious acts may be classified under three groups: (a) the acts in which one offers one's body as a mark of veneration to God (adoration); (b) the acts in which one offers external goods, whether given (sacrifices, offerings, first-fruits, tithes) or promised (vows); (c) the acts in which one makes use of divine things to honor God (Sacraments, oaths, adjuration, praises).

2176. Definition of Adoration.—Adoration or worship is honor shown to God through bodily acts offered in acknowledgment of His supreme excellence and of our dependence on Him.

(a) Thus, it is acknowledgment of *dependence* on God, and as such it differs from mere honor, which may be shown even to an equal.

(b) It is an acknowledgment of *supreme excellence,* and so it differs from veneration shown to creatures who are above us. Adoration (*latria*), therefore, is not the same thing as the sacred cult or veneration shown the Blessed Virgin (*hyperdulia*) and the Saints (*dulia*) on account of their supernatural grace and glory; much less is it the same thing as the civil cult shown to

persons illustrious for natural qualities, such as acquired knowledge, political dignity or power, etc.: "The Lord thy God shalt thou adore and Him only shalt thou serve" (Matt., iv. 10).

2177. Unity and Variety of Adoration.—Adoration is but one, though it has various expressions. (a) The unity of adoration depends on the unity of its object. There is but one God to whom belong the various divine attributes, and the three Divine Persons share the same majesty. Hence, there is but one adoration. (b) The variety in adoration is in the expression. The higher expression of adoration is internal: it does not depend on bodily acts or places, and it is offered by Angels as well as by man. The lower expression of adoration is made through bodily acts, such as genuflections, prostrations, prayer with face to the east, and the use of sacred places for worship, all of which externals are employed as aids to devotion and symbols of the divine glory (Matt., xviii. 20; Luke, xix. 46). Some of the actions here mentioned are sometimes used in the religious or civil cult shown to creatures, but internal adoration belongs to God alone.

2178. Definition of Sacrifice.—Sacrifice is the offering to God and a real changing of a sensible thing, made by a lawful minister, in acknowledgment of God's supreme dominion and of our subjection to Him.

(a) It is an *offering* or oblation; that is, one makes a gift directly to God Himself. Thus, sacrifice differs from contributions of the people made for the clergy or the church.

(b) It offers a *sensible thing,* that is, some object perceptible by the senses or hidden under sensible species; for sacrifice is an outward sign of the inner offering, by which the soul itself is subjected to God.

(c) It is made *by a lawful minister,* for sacrifice is a public act performed in the name of the community, and hence it may be offered only by those who represent the community. St. Paul declares that a high-priest is chosen from men to offer sacrifice, and that no one may take the honor to himself unless he is called as Aaron was (Heb., v. 4).

(d) It is *made to God alone,* since God alone is our First Beginning and Last End: "He who sacrifices to other gods besides the Lord shall be put to death" (Exod., xxii. 20). Mass in honor of the Blessed Virgin or the Saints means that sacrifice is offered God in thanksgiving for their merits or in petition that we may imitate their virtues. Oblations may be made to men, but sacrifice may be offered only to God.

(e) It is *through a real change* of the thing offered, which thus becomes the victim of sacrifice; for the supreme act of worship reserved to God acts upon the substance itself of an external thing to signify that the worshipper offers his own being to God. The change in the thing sacrificed consists in its being made sacred, or set apart as the central object in the supreme act of worship.

(f) It is made *in acknowledgment of God's supreme dominion and of our subjection* to Him; that is, it is an act whose direct and proper end is the exercise of the virtue of religion. Thus, sacrifice differs from acts of self-sacrifice such as continence, abstinence, martyrdom, even when they are offered in honor of God, for the direct and proper end of these acts is some other virtue than that of religion. The act of sacrifice may have no purpose except worship, but other virtuous acts have their own ends to make them praiseworthy, even when they are used as acts of worship.

