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BY

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VOLUME TWO

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PRECEPTS OF THE CHURCH

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'TREATISE VI

THE DECALOGUE

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CHAPTER I

ORIGIN, CONTENT, OBLIGATION

The Ten Commandments of God come to us by Revelation through Tradition. They were given to the Jewish people through Moses, and were confirmed by Christ in the New Dispensation, which is the Law of Reality, whereas the Old Law was the law of the shadow of things to come (Col. 2, 17). The ceremonial precepts of the Old Law are displaced once for all ; for the Jewish Sabbath, the Christian Church has substituted Sunday as the Lord's day, in memory of Christ's Resurrection.

The Commandments summarize in explicit terms man's duties according to Natural law. The first three precepts refer to the external worship of God, the last seven refer to authority in the family, the sacredness of life and good report, the sanctity of marriage and the rights of property respectively.

Since these precepts are imposed by God, their observance is *prima facie* a matter of serious obligation. If they are violated in trivial matters—where from the nature of the case that is possible, as in the precept against theft—such violation is not a grave sin. It is the task of Moral Theology to try to distinguish between what is objectively serious and what is not, for there is an objective order to be maintained ; subjectivism in morality leads to nothing but agnosticism or moral anarchy.[1]

[1] This is nowhere so clearly patent as in the reaction from all objective morality that followed upon Luther's teaching. He himself deplored it and despaired of success in countering it (cf. Grisar, *Life,* vol. V) : "It is clear enough how much more greedy, cruel, immodest, shameless, wicked, the people now is than it was under Popery." cf. Maritain, *Three Reformers,* p. 186.

CHAPTER II

FIRST COMMANDMENT

SECTION 1. The Precept

The First Commandment is " I am the Lord thy God . . . thou shalt not have strange gods before Me " (Exod. 20, 2, 3).

This precept is affirmative and prescribes acts of the virtue of religion ; it is also negative and forbids acts contrary to the virtue. Th^-virtue of religion, in its strict sense and as employed here, is a moral virtue, inclining one to give due worship both-internal and external, to God, as the Creator~and Sovereign Lord of all things. It is not a theological virtue, because its material object is the worship of God, and its motive is the reasonableness of giving such worship. It is the greatest of all the moral virtues.

The chief act of religionl is devotion, which is a ready will to worship God. When the act is externalized, religion means :

I. Adoration, Vocal Prayer, Sacrifice (the First Commandment).
2. Vow, Oath (the Second Commandment).
3. Public Worship (the Third Commandment).

SECTION 2. Devotion

Devotion is the foundation of all religious acts, for it is the prompt will of offering oneself to the service of God. " In the head of the book it is written of Me that I should do thy will. O my God, I have desired it, and thy law in the midst of my heart " (Ps. 39, 8) ; " My food is to do the will of Him who sent Me " (Jn. 4, 34).

l It was said above that religion is here defined in its strictest sense. In a general sense, religion comprises all our duties to Godx those of charity as well as ofjustice. We have a duty ofjustice, because God is our Creator and Providence in all respects and is Lord over all (S. Th., *S.*, 2. 2, q. 8t, a. 2) ; but religious worship is also due to God as our highest good, that is, from the motive of charity (S. Th., *S.*> 2. 2, q. 81, a. 1), and that, even from the point of view of Natural law. This Jove of God for His own sake is the greatest and highest moral act. In the text we speak of religion in its strictest sense.

The chief effect of devotion is the spiritual joy of the mind which results from the surrender *of* oneself to God ; the secondary effect is sorrow from the consideration of one's failings and the absence of the vision of God. Tears also issue from the sentiment of devotion, just as men are wont to shed tears through the sentiment of love, when they receive their children or dear friends, whom they thought they had lost.1

SECTION 3. Adoration

Adoration is internal, when we acknowledge the divine excellence and our subjection and intend this acknowledgement and subjection ; it is external, when these are outwardly manifested.

Adoration is the external worship or honour paid to excellence. We exhibit signs of humility in our bodies, in order to incite our affections to submit to God, since it is connatural to us to proceed from the sensible to the intelligible. This honour can, therefore, be given to God and His Saints.

I. To God, unique interior and external honour are paid on account of His infinite excellences and supreme dominion. This worship is due to the Holy Trinity, to each Divine Person, to Christ our Lord, to Christ living and present under the sacramental species (c. 1255), and to the Sacred Heart.2

This *latria* or supreme honour is due to God by the precept of nature : for God has supreme dominion over all things, and it is reasonable and obligator}' that such a One should be externally honoured. It is due also by positive divine precept : " The Lord thy God shalt thou adore " (Mt. 4, 10). The precept is fulfilled when we fulfil other precepts which are ordinarily associated with external worship. Sacrifice is the only distinctive act of worship that can be offered

1 S. Th., *S.,* 2. 2, q. 82, aa. 3, 4.

1 The adoration offered to the Sacred Heart of our Saviour is an act of supreme worship. We truly adore that Sacred Heart because it belongs to God and is a part of the Sacred Humanity of Christ, God-man, and is hypostatically united to the Word, and therefore the immediate object of our adoration is the physical and living heart of Christ, as the symbol of the love of Christ for us (Pesch, *Comp.,* **III,** n. 69).

to God alone, since it is acknowledgement of His supreme dominion.

2. To the Mother of God, the highest kind of worship, short of divine, is due on account of her pre-eminent excellence ; such w'orship is called *hyperdidia.*

3.A lesser kind of worship is due to the Saints on account of their personal excellence and their special likeness to God ; such worship is called *dulia.*

4. Worship is absolute, if offered to God or to His Saints as persons. It is relative, if offered to images (pictures, statues) of them, or to the sacred relics of the Saints, and such relative worship is due to these things. They are honoured, not for any intrinsic sanctity or excellence, but by reason of the moral connexion they have with the persons whom they represent.

5. Worship is public, if offered in the name of the Church by those legitimately deputed to do so in the manner prescribed (c. 1256)?

SECTION 4. Honour to the Saints and Relics

I. External honour may be publicly offered only to those servants of God who have been declared by the Church to be Saints or Blessed. To the Saints, honour may be offered anywhere and by any befitting act, but the Blessed may not be honoured except where and how the Roman Pontiff permits (c. 1277). Those who have died and are reputed Saints may not be publicly worshipped—if not as yet beatified or canonized—nor may representations of them be set upon the altars at all, nor even outside the altars with aureoles, but they and their lives may be the subject of representations on the church walls or in windows, without, however, any expression of worship or attribution of sanctity, or in a manner that is worldly or unusual

1 Canon 1256 is as follows : "Worship, if offered in the name of the Church by persons legitimately deputed to do so and by* acts to be directed only to God, the Saints and the Blessed, is called public." The l and ' of the canon is equivalent to ' or as explained by Pope Benedict XIV, c. *Quamvis justo.*

(D.A., 3835).[1] Relics of the Saints "arc given a relative honour inasmuch as they arc connected with the person whose relics they arc. They thus participate in a certain dignity and sanctity, which is the reason why they may not be treated unbecomingly, and may be positively honoured.

2. Notable relics[2] of the Saints or the Beatified may not be kept in houses or private oratories without express leave of the local Ordinary (c. 1282, 1) ; relics that are not notable may be kept in a private house or piously worn (c. 1282, 2).

3. Public veneration is permitted to those relics only whicji are known to bejgenuinc from the authentic document of a'Cardinal or a local Ordinary or other person delegated *ad hoc* (c. 1283), but not of a vicar general without special mandate (c. 1283, 2), nor can he, without special mandate, authenticate a part of a relic taken from one already authenticated, nor give a new certificate of authenticity, nor place a new seal upon a relic.[3] If these authentic documents have perished, the relics may not be exposed for public veneration before judgment is favourably given by the local Ordinary, but ancient relics arc to retain the veneration hitherto paid to them, unless they are certainly proved to be false or supposititious (c. 1285). Those who make false relics or deliberately sell, distribute or expose such for public veneration are excommunicated (c. 2326).

4. Relics, when exposed, arc to be enclosed within reliquaries and sealed, but relics of the True Cross may never be exposed to public worship in the same reliquary with the relics of a Saint (c. 1287),

5. It is forbidden to sell relics : the Church utters a warning against their being sold or passing into non-Catholic possession (c. 1289). Notable relics or precious images (i.e., precious on account of age, artistic work or conspicuous veneration) that are honoured in a church by great popular devotion cannot be validly alienated, nor

[1] Servants of God cannot be called Venerable when their cause is introduced, but when the heroism of their virtues or their martyrdom has been admitted by the Supreme Pontiff (*S.R.C.*, Aug. 26, 1913, cc. 2084, 2115).

[3] Such are : the body, head, arm (and either half if it), heart, tongue, hand, leg, that part wherein the martyr suffered, if it is complete and not small (c. 1281).

[3] P.C.C.J., July 17, 1933·

permanently transferred to another church, without Apostolic sanction (c. 1281). Such precious images publicly exposed to veneration in churches or public oratories may not be repaired—when repair is needful—without written consent of the Ordinary (c. 1280).

SECTION 5. Prayer

Prayer is the raising up of the mind and heart to God, to ask God for favours which it befits Him to give. It is formally an act of intellect. Prayer is, therefore, the elevation or ascent of the mind and heart to God. Every approach of ours to God includes petition at least virtually. It is impossible to conceive any intercourse or consideration between man and God where the creature does not receive and God does not bestow. The thanksgiving of the Blessed in heaven is a virtual petition that their possession of God may be everlasting.[1]

1. Kinds

Prayer may be mental, vocal, private, public. It is public when offered in the name of the Church by one deputed to do so and in the proper manner. Holy Mass is the supreme public prayer of the Church.

2. Necessity

Man must dispose himself for justification, otherwise he cannot be saved. He must, therefore, turn to God in some way. This conversion is prayer, and in this sense prayer is absolutely necessary for salvation. We do not pray so as to enlighten God or to change His Divine Will, but we pray in order to dispose ourselves to receive what God has decreed to give us when we pray.[2]

[1] Verm., II, n. 179.

[2] cf. S. Th., *S.*, 2. 2, q. 83, a. 2, c. It is foolish to ask the question : Why should we pray at all ? Christ our Lord has commanded us to pray. It is not less foolish to say that a sinner cannot pray with God's help, for the very beginning of his conversion and power to turn to God is a gift of God, quite uncovcnanted. But that fact makes God's mercy the more wonderful. This is explained by S. Thomas when he says that a man cannot indeed prepare

PRAYER

Besides being necessary in the sense just explained, prayer is matter of divine precept, even for sinners : " And He spoke to them a parable that we ought always to pray and not to faint" (Lk. 18, i). It is the ordinary means of obtaining God's graces : " Ask and ye shall receive " (Jn. 16, 24).

We must pray often during life : " Pray without ceasing " (1 Thess. 5, 17), that is, our hearts must never be turned away from God ; they must ever be raised to Him by an intention, once made and never retracted, and so long as we are in this life, we must never give up prayer but persevere in asking for graces. Every day we need God's help that we may not fall into sin. But it is nowhere determined that we are bound to pray in set terms every day : and therefore the omission of morning and (or) night prayers is not strictly sinful, unless due to spiritual sloth or negligence.

We must certainly pray in temptations that cannot, without prayer, be overcome ; also when other precepts (v.g., the precept of confession) require prayer, and on occasions (such as war, famine, pestilence) when divine help is necessary. Lastly, we must pray at the hour of death if we are not in the grace of God, for then most of all it behoves us to be friends of God.[1]

3. Characteristics

Prayer must be attentive, persevering, reverential, humble, trustful and offered up for things necessary or useful to salvation. Voluntary distraction in prayer is sinful because irreverent. A set form of words is not prayer at all if we have not external attention, that is, if we are engaged in

himself for grace (i.e., for the state of friendship with God) unless God helps his free will to turn to Him by moving it : " Convert us O Lord to Thee and we shall be converted." Lastly, though God has decreed what He will give us when we pray, He decreed to give it to us foreseeing our free prayer. He has settled that, as a fact, such and such a field shall yield crops, but He foresees that in such a case the field will be tilled and sown.

[1] It is the height of folly to say that it is cowardly to pray and that God has settled already to save us or to let us perish. To pray is but the fulfilling of our natural obligations ; and God's unalterable decrees, though indeed inscrutable, take account of our human efforts.

doing what is absolutely incompatible with internal attention of even the most tenuous kind. But actual attention to what we are saying is certainly not essential, for involuntary distractions do not make prayer cease to be an appeal to God ; even less necessary is it to understand the words we use, for a child often does not understand what it says, and a priest truly says divine office as the prayer of the Church, though he does not understand everything it contains.[1] But prayer is undoubtedly better for ourselves if we give it actual attention, and if we understand it. Prayer must be trustful, even though God does not give us what we ask for. We must, however, trust Him to give us something equally good or better, and always pray in accordance with His Divine Will."

4. Who can pray

Christ our Lord now intercedes for us in heaven (Heb. 7, 25), in that, as a perpetual victim *{hostia perpetua* of S. Thomas), His Sacred Wounds and His glorious Humanity are a title to winning from God all graces for mankind. Our Blessed Lady is the Mediatrix of all graces. She has been so styled in pontifical documents and in the Mass assigned to that title. This is the belief of the faithful, though as yet it is not a dogma of Catholic Faith.[2] The Saints can pray for us that God may give us all graces in accordance with His Holy Will. The Souls in Purgatory can pray for those living on earth, although perhaps they do not know our individual thoughts or needs.[3] They can also, it is credible, pray for one another and for themselves, though in their present state they can offer no condign satisfaction, but it seems probable that they

1 The trite objection that this makes prayer mechanical may be set aside, because nobody understands the mysteries of heaven, yet we rightly pray for salvation. The same objection would repudiate altogether the recitation of the Rosary as senseless repetition, and would urge that one prayer once in a lifetime is sufficient. The greatest Doctors of the Church saw no difficulties where heretics affected to be shocked.

* Verm., II, n. 181.

• S. Thomas held that the Holy Souls do not know our thoughts or words : S., 2. 2, q. 83, a. 4, ad 2 et 3 ; a. u, ad 3 ; cf. S. R. Bellarmine, *de* Purg. II, c. 15 ; Suarez, *de Oral.,* c. 11, n. 16.

can beg God to move us to pray and to make satisfaction for them.[1] Lastly, those living on earth, even sinners, can pray for themselves and others.

5. For Whom to pray

We may pray for ourselves, for all the living, for the Souls in Purgatory. We may not pray for those who can derive no profit from our prayers. When we pray for God's glory to be increased, God, of course, cannot derive any benefit from our prayers, but mankind does. The faithful may pray privately, scandal apart, even for the excommunicate, living or dead ; a priest may offer Mass privately, and scandal apart, for the excommunicate, but if such person be one excommunicated by name by the Holy See and the sentence is published with express mention that such a one is to be avoided, private Mass may be offered only for his conversion (c. 2262) ; no express sentence is needed in the case of one who lays violent hands on the Pope (c. 2343).

6. What to pray for

We may pray for all graces, helps, opportunities that will lead to salvation, but for temporal benefits only in so far as they conduce to that end. We may, therefore, ask for specific favours as well as for favours in general. When a particular favour asked for is not granted, it may be, as S. Augustine points out, that God wishes us to persevere in prayer, to be the more fitted to receive that or other graces which He intends to give. If a favour is not granted, and through lapse of time cannot now be granted, as in the case of the sick whose recovery we have prayed for but who have died, we must trust that God has heard our prayers and has granted some favour even better than that for which we asked.

7. The Efficacy of Prayer

Prayer is infallibly heard by God : " Ask and it shall be given to you " (Mt. 7, 7). " All, whatsoever ye ask for in prayer believing, ye shall receive" (Mt. 21, 22). The

1 Verm., II, η. 181 ; Suarez, *de Relig.,* tr. 4, lib. 1, c. 10, nn. 25-28.

divine promises extend to sinners as well as to the just. The sinner is moved by God to pray, and his prayer will be heard on condition that he co-operates with divine grace. Since S. Paul (Ephes. 6,18) speaks of prayers for others, and desired his hearers to pray for all men (i Tim. 2, 1 sqq.), and S. John (1 Jn. 5, 16) bids us pray for a brother, and since we are commanded to love one another and prayer is an act of love, God will hear our prayers for others. But such prayer for others may be said not to be infallibly heard, since the necessary disposition to receive graces is required in others. Furthermore, our prayer for Souls in Purgatory, though certainly effectual in general,[1] may not be heard for a particular soul so as to appease Divine Justice, for it is held that other conditions may be necessary besides the present disposition of the Holy Souls; these other conditions are inscrutable.

8. To Whom to pray

We rightly pray to God, to the Blessed Mother of God, to all the Saints and Angels. In private prayer we may pray to children who, after Baptism, died before reaching the use of reason. We may probably pray to the Holy Souls in Purgatory.[2]

There is no strict obligation to pray to the Saints, but one who deliberately refrains from ever praying to the Saints and to the Mother of God would probably be guilty of a venial sin of contempt, negligence, or sloth, and would be guilty of a grievous sin of heresy if he denied the efficacy of such prayers. Canon 1276 bids all the faithful to have a filial devotion towards the Blessed Virgin Mary.

Pastoral Note

Parents should teach their children to pray and should pray with them; in the child's early years, it is a parent's

[1] Taught by the Councils of Lyons II, Florence and Trent, and embodied in the Tridentine Profession of Faith.

[2] S. Thomas (S., 2. 2, q. 83, a. 4) appears to deny this, but there are many divines who think that the Holy Souls do pray for us on earth, and that we may invoke their prayers; the faithful certainly pray to them; cf. Génicot, I, it. 261, and authors there cited.

privilege to pray at the child's bedside. The pastor should teach his people to pray devoutly, not hurriedly nor perfunctorily. He should himself pray with his people, and teach them by example to pronounce the words distinctly. Courses of sermons might usefully be given on the common prayers of the Church ; these prayers enshrine a wonderful amount of doctrine. The devoted pastor will also pray with the sick and the infirm. The pastor will wish to lead some of his devout people to the practice of mental prayer. This, as distinguished from vocal prayer—when the petition is formulated in words—is not expressed in any phrases. It is either meditation or contemplation. Meditation is usually discursive, in which the mind passes from one thought to another, deriving lessons, help, or example from each, and suggesting to the will appropriate acts of faith, hope, love and other virtues. Contemplation is the affective consideration of some truth or mystery, in so far as a mystery can be grasped. Ordinary contemplation has not the intimate sense of the Divine Presence, which is the property of a mystical contemplation.[1]

To enable his people to meditate, the pastor will read at night prayers, where these are said publicly, some verses from the gospels, or from the *Imitation of Christ,* in order to give the hearer food for thought.

It would be a mistake to suppose that little children are incapable of meditation. Some of the most fruitful moments and the happiest during retreats, are those when children, kneeling before the Blessed Sacrament, are given some thoughts to ponder on. It requires no great mental apparatus to meditate ; even the poorest and the most uncultured can acquire the art of meditation.

SECTION 6. Sins contrary to Religion by excess

1. Superstition

Superstition in general is the giving to a creature the honour that belongs to God alone, or the giving to God Himself honour that is false or superfluous.

The former kind of superstition is essentially a grievous

[1] Verm., II, n. 179.

sin. The latter kind, when false, is a grievous sin ; when superfluous, it is usually a venial sin, apart from scandal or grave positive prohibition by the Church. Thus, it is forbidden to the celebrant of Mass to add prayers of his own to those liturgical prayers of the Mass that are prescribed or permitted. To do so would be superfluous worship.[1] Superstition that offers divine worship to false deities comprises idolatry, vain observance and divination.

2. Idolatry

Idolatry is the giving to any creature divine honour, v.g., sacrifices to Satan, to idols, to the elements, genuflecting to idols as to God. It is simulated or material if such honour is given externally only, and is then a grievous sin as it is an external repudiation of God. It is also called material (but not simulated) when it is given inadvertently, and is not then sinful. When divine worship is offered to a creature thought to be truly divine, the idolatry is perfect and formal, and though an affront to God, viewed in itself, it is not sinful because it is unintentional. Idolatry is formal but imperfect when divine worship is given to a creature, either out of hatred to God, or from the motive of winning some favour from the creature. This, if fully deliberate, is a grievous sin, being a deadly affront to God.

In missionary countries it is found that the primitive, uneducated pagan worships stones, trees, animals, and many inanimate and irrational things. It is questionable whether they always worship the thing itself. Students of comparative religion maintain that image-worship is animistic in its lower form, and symbolic in its higher.[2] The concrete object is viewed as invisibly permeated or animated by the presence of a spirit, of which it is the dwelling-place. Hindus have a ritual for inducing the presence of the god, as by

[1] It would be superfluous worship to honour God or the Saints by a precise number of candles lighted, or prayers said, or particular numbers, if the worshipper relied on numbers by themselves. Canons (c. 1261) bid the Ordinary to see that no superstitious practice is allowed to creep in among the people. Recently (1932) votive candles have been removed from the churches in Rome.

[2] E. R. Hull, S.J., *Hinduism,* p. 21 (C.T.S.).

covering a suitable object with vermilion paint.1 The educated pagans adopt the symbolic explanation, that is, that the image is a symbol of some attribute of the deity. A Brahmin priest explains his belief by saying : "God is everywhere, for He is everything and in everything. What we mean is only that He is more operative towards us in the image than apart from it."

3. Vain Observance

Vain Observance is a superstitious act that employs means not instituted by God, nor in any way becoming, in order to obtain a favour. It may be concerned about acquiring knowledge without labour *(ars notoria),* seeking health by absurd methods *(ars sanitatum),* seeking information through chance *{observantia eventuum).* It is exercised by magic, charms, spells, cabalistic signs. It is usually a grievous sin, because there is in it at least a tacit invocation of some power other than that of God, usually demoniacal.

It is obviously not Vain Observance to wear medals, crucifixes, scapulars, relics—for these are not used as though they possessed magical powers—nor to recite a certain fixed number of prayers—provided one does not rely on the number as such—in the confident expectation of help in temporal or spiritual difficulties. But unconscious superstition may insinuate itself even into pious practices, and the young especially must be taught the Catholic doctrine of the use of emblems.