2179. The Essentials of Sacrifice.—(a) The outward sign may be said to consist of matter and form. The matter is some sensible thing used as vietim, whether it be inanimate (*e.g.,* the bread and wine of Melchisedech), or animate (*e.g.,* the paschal lamb), or human (*e.g.,* Our Lord in His passion). The form is some sensible action that makes the victim sacred by dedicating it to sacrificial oblation (*e.g.,* the breaking of bread, the libation of wine, the offering of the slain lamb, the voluntary and visible acceptance of death by Our Lord). In the Mass Christ is sacrificed, not as existing under His own appearances, but as present under the sacramental species and offered through His representatives; and hence in the Mass the Victim is sensible by means of the species that signify and contain Him, while

the dedication by the Supreme Priest is made sensible through the words of the ministering priest who acts for Christ.

(b) The inner thing that is signified in sacrifice is primarily the offering of self to God, in recognition that from Him we have our being and in Him is our happiness. But secondarily it signifies the fruits we derive from union with God (*e.g.*, the benefits of redemption and salvation). Thus, the sacrificial death of Christ is also a symbol of man's death to sin and life in God (I Peter, iv. 1).

2180. The Obligation of Sacrifice.—(a) The internal or spiritual sacrifice is obligatory for all, since all are bound to offer God devotion of will, communion of mind, recognition of His supremacy. (b) The external sacrifice improperly so called, which consists in the practice of works of virtue, is obligatory for all in so far as commanded acts are concerned, but not when virtuous deeds are of supererogation. (c) The external sacrifice properly so called, which consists in an outward sign indicative of internal worship of God, is by natural law necessary, for reason itself shows to man that he is an inferior and dependent being, and so should acknowledge the superiority of God and his own submission by acts suitable to his nature as a being composed of body and soul, and for whom sensible things are signs of spiritual truths.

2181. Exemptions Based on the Natural Law.—Though the external sacrifice strictly so called is obligatory from natural law, it is not a primary precept of nature, nor does nature determine its details.

(a) Hence, the fact of the obligation may be unknown to an individual, since (though reason indicates it) it is not evident and rests upon a number of premises from which it has to be reasoned out. Unlike the duty of honoring parents, which is immediately inferred from natural principles, the duty of offering sacrifice is only remotely inferred, and hence admits of invincible ignorance (see **320**).

(b) The manner of fulfilling the obligation, since not defined by natural law, has to be determined by positive laws, or, in the absence of these, by suitability to the circumstances in

which one lives. Before the positive divine law was given, there was no obligatory rite for sacrifice and the oblation was not entrusted to any special body of men, and hence we read that in the times of the patriarchs there was great freedom as to the ceremonies and the ministry employed in sacrifice. But under the Mosaic Law the manner of sacrificing was minutely prescribed and its office entrusted to the sons of Aaron, even to the exclusion of monarchs; while under the law of Christ there is but the one sacrifice of the Cross perpetuated in the Mass in an unbloody manner, and the ministers who have power to offer sacrifice are only the bishops and priests.

2182. Is Sacrifice Superior to All the Other Acts of Religion?—(a) Sacrifice is not superior to the internal act of religion, for devotion or the internal sacrifice is the soul that animates and moves the external rites (see **2149**): "The multitude offered victims and praises and holocausts with a devout mind" (II Par., xxix. 31); "Obedience is better than sacrifice" (I Kings, xv. 22).

(b) Sacrifice is preëminent among the external acts of religion. Some acts of religion are optional (*e.g.*, vows, oaths, adjurations), but sacrifice is a natural obligation. Some acts of religion are obligatory, but marks of respect similar to them may also be shown to creatures (*e.g.*, customary offerings, praises), whereas no kind of sacrifice may be offered to a creature. Some acts of religion are reserved to God, but they have no rite that is peculiar to the worship of God and that may not be exercised by all (*e.g.*, acts of adoration), whereas sacrifice has a service reserved to God and which only priests can perform. Sacraments are primarily for the welfare of man; sacrifice is primarily for the honor of God. Non-sacrificial acts of religion may be performed in the name of an individual (*e.g.*, adoration), whereas sacrifice is in the name of the community; other acts of religion may signify dependence on God for temporal and corporal things (*e.g.*, offering of first-fruits), but sacrifice signifies the dependence of the soul itself on God for existence and beatitude.

2183. Offerings.—Offerings are gifts made immediately to God, to be employed without change for divine worship or for

the needs of the ministers of divine worship, the purpose being to worship God by the tribute paid.

(a) Thus, offerings are *gifts;* that is, they are offered to God without the compulsion of any law, or at least without any determination by law of the amount to be given. Natural reason teaches man that he should bestow something from his goods in this manner as a thank offering for the divine bounty, when there are representatives of God to whom the gift may be given. The gift should be a free-will offering (Exod., xxv. 2), unless there are special circumstances that render it a debt, such as contract, promise, custom, or the need of the ministers of the Church.

(b) They are *made immediately to God Himself,* and so they differ from tithes or other dues that are paid to the clergy for their support.

(c) They are *not changed* at all in the act of worship (*e.g.,* an offering of sacred vessels or altar furnishings), or at least they are not changed into the sacred condition of a sacrificial victim (*e.g.,* offerings of candles, incense, etc., that are consumed during Mass). Thus, simple oblation differs from sacrificial oblation.

(d) They are *devoted to the service of God,* since they are gifts made to Him. Hence, they are used in divine worship and, if consecrated (*e.g.,* chalices, vestments), may not be used for other purposes; or they are used for the needs of the ministers of divine worship or of the poor, since those who serve the altar should live by the altar (I Cor., ix. 14), and Our Lord shared His purse with the poor (Matt., xxvi. 9, 11).

(e) They are given as a *mark of honor* to God, especially in recognition of favors received from Him. Thus, in the Old Law the people were obliged to give the first-fruits of their fields and crops to God, in thanksgiving for the gift of the promised land and of its fruits (Deut., xxvi. 10).

2184. Goods Unsuitable as Offerings to God.—There are certain goods, however, that should not be used as offerings to God.

(a) Thus, those goods that are forbidden by positive law

may not be offered to God. In the Old Law certain animals could not be offered to God, either because they were legally unclean (*e.g.,* dogs were associated with pagan rites and were regarded as symbols of rapacity), or because they were of inferior quality (*e.g.,* a blind or lame sheep or other animal worthless to its owner).

(b) Those goods that the offerer has no right to give away or that are unsuitable on account of circumstances may never be given as offerings to God. Thus, one may not make an offering to God of money that belongs to another (Ecclus., xxxiv. 21); a son may not give as a gift to God the money he should spend on his needy parents (Matt., xv. 3–6). Neither may one offer corrupted wine for the Mass, nor the wages of prostitution to the church if there will be scandal, nor gifts that are mean and contemptible, etc.

2185. Contributions.—Contributions to the support of the clergy and church causes are neither sacrifices nor offerings in the strict sense of these words, since they are given not directly to God but to the ministers of God. The manner of making contributions to the Church has varied with time.

(a) Thus, in the first ages of the Church clerics having the care of souls were supported by the voluntary gifts of the people. These gifts were made especially during Mass. Bread and wine and other things necessary for divine worship and the support of the clergy were brought at the Offertory (the origin of the present Offertory collection), while food for the agapæ or for the poor was presented for a blessing towards the end of the Canon, or before Mass.

(b) After peace had been given to the Church and the number of the faithful and of the clergy had greatly increased, it was found necessary to devise means for a more regular and certain supply of income. As early as the sixth century the ancient customs of first-fruits and tithes were made the subjects of conciliar enactments and imposed as specific taxes on crops or revenues. A more permanent system of church support was that of endowments or benefices which, owing to the increasing difficulties of older methods, sprang up about the sixth century