4. Magic

Magic is exercised amongst barbarous tribes by native witch-doctors. These claim preternatural powers through the employment of signs and incantations. In China, Japan and Africa, magic is used to placate unfriendly spirits, and tliis is a kind of invocation of the demon. Since the native doctors are often very successful, this grim belief in the power of the evil spirits is one of the last things to be relinquished by the natives. The belief in the power of

1 Abbé Dubois explained how this was done in his time, early nineteenth century ; cf. *Hindu Manners, Customs and Ceremonies* (Oxford, 1924), p. 582.

the evil eye is recurrent in civilized countries. An instance occurred as recently as 1926, when at Bombom, near Paris, the Curé of the village was suspected of having an evil, psychical influence over a certain lady, and of being possessed by the devil. The people were so convinced of this baneful influence that they tied him to a tree and beat him nearly to death.

S. Thomas has a curious opinion on the power of the demon to employ the phases of the moon to affect mankind, and the power of witches to affect, by their poisonous glances, the tender bodies of children. The latter, he says, may perhaps happen by God's permission, or by a secret compact with the demon.1

5. Divination

Divination is the investigation of the occult by the explicit or implicit invocation of the devil's aid. Such aid is implicitly sought when altogether disproportionate means are employed to search out the occult. There have been, and in barbarous countries still are, many kinds of divination, such as astrology—when it means more than reading the horoscope, once so fashionable but so silly,—augury (from the flight or chattering of birds), divination by vivisection, cheiromancy (which survives in modem palmistry, if used for learning the occult and not merely for the playful—and usually remunerative—reading of character), necromancy (modem spiritualism), casting of lots, dream-omens and oracles. Mankind is singularly liable to this kind of superstition. The Romans made of it a fine art, till its unreality was unmasked, and the augurs wanked at one another. It has survived to our own time amongst the Chinese and the African negroes especially, and in the form of spiritualism, in almost every civilized country. Express divination is a grievous sin, both because it is an insult to God and a danger to man: "The Lord abhorreth all these things and for these abominations He will destroy them at thy coming" (Deut. 18, 10-12). If divination is tacit or presumptive, though dangerous, it is not necessarily a grievous sin, as

it may be due to ignorance or stupidity. Practices such as crystal-gazing[1] (scrying) or cup-reading (strangely called cup-tossing), though strictly not examples of divination, often lead to it ; the former is to be especially discouraged.

The scrycr uses either a crystal sphere or something equivalent, as a piece of glass, a mirror, a pool of ink or blood in the palm of the hand. The pictures may appear instantly or after a very brief interval, and events, past and future, are seen, it is alleged, in the 'mind's eye'. Children are used as seers and often succeed very well. Scrying deceives those who want to be deceived, and when used to foretell the future it is certainly divination. It may succeed in evoking pictures of the past but this is probably due to mental telepathy. It might possibly be due to Satan, but we are not obliged to think so.

The use of the divining rod to discover flowing water or the presence of metals underground cannot be condemned as necessarily superstitious ; the bending of the twig in the hands of the dowser appears to be due to natural causes, and there are many instances of the successful finding of water by such experts, though probably there are more unrecorded failures. Modern Science cannot explain this obscure power of the dowser, or, perhaps we ought to say, the strange behaviour of the forked twig. Seven dowsers were tested by experts at Guildford (England) in the year 1913 ; the conclusion arrived at was that the dowser cannot be trusted with any practical certainty to find underground water. But that such matter-of-fact men are addicted to superstition or magic is a ridiculous assumption. It would be foolish—and might be superstition—to attempt to trace culprits by employing the divining rod. Such a practice, once in vogue in France, was condemned by the Inquisition (an. 1701).

6. Lots

The casting of lots to decide doubtful claims is not sinful, if the parties interested agree to abide by the results of

[1] cf. an excellent article on Crystal-gazing by A. Lang in the *Encyclopedia Britannica*.

chance.[1] We have examples in the Book of Josue (7, 14) and the Acts (1, 24—26).

7. Invocation of the Devil

Invocation of the devil, expressly or tacitly, to produce wonderful effects, as in magic, or to incite to love, as by the serious use of love-philtres or love-incense (commonly called burning 'stuff'), or to provoke the hatred of others, is a serious sin against religion.[2] Sorcerers of all sorts have ever opposed the spread of Christianity, and do so today in missionary countries. The annals of the missions are full of examples of pagan practices which are nothing else than deyil-worship.

8. Automatic Writing

Planchette-writing, once common, but now supplanted by ordinary so-called automatic writing at spiritualistic seances, is found by experience to be the beginning of spiritualistic practices. Such writing, with or without a board, that purports to be communications from the dead, is a piece of gross self-deception. The palmary instances are the cases of 'M. A. Oxon' (Rev. Stainton Moses), who produced reams of this nonsense, and who has been accepted by beginners as a sure guide to supra-mundane realms; and in our days (an. 1920), of another reverend gentleman who claimed to be in communication with the departed, and who has given most minute and beautiful descriptions of the voyage to the other world and of much that is supposed to go on there, but no light is thrown on what one would reasonably expect to be of the highest moment, namely, the nature and habitat of the communicating spirits. Automatic writing may well be a harmless pastime at first, but it is apt to become an obsession, to unhinge the mind, and to take the place of the only true Revelation given to man by God. If automatic writing is seriously meant to

[1] The *sortes Sergiliana* applied to the Bible is a harmless procedure, provided mere chance or coincidence is not regarded as a divine interposition.

[2] Much, of course, of the love-incense indulged in by young women is amorous folly and not sinful.

be writing from the dictation—unheard, of course—of the spirits of the departed, or by a spirit invasion of the medium, it is virtual evocation of the spirits, and is nothing but necromancy, which is a gross superstition. But this kind of script is credibly attributed solely to the medium, who may have—as, indeed, experiments suggest—some telepathic power which enables her (or him) to tap the minds of those present.

9. Hypnotism

Hypnotism is artificially produced hysteria, the inducing of a nervous abnormal state of mind, similar to sleep, by external means—rarely by drugs—which are used to produce either sensory stimulation or mental suggestion. It does not differ essentially from what was called animal magnetism and mesmerism. The sleep is due to fatigue, which may be induced by concentrated attention through the medium of 'passes', or acute sensation caused by looking fixedly and for long at a bright object, or by squinting, or by listening to a monotonous sound, as the beating of a gong, the tick of a watch, or by strong volitional effort. Many hypnotists have relied simply on suggestion. The stages are lethargy, catalepsy, somnambulism. The effect of the sleep is to deprive the patient of independent free action, though he or she will respond to suggestions. It has been proved by Bertrand, Braid and Bernheim (ann. 1823-1884) that the mind of the patient produces the hypnotic state on his own organism. In hypnosis, the mind appears to become dissociated, split into separate compartments, one active, the other dormant. We thus have the strange phenomena—not unknown outside the hypnotic state—of double and even triple personality.[1]

In a more restricted sense, the term hypnotism is inaccurately used for suggestion as practised in psychical therapeutics and Spiritual Healing. We are, for the moment, speaking of hypnotism strictly so-called. The patient hypnotized is under the moral control of the hypnotizer

[1] cf. J. Milne Bramwell, *Hypnotism*, especially p. 393 for multiple personality; p. 407 for post-hypnotic suggestions; p. 383 for dissociation.

to an extraordinary extent, so as to resemble a trained animal which obeys its master but no one else. The most absurd suggestions are accepted by the patient as rational.[1] It is maintained that patients yield slowly to displeasing suggestions, and not at all to what is grossly repugnant to their waking moral sense. In fact, increased refinement has been observed in the hypnotic state, but it is admitted that in unscrupulous hands the moral sense can be dulled, not by the operator's direct power, but by the patient's auto-suggestion.[2]

Varying percentages of hypnotizable subjects are given, ranging from 50 to 95 per cent. The consent of the subject is necessary at first and with normal persons, but by repeated processes the will-power may become so weak that the sleep can be induced against the patient's will and without his advertence, and even during natural sleep.[3] Orders given during hypnosis will be carried out afterwards in the normal state, an example, it is supposed of a dual stream of mental activity.[4]

In regard to the morality of hypnotism, it is certain that continued subjection to it is morally wrong, because it is harmful to the mental faculties. It is true that many experienced hypnotists saw no harm in it. Liébeault, Bernheim, Wetterstrand, Moll, Forel had never seen a single instance of harm. But there are sufficient cases of harm recorded to suggest danger. It is wrong to abdicate one's reason and will except for a very grave cause and after taking stringent precautions that this power of another over one shall not be abused. Hypnosis has been rejected by many capable hypnotists, partly on account of its danger, in favour of 'waking suggestion', a state in which the subject retains full self-control. It must be admitted that the most astonishing cures have been effected by suggestion during hypnosis. Even were the cures not permanent, it is a benefit that temporary relief should be obtainable. It is

[1] Surbled in *Cath. Ency.*, s.v. Hypnotism, p. 608 a.
[1] Milne Bramwell, *op. rit.*, pp. 330, 425.
[3] Done by Wetterstrand, Moll, Bernheim.
[1] cf. McDougall in *Diet, of Religion and Ethies,* s.v. Hypnotism.

stated that cases of sexual inversion have proved amenable to hypnotism alone. At all events, subjects have been suddenly cured.[1]

The Church has not condemned hypnotism *in toto,* but only the form of it that is tainted with superstition, or that leads to moral evil. In the early days of magnetism, the Roman Congregations looked upon the phenomena with suspicion, but in the year 1899 permission was given to a Catholic doctor to discuss past phenomena, and even to attempt new experiments in hypnotism, but only for very grave reasons, provided that scandal was avoided, if protestation was made against any intention to deal with preternatural events, and on the supposition that the effects did not clearly transcend natural causes.[2]

One may submit to hypnotic treatment for a grave reason, if suitable precautions against its abuse are taken, and if there is no superstition or scandal. The suitable precautions are that a trustworthy witness should be present during the treatment, and that the hypnotizer should be both skilled and morally unexceptionable. The consent of the patient to be hypnotized should be given, though, for a very great good and subject to necessary precautions, that consent may be presumed.

In Austria, Italy and Belgium public exhibitions of it are forbidden ; in Denmark and Germany it can be practised only by doctors of medicine ; in some of the States, U.S.A., it is forbidden ; in English Courts its use would be regarded as evidence of 'undue influence'.

10. Waking Suggestion

The milder form of hypnotism—without true hypnosis—employed in psycho-therapeutics as a curative agency is less dangerous. It works remarkable cures quickly and permanently, provided the patient uses his own will-power to maintain the primary beneficial effect. It is the mind and

1 Milne Bramwell, *op. cit.,* pp. 233, 234, 236.

3 It was stated privately to the writer that a certain Professor (not named) claimed—with what truth, we do not know—that he could produce stigmata in a certain patient three miles away, and afterwards cure them.

wall of the patient that effect the cure, for the agent merely 'ministers to a mind diseased'. Just as imagination works radical cures with the factitious aid of useless drugs or simple mechanical instruments, so suggestion has most effect in curing nervous disorders, by putting the mind at rest and allowing nature to exert its beneficent powers. It induces a contrary habit of mind or a changed mental outlook in such disorders as alcoholism, the drug habit, sexual perversion, obsessions of fear, and loss of memory. There is no reason, therefore, to condemn 'waking suggestion' unless it is misinterpreted and misdirected, that is, if its use lead to ridiculous superstition, or the attribution to the healer of magic and occult powers, and if the suggestions employed are wrong.[1]

11. Spiritual Healing

Closely allied to healing by 'waking suggestion' is the so-called Spiritual Healing or Faith Healing. That cures have been effected on the bodies of men and women of all beliefs, without physical contact, is an indubitable fact. There are cases recorded in almost every age and country. The frenzy of the mysteries of Dionysus was cured by music and dancing; blindness, paralysis, gout and other ills were cured in the fourth century b.g. by invocation of the deities, if we are to believe the inscription of the temples of Aesculapius at Epidaurus and Rome.[2] The temple-

[1] cf. P^.P.Λ.,voI.27, p. 370 sqq.,for very striking cases of effective suggestion. Psychoanalysis appears to consist in delivering the mind from suppressed phobias by getting the patient to live a period of his past life over again and work off a suppressed emotion. It is supposed that the psychoanalyst gets down to the content of the subconscious mind, and drags ideas and emotions therefrom to the surface of consciousness. By this process, a man is freed from his obsessions, and, as it were, his 'complexes' as they are called, are unravelled. There arc serious abuses laid to the charge of psychoanalysis. The non-Christian analyst abandons Christian moral principles, inculcates the falsehood that self-restraint is unnatural and leads to disease, justifies any sort of self-indulgence if he thinks it will do good to the patient, and being a devotee of the most uncompromising pragmatism, floods the mind of his patient with a false philosophy. Thereafter, 'whatever is, is right' Christians cannot submit to psychoanalysis unless they arc sure of the Christian moral principles of their analyst.

[1] cf. Friedlander, *Roman Life, etc.,* III, p. 140.

sleep in pagan temples cured many a sufferer. S. Augustine recounts many wonderful cures due to prayer and faith.[1] Through the Middle Ages and later, cures were effected by recourse to the Saints. When the Reformation discouraged invocation of the Saints, sufferers had recourse to kings. The king's touch was then a necessary condition of cure. Long before, Vespasian is said to have cured various maladies by touch. S. Irenæus speaks of healing the sick by the laying on of hands. King Charles II of England is said to have touched more than ninety-thousand sufferers. In rivalry with Charles II, Valentine Greatrix, popularly known as Greatrakes the Stroker,[2] cured many persons by touching and stroking the affected parts. He cured some whom the king had failed to cure, and even one case, at least, of contracture of the joints sent to him by Dr. Mickelthwait from S. Bartholomew's Hospital. In our days, M. Coué produced astonishing results by mere suggestion. Rationalism undermined faith after the Reformation up to the middle of the nineteenth century, but the practice of Faith Healing continued to be exercised by a few individuals. Within the last twenty years the revival of Spiritualism[3] and the study of psychology together with the adoption of a more spiritual outlook on life have led to an increase of attempted cures by Spiritual Healers and recorded cases are many and striking.[4] The development has been from mesmerism to mental healing, then to the present methods of suggestion, auto-suggestion and Spiritual Healing.[5]

It is not here suggested that cures produced in the case of devout Catholics are on the same plane as other cures, for every Catholic believes that prayer for the cure of disease

1 cf. *de Civ. Dei,* lib. 22, c. 8.

1 cf. *The Month* (Sept., 1932), p. 233 : 'The Healing Hand', by Herbert Thurston, S.J.

3 This term is used in preference to Spiritism, because it is easily understood and more commonly used. Neither word really expresses the process, phenomena, or attitude.

* The writer does not wish to put into the same category the cures effected by pagans, charlatans and kings, and those effected in the early ages of Christianity by the laying on of hands. In the text, he is recording only a certain historical progress.

5 cf. Langford-James, *The Church and Bodily Healing,* c. vii. '

can be directly answered. But when one finds analogous cures outside the Catholic Church, one may reasonably ask the question : Has not the mind of the sufferer something to do with many a cure? Prayer, we know, is heard by God, Who has proved by numerous examples that He cures diseases directly, but prayer may dispose the mind of the sufferer in such a way as to shake off at least the more trivial ailments, releasing the healing power of nature from the trammels of obsession. The attitude of many sincere people towards such cases is summed up as follows : " The question whether the theory of Faith Healing is that man's organism is self-contained, like a *perfecta societas,* or that it is like an Æolian harp played on by outside forces, may remain here undetermined as being a question of philosophy or of a Weltanschauung. In any case, both may be true, for they are not contradictories but contraries. A place or thing may be sacred or potent, not merely because we think it so, and the *vis medicatrix natum* latent in us may be reinforced and not merely stimulated by external agents, whether visible or invisible."[1]

Those who practise the art of healing by suggestion without hypnosis are divided on the question as to whether or not there is any real foundation for the claims made by Spiritual Healers. The latter, of course, maintain that they possess a special gift which, by means of prayer, anointing, or imposition of hands on the sufferer, is set free by divine intervention. The gift, they say, is a modern example of the charismata of Apostolic times. They appeal to Holy Scripture to prove the reality and permanence of such powers : " To another is given the grace of healing in one Spirit " (i Cor. 12, 9) ; " These signs shall follow those that believe ; they shall lay hands on the sick and they shall recover" (Mk. 16, 17, 18). The success of Spiritual Healers is striking in such disorders as alcoholism, vicious habits, nervous disorders, paranoia, melancholia. In cases which prove intractable, such as cancer, the patient dies in great peace of mind. These Healers claim no occult or

1 VV. F. Cobb Ln *Did. Religion and Ethics*› s.v. Faith-Healing.

spiritualistic power ; it is just God working by their instrumentality, and there is no limit to divine power ; cures can be and are effected by letter and telephone. They repudiate all claim to telekinetic powers.

These claims have been carefully examined by a Committee composed of distinguished members of both the clerical and the medical professions.[1] One witness stated that he had relieved pain permanently or effected cures in cases of cancer, paralysis, sciatica, blindness, mania, attributing these cures to a special personal power. Another witness claimed to have had results " where every other means had failed, and never a death in his twenty-two years of practice," his most frequent successes being in cases of obsession, alcoholism, drug-habit and impurity. He claimed no special spiritual power. A third had seen stigmata produced by suggestion and fully admitted the existence of special gifts.

The conclusions of the Committee did not favour any distinction between Spiritual Healing and healing by suggestion, though admitting that religious appeal could sometimes be the most potent form of suggestion, adding the note of warning, that those who resort to Healers might be postponing until too late the medical treatment that would serve to arrest organic disease.

These conclusions can be endorsed by the Moral theologian. There is nothing in Spiritual Healing that need be thought occult or superstitious. The priest in his daily rounds of service on the sick and the poor exercises great powers of suggestion, by bringing hope into saddened lives. We do not, of course, claim for him any special gift of healing. It would be rash to apply suggestion as a remedy in serious cases, without first invoking medical aid, for the latter is scientific, and based on a vast body of certain knowledge and experience, whereas suggestion is very tentative. We need not deny that in the case of Catholics who receive Extreme Unction, their expectation of recovery may have

1 cf. *Spiritual Healing :* Report of a Clerical and Medical Committee of Inquiry into Spiritual, Faith and Mental Healing ; cf. also, *My Experiences in Spiritual Healing,* by the Earl of Sandwich.

a great influence on their minds, and indirectly on their bodies, for God does not eliminate natural causes but uses them. Understanding Spiritual Healing, therefore, as the healing of the sick by the suggestion of religious considerations, there is nothing unlawful in its use, provided it is used without superstition, scandal or vain-glory', and in serious cases, after the appeal, if possible, to medical aid.

Catholics may not ask for the ministrations of a non-Catholic Spiritual Healer, because such ministrations are not recognized by the Church, they may easily lead to indifferentism in religion, since effective cures will induce Catholics to believe that these ministrations are blessed by God, whereas their own prayers and the Sacraments are apparently not so blessed. No Catholic claims the gift of Spiritual Healing, but like others, a Catholic may be able to employ suggestion to heal disease ; if he effects a cure he will never attribute the result to any special personal gift of his own,1 but to the power of God Who makes use of natural means, when these are sufficient. In accordance with Resolution 63 of the Lambeth Conference, 1920, the Anglican Church appointed a Committee to investigate and report on the whole question of a Ministry of Healing.2 The Committee held that " the official recognition of healing societies by ecclesiastical authorities is unnecessary, that it is not the function of the Church to apply its means of restoration, if no higher end is sought than the recovery of bodily health, but that it must sanction methods of religious treatment of body, and in doing so, give full weight to the scientific discoveries of those who are investigating the interrelation of spirit, mind and body."

1 The rather terrifying experiences recorded in *P.S.P.R.*, vol. 27, p. 400 sqq., should deter anyone from attempting self-hypnotism. " I found it as a rule very easy," the writer says, " to manœuvre myself into some mental state from which I could not get myself out again." The confessor will meet with cases of a milder sort than this, and it is well to realize that a diseased mind should be treated with extraordinary patience, and the sufferer referred to a physician. Persons who complain of hearing voices and feeling touches are real objects of pity and their sufferings should be treated seriously.

x *The Ministiy of Healing* ; Report of die Committee (London, S.P.C.K., x924> P· 43)-

SINS CONTRARY TO RELIGION

12. Spiritualism

By this term is understood the practice of attempted communication with the spirits of another world, or, perhaps more accurately, of spirits in a state of existence other than our present human state. We may dismiss at once, as being grievously dangerous and wrong, all attempted unauthorized communications with evil spirits. It must be admitted that the evil spirits are the enemies of mankind, and association with them is sure to lead to spiritual harm. Even implicit invocation of spirits, namely, the seeking for knowledge from them by means not approved by God or His Church—and this is the besetting sin of modern spiritualism—is implicit idolatry, since it is to attribute to these spiritual beings, whether evil or not, the power of revealing the things of another world, or of foretelling the future. This is to attribute to them that which belongs to God alone, and to assign to them a sphere independent of God. If, however, God is to be supposed to allow the spirits to be questioned and to return answers, it is monstrous to maintain that His Divine Majesty should allow them to give contradictory replies, to deny the existence of hell, the divinity of Christ and other revealed mysteries.

But modern spiritualists claim that they wish to communicate with spirits of the known dead only, and if other spirits, human or other, interpose themselves, as they are supposed to do, acting as 'controls' or intermediaries between the human medium 'on this side', and the departed friend 'on the other side', they must be put up with for the time, since the dead apparently cannot communicate with us directly. This method has in point of fact, been found, so it is alleged, the most effectual.

The most famous of modern 'controls' called themselves: G.P. (George Pelham), Dr. Phinuit (once a popular control, a busybody and practical joker, now, however, not in evidence, gone somewhere—to a higher sphere (?)—perhaps offended by people like Hodgson, and permanently estranged from mere humans), Imperator, Rector, Feda, Nelly, John King.

The most famous of modern mediums were Mrs. Piper and Madame Eusapia Palladino. An astonishing variety of phenomena is recorded in the case of the latter.[1] It is, however, fair to spiritualists to say that she was detected in trickery only in her later years. There are instances of vulgarities and absurdities of (controls especially of Dr. Phinuit.[2] There is trivial nonsense,[3] as when the communicating spirit (i.e., Raymond, as alleged) talks of having got a new tooth, of being allowed to wear earth-clothes till he got acclimatized to the new conditions, of the supply of whisky-sodas and cigars 'on the other side', of boys who had passed 'to the other side' with nasty ideas and vices, who were given another chance in a kind of reformatory. At a seance with Hodgson as control (in his earth life a very' exacting critic of the spiritualistic claims), Mrs. W. James made a most regrettable slip of the tongue by asking if the spirits were apparelled. The spirit of Hodgson made a no less regrettable slip by answering in the negative, and was so 'winded' that he had 'got to go out and get his breath', as Rector, another control, explained. Normally there are four intelligences engaged in a seance: 'on this side', the sitter (i.e., inquirer) and the medium; 'on the other side', the 'control' and the communicator (i.e., the spirit of a dead friend or relative). No one knows the precise relations that exist between the dead and the 'controls'. The Witch of Endor controlled the spirit of Samuel, but no modern medium works, we believe, except through a spirit control.

The phenomena produced by Rudi Schneider, an Austrian medium (1930—1931), were subjected to the most minute physical (photographic) tests. According to some observers fraud may be ruled out of the case, as well as direct contact by the medium. The phenomena may be styled telekinetic, and the medium a teledynamist. It appears that the 'power' was certainly objective. The control who is named Olga, was bom in Ireland in 1818, and died in

1 P.S.P.R., vol. 23.
2 P.S.P.R., vol. 13, pp. 338, 576; vol. 14, p. 25; vol. 17, p. 107.
3 P.S.P.R., vol. 13, *passim,* and Sir O. Lodge, *Raymond.*

New York in 1861. There is, of course, no evidence that any control ever intervenes in séances, and we are not committed, at present, to belief in their existence.[1]

The intentions of spiritualists are, they aver, excellent; they wish to prove that consciousness survives in the human spirit after death; they carry on their experiments with a reverence, sadly wanting at times in the 'controls' They are seeking more evidence for the apparent supernormal powers of mediums. All this is purely scientific. Attempts to extend the confines of human knowledge into the realms of spirit must not, they say, be discouraged. Hence, table-rappings, table-turning, tilting of tables, automatic script, psychometry, materializations, all these are means, they claim, of getting into contact with the spirits, and are scientific and praiseworthy.

Modern Spiritualism is attempted necromancy or evocation of the spirits of the dead, and for that reason, if for no other, it is to be condemned. When it is maintained that planchette (or ouija) or automatic writing is harmless, it is surely forgotten that universal experience proves that the phenomena become progressively more interesting, more fascinating, and often obsessing. Whether the spirits insidiously lure people on, or some of the mediums do so for professional gain, the result is the same; the 'sitters' begin to believe that they are in contact with spirits, and the belief itself—even if the contact is not a fact—is the beginning of the rejection of revealed religion and of the Church founded by Christ.

The practices of Spiritualism are ancient and wide-spread.[2] The prohibition is as old as the book of Deuteronomy: "Neither let there be found among you any that consulteth pythonic spirits or fortune-tellers or that seeketh the truth from the dead. For the Lord abhorreth all these tilings" (18, 10-12). No less precise is the prohibition today, for the Church definitely forbids even passive presence at

1 cf. *Hibbert Journal,* Oct., 1932, in an article entitled 'The New Era in Psychic Research,' by Professor Fraser Harris, and *The Month,* June, 1933. The case of Schneider is still a matter of controversy.

1 cf. Lapponi, *Hypnotism and Spiritism,* ch. 2.

spiritualistic séances (S.O., April 27, 1917). "Is it permitted," it was asked, "through a medium or without a medium, to assist at spiritualistic seances or manifestations of any sort—even when they appear to be good—by interrogating souls or spirits or by listening to the replies given, or by merely looking on, having made a tacit or express protestation against wishing to have any dealings thereby with the evil spirit?" The Holy Office replied in the negative to the question and to every part of it. In view of the serious nature of this prohibition, Catholics cannot be admitted to the Sacraments if they intend to frequent such seances without the express permission of their ecclesiastical Superiors. There can be no doubt that Spiritualism is a menace to Catholic faith, for complete loss of faith has been found to be the almost invariable result of addiction to it. The soi-disant spirits at first advise Catholics to frequent the Sacraments and to pray, but before long they insinuate doubts and suggest that all religion is superstition, except the particular aspect of it which they favour. Their own creed is that after death there is continued progress from sphere to sphere of light, ever more light and happiness, ending in something they never speak about, or at least speak about with such vagueness, though withal such unbounded assurance, that the doubting mind is captured and ends by abandoning revealed religion for the new, consoling and wonderful revelation given by the spirits.1

In the foregoing account the present writer in no way assumes that the phenomena are due to the agency of spirits. Many of the phenomena can be ascribed to telepathy, many to good guessing, some to trickery, and there is a residuum that is inexplicable on physical grounds.2 It is no part of

1 For a full statement of the case against Spiritualism, see Raupert, *Spiritistic Phenomena and their Interpretation.* This writer, once a member of the inner circle of Spiritualists, is convinced that the whole thing is evil.

1 Quite inexplicable phenomena—if the evidence is trustworthy—took place in modern times in the cases of Eusapia, Eva C. (examined with great care by the S.P.R., 1920), and Miss Goligher of Belfast (examined by Dr. Crawford from 1915 to 1920). In these strange cases of materialization, a tenuous material ('plasma') was supposed to emanate from the body of the medium and to take various shapes, such as rapping rods and psychic

the Moral theologian's task to discuss theories, but only to determine the morality of human acts ; for him, Spiritualism stands condemned, because it is acknowledged to be attempted evocation of the spirits of the dead, and because it has led to results that are disastrous to mind, morality and Christian belief. Even the less harmful playing with automatic writing and table-turning has the bad effect, that it develops into a craving for more and more striking phenomena, and this craving cannot, in practice, be resisted. The palmary instance of this was the case of the Rev. Stainton Moses, who wasted years of his life writing automatically—as he said—in the vain conceit that he had a message for humanity. It is strange that these messages should have been quite seriously taken by neophytes in the business as a true representation of facts ' on the other side '. Such vaporous outpourings become the *vade mecum* of mediums. Their jargon is extraordinarily stereotyped, as though they were careful to talk according to the text-book, but it is more than probable that the personal views of mediums also colour the communications. How else could we explain the contradictory nature of them ? Thus, whereas many of the spirits speak reverently of Jesus Christ, of religion, of the Bible, of Catholic belief, others speak of a probation after death for everyone, others deny the existence of Purgatory (" You have your purgatory here "—Phinuit) ; others, that a suicide is sorry merely for the trouble he has caused his friends ; others that the Bible has errors, and so on.

Such and other equally contradictory statements cannot be reconciled with revealed Christianity. The spirits are either liars, or themselves deceived, or never really speak at all, communication being just the fabrications of the medium's brain. Lastly, it is a very strong argument against the claims of Spiritualism, that on no occasion has the spirit proved its identity, though most anxious to do so, and though it has invited the sitters to apply the most rigorous tests.

cantilevers. The material has even, it is said, been photographed. Pieces of ' plasma ' have been snipped off, and found to be paper or a material like gauze or butter-cloth.

The spirit has failed in every case, unless, perhaps, in the few exceptions, where from the effects and its own admission, it was proved to be an evil spirit. Spiritualists, of course, admit the possibility of invasion by evil spirits ; this, however, is their main thesis, viz., that communication with the dead has been established, which Catholics must deny, both owing to lack of evidence and on grounds of Christian belief.

It was stated above that Spiritualism is a very ancient and widespread cult. Practically everything that modern mediums do has been done ages ago.1 Today, the phenomena produced by mediumistic savages are singularly like those produced in seance rooms. To quote one example : Mr. D. Home is reported to have been able to elongate himself on several occasions. This elongation is one of the rare phenomena produced by mediums. A Catholic Missionary, Fr. Orinel, C.S.Sp., records the following occurrence amongst the Madagascar natives.2 A girl acted as medium, two aged women as her attendants. Incense was being burnt in some pans, which they passed from time to time in front of the girl. They then made a series of passes with hazel wands over the girl, who became violently agitated. Her bosom heaved violently, her eyes seemed as though imploring the lookers-on, who howled forth a menacing prayer. She bounded to her feet, saying : "I am here," which meant that the spirit had descended upon her. An indescribable delirium took possession of all present. "What was my astonishment," wrote the Missionary, " on seeing the girl's features change as I looked ! It seemed to me that her limbs became longer, her height much greater. I rubbed my eyes. No, I was not the victim of an hallucination. The possessed girl had grown taller, until she was fully a head over the two old women. The girl then named the disease of each sufferer who passed in front of her, though her eyes remained fixed, motionless and gazing into the distance. The aged women repeated the passes ; the figure of the young girl resumed its normal size ; her features

1 cf. M. Delrio, SJ. (1551-1608), *Disquisitiones Magica.*
2 *Annals of the Propagation of tht Faith* (Feb., 1918), p. 12

relaxed, her eyes recovered their natural expression, and at last she said : 'I go'. The spirit was gone. The *tromba* was finished."

It is extremely likely that if the Missionary had exercised his own spiritual power he could have prevented these sinister manifestations.[1] Catholic priests cannot always prudently prevent such things ; sometimes the spirit of evil is allowed by God to exercise his power in opposition to the priest. Missionaries in almost every country have first hand evidence of the power of Satan, and it is the most credible hypothesis that in modern Spiritualism, as practised in civilized countries, from the recrudescence of it in the Fox family, Hydesville, U.S.A, *[circa* 1850) to the present day, the devil has insinuated himself, but deftly disguises his presence, lest he should turn people away from a cult which he is very pleased to see practised, in the hope that he may win apostates from the revealed truth, once for all and fully given to man by God, through His Divine Son.

SECTION 7. Sins contrary to Religion by defect

The virtue of religion is violated by defect through want of due reverence to God. Irreverence is direct, when we make trial of God's Attributes (that is, tempt God), and in peijury, unfaithfulness to promises made to God, and blasphemy. It is indirect in sacrilege and simony, because in these sins God is dishonoured by impheation, namely, by dishonouring persons, things, or places that have peculiar relations to Him.

1. Tempting God

The tempting or making trial of God consists in any word, deed, or omission, whereby we attempt to put to the test one of God's Attributes, as His Power, Wisdom, Love. It is explicit, if such trial is made directly, as by one who challenges God to work a miracle if He can ; it is implicit, if such trial is made by implication, as by one who needlessly exposes his life, wishing that God will help him.

[1] A very g i example of effectual opposition is recorded in *Twentj-fice Years' Reminiscences,* by Katharine Tynan, p. 288, where the authoress tells how she broke a psychic circle by her prayers.

Explicit tempting of God is a grievous sin, because it is an insult to God to doubt His power, and to challenge Him to manifest it.[1] It is a sin against faith and religion.

Implicit tempting of God may be a venial sin, if in a slight matter God's help is recklessly invoked. This is a sin against religion only. This sin of tempting God is neither presumption—a sin against hope—nor true confidence. The Saints have apparently exposed themselves to danger, and even to death, without obvious necessity, if we can believe the records of their actions. If they did, we may reasonably think that they were specially inspired to do so. Bishops have permitted the trial by ordeal to prove guilt or innocence.[2] They may have thought the cases serious enough for God's intervention, relying on the example recorded in the Book of Numbers (5, 12 sqq.), or they may have allowed it to prevent greater evils. At all events, it was constantly condemned by the Church from the earliest times as savouring of superstition and irréligion. Trial by ordeal was condemned as early as Pope Stephen V (816) and S. Nicholas I (858). Trial by ordeal is still resorted to by some savages. A case is quoted from Liberia (1931). One form of trial by ordeal is the palm-oil-and-stone trial. A vessel containing an oily concoction of leaves and herbs is prepared. The right hand and forearm of the person to be tried arc anointed. He is then ordered to pick up a small stone lying at the bottom of an iron pot, full of boiling palm oil. If he succeeds, he is to place the stone in his mouth. If his mouth is not burned, he is judged to be innocent. Another trial is that by sasswood. This is a poisonous plant. A bag containing bark chips is soaked in water. The accused has to drink some of the water. The lucky one vomits but the others who retain the poison die in a short time. A third form of trial is still more absurd ; a small boy goes round the town and whips those whom he has a fancy to whip. The doctor follows him and decides who is the culprit.

[1] " Thou shalt not tempt the Lord thy God " (Mt. 4, 7 ; cf. Deut. 6, 16).
[1] P. Browe, S.J., ώ *OrdaIiis.*

2. Sacrilege

1. Sacrilege is the violation of a sacred person, place, or thing. In a wide sense, every sin of a Christian is a sacrilege, because it is the violation of the temple of the Holy Ghost : " Know you not that your members are the temple of the Holy Ghost, Who is in you, Whom you have from God" (i Cor. 6, 19).[1] Sin is a profanation of that which, by Baptism, is peculiarly dedicated to God. But since every mortal sin is sacrilege in this broad sense, it would be meaningless to speak of a specific sin of sacrilege in a particular sense, having its own peculiar malice. Yet we must speak of specific sacrilege, for there is a species of profanation found in some sins and not found in others, when the peculiar sanctity of person, place or thing is violated.

2. The true concept of sacrilege is that it is the violation of a person, place, or thing, publicly dedicated to God in a particular manner and for a particular purpose. Christ Himself has set aside the Sacraments as quite peculiar rites, and the Church has set aside persons, places and things as peculiarly holy. Violation of these is sacrilegious, provided the violation be directly opposed to their specific juridical holiness and dedication. Two factors, therefore, constitute sacrilege, namely, violation of a holy object (person, place, or thing) and the violation of the purpose for which it was dedicated. Theft of church property is a sacrilege ; theft of money in a church, neither belonging to nor committed to the Church, is probably not sacrilege. The violation of chastity by a priest is sacrilege ; the violation of a private vow of chastity is probably not.[2] To lay

[1] The Apostle is here speaking of impurity as defiling the body, which is the temple of the Holy Ghost. He speaks more generally in 2 Cor. 7, 1 : " Let us cleanse ourselves from all defilement of the flesh and of the spirit " ; 2 Cor. 6, 16 : " What agreement hath the temple of God with idols ? "

[2] This statement is disputed : cf. S. Alphonsus (lib. 3, n. 47) ; Lugo, *de Panit.*, d. 16, n. 146. But obviously, the violation of a vow is always a sin both against religion and against the virtue which is the matter of the vow. In the case of a private vow of chastity there is no juridical dedication by the Church. An individual does not make himself dedicate to God by a private vow (Verm., II, n. 267).

violent hands on any cleric is sacrilege ; it is not sacrilege to strike a parent.

It will be true to say, therefore, that what is constituted sacred by the Church's dedication is juridically removed from common use, and the violation of it is sacrilegious. The State renders the persons of some of its members sacrosanct and exempt from arrest. The Church has similar power in its own sphere, but God ratifies the Church's action, and the matter is brought into the sphere of conscience.

3. Sacrilege is personal, local, or real, according as a sacred person, place, or thing is violated. These three species of sacrilege differ in heinousness, and in each species there are varying degrees. Thus, in general, the violation of a sacred person is worse than that of a sacred place, but the worst of all sacrileges is sacrilege against the Holy Eucharist, for this Sacrament contains Christ Himself.[1]

(a) Personal sacrilege is the violation of the juridical or consecrated holiness of a person ; it is committed in any of the following ways :

By laying violent hands on clerics or Religious. The offence is contrary to the ' privilege of the canon ', and is visited with excommunication reserved to the Ordinary (c. 2343, 4). Clerics are they who are set apart for the sacred ministry by the first tonsure (c. 108). Religious include all who have taken public vows in any religious body tending to evangelical perfection (c. 488, 7) ; novices are included in this privilege.

By 'real injury' done to clerics or Religious (c. 119). This includes all injurious deeds.

By violating the '*privilegium fori*', or the immunity of clerics from citation before secular Courts. This immunity

1 S. Th., S'., 2. 2, q. 99, a. 3, *c.* S. Thomas appears to approve of the division of sacrilege as stated in the text. Others reduce local sacrilege to real sacrilege, and admit only two kinds. Since the gravity and species of sins of sacrilege differ greatly, as in unworthy Communion and sacrilegious theft, it would not seem sufficient to confess merely personal or real sacrilege, without adding other circumstances which add to the malice of the sin. Thus, trampling on a sacred image may be blasphemous, and theft of church property is opposed to justice as well as to religion.

is clearly defined and limited by the canons (c. 120), and the penalties arc assigned (c. 2341). Religious (even lay, and also novices) enjoy this privilege (c. 614).

[1] By a sin against chastity internal or external, committed by a person in Sacred Orders or one under a vow of chastity (public, probably not private) ; or such a sin externally committed with such person, or internally conceived against such person. A Religious who is also in Sacred Orders commits one sin not two sins by the violation of the vow of chastity, because the obligation of the vow arises in both cases from one source, namely religion. If accomplices in unchastity are both under public vow there is a double sacrilege committed.[1]

(α) Local sacrilege is the violation of a sacred place. A place is sacred if it has been dedicated by public consecration or blessing to divine worship or the burial of the faithful ; thus, a church or oratory so blessed and a blessed cemetery are sacred places. It may be committed in the following ways :

Theft in a church of private property committed to the Church's keeping, and probably, if not so committed, for in the latter case the sin is contrary to the reverence due to the place. This latter sin will usually be not serious as against religion.[2]

By violating the immunity of a place in the way determined by the canons ; this is violation of the right of sanctuary (c. 1179).

blessed), such as the destruction of a church, homicide and suicide, marketing, stabling, serious and sinful shedding of blood, and other similar impious and unseemly actions

[1] This personal sacrilege requires carnal pleasure in fact or in desire on the part of the person under vow. If such a one, without carnal pleasure or the desire of it, induced another not under vow to commit a sin of unchastity with a third party not under vow, he would not be committing personal sacrilege, though obviously his sin would be mortal. The distinction makes a difference in the manner of confessing such a sin.

in a church whereby it is violated, as also by the burial of an infidel or a sentenced excommunicate (c. 1172). To these may be added banqueting, dancing, shows, plays. Forbidden also are lantern pictures, still or moving (S.G.C., Dec. 10, 1912). Internal sins in a sacred place are not sacrileges, unless there is the desire of committing actual sacrilege in the place.

These actions must be certain, notorious and committed in the sacred place itself.

(c) Real sacrilege is violation of sacred things. It may be committed in the following ways :

By abuse of the Sacraments, whether in attempting to confer or receive them invalidly, or in administering or receiving them unworthily, or profaning the sacred species.[1]

By the abuse of sacred things, such as Holy Scripture, to prove heresy or make obscene jokes ; using consecrated vessels for banqueting ; treating with disrespect the relics or images of the Saints, altars, sacred edifices ; aping holy ceremonies with ridicule.

By theft of church property, as to seize a legacy left to the Church, or to alienate money or tithes collected for the Church ; destruction of church property, theft or destruction of property belonging to Religious or pious Institutes erected by legitimate authority.

In common opinion, carnal sin within a short time after receiving Holy Communion, or when a sacred Minister is vested for Mass, or while a sacred Minister celebrates Mass or carries the Blessed Sacrament.

Celebrating Mass without vestments, needlessly and deliberately, or using extremely dirty chalice or corporal.

Though sin committed on a major feast day is not, for that reason, sacrilegious, public anti-religious processions instituted as an affront to the Christian reverence for the Blessed Sacrament are, if not sacrilegious in intention, at all events, blasphemous.

[1] A deplorable and blasphemous practice of some Spiritualists who worship Satan in despite of Christ. Unworthy and sacrilegious Ordination to the priesthood for blasphemous theosophical purposes : cf. *The Month* (July, 1918), for a modem example.

3. Simony

1. Definition.

" When Simon Magus saw that by the imposition of the hands of the Apostles the Holy Ghost was given, he offered them money, saying : ' Give me also this power, that on whomsoever I shall lay my hands, he may receive the Holy Ghost.' But Peter said to him ' Keep thy money to thyself to perish with thee, because thou hast thought that the gift of God may be purchased with money. Thou hast no part nor lot in this matter. For thy heart is not right in the sight of God. Do penance, therefore, for this thy wickedness, and pray to God, if perhaps this thought of thy heart may be forgiven thee. For I see thou art in the gall of bitterness and in the bonds of iniquity.' " (Acts 8, 18 sqq). From the name of this man, simony is used to denote the sin of buying what is spiritual with what is temporal. In the canons (cc. 727-730) it is defined as the formal and expressed will[1] to bind another to make an exchange for some temporal price of what is intrinsically spiritual, or what is annexed to something spiritual, the Sacraments being intrinsically spiritual, revenues of a benefice being annexed to spiritual jurisdiction.

In the term ' temporal price ' are included money, anything used to barter *{munus a manu),* moral factors of exchange value, such as, patronage, praise, commendation *{munus a lingua),* sendee, despatch of business and the like *{munus ab obsequio).* Simony is called intended, if some act is done with simoniacal intent ; it is real, when a contract has been executed ; it is contractual, when a contract has been entered into but not executed ; it is confidential, when the simony relates to benefices. Without mutual agreement, simony does not take place.

2. Simony agqinst divine law takes place :

{a) When .'something intrinsically spiritual is bought or sold for a temporal price, such as the Sacraments, ecclesiastical jurisdiction, consecration, indulgences.

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1 Will : i.e., by means chosen and employed, express contract, actual transference. These forms of simony are, respectively, intended, contractual, real.

2^.-*

(b) When what is bartered is a temporal advantage, so connected with what is spiritual that the former cannot exist apart from the latter, such as revenues of a benefice.

(r) When that which is spiritual is the object, even partially, of a contract, such as the consecration of a chalice in the sale of chalices (c. 727, 1).

3. Simony against Ecclesiastical law.

This kind of simony takes place when an exchange is made between things of temporal value, each being connected with what is spiritual, or when an exchange is made of spiritual with spiritual or of temporal with temporal, provided that in both cases the exchange is forbidden by church law on account of the danger of irreverence towards spiritual things (c. 727, 2).

4. Sinfulness of simony.

Simony against divine law is always a grave act of irreverence to God ; it is disposing of what belongs to God in a way that implies irreverence and contempt ; for His grace, the Sacraments, jurisdiction, are His free gifts. Man cannot dispose of them, and they have no price. If, however, a very small amount is offered for spiritual gifts, that circumstance might be taken to mean absence of deliberate simony. Simony against Ecclesiastical law is ordinarily a grave sin, but may be venial if the exchange made is trivial, unless the Church has declared the contrary.

Custom or contrary law can abrogate simony against church law but not against divine law.

5. Absence of simony.

(a) Simony is absent when a temporal price is given on the occasion of some spiritual ministration, by virtue of a just title recognized by the sacred canons, or by legitimate custom, such as offerings for Masses, baptisms, marriages, funerals, expenses in expediting and sending dispensations.[1]

[1] For a long discussion on the legitimacy of Mass offerings, as they are called, see Venn., II, n. 279 ; also, for the opinion of M. De la Taille, that Mass stipends today represent the ancient oblation by the people of bread and wine, etc., which, after being offered in sacrifice, became the property of the priests. This opinion need not displace the opinion given in the text, which regards the lawfulness of accepting Mass stipends. Whether the contract be

(b) It is absent also when a price is given for a consecrated chalice, provided that the price is not increased on account merely of the consecration, apart from the trouble and expense of getting it consecrated (c. 730).

(r) A price may be similarly given for the material of altar-stones, crucifixes, rosaries, and for the favour of getting them blessed. But if blessed rosaries are sold they lose all indulgences annexed.

(s) It need not be simony to perform sacred functions more readily for a large offering, since the actual ministration is not bartered.

(e) It is not simony to offer money in order to free oneself from the loss of the Sacraments, or from annoyance in the free performance of one's religious duties, or to rescue sacred tilings from profanation.

(f) Though it may not be simony to offer prayers and even Masses as stakes in gaming, it is irreverent and scandalous ; it is not simony to offer Masses in payment of debt, if made as a virtual return of Mass stipends.

(g) Chalices and vestments may be sold for the material in them to any buyer, provided the price is not enhanced in consequence of their being consecrated or blessed.

(h) Though fees may not be taken for Masses as the price of them, nor for that labour which is necessarily implied in saying them, they may be taken for the maintenance of the priest, even though he do not need them, or for the accidental or additional trouble or expense in saying Mass. Similarly, fees for spiritual ministrations are not cases of simony, as they are in no sense given—nor may they be given—for any spiritual benefit. They are the reasonable contribution of the faithful to the support of their pastors.

6. Acts of simony.

(a) As it is simony to give a temporal price for a spiritual

for conferring a spiritual favour, or as compensation for what is spiritual.

onerous *(do ut facias)* or gratuitous *(rations rei relentæ)* the priest's obligation is identical.

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(6) To give an enhanced price for a consecrated chalice on account of its consecration is simony.

(c) Simony is committed if deduction from the income of a benefice, or compensation or payments are to be made by a cleric in the act of provision to die benefice (c. 1441).

(ꞩ) It is simony to take money for the publication of Indulgences or other spiritual favours, for the erection of confraternities, for admission of novices to religion, except by way of dowry for sustenance, unless the novice is clearly unfit.

ℓ It is simony to give money to another as the price of omitting a spiritual benefit which that other is bound to give, such as sacramental absolution, necessary fraternal correction.

7. Effects of simony.

(a) A simoniacal contract is null and void in Ecclesiastical law (c. 729) ; if simony be committed in respect of benefices, offices, dignities, the subsequent provision is invalid, even if the simony was committed by a third party without the knowledge of the provided person, and if it was not done deceitfully or against the expressed will of such person.

(b) Consequently, before any judicial sentence, the thing given and received simoniacally must be restored, if capable of being restored, and if restitution is not contrary to reverence due to a spiritual thing ; a benefice, office, or dignity so accepted must be relinquished.

(c) The person simoniacally provided derives no emoluments from the provision ; if, however, he acted in good faith, the judge or the Ordinary may condone wholly or in part the fruits already received (c. 729).

8. Penalties for simony.

(a) All persons, even of episcopal dignity, who have knowingly promoted others simoniacally to Orders, or who have been so promoted, or have thus administered or received the other Sacraments, are suspect of heresy : clerics thus guilty also incur suspension reserved to the Holy See (c. 2371).

(i) In addition to what has been stated above, those who

are guilty of simony in any ecclesiastical office, benefice, or dignity, incur excommunication, *ipso facto,* reserved simply to the Holy See, and are, *ipso facto,* deprived in perpetuity of the right of election, presentation, nomination, if they had any such rights. If clerics, they are also suspended (c. 2392).

9. Restitution for simony.

(a) If the temporal price has been handed over but not the spiritual thing, the former must be restored.

(/>) If transference has taken place on both sides, apart from the matter of benefices already mentioned :

(i) Restitution must be made, if the spiritual thing confers no temporal benefit, or one not commensurate with the price given, or one which had to be bestowed on grounds of duty—such duty, for example, as a bishop or priest is bound to fulfil gratuitously—for in such cases justice is violated.

(ii) Restitution must be made of any excess in Mass stipends demanded contrary to the prohibition of the Church, even if simony was not committed, provided that commutative justice has been violated. If commutative justice has not been violated, then, apart from express declaration or sentence, such price received need not be restored, for religion or obedience, but not justice has been violated. Therefore, one who has sold indulgenced objects such as rosary beads, medals, etc., for the value of their material is not bound to make restitution. Thus, too, a parish priest who has taken a stipend without permission for the second Mass said on Sundays—the first having been said *de jure* for the people—is not bound to restitution *postfactum.* But if he exacted a stipend for the Mass which he is bound, in justice, to say for the people, he would be bound to restitution, since he would have been remunerated twice for the same Mass.1

1 Verm., IΓ, η. 284.

CHAPTER III

SECOND COMMANDMENT

SECTION 1. The Precept

The Second Commandment is : " Thou shalt not take the name of the Lord thy God in vain " (Exod. 20, 7).

This Commandment forbids all irreverent speech against God, expressed chiefly in blasphemy, and also taking of unlawful oaths and the violation of vows.

The Holy Name of God must be used reverently always, and therefore if It is consciously used as a mere expletive, at least a venial sin is committed unless there is contempt added, when it would be grievously sinful.

Similarly, the Holy Name of Jesus, the names of the Blessed Virgin and of the Saints must be used with reverence, since this is due to the Sacred Humanity of our Lord, and to the Saints as especially beloved of God.

SECTION 2. Blasphemy

Blasphemy is contumely against God and is directly opposed to the desire of worshipping God. It is primarily a sin of the tongue, but blasphemous thoughts, writing, actions are equally offensive to God. Direct blasphemy takes place when contumelious speech is used intentionally to dishonour God ; it is indirect blasphemy, if God's dishonour is foreseen but not intended. There is no specific difference between these two kinds of blasphemy.

Heretical blasphemy contains expressions of heresy, such as the denial of God's mercy, providence, justice, and this is an added sin against faith. Imprecatory blasphemy contains imprecations against God that evil may come to Him. Blasphemy is sometimes directed against God in His Person or Attributes, sometimes against His Saints, Angels, men, universe—in their relations to Him.

All blasphemy against God is a grievous sin. It is the most grievous sin against religion. Blasphemy against the Saints

or sacred things—in so far as they are consciously referred to God—is also grievous, for God is equally dishonoured thereby. But such is not common ; the sin usually committed is one of irreverence towards those to whom reverence is due, and will ordinarily be a venial sin.

To utter imprecations without just cause against irrational creatures or the world in general—but not in their relation to God—is not blasphemy, but is an act of impatience.

The habit of blasphemy is a scandal to others, and should be discontinued by curbing impatience and anger. In the case of one who blasphemes from habit and without advertence either to God's dishonour or to the scandal given, material sin only is committed, but there exists a serious obligation of eradicating the habit, and he is responsible for having contracted the habit. Penitents who are not able to forgo the habit are usefully advised to try to diminish the frequency of their blasphemies, and to exercise patience and meekness.

Pastoral Note

The pastor will earnestly exhort the blasphemer to consider what an outrage he is guilty of in the sight of God, if his blasphemy is deliberate. For such deliberate blasphemies the Council of Lateran bade the confessor to impose a most severe penance. If, however, the blasphemies are indeliberate, the penitent will be advised to keep away from occasions of such scandal to others, to repeat the 'Glory be to the Father' as often as he has blasphemed during the day, to determine seriously each day to diminish the number of his blasphemies that day, not to expect to get rid of an inveterate habit in a moment, to curb his temper, for anger is usually the cause of impatient blasphemy, and to avoid, as far as possible, the company of those who are the occasion of his fits of temper. In addition to these helps, he will, of course, be exhorted to go frequently to confession and Holy Communion, and to be faithful to his daily prayers. By using such supernatural means, he may confidently hope to overcome the habit.[1]

[1] Reuter, *Neo-Conf.*, n. 94.

SECTION 3. Oaths

1. Definition

An oath is the invoking of God to bear witness to the truth of what we say. If used with reverence it is an act of the worship of God ; otherwise it is sinful. It might appear that our Lord forbade all oaths : " But I say to you not to swear at all ; neither by heaven, for it is the throne of God, nor by the earth, for it is His footstool, nor by Jerusalem, for it is the city of the great king, neither shalt thou swear by thy head because thou canst not make one hair white or black. But let your speech be : Yea, yea : no, no. And that which is over and above these is of evil " (Mt. 5, 34-37 ; Jas. 5, 12). This passage does not exclude every oath, for we have examples in Holy Writ in which God Himself, and our Lord, and the Apostle Paul confirmed statements by oath (Gen. 22, 16 ; Isaias 45, 23 ; Lk. 1, 73 ; Heb. 3,11; Rom. I, 9 ; Gal. 1, 20). Scripture itself shows, therefore, that the prohibition against oaths—like that against killing, " Thou shalt not kill "—is not universal. The words : " Let your speech be Yea, yea : no, no. And that which is over and above these is of evil " (not of the evil one), mean that if an oath be necessary sometimes, as it may be, the reason is found to be the incredulity of the hearer, or the universal deceitfulness of speakers, and these are of evil origin. In this sense, God also could affirm on oath, because, though His Divine Word is credible, unbelieving man will not accept a mere affirmation.

In an assertory oath we call God to witness the truth of an assertion ; in a promissory' or comminatory oath we invoke Him to confirm our promise or resolution. A solemn oath employs a set formula determined by law in legal cases ; a simple oath does not. An imprecatory oath invokes God as the Avenger of perjury : ' So help me God ' ; ' May God punish me if I lie.' An invocatory oath simply invokes God as witness : ' I call God to witness that I speak the truth.'

Two forms of oath are known in the English Courts ; the Scotch oath, an adjuration by the invocation of God with uplifted hand ; the ordinary form of English oath, concluding

with the words : ‘ So help me God,’ and sworn upon the Bible. ‘ Kissing the Book ’ is peculiar to England. The Oaths Act of 1888 permitted an affirmation instead of an oath in the case of those who objected to be sworn. The Bible need not now be kissed or touched. The abolition of kissing the Book as a necessary element in the English oath (ann. 1893, 1909) was due to members of the medical profession, who objected, on sanitary grounds, to kissing the same copy of the Testament that had been in use for years, and had been daily kissed by people of the lowest classes and uncleanly habits.

For a valid oath, binding in conscience, there are required the intention of taking the oath, and requisite formula to express that intention. Consequently, a fictitious oath, one taken with no intention of invoking God as witness, does not bind in virtue of religion ; if it were fictitious and promissory, it would bind one to make good any loss accruing to another who entered into a contract in reliance on such an oath, for no man may derive a benefit from fraud.

An oath extorted by violence, or made under the pressure of grave fear, is binding in conscience, but can be voided by a Superior (c. 1317). An oath taken without pressure from violence or fraud, whereby one renounces a private good or favour granted by law, must be kept, so long as it does not imperil salvation (c. 1317, 3).

The formula of an oath must be a sufficient one. Thus : ‘ I swear by God,’ ‘ God is my witness,’ are sufficient. The forms : ‘ As God liveth,’ ‘ By my oath,’ ‘ By my conscience,’ ‘ God knows,’ ‘ By heaven,’ are very doubtful formulas. ‘ May I die if this is not so,’ ‘ This is as certain as my existence,’ ‘ May Satan destroy me if this is not so,’ are certainly insufficient.

2. Lawful Oaths

For a lawful oath there are also required the three elements of truth, judgment and justice : “ And thou shalt swear, As the Lord liveth, in truth, and in judgment, and injustice ” (Jer. 4, 2).

I. Truth excludes lying and reasonable doubt, but does

not exclude invincible error or legitimate mental restriction. Truth requires that we should be morally certain of the fact of our assertion and the sincerity of our promise. It would be grievously sinful to invoke God as witness to a falsehood. This does not, however, preclude us from exacting an oath in a Court of Law from another, which he will not take without peijuring himself, provided we have the right, in defence of ourselves or others, to exact the oath. The peijury results from the malice of the other.

2. Judgment in an oath requires that it should be taken for a sufficient cause and with becoming reverence. Absence of this condition will mean a vain employment of God's name, and will ordinarily be a venial sin.

3. Justice in an oath requires :

(a) In promissory oaths, that the promise should regard what is morally lawful ; if the object be grievously wrong, a grievous sin will be committed ; if it is vcnially wrong, the promise is at least vcnially wTong, probably grievously so.[1]

(ά) In assertory oaths, that the assertion should not be sinful, such as a boastful assertion under oath of past sins. This oath would be a venial sin, for God is invoked in respect of what is true in fact, though the assertion should not be made. It will, however, be a serious sin, if God is invoked to strengthen serious detraction, and still more, calumny, because it would be to challenge God to confirm grave injustice. If the detraction is slight, it is held that God is then invoked as an accomplice in sin. The view is probable, though not certain.

3. Fictitious Oaths

It is sinful to take a fictitious oath, namely, one in which we have no intention of invoking God, though we use the necessary form of words, or one by which we pledge a promise when we have no intention of binding ourselves by the oath. Such an oath is condemned by Pope Innocent XI.[2]

[1] cf. S. Alphonsus, lib. 3, n. 146, who sees in it grave irreverence.

[1] A fictitious oath is not to be confounded with a form of words, which naturally indeed are a true expression of an oath, but which we openly declare not to be so for us, but to be words to which we attribute no meaning.

It is seriously sinful to take a fictitious promissory oath in a serious matter, and probably also in matters not serious, without intending to fulfil our promise, or if serious harm is thereby done to another—which must be repaired—or if there be a grave precept imposed by a Superior to take an oath.

In other cases, fictitious oaths will probably be venial sins, because they arc idle invocations of God's name. An oath taken to pledge an assertion that is true if rightly understood by sane people, but which may be misinterpreted by the unthinking, is not a fictitious oath.

4. Promissory Oaths

In promissory oaths we necessarily bind ourselves to fulfil the promise by the virtues of fidelity and religion (c. 1317,1).

The obligation of such oaths is grave or light, as the object promised is grave or light ; there is none at all, if the object promised is unlawful, useless, or impossible *(accessorium sequitur principale),*[1] If the object of the promise directly tend to the harm of others, or the prejudice of common good, or of virtue, perfection, salvation, an oath added gives no stability to the promise (c. 1318).

An oath, being a restriction of liberty, must be strictly interpreted in accordance with the rights and intention of him who takes it ; if he act with fraud, it is to be interpreted according to the intention of him in whose favour it was taken (c. 1321) ; this principle will be applied in the *forum externum.*

A promissory oath in favour of another person, who by it has acquired rights, must be fulfilled—circumstances not having been changed—if it can be fulfilled without sin.

A promissory oath ceases to bind, if remitted by the promisee ; if the object of the promise has substantially changed ; if the object has become sinful or altogether indifferent, or an obstacle to greater good ; if the motive cause cease to exist ; if a condition under which the oath was

[1] A promise to enter into a mixed marriage without dispensation is sinful and does not bind, just as a promise to steal is null and void, for we cannot oblige ourselves to do what is sinful.

pledged lapses ; or finally, by legitimate annulling, dispensing or commuting of it.

Those who can annul, dispense or commute vows can do the same in case of promissor)' oaths, but if dispensation of the oath tend to the prejudice of others who refuse to free the promisor from his obligation, only the Apostolic See can dispense, provided that the needs or utility of the Church require it (c. 1320).

An oath to observe civil constitutions does not extend to such laws as are contrary to divine or ecclesiastical right.

SECTION 4. Adjuration

Adjuration is the use of the name of God, of a Saint, or a holy tiling, to confirm a command or request (" I adjure Thee by the living God that thou tell us if thou be the Christ the Son of God" : Mt. 26, 63).

It is solemn adjuration, if made by a legitimate minister of the Church in her name and in the prescribed form, as in exorcisms. In such cases it is comminatory or imperative. In requests, it is precatory, as when in prayer we beseech God to grant us favours in the name of Jesus Christ His Son.

Adjuration must be made with truth, judgment and justice ; otherwise it is sinful, as in the case of oaths.

No one may lawfully exorcise the possessed unless he has special and express permission from the Ordinary. This permission may be granted only to a priest who is endowed with piety, prudence and holiness of life. Exorcism is not to be resorted to until diligent and prudent investigation has been made, and until it is proved that there is real possession (c. 1151). Exorcisms may be pronounced over non-Catholics and the excommunicate, as well as over the members of the Church. This is solemn adjuration.[1] Private adjuration is always lawful, if truthful, useful, and employed for a morally good object.

[1] The Roman Ritual, tit. xi, gives the formula for exorcisms and enumerates the signs of possession. In pagan countries diabolical possession appears to be not uncommon.

SECTION 5. Vows

1. Definition

A vow is a deliberate and free promise made to God, in respect of something that is possible, morally good, and better than its voluntary omission. It is, therefore, an act of worship, the acknowledgement of God's supreme dominion. We vow only to God; vows are not made to the Saints, but to God in their honour.

To take a vow is better, *ceteris paribus,* than not to take it, for to perform a virtuous act under vow—the obligation being that of religion—is better than to perform it without that obligation for these reasons [1]

1. Such an act done under vow is done for a higher motive, namely, the worship of God.

2. By a vow we place under subjection to God, not only our action, but the power to act, for we surrender the power of acting otherwise. We are in the position of a man who gives to another not merely the fruit of a tree, but the tree itself.

3. It is more virtuous to act with an undeviating will than with one that may vacillate. Under a vow our will is fixed determinedly. Vow forestalls weakness, and better secures the performance of a good act, not leaving matters to the indecision of the moment.

The one objection to vows that is worth answering is that it would appear to be more virtuous to serve God freely than to be constrained to do so. But the vow is a free act, and is a definite choice of that which is the better. A vow is acceptable to God if its object is pleasing to Him: "When thou hast made a vow, thou shalt not delay to pay it, because the Lord thy God will require it. And if thou delay, it shall be imputed to thee for sin. If thou -wilt not promise, thou shalt be without sin" (Deut. 23, 21).

Vows were not abrogated in the New Law, for Isaias (19, 21) speaking of the Messianic period, declared in

[1] S. Th., iS., 2. 2, q. 88, a. 6; Cronin, *The Science of Ethics,* II, p. 18; S. R. Bellarmine, *de Monachis,* II, c. 28, '*quinto.*'

prophecy that the Egyptians would make vows to the Lord and would perform them. In the New Law, the worship of God does not consist only of prayer and the preaching of the Word, but also of sacrifices and vows.[1] In the New Testament we have evidence of vows,[2] and in the early Church, the vow of virginity was common.[3] S. Augustine goes so far as to say: "Happy the necessity that compels to better things."[4]

2. Kinds of Vows

1. A public vow is one that is accepted by a legitimate ecclesiastical Superior in the name of the Church; a private vow is not formally so accepted. The vows of religious profession are public.

2. Solemn vows (those, namely, taken in Sacred Orders and in Regular Religious Orders) are accepted as such by the Church, have certain juridical effects, enjoying also greater stability because less easily dispensed. The main effect of a solemn vow is that it renders attempted violation of it invalid in cases of alienation of goods, attempted marriage, inheritance, ownership. A simple vow of chastity does not render subsequent marriage invalid but illicit only[5]; a solemn vow of chastity renders subsequent attempt to marry of no effect.

3. A personal vow binds a person to do or to omit some action; a real vow dedicates a thing to God's service by the bond of religion. A vow is called mixed, if it include both elements, personal obligation and obligatory offering of a thing, action, or service. A conditional vow includes a suspensive condition, as opposed to an absolute vow.

3. Subject of Vows

Any person who has the use of reason can make a vow unless forbidden by the law (c. 1307, 2), and the intention to

[1] Knabenbauer, in *Act. Apost.*, 18, 18.

[2] Acts 18, 18; 21, 23.

[3] S. Ignatius, *ad Polycarp., 5.* 2; S. Just., *Apol.,* I, 15; S. Ambrose, *de Vire.,* VII, n. 36.

[4] *Ep.* 127 (M.P.L. 33, 483).

[5] Except in the one case of special privilege, where this juridical recognition of the simple vow has been granted, as in the Society of Jesus.

do so must be fully free and deliberate. Fuller knowledge is required for a vow than for a mortal sin, for the precise matter of a vow must be known, whereas the gravity of a mortal sin may be known in general without the knowledge of its precise malice.[1]

4. Intention

1. In taking the vow, both its binding force and amplitude must be known. One who is ordained subdeacon or who takes the three vows of religion, may not know what unchastity is, but he is bound by the vow of chastity, for he deliberately wishes to take on himself all the obligations of his state of life—he need not be at once aware of them all—and he wants to follow the way of the evangelical counsels as others do. Nevertheless, previous instruction in the matter should be prudently given in order to preclude future harassing doubts.[2]

2. In doubt as to full deliberation, a vow does not bind.

3. Actual attention in taking a vow is not necessary, for involuntary distractions during ordination service could not render the Orders nor the vow invalid.

4. A fictitious vow does not bind. To take such an ostensible vow is deceit, and usually a venial sin ; it will be serious, if there were serious contempt, grave scandal, or gross deceit.

5. Error and ignorance invalidate a vow if either affects the very substance of the vow ; even an accidental error

[1] A person can commit a mortal sin provided he knows that the act is grievously wrong ; he need not realize the magnitude of the evil of mortal sin. One who would not have sinned had he better realized the enormity of mortal sin, can have sinned nevertheless. But one who would not have vowed had he realized better what he was doing, has not vowed at all, if we except the cases of embracing a state of life under vow (Verm., II, n. 209, note).

[1] cf. Verm., *de Virt. Relig.,* c. iv, n. 133. In the Latin Church, the ordained subdeacon, invited by the ordaining bishop to chastity, takes no formal vow of chastity, but by accepting the whole rite, accepts the obligations of a vow of chastity. If such a one should decline to accept this personal explicit obligation, or if he is entirely ignorant of the connexion of Sacred Orders and the vow, he is probably not bound by any vow of chastity, but he is bound to observe chastity by the precept of the Church, and the obligation is one of religion (Verm., II, n. 210).

would do so if it were the only motive for taking the vow. Examples of substantial error would be to vow to give a definite silver chalice, which proves to be gold ; a vow to endow a hospital bed at a normal charge, if the charge proved to be twice the normal ; a vow to offer Mass for the recovery of one who happens to be dead.

6.In the vows of religion, since a contract is made, the vow is invalid only in consequence of substantial error.

7. A vow taken under stress of grave and unjust fear is invalid (c. 1307) ; probably also, if taken under stress of slight and unjust fear, if this were the only reason for taking the vow.

5. Matter of Vows

1. The matter of a vow must be physically and morally possible. The vow to avoid every mortal sin is valid, for sufficient grace is offered for this, but a vow to avoid every semi-deliberate venial sin is invalid, for this is a special privilege of God which we cannot claim.[1]

2. The matter must be good and relatively better than its contrary or its voluntary omission. Circumstances must be taken into account, for we cannot validly vow what is opposed to the duties of our state of life. Furthermore, what is indifferent, and in no way conducive to holiness or the honour of God, cannot be the matter of a vow.[2]

3.A wrong motive, seriously sinful, vitiates a vow altogether. A slightly wrong motive would also do so, if it were the only motive.

1 Cone. Trid., s. 6, c. 23.

' The fulfilment by Jephthe of his vow by sacrificing his own daughter (cf. Judges 11,29 sqq.) has given trouble to careless readers. Both the making of the vow and its discharge were wrong : " It would have been better not to make such a promise than to fulfil it by parricide" (S. Ambrose, M.P.L. 16, 108). The context does not oblige us to suppose that the Spirit of the Lord suggested the vow to Jephthe. The sacrifice of children was an abomination reprobated (4 Kings 23, 10 ; Jer. 32, 35), and explicitly forbidden (Deut. 12, 31). S. Paul (Heb. 11, 32) praises Jephthe for his faith and justice but not for his vow, and S. Augustine (M.P.L. 34, 810 sqq.) can assimilate Jephthe to Christ, and S. Ambrose (M.P.L. 16,178) can praise the noble sacrifice of her life by Jephthe's daughter, without approving either of the vow or its fulfilment. That Jephthe acted in good faith is indeed possible, cf. A. Fernandez in *Vrrbum Domini* (April, 1921 : Oct., 1921).

4. Vows directly contrary to greater possible good are invalid. Thus, the vow to marry is invalid, unless circumstances show that, in the concrete, marriage is advisable, as it may sometimes be, if a person is not prepared to use the graces offered to preserve virginity.

5. A vow can be taken to do that which is already obligatory, such as to preserve chastity; the virtue of religion is then an added motive and bond.

6. Obligation of Vows

1. The obligation of a vow is one of religion, and its extent depends on the subject and the intention, for a vow is a precept imposed on oneself. Therefore, grave matter can be vowed under light obligation—and it is usually better to advise this—unless the Church forbids it, or the nature of the subject-matter requires otherwise. Thus, vows of stability in the religious life necessarily bind seriously, so long as they bind at all. Contrariwise, what is a slight or trivial matter cannot be vowed under grave obligation. Vows permit of venial transgression, if the nature of the subject-matter permits. This does not mean that deliberate disregard of God is a venial sin, but it means that negligence in keeping a vow when its subject-matter is slight is a venial sin.

2. In doubt as to the obligation intended, a grave obligation may be presumed if the matter is grave. Such matter is what would be imposed as grave by the Church, as the hearing of Mass, a day's fast or abstinence. In real vows, grave matter is that which would be absolutely grave in cases of injustice. But regard must be paid to proportions; thus, a vow to hear Mass daily for a year would not be seriously violated if Mass were very occasionally omitted. Again, the matter of a vow, if trifling, that has to be fulfilled each day—such as, in personal vows, the recital of three *Paters*—would usually not coalesce and become a grave omission, however often omitted. But in real vows, slight matter could more easily coalesce and become grave, as if one vowed to give a small alms daily, intending to part with a definite large sum eventually.

3. Certain conditions are always reasonably understood to exist in every vow, such as the following : If I am able ; if my Superior allow ; unless the matter undergo a notable change ; unless another give up an acquired right to the fulfilment ; the last condition, however, affects only matters that bind in justice.

Incidence of a Vow

1. A personal vow binds only the person who makes it (c. 1310). Parents cannot bind their children by vow to enter the religious state.

2.The obligation of a real vow passes to heirs, for the thing vowed is already dedicate by the obligation of religion (c. 1310)?

3.A personal vow is fulfilled when that which is vowed is done, though inadvertently, not, however, if done with positive explicit intention of not fulfilling the vow.

4.A real vow can be fulfilled on behalf of the person who vowed, with his consent or subsequent ratification.

5.A conditional vow does not bind if the condition is not verified, even culpably.

6.If the object of a real vow has perished, even culpably, the vow ceases to bind.

7.In a disjunctive.vow (v.g., to hear Mass or to give an alms), if, before actual choice, one alternative has become inculpably impossible, the other need not be fulfilled ; if, after actual choice, the alternative chosen has become impossible, the other alternative need not be fulfilled.

8.Delay in fulfilling a vow is not a serious sin, unless the object vowed has thereby greatly depreciated, or there is serious danger of forgetting the vow or of not being able to fulfil it. Vows do not cease through lapse of time unless a term was fixed when the vow should cease. Vows that consist of several independent parts must be partially, if they cannot be wholly, fulfilled.

l Since the original obligation of the dead person was one of religion, the heir cannot be obliged in justice. The obligation is entirely due to positive law (c. 1310) and is one of religion, cf. Verm., II, n. 218. It is otherwise in the case of debts. These are a matter of justice.

8. Cessation of Vows

1. The obligation of a vow ceases through intrinsic causes, as lapse of time, if a term was fixed ; by substantial change in the matter ; by failure of condition, or of the reason for the vow. It ceases through extrinsic causes, if it is annulled, dispensed, or commuted (c. 1311).

2. A vow is annulled directly if its obligation is completely extinguished by a legitimate Superior ; it is annulled indirectly, if its obligation is suspended for a time.

(a) One who has legitimate authority over the will of a person who has vowed (as a father has over his children below the age of puberty) can directly extinguish any private vow of the latter, and for a just reason can lawfully do so (c. 1312, 1), so that the vow ceases altogether.

(M One who has legitimate authority over the subject-matter of another's vow (as a father has in matters of home discipline) can suspend the obligation of that vow, so long as the vow is prejudicial to him ; for a just reason he may lawfully do so. Thus, a father (and in his default, mother or guardian) can utterly annul all private vows of their children before puberty and most probably also up to their majority if they remain subject to parental authority (c. 89). But the Pope alone can dispense from a private vow of perfect and perpetual chastity and the vow of entering a Religious Order of solemn vows, if such vows were taken absolutely and after the eighteenth year of age (c. 1309).

A religious Superior can annul any vows of his subjects made after profession, other than the religious vows and the vow of entering a stricter Religious Order. This power does not extend to vows which novices may take, for a novice is not bound by a vow of obedience, and a novice's private vow has not the force of a vow in religion, nor is the novice subject to his Superior as professed Religious are, so that the Superior has not the power, by the vow of obedience, to annul the vows of novices, though he may suspend their obligation, where fulfilment of the vow would do prejudice to the Superior's rights of ruling (c. 1312).

A husband can annul all vows taken by his wife during

coverture, in so far as they prejudice his rights, and also vows taken before marriage.[1]

Suspension of vows is within the power of every legitimate Superior in so far as the vows are prejudicial to authority. Thus, a master can suspend such vows taken by his servants.

Vows taken before religious profession are suspended during life in religion (c. 1315).

9. Dispensation of Vows

I. Dispensation of a vow is its absolute extinction made in God's name. The Church can dispense in vows : " Whatsoever you shall loose upon earth shall be loosed also in heaven " (Mt. 18, 18).

2. For valid dispensation there are required jurisdiction in him who dispenses, a just reason for dispensing, consent in the dispensed, and the waiving of rights acquired by that person in whose favour the vow was made.[2] A just reason would be the good of the Church or civil society, spiritual advantage, notable difficulty in keeping the vow, insufficient deliberation in taking the vow, harassing disquietude or scruples in fulfilling a vow.

3. The following can dispense in vows (c. 1313) :

(a) The Pope in all vows.

(b) In vows that are not reserved to the Holy See, or where a third party has not acquired definite rights :

(i) The local Ordinary in the case of his subjects and strangers.

(ii) The Superior (even local) of a clerical exempt Religious in the case of the professed, novices, and others living in the religious house for service, education, hospitality or health

(iii) Those delegated by the Holy See.

[1] It is disputed whether the husband annuls the vows directly ; there is no doubt that both husband and wife can suspend the obligation of the vows of the other, in so far as they prejudice marital rights (c. 1312).

[2] The *jus quasitum* of others means the rights which others have acquired in consequence of another's vow. Such rights are acquired in all vows assimilated to onerous contracts, as in the vows of the religious state, in vows accepted by another for his benefit.

The two vows that are reserved *de jure* to the Holy See would not be reserved if taken under light obligation, or without full deliberation and freedom, as in the case of vows taken under the influence of fear, or if taken through confusion with other similar vows, or if taken conditionally.

Those confessors who have the power to dispense from vows should be slow to dispense ; they should rather commute a vow into some good work easily possible for the penitent, unless any vow might give rise in a particular ease to great mental unrest or scruples. On the other hand, confessors should be slow to allow penitents to take vows, especially under grave obligations, unless they have tested their stability, or know them from experience to be fit subjects for vows.

10. Commutation of Vows

The commutation of a vow is the substitution of some work other than that vowed, and under the obligation of the virtue of religion. For valid commutation, both a just reason for commutation into what is less, and absence of injustice to others are necessary.

Vows that are not reserved can be commuted by the one who vowed into what is better or equally good, provided no acquired rights are infringed. Those who are empowered to dispense by virtue of the canons, viz., the local Ordinary for his subjects and for strangers, Superiors of clerical exempt Religious for those enumerated in canon 514, and those delegated by the Apostolic See, can commute non-reserved vows, without prejudice, however, to the acquired rights of others, into a work that is less good than the matter of the original vow. For substitution of what is better, no special reason is necessary ; for substitution of what is equally good, a grave reason is not necessary. A less good reason is sufficient for commutation than for dispensation.

In this context, the better object is that which conduces more to the glory of God, regard being had to all circumstances, especially to the condition of the person who vows.

After commutation into what is equally or less good, return may be made to the original vow, and probably also, if the

commutation was made into what is better. If the substituted matter—determined by superior authority—has become impossible of fulfilment, return need not be made to the original vow ; if determined by the person who vowed, the original vow must be kept.

In cases where there does not appear to be a really sufficient cause for dispensation, a vow can be pardy dispensed and partly commuted.

A Religious can commute all preceding non-reserved vows into the perpetual vows of religious profession. He may also have this done by authority.

Pastoral Note

The practical bearing of the doctrine of vows is that Catholics should realize the obligation of a vow. Penitents will not easily be allowed by a prudent confessor to take vows ; they should be reminded of the obligation, they should not vow impossibilities, nor even that which, in moments of fervour, seems easy7. They may righdy be told to consider what they are about to do before they bind themselves, and to return to the same confessor to open their minds to him. Furthermore, the confessor will not be too ready to dispense a vow ; he may righdy commute it into something that the penitent can do, with the penitent's full and deliberate approval. Where the object of the vow whose commutation is sought is not already obligatory under sin, as chastity, but an object of supererogation, such as the hearing of daily Mass, he may advise them not to bind themselves under mortal sin, and remind them that light obligations do not usually in the sum total amount to a serious obligation, apart from some obligations under vow of almsgiving. At the same time, he will teach those penitents who aim at a more perfect life than ordinary people, that a vow is an act of worship of God, and therefore pleasing to the Divine Majesty, and that a vow strengthens the vacillating human will. He wall not allow a penitent to take a vow always to do that which seems the more perfect act, unless the penitent is a person of tried and conspicuous holiness.

CHAPTER IV

THIRD COMMANDMENT

SECTION 1. The Precept

The Third Commandment is: "Remember that thou keep holy the Sabbath Day . . . thou shalt do no work on **it**" (Exod. 20, 8, 10).

The obligation of worshipping God is imposed on all mankind by the Natural law. God more exactly defined how man had to fulfil it by His divine positive precept in the Old Testament. In the New Law the Church has determined it, as a minimum, to mean a definite act of the worship of God on Sundays and holy days by fulfilling certain religious duties; if this particular obligation cannot be fulfilled, man is not therefore exempt from all act of divine worship. It is also matter of divine positive law that man should participate in some way in the sacrifice of the New Law. The precept, as defined by the Church, is affirmative in prescribing certain acts, negative in forbidding certain others.

SECTION 2. The Precept as Affirmative: The Hearing of Mass

All the faithful who have reached the age of seven years and have the habitual use of reason are bound under serious sin[1] to hear Mass on Sundays and holy days (cc. 12, 1248). There is no obligation to attend other services—except where necessary for paschal Communion—unless a person is in need of instruction in his religion, and no other means are available, as would usually be the case. The faithful are, therefore, to be earnestly exhorted to be present frequently at sacred instructions (c. 1348).

The days on which Mass is now to be heard are all Sundays and the feasts of the Nativity of our Lord, the Circumcision, the Epiphany, the Ascension, Corpus Christi,

1 Pope Innocent XT, pr. d. 52.

the Immaculate Conception, the Assumption of our Blessed Lady, the feast of S. Joseph her Spouse, the feast of SS. Peter and Paul, the feast of All Saints (c. 1247). If any of these holy days had been anywhere legitimately abolished or transferred, no change is to be made without sanction of the Holy See (c. 1247,3). No other days are days of obligation by the common law, even though others were observed before the publication of the *Codex*.[1] Others can be added by special induit. In England, but not in Scotland, of the ten holy days of obligation enumerated, those of the Immaculate Conception and of S. Joseph are excluded. In U.S.A., the holy days are Christmas day, the feasts of the Circumcision, the Ascension, the Immaculate Conception, the Assumption and All Saints.[2]

For the right assistance at or hearing of Mass there are required the intention to do so, devout bodily presence in the proper place, the correct liturgical rite, and mental attention to the Mass.

I. The intention must be at least the virtual intention of assisting at the external rite. Consequently, one who did not know that Mass was being celebrated, or who was in a deep sleep all the time, could not have had any intention of assisting at Mass there and then. The intention of fulfilling the Church's precept as such is not necessary. Provided Mass is heard, the precept is fulfilled.

2. The necessary bodily presence at Mass is thus explained by divines. The worshipper must be in the church itself, or if outside the church, must be one of the number of those who assist at and offer the Sacrifice, or if in a neighbouring place, not far away, or if in the sacristy, must be externally attentive to the Mass. There are obvious limitations of bodily presence, as, for example, if one were separated by a great distance from the body of worshippers, but the precise distance is hard to determine. It is certainly sufficient to be in a place from which the ceremonies of the Mass can be substantially apprehended, by seeing, hearing or adverting to others assisting at the Mass, even though one

1 P.C.C.J., Feb. 17, 1918.
' Sabetti-Barrett, *Comp. Theol. Mor.,* n. 327.

is outside the church, not, however, more than about forty paces clear from the rest of the worshippers.[1]

Bodily presence, as described, must be continuous during the Mass from the beginning to the last Gospel exclusively. The faithful are obliged to hear the whole of Mass, without even the smallest omission. But very often it is not all heard, and it may be reasonably asked, both by those who would not willingly disobey the Church in a serious matter, and by negligent Catholics, what omission would be, in the common opinion of divines, a serious omission. In this matter, as in the case of fasting, it is important not to be pharisaical nor lax ; one can, therefore, take the generally accepted opinion.[2]

3. It is a grievous sin to omit a notable part of the Mass, either in view of amount (v.g., a third part) or of dignity. Mass will not be heard substantially if the following parts are omitted : all up to the prayer of the Offertory of Mass, for that is a third part ; all up to the Gospel inclusive together with all after the Communion ; all from the Preface (exclusive) to the *Pater Noster* ; both the Consecration and Communion ; the Consecration ; probably the Consecration of one species.[3]

If a notable part of Mass is missed, that amount of another Mass should be heard if possible ; but it is commonly held that Consecration and Communion should be in one and the same Mass. If only a small part of Mass is omitted outside the Consecration, there is no obligation to make up that amount by hearing the corresponding part of another Mass. Involuntary absence during either Consecration or Communion would not certainly impose the obligation of hearing

[1] It is, therefore, absurd to say that it would be sufficient to observe the Mass through a telescope from a considerable distance, or to hear the service by radio. The latter substitution for bodily presence may be an act of worship in the case of the bedridden, but it is not fulfilling the Church's precept of hearing Mass.

[*] This determination is certainly casuistry of the right sort. The faithful should be exhorted by confessors not to whittle down obligations, nor to see how much can be omitted without grave sin, but rather to be present at the whole of Mass, and if possible at daily Mass.

[•] It is, however, held that momentary and necessary withdrawal during the Consecration would be excusable (Lchm., I, n. 718, note).

another Mass. If one arrives at the church after the Consecration and there is to be no other Mass to follow, there is probably no obligation to remain, because Mass cannot then be substantially heard. Good Catholics would remain, however, for the sake of prayer. Those who habitually come late for Mass commit sins of disobedience and scandal. They are mistaken in thinking that they act up to the spirit of Catholicism by being in time for the Gospel, a very common error. The precept cannot be fulfilled by hearing simultaneously the complementary' parts of different Masses,[1] but it will not be a grave sin (and no sin at all, if there is reasonable excuse) to hear successively the complementary parts of two Masses even in the inverse order, but the Consecration and Communion must be in the one Mass.

4. At least confused attention to what is going on is necessary and probably sufficient. Such an amount of attention is probably sufficient for true prayer, because we can ask for favours in spite of distractions. This kind of attention is called external, and in practice manifests its presence when we do nothing that would, of its nature, exclude a confused attention to Mass. Thus, to write, read secular books, talk earnestly, sleep, all these would exclude the necessary confused attention. The Church commands us to be present at Mass as a corporate act of worship, and therefore to be devoutly present ; but it does not command us to give all our sustained internal attention, an impossibility in many cases.

No vocal or mental prayer is enjoined during Mass. But the faithful, and children especially, should be exhorted to use their prayer-books and to become familiar with the parts of the Mass. In default of prayer-books, meditation on the Sacred Passion, or the Last Supper, or the recital of the Rosary are to be recommended. Attention should not be interrupted more than is inevitable to human weakness.

Those who go to confession in the church during Mass fulfil the precept, for they can remain conscious of what is going on in the church; they are receiving a Sacrament; they are devoutly present at, and they can be conscious sharers in, the Sacrifice.

[1] Pope Innocent XI, pr. d. 53.

Choristers, servers, collectors, vergers can all give the necessary amount of attention if they wish ; the examining of one's conscience, the recitation of the divine office, or of sacramental penance—even if it be the Stations of the Cross—the reading of spiritual books, do not exclude the necessary attention.

However, though the Church demands very little internal attention—accommodating her precept to the least capable—the faithful should be taught not how little attention they are bound to give, but how fervently they can assist at the Holy Sacrifice. The theory of attention causes no trouble to Catholics, for if they are devoutly present, though distracted, they are convinced they have heard Mass, but wilful distractions are confessed.

5. The precept of hearing Massis fulfilled by due assistance at Mass celebrated in any Catholic rite in the open or in those places indicated by canon 1249.

The proper places for fulfilling this precept are defined (c. 1249). They are: Any Church, oratory (public or semi-public), cemetery chapels (erected by individuals or families for burial), but not private oratories except by induit of the Holy See (c. 1249). The oratories of Cardinals and of bishops (even titular) enjoy all the privileges of semi-public oratories (c. 1189).

The precept can, therefore, be fulfilled in the oratories of Religious, colleges, barracks, prisons, hospitals, ships (if the chapel is a fixed one or in a public place). The obligation of hearing Mass on shipboard depends on whether or not the altar is fixed and set up in a definite place on the ship. By some companies, a chapel for Catholics is regularly arranged in their ships. If so, it is a public oratory. A question and a reply on this matter may be quoted :

" Utrum cappellæ navium aut altaria in ipsis navibus erecta pro Sacro litando debeant considerari ut Oratoria privata vel publica ? *R.* Si cappella locum fixum habeat in navi, uti publica habenda est ; secus, neque publica est neque privata, sed habetur uti Altare Portatile." [1]

Vermecrsch thinks that when Mass is said on shipboard

[1] S.C.R.. March 4, 1901 ; D.A., 406g.

in any place outside private cabins and apartments, the place may be regarded as at least a semi-public oratory.[1] A former privilege for Christmas is canonized (c. 821), that is, the precept of hearing Mass can be fulfilled by those who attend the midnight Mass in religious or pious houses, in which the Holy Eucharist is habitually reserved legitimately. The obligation can also be fulfilled where Mass is celebrated at a portable altar by a Cardinal or bishop or for the convenience of either, or by missionary' priests where there are no oratories or fixed altars.

In the case of private oratories the terms of the induit must be observed, and in general the precept can be fulfilled only by those in whose favour it is granted. Certain days are usually excepted in the induit for celebration of Mass, viz., Christmas day, Epiphany, Easter Sunday, Whit Sunday, Ascension, Immaculate Conception B.V.M., the Assumption, S. Joseph, SS. Peter and Paul, All Saints, the Sundays to which the external solemnity of the principal Patron and the feast of Corpus Christi are transferred, the last three days of Holy Week.[1] Even on these days, as on others, the local Ordinary can allow Mass to be said and the precept fulfilled as a temporary concession (c. 1195). The privilege of fulfilling the precept in such oratories is usually extended to the server (though not one of those privileged), relatives, servants, guests, all who live under the same roof, and in country places, where there is no public church convenient, to dependants and villagers.

By privilege, the precept can be fulfilled in a chapel temporarily erected by members of Regular Orders.[3]

6. Any moderately grave inconvenience to mind or body, or to temporal goods, either of oneself, or of another, excuses from the precept. If, however, a person can never be present at Mass on any day of precept, it appears obligatory that he should sometimes hear Mass, if possible, during the year, for there is a divine precept to assist at the Sacrifice.[4]

[1] *Thtol. Mor.,* III, n. 862. [1] *Ordo Missa Cel. Roma,* 1920.

* In these cases, if there is a parish church convenient, the faithful should be advised to hear Mass there, in order to pay their dues to the parish priest, for privileges should not be used so as to give reasonable offence.

* Verm., III, n. 861.

Those arc excused who are sick or whose presence is required for care of the sick, or who tend infant children at home, or who do necessary domestic work, or who have no suitable clothes (an excuse rather easy to magnify), or who would have to hear their banns of marriage called (if this prove disconcerting), or those who live at a distance from the church of three miles or an hour's walk, or even less, if the weather is bad, or if they are infirm ; the distance that excuses would be greater for those who can use cars, tramway, railway, cycles, without incurring expense which they can ill afford. Servants also are excused, if forbidden by non-Catholic employers to go to Mass, but they should find another place, if reasonably possible, where they could have the opportunity of hearing Mass. A wife is excused, if by going to Mass she would give great offence to her husband ; under similar circumstances, children and servants are excused. It is not expected by the Church that servants or labourers should deprive themselves of reasonably necessary sleep that they may be able to assist at an early Mass. Those are excused who would normally remain at home during a period of mourning ; mothers, too, after childbirth for some weeks, and of course some weeks before childbirth. It is held that those are excused who would have to forgo—occasionally, but not as a general rule—a good stroke of business or considerable gain, such as would be the case with merchants, and during the lambing season with farmers.

Dispensation from the precept can be given for a good reason by local Ordinaries and parish priests to individual parishioners or families belonging to the parish—even if absent from the parish—and also to strangers in the parish not being parishioners. Curates who assist the parish priest in all matters of parochial duty, and are delegated to do so by the Ordinary, have the same power of dispensing as the parish priest. In clerical exempt Religious Orders, Superiors have the same dispensing power as parish priests, in respect of subjects as defined (c. 514, 1).

If one has a privilege of a private oratory, it is held that there is no obligation to use the privilege, but if it is used, there is an obligation of hearing Mass.

SECTION 3. The Precept as Negative : The Prohibition of Servile Work

1. Definition

The Church forbids servile work on all Sundays and holy days of obligation, that we may have time and opportunity for attending Mass, hearing instructions, reading good spiritual books, and incidentally, that we may recuperate body and mind for the better service of God and neighbour. Servile work is, in general, work done by manual workers of all sorts ; liberal work is, in general, that which is the product of skill and due to mental effort ; mixed work is not exclusively either, and is done by all classes and conditions of people.

2. Kinds of Work forbidden

True servile work is forbidden, namely, such as is done by servants or hired manual labourers, and requiring bodily rather than mental activity.

Judicial proceedings are forbidden. What is forbidden is the ordinary workaday business and apparatus required in pleading, acting as witness, giving judgment. It is not, however, forbidden to do private legal work, such as solicitors do in preparing a brief, or counsel does in getting up a case. A judge may be informed, or counsel consulted privately. In Ecclesiastical Courts no business is done on feast days of obligation, nor on the last three days of Holy Week, unless necessity, Christian charity, or the public good require it (c. 1639).

Civil occupations are forbidden, such as public trading, markets, public buying and selling, unless there is a contrary legitimate custom or special induit in their favour (c. 1248).[1]

[1] By English law the Courts do not sit on Sundays. Contracts made on Sundays are void within the ordinary calling of artificer or labourer. The rule does not apply to other contracts, or to works of necessity. A bill of exchange, promissory note or cheque is not invalid only by reason that it bears date on Sunday (J., n. 154). Work and play are forbidden by numerous Statutes and liquor traffic is restricted. In U.S.A, unnecessary labour is forbidden in nearly all the States, and in some few, sport, play, fishing, dancing, hunting with the gun, card-playing : Slater (ed. 1909), I, p. 266. In May,

Servile work may not be done, without necessity, for pleasure or recreation ; it remains servile, whatever the motive be, even if no wages are taken for it. It is the character of the work that determines its nature, but in all cases, we must be guided by common opinion. It is usually held servile work to plough, dig, sow, grind corn, reap, load, print, knit, sew, make rosaries, scapulars, artificial flowers, to plaster, whitewash, wash, iron. It is not servile work to study, write, do artistic work in sculpture, painting, design, embroidery, nor to typewrite, photograph, even if these things are done for pay. Crochet-work is perhaps artistic ; and fly-fishing is considered skilful, but not rogging with nets for salmon. Only a few examples can be given the standard of good people is a safe one to g° by.

Although servile work is forbidden on certain days it is not a grievous sin to do the smallest amount of it.[1] It is commonly thought that servile work of a fairly arduous nature—such as ploughing and digging—done for a space of between two and three hours would be a serious violation of the precept, but that lighter work, such as weeding or light gardening, done for the same space of time, would not be a serious sin.

3. Causes that excuse from this Precept

1. Necessity of body or mind, personal or that of another.
2. Considerable public utility.
3. Avoidance of idleness in case idleness is a dangerous proximate occasion of sin.
4. Considerable utility to others in need of our help, such as to attend on the sick, or to care for the deceased for the sake of the living, to make clothing for a particular

1930, considerable surprise was caused in Trenton (New Jersey) by the sudden appeal to the ancient 'Blue Law', a Statute of 1798, which forbade buying or selling on the Sabbath, and even riding, walking or driving anywhere except to and from church.

[1] This precept and that of hearing Mass are thus different in kind from the precept of the Eucharistic fast which, of its nature, can be violated by the very smallest quantity of food or drink deliberately taken, for total abstinence from or drink is what is commanded.

poor person who is in fairly urgent need, not, however, to work for die poor in general unless there is general pressing need, to work for the public services in urgent cases, as to sew, knit, make clothes in war time.

5. Piety towards God, as to make what is immediately necessary for actual divine worship, to prepare or adorn church or altars, or repair vestments that are at once required, or to make vestments for use in a poor church or mission.

6. Legitimate custom, which differs in different countries.

7.Dispensation by legitimate authority, as in the obligation of hearing Mass (c. 1245).

Pastoral Note

The pastor will exhort his people not to consume the time on Sundays in playing outdoor games at the expense either of hearing Mass or being present at instructions. The Church does not begrudge anyone his or her necessary, reasonable, or even simply enjoyable recreation, even on Sundays, and wishes Sundays—as well as every other day—to be filled with joyful service of God, in prayer, work—when not forbidden—and play. Sunday need not be funereal, but it may not be godless. Time should be set aside on Sunday for hearing Mass, for attending instructions and sermons, and for reading Catholic literature.

The pastor will, furthermore, inveigh against the quite inordinate amount of time wasted on Sunday, in reading the Sunday secular papers. These papers, if unobjectionable, have their legitimate use, but they should not engross a man's attention for hours.

In order to supply his people with good Catholic literature, the pastor should form a parish library or have, if possible, Catholic pamphlets and papers for sale.

CHAPTER V

FOURTH COMMANDMENT

SECTION 1. The Precept

The Fourth Commandment is: "Honour thy father and thy mother" (Exod. 20, 12).

This Commandment explicitly regards the obligations of children towards parents; implicitly, the obligations of all inferiors towards their superiors, and the correlative obligations of superiors towards their inferiors.

SECTION 2. Duties of Children

Children are bound to love, reverence and obey their parents: to love them, because of the natural union between parent and child, and by reason of the benefits received; to reverence them, because of a parent's dignity and authority, the dignity of co-operation in creation, the authority in the natural unit of society, which is the family; to obey them, because the parent has a right and duty to educate the child, physically, morally, religiously and intellectually.

Love and reverence are absolute and perpetual obligations; obedience is conditional and temporary whilst the child has need of a parent, but both Civil and Ecclesiastical law may and do determine the duration of the state of tutelage, and therefore the obligation of submission and obedience, beyond the strict requirements of Natural law.

Each of these duties of love, reverence and obedience, has its own specific object, and can be specifically violated, and obviously the two former are more obligatory in the case of parents than of strangers. The sins of children against parents are, therefore, in the nature of things, and because rational nature so dictates, more serious than would be their sins against others.

The love which children owe must be that of benevolence and beneficence, that is, interior love externally exhibited

by relieving parents' needs, evincing external signs of love, guarding parents from evil, corporal and spiritual. Children seriously sin against this precept by hating their parents, wishing them serious evil, showing serious signs of great hatred, treating them heartlessly, speaking to them as to enemies, not helping them, when possible, in grave necessity of soul or body, inciting them to great anger and sadness, seriously neglecting to visit them in sickness.

Reverence, both interior and exterior, is due to parents : " Cursed is he that honoureth not his father and mother " (Deut. 27, 16). Children sin grievously against this precept of reverence by striking parents unjustly, raising the hand to strike them, heaping reproaches undeservedly on them, uttering unjust and serious threats, despising or disregarding them in their poverty, cursing them, seriously ridiculing them, refusing to show customary signs of respect to their great and reasonable sorrow.[1]

Children are bound to obey their parents in their lawful commands so long as they live under the parental authority. When emancipated, they still owe them love and reverence but not obedience. They are emancipated when they have completed the twenty-first year of age—though still living under the parental roof—or when they marry, or enter the religious life.[2] They sin grievously by disobedience in a grave matter that falls within the scope of parental authority, and if such matter is seriously forbidden by parents. As a fact, young children do not usually offend grievously in disobeying, on account of their levity and inadvertence, and for want of seriousness on the part of parents.

Children who have come to the use of reason are entitled to embrace the True Faith if they do not belong to it

1 cf. Exod. 21, 15 : 21,17; Prov. 30, 17. It is held to be not sinful, though revolting to noble natures, if a child who has achieved high position in the State disregards parents in a humble condition of life, provided, of course, the latter are not in need of help.

* In English law a child 13 emancipated when twenty-one years of age. In American law, emancipation may take place before that age by agreement in writing or by parole. Judicial emancipation may be got in some of the Sûtes of the Union before the age of twenty-one. In many Sûtes, females atuin majority at eighteen years of age : cf. Slater (cd. 1909), I, p. 272.

Parents have no power to forbid this, neither can they oblige their children to adopt a particular state of life in the world, but the parents legal consent is sometimes necessary, and their canonical consent is necessary, probably up to the emancipation of the child (c. 89). Parents may not force their children to marry, nor to enter the religious state, nor deter them from the latter (cc. 971, 1087, 2352).

Although, after choosing a fixed state of life, children are emancipated, yet on account of parents' grave need they may be obliged to defer, for a time,, their choice, if they cannot otherwise help their parents. Thus, though a minor may legally enlist without his parents' consent, he may be obliged to remain in civil life for a time.

In regard to marriage, minors should ordinarily have the approval of their parents, both for entering on marriage and for their choice of partner, but on the other hand, parents should not be selfish in putting unreasonable obstacles in the way of their children's» marriage. By so doing, they forfeit love and respect, since they do not allow the freedom which they enjoyed themselves. In any case, the approval of parents is not necessary to the valid marriage of their children (c. 1034), though, from the motive of love, children may sometimes be obliged to accede to a parent's wish. According to the Marriage Act (an. 1823), the consent of certain persons—including guardians in default of parents—is necessary for the marriage of minors, though absence of consent does not render the marriage void. But if such marriage of a minor is procured, without the necessary consent, by the false oath or declaration of one of the parties, the Attorney or Solicitor General may sue for a forfeiture of any interest in property accruing to such party by reason of the marriage.1 Children are bound by Natural law to support parents who cannot support themselves ; there i^, also the legal obligation to provide necessary maintenance.2

1J. 1842, 1843.

aJ. ï907, ï900·

SECTION 3. Duties of Parents

1. Love and Maintenance

Parents are bound to love and maintain their children, and to give them an education at least in accordance with their state of life. They are most strictly bound to provide for the religious, moral, physical and intellectual education of their children, and to make provision for their temporal welfare (c. 1113). If the parents are dead, the duty devolves on the grandparents. Illegitimate children have precisely the same moral rights, and English law can oblige the father of such children to supply part maintenance—if claimed by the unmarried mother within twelve months after birth—until the child reaches the age of thirteen (and possibly sixteen) years.[1] But neglect of this claim does not exonerate the father from supporting the child and providing for its education, if his help is necessary.

Parents are bound to show their love for their children in a reasonable and effectual manner. They sin against this precept of God and nature by hating their children, by serious injury or neglect, by wishing them great evil, by being inordinate in their affection, by indulging every childish whim—to the great detriment of character—by neglecting to correct them, by favouring some to the exclusion of others.

2. Education

I. Spiritual.

Parents are bound to provide effectually for the religious instruction of their children: "If any provideth not for his own and especially for his own household, he hath denied the faith and is worse than an unbeliever" (1 Tim. 5, 8). If they cannot instruct their children personally, they must find a capable substitute to teach them the principles of right conduct, the Commandments of God and of the Church, their Catholic Faith, and what is necessary for salvation. They must take care that their children

are baptized without delay, taught in good Catholic schools, if possible, prepared for confession, Confirmation, and Holy Communion, kept away from bad companions, bad literature and bad places of amusement. To do so effectively, parents must know their children's friends and places of resort, and oppose the practice, so common today, of children making their homes merely places in which to take their meals and to sleep. The late hours kept by young girls frequently ruin their health and morality.

2. Intellectual.

It may be said, generally, that parents should give all their children an education at least suited to their state of life, and one which will give promise that the child may be able, later on—unless already favoured by fortune—to earn subsistence. They must, however, guard against inordinate ambition by aiming at impossibilities for their children, for this engenders in the child impatience with its family lot, ingratitude and social Unrest. In every well-ordered State, there must be manual workers, whose work should be looked upon as necessary, and in a vast majority of occupations, ennobling. Impatience with hard manual labour gives rise to jealousy of classes more favoured, and leads to a universal unwillingness to do a fair day's work.

By present Canon law (c. 1374) it is forbidden that Catholic children should frequent non-Catholic schools, and this prohibition extends to all schools, secondary as well as primary, and more so to Universities. It is the business of the local Ordinary to judge whether attendance at non-Catholic schools may be tolerated in particular cases. Confessors and parish priests are not to be the judges in such cases, nor should they refuse absolution to parents who infringe this law, without previous reference to the bishop. In some places, the bishops have already spoken definitely on the matter.[1]

In England, general permission has been granted by the Holy See for young people to attend the non-Catholic Universities, if the necessary safeguards are present. The

[1] As in the Archdiocese of St. Louis : cf. Slater (ed. 1909), I, p. 277.

necessary' safeguards have been supplied in England by the Hierarchy. They consist chiefly in the appointment of Chaplains at Oxford, Cambridge and London, whose duty it is to give or provide regular courses of instruction in religion, philosophy and history' to the undergraduates. It is obvious that undergraduates are bound to attend these instructions, unless their faith is otherwise safeguarded, a rather unlikely contingency. The Chaplain has the right to decide.

In the declaration made by the archbishops and bishops of the Province of Westminster (Aug., 1905),[1] it was stated that " not infrequendy there is grave scandal when parents send children to non-Catholic schools ; for where Catholics, and especially those in a prominent position, make use of non-Catholic schools, they affect injuriously the whole Catholic position, leading many to follow their example and making it increasingly difficult to provide, maintain and improve our own schools and colleges." It was stated—and the statement is even more true today—that " the social advantages to be gained at certain schools manifestly do not constitute such a necessity," viz., of sending children to non-Catholic schools. No individual priest or confessor is entitled to decide when necessity of this nature exists, but the matter is to be referred to the Ordinary of the diocese for his counsel and judgment. There is no profession for which boys cannot be trained at English Catholic colleges equally well as at the best non-Catholic schools. Statistics prove this abundantly. Indeed, boys who seriously wish to succeed, if given a fair field, get a better training in Catholic colleges than elsewhere. If they fail afterwards, the failure is often largely to be attributed to bigotry and freemasonry'. Social prestige may help occasionally, but Catholics have to forgo that factor in many cases, and beyond a certain point, very soon reached, it is practically negligible. Prestige is apt to be the last defensive plea. It is, therefore, a serious sin for parents to send their children to non-Catholic schools, unless they have permission to do

[1] Reaffirmed by the Hierarchy in 1918.

so, and unless religious safeguards are abundantly provided. If, however, public authority should compel them to do so, they are not obliged to be passive resisters, but they must secure the sound Catholic training of their children somehow and effectually.

Danger also exists for children in those schools where the co-education of boys and girls is in vogue. Until the Church approves of this system, Catholics may condemn it wholeheartedly, both on moral and on pedagogic grounds.[1] Such schools have had a fair trial in many places, with lamentable results to the moral tone of the scholars in general and the deterioration of girls in particular. People with open minds are convinced that the association of boys and girls in the early teens—even in games—is distasteful to both, because it is unnatural and easily leads to immorality. Where the latter abuse does not occur, this is due to extraordinary supervision, which only one teacher in ten will have the persistency to exercise. The natural reserve and modesty of girls, and the disinclination of boys to be chivalrous to the weaker sex, are the safeguards that nature supplies against precocity and in favour of slow natural development. Faddists who want to improve on nature by co-educating the sexes are unscientific, to say the least. The mixed classes of youths and young women in medical schools is entirely objectionable on moral grounds. It is, of course, claimed that women may have medical training in these classes where no others exist. The claim is quite valid for a small proportion of women students, but there is no need to equalize the numbers of men and of women students. We believe that only a confirmed feminist of the extreme type would maintain that women generally prefer women doctors. The true place for a woman is the home, and it is no exaggeration to say that any secular profession which practically debars women from home-life with husband and children is so unsuited to the human race, if such profession were generally adopted, as to be proved to be no profession for women at all. We must

1 cf. Appendix 5 *(infra,* p. 105).

fully admit exceptional cases, tor it is not true that everyone is bound to marry ; but a general line of conduct that seriously interferes with women and the home is obviously not a woman's vocation and should be discouraged.[1]

3. Physical.

Parents are bound to supply their children with necessary clothing and food ; the seeds of consumption and decline are sown in children for lack of either. Especially is this the case with adolescent boys, who are apt to neglect their food for the sake of the emotional excitement of shows and theatres. The working boy is usually a sufferer from continuous lassitude, owing both to conditions of work and to his inordinate desire of activity and excitement. The race is devitalized when it should be being built up.

The pre-natal life of the fetus must be sedulously guarded ; to expose it deliberately to death by premature birth is to wish to commit murder, for the fetus has its right to life no less than has an adult. After birth, there is an obligation on the mother to suckle her child, though not a serious one, if nourishment can be supplied otherwise with sufficient success. Nothing, however, can adequately take the place of the mother's milk during the child's first three months of life. Children put out to nurse are liable to disease, their mortality being as high as 70 per cent, as against 15 per cent of children nursed at home.[2]

The parents must acknowledge their legitimate child and give it their name. They will sin grievously if they put the child into an orphanage without real necessity, and even then they are bound to see to the child's physical and moral well-being and to assure themselves that it is cared for.

[1] Women doctors are probably best for children, and that reason is valid for a small proportionate number of women doctors.

[1] The reader may be referred to *Midwifery,* by Ten Teachers, p. 585, for valuable medical remarks on this subject, which reinforce all that moralists teach. The failure of mothers to suckle their children—prescinding from ill-health and real incapacity, the latter being very rare—is due, in very many cases, to a lamentable repression of the maternal instinct, mixed with an amount of auto-suggestion ; cf. also, Pope Benedict XIV, ώ *Syn. Diacts.,* lib. xi, c. 7, n. ix ; and on 'Wet Nurses', *loc. cit.,* n. xiii ; Capellman, *Pastoral Medicine,* p. 45 ; Scharlieb, *Straight Talks to Women,* p. 4.

SECTION 4. Duties of Relatives

Near relatives are bound to one another by a special obligation of charity, and in default of parents they are bound by natural justice and charity to foster their infant relatives, and to see to their Christian education (c. 1372, 2), for relatives are the natural substitutes of parents and there are no others. Brothers and sisters are specially bound to mutual charity and to help one another in grave need.

Notes on English and American Law

1. A father has the right by English law to the custody of his child and can enforce his right by writ of *Habeas Corpus.* American law is more liberal in favour of a mother's right.[1]

2. In English law, a husband is bound to maintain his wife's children, who, being legitimate or illegitimate, were born before his marriage to her, and he is bound to do so until they reach the age of sixteen years, or until the death of the mother, whichever happens first.[2] There is, however, no liability if he cannot do so out of his own property, or by means of his labour, nor if the child is able to maintain itself, and he is bound to do no more than provide the bare necessaries of life and mere elementary education.[3]

3. A father has the right to determine the method of his child's education and maintenance, to inflict reasonable punishment, and to delegate these rights to a tutor, schoolmaster or similar person.[4]

4. A father has the right to determine the religion in which his minor children shall be brought up, and any contrary contract is void. The promises, therefore, made by a non-Catholic man in a mixed marriage in respect of the Catholic education of future children have been held to be legally void, though, of course, they are binding in conscience. After the father's death, the Court may order that the minor shall be brought up in the religion of the father, but the fact that the child has absorbed the principles of one

1 Slater (ed. 1909), I, p. 282.
2 Jenks, *Digest of Civil Law,* n. 1906.
3 J- 1911, note.
4 J· !932·

form of religion will be ground for refusing to order it to be educated in another form of religion.[1]

5. A father or mother is not, as such, entitled to control over or to any legal interest in the lands of the child being a minor.[1]

6. A father is entitled to the services of his child being a minor, so long as the child is living with him, or not being in the service of some other, is only temporarily away from home?

The American Courts have held that a father is entitled to the earnings of his child, but English authority appears to be the other way?

SECTION 5. Husband and Wife

The husband has authority over the wife in all tilings that pertain to their domestic relations and family discipline : " Let women be subject to their husbands as to the Lord ; because the husband is the head of his wife as Christ is the Head of the Church. Therefore, as the Church is subject to Christ, so also let wives be to their husbands in all things " (Ephes. 5, 22-24).

Husband and wife are bound to show mutual love : " Husbands love your wives as Christ also loved the Church and delivered Himself for it ... so also ought men to love their wives as their own bodies " (Ephes. 5, 25 ; Tit. 2, 5). They are bound to cohabitation (1 Cor. 7, 10), to mutual maintenance—though by nature and law the husband is primarily bound to maintain the wife—to render conjugal dues when seriously asked for—even by implication—if there be no valid excuse for continence : " Defraud not one another, except perhaps by consent for a time, that you may give yourselves to prayer : and return together again, lest Satan tempt you for your incontinency " (1 Cor. 7, 5).

By English law the husband must maintain his wife according to his state and condition, unless they are separated

[1] J. '937] cf. a valuable legal discussion of this point in *American Ecclesiastical Review,* May, June, July, 1932.

'J- 1945. * J. 1952. 4 J. 1952, note.

through her fault.[1] A wife is not obliged by law to maintain her husband except that, if she has separate estate and her husband becomes chargeable to a Poor Law Authority, she can be obliged to maintain him in an institution.[2]

The savings which a wife, living with her husband or temporarily apart, may make out of money supplied to her by her husband for household purposes or maintenance, belong to the husband unless there is evidence that he intended such to be her property.[3] Since the year 1883 the husband acquires no rights over his wife's estate except what she gives him. If the husband refuses or neglects to supply his wife with necessaries, the law assumes that she has his authority to pledge his credit for them, otherwise she cannot pledge her husband's credit. A husband can refuse to pledge his credit for unnecessary luxuries or extravagant dress.

The husband is bound to administer his property wisely so as to be able to support his wife and children, to have a care for his wife's Christian life, to reprove her prudently and temperately.

The wife is bound to obey and pay respect to her husband's authority, to see to the orderliness and comfort of home life, and to exercise reasonable economy in outlay.

Though children are primarily subject to the father, the mother has an important and irreplaceable share in their upbringing. The mother normally settles the religious and moral outlook of her children. She will fail in her duty, if she teaches her children to disregard their father's reasonable commands by sympathizing with them against their father. It is thus that she undermines all parental authority, her own included.

Serious sin is committed by husband or wife by serious injury in word or action, by grave negligence in respect of temporal goods that are necessary for maintenance, by hatred, by putting unreasonable obstacles in the way of the observance of the Commandments of God and of the Church.

As a matter of counsel, parents may well be exhorted

*J. 1868. «J. 1868. SJ. 1871.

to encourage their children to become acquainted with the lives of their patron Saints, the ceremonies and practices of the Church, the history of Catholic activity, the sublimity of a vocation to the priesthood or to religious life and the work of Catholic Missions. The good Catholic parent will consecrate his house and family to the Sacred Heart, and foster a devotion which establishes concord and happiness wherever it is practised.

SECTION 6. Employers and Wage-earners

Temporary sendee by contract begets real duties in conscience both in employer and employee. The reciprocal duties must not be exaggerated, especially as nowadays the former fidendly relations between the two parties are fast disappearing, and matters are put on the basis of contract.

I. The master is bound to treat the worker in a humane way, securing safe and decent conditions—as far as the nature of the work permits—giving reasonable wages, not exacting so many hours of labour that no time remains for rest, leisure, amusement, religious exercises and instruction.[1] If a master is a sincere Christian, he will, if possible, see that working conditions are not scandalous, as they often were—and probably still are—in large shops and factories, where the young are thoroughly corrupted in faith and morals. He must see, moreover, that the young do not work beyond their strength and must ward off from all his employees both physical and moral harm.[2] "Religion teaches the employer that workers are not to be accounted bondsmen ; that in every man they must respect his dignity and worth as a man and as a Christian ; that labour is not a thing to be ashamed of, but is an honourable calling ; that it is inhuman to treat men like chattels to make money by, or to look upon them merely as so much muscle or physical power."[3] The duties of employer cannot be evaded nor left to chance fulfilment. An employer who uses the labour of others for his own profit—though also for theirs—has

1 A point urged by the Code of Canon law (c. 1335).
2 This point is emphasized by canon 1524.
3 Pope Leo XIII, Encycl. *Rerun Novarum.*

serious obligations, and if he will not do his duty, the State is bound to coerce him.

A just wage for a married worker is that amount of wage that will keep 'him and his wife and family in frugal comfort, commensurate with the conditions of life of the normal worker of his class.[1] It was commonly held that the family might be computed as consisting of three or four children, and this would still be reâsonable if birth control were not practised, because the first born child would normally begin to work when a large family becomes a burden on the family resources, assuming reasonable intervals, which ought normally to be two years or a little more, between the successive births of the early children.[2] A just wage for a young unmarried worker will be that amount of wage that will enable him to live in frugal comfort and to make reasonable provision for future marriage. It is economically unsound to pay married men more than the unmarried, for the former will not be employed when they can be dispensed with. The standard of wages, therefore, for all, must practically be the living family wage—unless family allowances are added—but if the unmarried are paid less, no injustice will be done to them. The parable of the labourers is completely applicable to the case. Every man has a right to a decent livelihood if he works. Since most men cannot directly get at the fruits of the earth, their only method of winning sustenance is to work for wages. The workman's wage, therefore, must be the first call on the employer's turn-over, after payment for raw materials and

[1] The question of commutative justice is not here discussed. It is sufficient to say that there is at least an obligation in charity on an employer to pay sufficient to support man, wife and three children. We omit all discussion on the obligation of commutative justice, if it exists, for we must frankly admit that the case is not, we think, proved. Some writers speak of the 'natural' value of a man's work, and base on that the employer's obligation of justice to give a family wage (three children). They claim the same wage for the unmarried, for a man's ability does not change when he becomes married. We confess that the latter contention is obscure.

[2] We fully admit that statistics prove that families with three children are in the minority, speaking of England and Wales; only about nine per cent of the families of working-class men have three or more children. The standard taken in the text is a rough and ready one, but it appears, on the whole, to work the most satisfactorily, unless a family allowance is adopted.

depreciation. The best possible solution of the wages questionis for the State to fix a minimum legal living wage in every industry ; additional wages might be earned in thriving businesses.1

In English law the master's responsibilities to his servants have become onerous through the W orkmen's Compensation Acts, 1906 to 1926, and the Employers' Liability Act, 1880. The master's responsibilities for his servants' conduct are also onerous, and he is liable to pay compensation for injury to others or to property caused by a servant acting in the ordinary course of his duty, unless the injury was done through personal malice of the servant. If the servant has simply been negligent, the master can sue him and recover what he has had to pay.

If in giving a *bonafide* 'character' to a servant, criminating statements are honesdy made by master or mistress, no action lies, for the character is a privileged communication unless malice is proved.2

A master is not bound to provide a servant with medical attendance or medicine unless he has agreed to do so,3 but if the servant is not dismissed on account of sickness, the master is not entided, in the absence of agreement, to make any deduction from the agreed wage in respect of such sickness, nor to charge the servant for medicine and medical attendance procured for the servant by the master.

2. Employees are bound to give their employers reasonable honour and respect,4 service and obedience in accordance with their contractual obligations, fidelity in fulfilling contracts, so long as conditions do not completely change the nature of the contracts. They sin by arousing against their master unfounded discontent. It is certain that they violate strict justice—as well as charity—if they neglect their duties, if they do not give a fair day's work for a fair day's wage, if they unreasonably diminish output whilst taking a good wage, since this is a species of covert hostility opposed radically to their contractual àgreements. They

1 cf. Ryan, *Distributive Justice.*
1 Rucgg, *Elementary Commentary on English Law*. p. 160.
•J. 460 sqq.j 474. 4 i Tim. 6, I ; Tit. 2, 9, 10.

violate justice if they wilfully damage the master's property, or even neglect to protect that property if they have contracted for a special position of trust. "Religion teaches the worker and the artisan to carry out honestly and fairly all equitable agreements freely entered into; never to resort to violence in defending their own cause nor to engage in riot or disorder" (Pope Leo XIII, Encycl. *Rerum Novarum).*

On the rivalry between Capital and Labour, Pope Pius XI (Encycl. *Quadragesimo Anno)* wrote as follows: "Capital, however, was long able to appropriate to itself excessive advantages; it claimed all the products and profits, and left to the labourer the barest minimum necessary to repair his strength and to ensure the continur-tion of his class. For by an inexorable economic law, it was held, all accumulation of riches must fall to the share of the wealthy, while the workingman must remain perpetually in indigence or reduced to the minimum needed for existence. It is true that the actual state of things was not always and everywhere as deplorable as the liberalistic tenets of the so-called Manchester school might lead us to conclude; but it cannot be denied that a steady drift of economic and social tendencies was in this direction. These false opinions and specious axioms were vehemently attacked, as was to be expected, and by others also than merely those whom such principles deprived of their innate right to better their condition."

The Encyclical goes on to speak of the unjust claims of Labour. It declares that it is a false moral principle that all products and profits, except those required to repair and replace invested capital, belong by every right to the workingman. This error is an alluring poison, consumed with avidity by many not deceived by open Socialism.

To remedy this disastrous conflict, the Pope urges a division of fruits of production: "Every effort therefore must be made that at least in future a just share only of the fruits of production be permitted to accumulate in the hands of the wealthy, and that an ample sufficiency be supplied to the workingmen. The purpose is not that these become slack at their work, for man is born to labour as the bird to

fly, but that by thrift they may increase their possessions and by the prudent management of the same may be enabled to bear the family burden with greater ease and security, being freed from that hand-to-mouth uncertainty which is the lot of the proletarian. Thus they will not only be in a position to support life's changing fortunes, but will also have the reassuring confidence that, when their own lives are ended, some little provision will remain for those whom they leave behind them."

SECTION 7. Strikes[1]

A strike is an organized cessation from work on the part of a body, of men with the object of forcing the employers to assent to the demands of the workmen.

The simple strike is set going by a number of men suffering from the same grievance; the sympathetic strike is set going by one body of men for the removal of the grievance of another body of men; the general strike is set going by the whole body of workmen, or by such an important and powerful section of them, as to bring industry to a standstill, with the object of either bettering working conditions or seizing political power.

That a strike may be morally right, there must be a just reason for it, the good to be obtained must be proportionate to the evil effects produced by the strike, and the means used in the strike must be lawful. These three conditions are of great importance, but the second condition, namely, proportion between the evils of a strike and its good effects, is usually unknown till after the strike has been set going. Nevertheless, past experience may be a guide in this matter, and furthermore, if the effects are, in point of fact, evil beyond all proportion to the strikers' grievances, the strike must be called off.[2]

The simple strike is not in itself unjust, for every man

[1] c£ Cronin, *The Science of Ethics,* II, p. 354 sqq. ; Vermecrsch, *Q_q. de Just.,* p. 624 sqq. ; L. Watt, S.J., *Capitalinn and Morality,* c. vii, for a full and clear treatment.

[2] The individual is powerless, and there is no obligation on any individual to resume work, since usually he would inflict more loss on himself by so doing than the loss which his employer is suffering.

may withdraw his labour from an employer when his contract is fulfilled, or if his contract is no longer morally binding owing to changed circumstances, a condition necessarily presupposed in every business contract. But though the simple strike, as explained, is not necessarily against justice, it may be against charity, for it may often produce widespread misery. Furthermore, what one man may lawfully do, he may join with others in doing. The organized strike is not unjust, but its accompaniments often are, as when it positively prevents other men, by peaceful (!) picketing, from doing necessary work, such as to save mines from being flooded, and when it forces others, by threats or violence, to join the strike. Strikers, however justified they may be in fighting for principle, are not military generals who on the score of military necessity may even kill their enemies, invade their homes, and take away their lands and property. It cannot be seriously maintained that a small advance in wages, if the wages are already sufficient for reasonable family maintenance, is a moral set-off against the terrible distress, violence, unrest, irréligion, drunkenness, loss of trade, permanent ruin of industry which, not infrequently, accompany strikes.

The sympathetic strike is called by a set of men to remedy injustice done to one man or a number of men in their Union or belonging to other Unions. Under the conditions mentioned above, such a strike is just, for it is not unjust to defend another as we would defend ourselves. But if such a strike is set going by one set of men simply because another set of men are on strike, so as to assert the solidarity of workers, without investigating the justice of the case, it is as impossible to justify such a strike, as it would be to justify a sympathetic lock-out. The plea that men must help their fellow-workers in all emergencies will not stand a moment's consideration, for it has to be proved that all employers affected by the strike may be legitimately penalized. It is said that the men must follow the lead of their representatives. They are subjected to great moral pressure. They are loth to desert their Trade Union. But some leaders who have an immense influence are imprudent,

and are known to favour theories, such as those of Communism and spoliation, which are fundamentally false. It would be more consonant with justice for men to know exactly what they are striking for, and to determine the matter by a secret ballot, confined to men over twenty-one years of age, and even, possibly, allowing a double vote to married men. Certainly, boys of sixteen years, and unmarried adults without dependants, cannot be expected to realize the distress which strikes cause in families. But even so, every man must make sure of the clear justice of his own case before voting for a strike. Catholic teaching, and in fact natural ethical doctrine, fully admit the value of solidarity, but like other class shibboleths, this one can misguide men to the great detriment of social and individual peace.

A general strike of all workers or of a paramount section of them, such as the Triple Alliance, is justifiable on the same conditions as set forth above and only on those. Evil effects are more liable to follow in the wake of such a strike as this. Where the object of a general strike is the abolition of all private property, or the spoliation of masters without compensation, or direct injury to innocent employers, the issue is apt to reverberate in the Council chambers of Trade Unions, for with such an object in view, the ownership and disposal of party funds of whatever sort could not be justified.[1]

SECTION 8. Teachers and Pupils

Teachers are bound by their contract to render themselves competent to teach that which they profess to teach, and to be diligent in procuring the progress of their pupils. It is obvious, therefore, that they owe to each pupil a modicum of attention. Total disregard of any pupil—except for a time and as a punishment—is a sin against justice, and the pupil's loss has to be made good. As a

[1] The General Strike called by the T.U.C. in England in May, 1926, was very soon found to be illegal and was called off. It was also patently wrong because, in the particular circumstances, it was a challenge to the legitimate Government of the moment. It is not defensible that a section of the people should assume the government of a country.

teacher is usually *in loco parentis,* he must regard his pupils, even the least favoured, with a special reverence and love, give them good Christian example, correct them if necessary and so far as the law permits, and ward off from them all moral harm by keeping them from bad companions. Favouritism is a source of discontent amongst pupils and may be a sin against charity.

Pupils in their turn are bound to treat their teachers much as they ought to treat their parents, by showing them reverence, obedience and love, willingly accepting a position of tutelage. A teacher's precept will usually not bind under any sin, unless in a very serious matter and where the teacher wishes to impose a grave obligation. Assistant teachers have not the same power, legally or morally, as head teachers, but pupils are nevertheléss bound to treat them in all respects as superiors, with a right of appeal to the higher authority.

Note on the State and Education

The relations of the parents and the State in the matter of education are set out in the following declaration by the English Hierarchy.

Declaration by the Archbishops and Bishops of England and Wales on the subject of Education (Low Week, 1929).

1. It is no part of the *normal* function of the State to *teach.*

2. The State is entitled to see that citizens receive due education sufficient to enable them to discharge the duties of citizenship in its various degrees.

3. The State ought, therefore, to encourage every form of sound educational endeavour, and may take means to safeguard the efficiency of education.

4. To parents whose economic means are insufficient to pay for the education of their children, it is the duty of the State to furnish the necessary means, providing them from the common funds arising out of the taxation of the whole community. But in so doing the State must not interfere with parental responsibility, nor hamper the reasonable

liberty of parents in their choice of a school for their children. Above all, where the people are not all of one creed, there must be no differentiation on the ground of religion.

5. Where there is need of greater school accommodation the State may, in default of other agencies, intervene to supply it; but it may do so only in default of, and in substitution for, and to the extent of, the responsibility of the parents of the children who need this accommodation.

6. The teacher is always acting in *loco parentis,* never in *loco civitatis,* though the State to safeguard its citizenship may take reasonable care to see that teachers are efficient.

7. Thus a teacher never is and never can be a civil servant, and should never regard himself or allow himself to be so regarded. Whatever authority he may possess to teach and control children, and to claim their respect and obedience, comes to him from God through the parents, and not through the State, except in so far as the State is acting on behalf of the parents.

SECTION 9. The State Authority and Citizens

The civil authority derives its power of government—legislative, coercive, vindictive—from God. It does not concern us to define or prove any theory as to the origin of civil authority; it is certain and admitted by all Catholic teachers that the people cannot capriciously change their polity, refuse to obey just laws, or induce others to disobey them, or raise rebellion or sedition against an authority that has been legitimately constituted. When a ruler has been legitimately designated, then he becomes, by the law of nature, the supreme civil authority, and derives his power ultimately from God. He can, therefore, exact obedience that binds under sin. "There is no power but from God, and those that are ordained of God. Therefore he that resisteth the power resisteth the ordinance of God. And they that resist purchase to themselves damnation."[1] "Hallowed in

[1] Rom. 13, 1 sqq. S. Paul is speaking in the most general terms, and not only for the Roman State of the time. The authority of princes, illegitimate and legitimate, is from God: "Thou wouldst not have any power against me, unless it were given thee from above" (Jn. 19, 11). The abuse of power

the minds of Christians is the very idea of public authority, in which they recognize some likeness and symbol, as it were, of the Divine Majesty, even when it is exercised by one unworthy. Civil rulers are, therefore, bound to rule with even-handed justice, not as masters, but rather as fathers . . . not subservient to the advantages of any one individual or of some few persons, for civil power was established for the common good of all. It is sinful in the State to have no care for religion, as something beyond its scope or as of no practical benefit" (Leo XIII, *Immortale Dei,* 1885, and *Sapientia Christiana,* 1890).

Citizens, though not obliged to obey civil authorities in what is contrary to God's law, are bound to obey them in lawful matters, even when authority is wrongly used, until that authority is displaced by legitimate means. It is, therefore, always sinful to rebel, that is, to offer violence to legitimate government. "The sovereignty of the people, and this without any reference to God, is held to reside in the multitude, which is doubtless a doctrine well calculated to flatter and inflame men's passions, but which lacks all reasonable proof and all power of ensuring safety and preserving order. Many hold as an axiom of civil jurisprudence that sedition may be rightly fostered. For the opinion prevails, that princes are nothing more than the delegates chosen to carry out the will of the people; whence it necessarily follows that all things are as changeable as the will of the people, so that risk of public disturbance is ever hanging-over our heads" (Leo XIII, *Immortale Dei).*

The people, however, have a right to defend themselves against tyranny when government is really and habitually tyrannical, when legitimate means of redress have failed, when there is hope of success—for greater ensuing evil

on the part of civil rulers does not extinguish their power nor make that power to come from any other source than from God; cf. Comely *in loc.,* and the passage cited from S. Augustine, *de Civ. Dei,* lib. 5, c. 21: "He that gave Marius rule, gave Cæsar rule; He that gave Augustus it, gave Nero it; He that gave Vespasian rule or Titus his son, both sweet natural men, gave it also to Domitian, that cruel blood-sucker. And to be brief, He that gave it to Constantine the Christian, gave it also to Julian the Apostate." (English translation by J. H., with comments by Vivès, London, 1620).

would make opposition wrong—and when the greater and saner part of the people are convinced of the habitual tyranny.[1] Most revolutions of recent years have been the result of propaganda by a noisy faction; peoples have been forced into rebellion, with unspeakable consequences, in respect of cruelty, injustice, murder, arson, and unhappiness, and have been misled in the fair name of liberty down the bypaths of servitude.[2]

Even without the consent of the people, a ruler can become legitimate ruler when the common good demands it, for when opposition to his rule becomes useless and causes more harm than good, the people must acquiesce in his rule. This is merely to say that in this, as in matters of property, prescription can give a good title, but in polities, common peace is ultimately the arbiter.

It is the duty of all citizens who have the right to vote, to exercise that right when the common good of the State or the good of religion and morals require their votes, and when their voting is useful. It is sinful to vote for the enemies of religion or liberty', except to exclude a worse candidate, or unless compelled by fear of great personal harm, relatively greater than the public harm at stake. But in politics, great latitude is righdy claimed by all citizens. As a matter of political education, Catholics should exercise their right of voting, for the safety and progress of religion depends very much on the electors. Outside the limits of legitimate freedom of opinion, Catholics should be guided by their ecclesiastical Superiors in their choice of candidates to represent them, and should willingly give their signatures to memorials sent to Members of Parliament, as a protest against irreligious legislation, such as the extension of the grounds for divorce, or the abolition in schools of religious education.

1 cf. Cronin, *Tie Science of Ethics,* II, p. 542.
1 cf. Nesta H. Webster, *The French Revolution, a Study in Democracy, passim.*

APPENDIX 1

Pope Pius XI on Education[1]

"Education is essentially a social and not a mere individual activity. Now there are three necessary societies, distinct from one another and yet harmoniously combined by God, into which man is born: two, namely the family and civil society, belong to the natural order; the third, the Church, to the supernatural order."

1. In General

"In the first place comes the family, instituted directly by God for its peculiar purpose, the generation and formation of offspring; for this reason it has priority of nature and therefore of rights over civil society. Nevertheless, the family is an imperfect society, since it has not in itself all the means for its ολνη complete development; whereas civil society is a perfect society, having in itself all the means for its peculiar end, which is the temporal well-being of the community; and so, in this respect, that is, in view of the common good, it has pre-eminence over the family, which finds its own suitable temporal perfection precisely in civil society.

"The third society, into which man is born when through Baptism he receives the divine life of grace, is the Church; a society of the supernatural order and of universal extent; a perfect society, because she has in herself all the means required for her own end, which is the eternal salvation of mankind; hence she is supreme in her own domain.

"Consequently, education which is concerned with man as a whole, individually and socially, in the order of nature and in the order of grace, necessarily belongs to all these three societies, in due proportion, corresponding, according to the disposition of Divine Providence, to the co-ordination of their respective ends."

1 Encycl. *The Christian Education of Youth,* Dec. 31, 1929.

2. In Particular

(a) To the Church

" And first of all education belongs pre-eminently to the Church, by reason of a double title in the supernatural order, conferred exclusively upon her by God Himself; absolutely superior therefore to any other title in the natural order.

" The first title is founded upon the express mission and supreme authority to teach given her by her divine Founder: 'All power is given to me in heaven and in earth. Going therefore teach ye all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost, teaching them to observe all things whatsoever I have commanded you, and behold I am with you all days, even to the consummation of the world.' Upon this magisterial office Christ conferred infallibility, together with the command to teach His doctrine. Hence the Church was set by her divine Author as the pillar and ground of truth, in order to teach the divine Faith to men, and keep whole and inviolate the deposit confided to her; to direct and fashion men, in all their actions individually and socially, to purity of morals and integrity of life, in accordance with revealed doctrine.

" The second title is the supernatural motherhood, in virtue of which the Church, spotless spouse of Christ, generates, nurtures and educates souls in the divine life of grace, with the Sacraments and her doctrine. With good reason then does S. Augustine maintain: 'He has not God for father who refuses to have the Church as mother.'

" Hence it is that in this proper object of her mission, that is, in faith and morals, God Himself has made the Church sharer in the divine magisterium and, by a special privilege, granted her immunity from error; hence she is the mistress of men, supreme and absolutely sure, and she has inherent in herself an inviolable right to freedom in teaching. By necessary consequence the Church is independent of any sort of earthly power as well in the origin as in the exercise of her mission as educator; not merely in regard to her proper end and object, but also in regard to the means-necessary and suitable to attain that end. Hence with

regard to every other kind of human learning and instruction, which is the common patrimony of individuals and society, the Church has an independent right to make use of it, and above all to decide what may help or harm Christian education. And this must be so, because the Church as a perfect society has an independent right to the means conducive to her end, and because every form of instruction, no less than every human action, has a necessary connexion with man's last end, and therefore cannot be withdrawn from the dictates of the divine law, of which the Church is guardian, interpreter, and infallible mistress."

(b) To the Family

"The Church's mission of education is in wonderful agreement with that of the family, for both proceed from God, and in a remarkably similar manner. God directly communicates to the family, in the natural order, fecundity, which is the principle of life, and hence also the principle of education to life, together with authority, the principle of order.

"The Angelic Doctor, with his wonted clearness of thought and precision of style, says: 'The father according to the flesh has in a particular way a share in that principle which in a manner universal is found in God . . . The father is the principle of generation, of education and discipline and of everything that bears upon the perfecting of human life.'

"The family therefore holds directly from the Creator the mission and hence the right to educate the offspring, a right inalienable because inseparably joined to the strict obligation, a right anterior to any right whatever of civil society and of the State, and therefore inviolable on the part of any power on earth.

"That this right is inviolable S. Thomas proves as follows: 'The child is naturally something of the father . . . so by natural right the child, before reaching the use of reason, is under the father's care. Hence it would be contrary to natural justice if the child, before the use of reason, were removed from the care of its parents, or if any disposition were made concerning him against the will of the parents?

And as this duty on the part of the parents continues up to the time when the child is in a position to provide for itself, this same inviolable parental right of education also endures. 'Nature intends not merely the generation of the offspring, but also its development and advance to the perfection of man considered as man, that is, to the state of virtue,' says the same S. Thomas.

"The wisdom of the Church in this matter is expressed with precision and clearness in the Code of Canon law, canon 1113: 'Parents are under a grave obligation to see to the religious and moral education of their children, as well as to their physical and civic training, as far as they can, and moreover to provide for their temporal well-being.'

"On this point the common sense of mankind is in such complete accord, that they would be in open contradiction with it who dared maintain that the children belong to the State before they belong to the family, and that the State has an absolute right over their education. Untenable is the reason they adduce, namely that man is born a citizen and hence belongs primarily to the State, not bearing in mind that before being a citizen man must exist; and existence does not come from the State, but from the parents, as Leo XIII wisely declared: 'The children are something of the father, and as it were an extension of the person *of the father; and, to be* perfectly accurate, they enter into and become part of civil society, not directly by themselves, but through the family in which they were born.' 'And therefore,' says the same Leo XIII, 'the father's power is of such a nature that it cannot be destroyed or absorbed by the State; for it has the same origin as human life itself.' It does not, however, follow from this that the parents' right to educate their children is absolute and despotic; for it is necessarily subordinated to the last end and to Natural and divine law, as Leo XIII declares in another memorable Encyclical, where he thus sums up the rights and duties of parents: 'By nature parents have a right to the training of their children, but with this added duty that the education and instruction of the child be in accord with the end for which by God's blessing it was begotten. Therefore it is

the duty of parents to make every effort to prevent any invasion of their rights in this matter, and to make absolutely sure that the education of their children remains under their own control in keeping with their Christian duty, and above all to refuse to send them to those schools in which there is danger of imbibing the deadly poison of impiety.'

"It must be borne in mind also that the obligation of the family to bring up children, includes not only religious and moral education, but physical and civic education as well, principally in so far as it touches upon religion and morality."

(c) To the State

"From such priority of rights on the part of the Church and the family in the field of education, most important advantages, as we have seen, accrue to the whole of society. Moreover in accordance with the divinely established order of things, no damage can follow from it to the true and just rights of the State in regard to the education of its citizens.

"These rights have been conferred upon civil society by the Author of Nature Himself, not by title of fatherhood, as in the case of the Church and of the family, but in virtue of the authority which it possesses to promote the common temporal welfare, which is precisely the purpose of its existence. Consequently education cannot pertain to civil society in the same way in which it pertains to the Church and to the family ; but in a different way corresponding to its own particular end and object.

"Now this end and object, the common welfare in the temporal order, consists in that peace and security in which families and individual citizens have the free exercise of their rights, and at the same time enjoy the greatest spiritual and temporal prosperity possible in this life, by the mutual union and co-ordination of the work of all. The function therefore of the civil authority residing in the State is twofold, to protect and to foster, but by no means to absorb the family and the individual, or to substitute itself for them.

"Accordingly in the matter of education, it is the right, or to speak more correctly, it is the duty of the State to

protect in its legislation, the prior rights, already described, of the family as regards the Christian education of its offspring, and consequently also to respect the supernatural rights of the Church in this same realm of Christian education.

" It also belongs to the State to protect the rights of the child itself when the parents are found wanting either physically or morally in this respect, whether by default, incapacity, or misconduct, since, as has been shown, their right to educate is not an absolute and despotic one, but dependent on the Natural and divine law, and therefore subject alike to the authority and jurisdiction of the Church, and to the vigilance and administrative care of the State in view of the common good. Besides, the family is not a perfect society, that is, it has not in itself all the means necessary for its full development. In such cases, exceptional no doubt, the State does not put itself in the place of the family, but merely supplies deficiencies, and provides suitable means, always in conformity with the natural rights of the child and the supernatural rights of the Church.

" In general then it is the right and duty of the State to protect, according to the rules of right reason and faith, the moral and religious education of youth, by removing public impediments that stand in the way.

" In the first place it pertains to the State, in view of the common good, to promote in various ways the education and instruction of youth. It should begin by encouraging and assisting, of its own accord, the initiative of the Church and the family, whose successes in this field have been clearly demonstrated by history and experience. It should moreover supplement their work whenever this falls short of what is necessary, even by means of its own schools and institutions. For the State more than any other society is provided with the means put at its disposal for the needs of all, and it is only right that it use these means to the advantage of those who have contributed them.

" Over and above this, the State can exact, and take measures to secure that all its citizens have the necessary knowledge of their civic and political duties, and a certain

degree of physical, intellectual and moral culture, which, considering the conditions of our times, is really necessary for the common good.

" However it is clear that in all these ways of promoting education and instruction, both public and private, the State should respect the inherent rights of the Church and of the family concerning Christian education, and moreover have regard for distributive justice. Accordingly, unjust and unlawful is any monopoly, educational or scholastic, which, physically or morally, forces families to make use of government schools, contrary to the dictates of their Christian conscience, or contrary to their legitimate preferences.

" This does not prevent the State from making due provision for the right administration of public affairs and for the protection of its peace, within or without the realm. These are things which directly concern the public good and call for special aptitudes and special preparation. The State may therefore reserve to itself the establishment and direction of schools intended to prepare for certain civic duties and especially for military service, provided it be careful not to injure the rights of the Church or of the family in what pertains to them. It is well to repeat this warning here ; for in these days there is spreading a spirit of nationalism which is false and exaggerated, as well as dangerous to' true peace and prosperity. Under its influence various excesses are committed in giving a military turn to the so-called physical training of boys (sometimes even to girls, contrary to the very instincts of human nature) ; or again in usurping unreasonably on Sunday, the time which should be devoted to religious duties and to family life at home. It is not Our intention however to condemn what is good in the spirit of discipline and legitimate bravery promoted by these methods ; we condemn only what is excessive, as for example violence, which must not be confounded with courage nor with the noble sentiment of military valour in defence of country and public order ; or again exaltation of athleticism which even in classic pagan times marked the decline and downfall of genuine physical training.

In general also it belongs to civil society and the State to provide what may be called civic education, not only for its youth, but for all ages and classes. This consists in the practice of presenting publicly to groups of individuals information having an intellectual, imaginative and emotional appeal, calculated to draw their will to what is upright and honest, and to urge its practice by a sort of moral compulsion, positively by disseminating such knowledge, and negatively by suppressing what is opposed to it. This civic education, so wide and varied in itself as to include almost every activity of the State intended for the public good, ought also to be regulated by the norms of rectitude, and therefore cannot conflict with the doctrines of the Church, which is the divinely appointed teacher of these norms."

APPENDIX 2

Pope Pius XI on Naturalism in Education

" Every form of pedagogic naturalism which in any way excludes or weakens supernatural Christian formation in the teaching of youth, is false. Every method of education founded, wholly or in part, on the denial or forgetfulness of original sin and of grace, and relying on the sole powers of human nature, is unsound. Such, generally speaking, are those modem systems bearing various names which appeal to a pretended self-government and unrestrained freedom on the part of the child, and which diminish or even suppress the teacher's authority and action, attributing to the child an exclusive primacy of initiative, and an activity' independent of any higher law, natural or divine, in the work of his education.

" If any of these terms are used, les» properly to denote the necessity of a gradually more active co-operation on the part of the pupil in his own education ; if the intention is to banish from education despotism and violence, which, by the way, just punishment is not, this would be correct, but in no way new. It would mean only what has been taught and reduced to practice by the Church in traditional

POPE PIUS XI ON EDUCATION

Christian education, in imitation of the method employed by God Himself towards His creatures, of whom He demands active co-operation according to the nature of each; for His Wisdom 'reacheth from end to end mightily and ordereth all things sweetly.'

"But alas! it is clear from the obvious meaning of the words and from experience, that what is intended by not a few, is the withdrawal of education from every sort of dependence on the divine law. So today we see—strange sight indeed—educators and philosophers who spend their lives searching for a universal moral code of education, as if there existed no decalogue, no gospel law, no law even of nature stamped by God on the heart of man, promulgated by right reason, and codified in positive revelation by God Himself in the Ten Commandments. These innovators are wont to refer contemptuously to Christian education as 'heteronomous,' 'passive,' 'obsolete,' because founded upon the authority of God and His holy law.

"Such men are miserably deluded in their claim to emancipate, as they say, the child, while in reality they are making him the slave of his own blind pride and of his disorderly affections, which, as a logical consequence of this false system, come to be justified as legitimate demands of a so-called autonomous nature.

"But what is worse is the claim, not only vain but false, irreverent and dangerous, to submit to research, experiment and conclusions of a purely natural and profane order, those matters of education which belong to the supernatural order; as for example questions of priestly or religious vocation, and in general the secret workings of grace which indeed elevate the natural powers, but are infinitely superior to them, and may nowise be subjected to physical laws, for 'the Spirit breatheth where He will'."

APPENDIX 3

Pope Pius XI on the Church and her Educational Works

"To meet the weakness of man's fallen nature, God in His Goodness has provided the abundant helps of His grace and the countless means with which He has endowed the Church, the great family of Christ. The Church therefore is the educational environment most intimately and harmoniously associated with the Christian family.

" This educational environment of the Church embraces the Sacraments, divinely efficacious means of grace, the sacred ritual, so wonderfully instructive, and the material fabric of her churches, whose liturgy and art have an immense educational value ; but it also includes the great number and variety of schools, associations, and institutions of all kinds, established for the training of youth in Christian piety, together with literature and the sciences, not omitting recreation and physical culture. And in this inexhaustible fecundity of educational works, how marvellous, how incomparable is the Church's maternal providence ! So admirable too is the harmony which she maintains with the Christian family, that the Church and the family may be said to constitute together one and the same temple of Christian education."

APPENDIX 4

Pope Pius XI on the School

1. Its Relation to Family and Church

" Since however the younger generations must be trained in the arts and sciences for the advantage and prosperity of civil society, and since the family of itself is unequal to this task, it was necessary to create that social institution, the school. But let it be borne in mind that this institution owed its existence to the initiative of the family and of the Church, long before it was undertaken by the State. Hence

considered in its historical origin, the school is by its very nature an institution subsidiary and complementary to the family and to the Church. It follows logically and necessarily that it must not be in opposition to, but in positive accord with those other two elements, and form with them a perfect moral union, constituting one sanctuary of education, as it were, with the family and the Church. Otherwise it is doomed to fail of its purpose, and to become instead an agent of destruction.

"This principle we find recognized by a layman, famous for his pedagogical writings, though these, because of their liberalism, cannot be unreservedly praised. 'The school,' he writes, 'if not a temple, is a den.' And again: 'When literary, social, domestic, and religious education do not go hand in hand, man is unhappy and helpless'.

2. Neutral, Lay, Mixed and 'Unique' Schools

"From this it follows that the so-called 'neutral' or 'lay' school, from which religion is excluded, is contrary to the fundamental principles of education. Such a school moreover cannot exist in practice; it is bound to become irreligious. There is no need to repeat what Our Predecessors have declared on this point, especially Pius IX and Leo XIII, at times when laicism was beginning to infest the public school. We renew and confirm their declarations, as well as the Sacred Canons in which the frequenting of non-Catholic schools, whether neutral or mixed, those namely which are open to Catholics and non-Catholics alike, is forbidden for Catholic children, and can at most be tolerated, on the approval of the Ordinary alone, under determined circumstances of place and time, and with special precautions. Neither can Catholics admit that other type of mixed school (least of all the so-called *école unique* obligatory on all), in which the students are provided with separate religious instruction, but receive other lessons in common with non-Catholic pupils from non-Catholic teachers."

1 Nie. Tommaseo, *Pensieri sull' educatione.*

3. Catholic Schools

"For the mere fact that a school gives some religious instruction (often extremely stinted) does not bring it into accord with the rights of the Church and of the Christian family or make it a fit place for Catholic students. To be this, it is necessary that all the teaching and the whole organization of the school, and its teachers, syllabus and text-books in every branch, be regulated by the Christian spirit, under the direction and maternal supervision of the Church ; so that Religion may be in very' truth the foundation and crown of the youth's entire training ; and this in every' grade of school, not only the elementary', but the intermediate and the higher institutions of learning as well. To use the words of Leo XIII : ' It is necessary not only that religious instruction be given to the young at certain fixed times, but also that every other subject taught be permeated with Christian piety. If this is wanting, if this sacred atmosphere does not pervade and warm the hearts of masters and scholars alike, little good can be expected from any kind of learning, and considerable harm will often be the consequence.'

" And let no one say that in a nation where there are different religious beliefs, it is impossible to provide for public instruction otherwise than by neutral or mixed schools. In such a case it becomes the duty of the State, indeed it is the easier and more reasonable method of procedure, to leave free scope to the initiative of the Church and the family, while giving them such assistance as justice demands. That this can be done to the full satisfaction of families, and to the advantage of education and of public peace and tranquillity, is clear from the actual experience of some countries comprising different religious denominations. There the school legislation respects the rights of the family, and Catholics are free to follow their own system of teaching in schools that are entirely Catholic. Nor is distributive justice lost sight of, as is evidenced by the financial aid granted by the State to the several schools demanded by the families.

"In other countries of mixed creeds, things are otherwise, and a heavy burden weighs upon Catholics, who under the guidance of their bishops and with the indefatigable co-operation of the clergy, secular and regular, support Catholic schools for their children entirely at their own expense; to this they feel obliged in conscience, and with a generosity and constancy worthy of all praise, they are firmly determined to make adequate provision for what they openly profess as their motto: 'Catholic education in Catholic schools for all the Catholic youth.' If such education is not aided from public funds, as distributive justice requires, certainly it may not be opposed by any civil authority ready to recognize the rights of the family, and the irreducible claims of legitimate liberty.

"Where this fundamental liberty is thwarted or interfered with, Catholics will never feel, whatever may have been the sacrifices already made, that they have done enough, for the support and defence of their schools and for the securing of laws that will do them justice."

APPENDIX 5

Pope Pius XI on Sex-Education and Co-Education

1. Sex-Education

The same Encyclical condemns the modern theory that the young should be enlightened on the subject of sex from the earliest age and as a matter of course. The reprobation of this theory is based on three principles, namely, that the importance of initiating the young into matters of sex is exaggerated, the mode of doing so is wrong, and it is a false method to expose the young to danger in order to preserve or safeguard them from evil. Even where some education in sex matters is found to be necessary, due precautions are to be taken.

The precautions well known to Christian tradition are assumed to be familiar, and the Pope does not enumerate them. These include prayer, fréquentation of the Sacraments and devotion to the Mother of God.

The Holy Office, in its decree on sexual education (March, 1931), stated that the method called sexual education and sexual initiation is to be condemned. It urged the necessity of a complete, solid and uninterrupted religious education of both sexes. It desired that the young should be stimulated to an esteem of the angelic virtue, a desire and love of it, that they should be exhorted to apply themselves to prayer, to the assiduous fréquentation of the Sacraments of Penance and the Holy Eucharist, that they should have a filial devotion to the Blessed Virgin, Mother of holy purity, committing themselves wholly to her protection. Furthermore, it urged that they should avoid dangerous reading, obscene spectacles, conversation with wicked people, and all occasions of sin. These are amongst the Catholic traditional methods of educating to purity. Teachers who rely only on natural considerations may succeed in a few cases, but they will fail in hundreds.

The following is the teaching of the Papal Encyclical :

" Another very grave danger is that naturalism which nowadays invades the field of education in that most delicate matter of purity of morals. Far too common is the error of those who with dangerous assurance and under an ugly term propagate a so-called sex-education, falsely imagining they can forearm youths against the dangers of sensuality by means purely natural, such as a foolhardy initiation and precautionary instruction for all indiscriminately, even in public ; and, worse still, by exposing them at an early age to the occasions, in order, so it is argued, to accustom them and as it were harden them against such dangers.

" Such persons grievously err in refusing to recognize the inborn weakness of human nature, and the law of which the Apostle speaks, fighting against the law of the mind ; and also ignoring the experience of facts, from which it is clear that, particularly in young people, evil practices are the effect not so much of ignorance of intellect as of weakness of a will exposed to dangerous occasions, and unsupported by the means of grace.

"In this extremely delicate matter, if, all things considered, some private instruction is found necessary and opportune,

from those who hold from God the commission to teach and who have the grace of state, every precaution must be taken. Such precautions arc well known in traditional Christian education, and are adequately described by Antoniano, when he says :

" ' Such is our misery and inclination to sin, that often in the very things considered to be remedies against sin, we find occasions for and inducements to sin itself. Hence it is of the highest importance that a good father, while discussing with his son a matter so delicate, should be well on his guard and not descend to details, nor refer to the various ways in which this infernal hydra destroys with its poison so large a portion of the world ; otherwise it may happen that instead of extinguishing this fire, he unwittingly stirs or kindles it in the simple and tender heart of the child. Speaking generally, during the period of childhood it suffices to employ those remedies which produce the double effect of opening the door to the virtue of purity and closing the door upon vice.' "

2. Co-Education

"False also and harmful to Christian education is the so-called method of ' co-education.' This too, by many of its supporters, is founded upon naturalism and the denial of original sin ; but by all, upon a deplorable confusion of ideas that mistakes a levelling promiscuity and equality, for the legitimate association of the sexes. The Creator has ordained and disposed perfect union of the sexes in matrimony, and with varying degrees of contact, in the family and in society. Besides there is not in nature itself, which fashions the two quite different in organism, in temperament, in abilities, anything to suggest that there can be and ought to be promiscuity, and much less equality, in the training of the two sexes. These in keeping with the wonderful designs of the Creator are destined to complement each other in the family and in society, precisely because of their differences, which therefore ought to be maintained and encouraged during their years of formation, with the necessary distinction and corresponding separation, according to age and

circumstances. These principles, with due regard to time and place, must, in accordance with Christian prudence, be applied to all schools, particularly in the most delicate and decisive period of formation, that, namely, of adolescence; and in gymnastic exercises and deportment, special care must be had of Christian modesty in young women and girls, which is so gravely impaired by any kind of exhibition in public.

"Recalling the terrible words of the divine Master: 'Woe to the world because of scandals!' we most earnestly appeal to your solicitude and your watchfulness, Venerable Brethren, against these pernicious errors, which, to the immense harm of youth, are spreading far and wide among Christian peoples."

APPENDIX 6

Pope Pius XI on the State and Social Order[1]

1. Public and Private Enterprises

"When We speak of the reform of the social order it is principally the State We have in mind. Not indeed that all salvation is to be hoped from its intervention; but because on account of the evil of 'individualism,' as We called it, things have come to such a pass that the highly developed social life, which once flourished in a variety of prosperous institutions organically linked with each other, has been damaged and all but ruined, leaving thus virtually only individuals and the State. Social life lost entirely its organic form; the State which now was encumbered with all the burdens once borne by associations rendered extinct by it, was in consequence submerged and overwhelmed by an infinity of affairs and duties.

"It is indeed true, as history clearly proves, that owing to the change in social conditions, much that was formerly done by small bodies can nowadays be accomplished only by large corporations. None the less, just as it is wrong to withdraw from the individual and commit to the com-

[1] Encycl. *Quadragesimo Anno,* May 15, 1931.

munity at large what private enterprise and industry can accomplish, so too it is an injustice, a grave evil and a disturbance of right order for a larger and higher organization to arrogate to itself functions which can be performed efficiently by smaller and lower bodies. This is a fundamental principle of social philosophy, unshaken and unchangeable, and it retains its full truth today. Of its very nature the true aim of all social activity should be to help individual members of the social body, but never to destroy or absorb them.

" The State should leave to these smaller groups the settlement of business of minor importance ; it will thus carry out with greater freedom, power, and success the tasks belonging to it, because it alone can effectively accomplish these, directing, watching, stimulating and restraining, as circumstances suggest or necessity demands. Let those in power, therefore, be convinced that the more faithfully this principle be followed, and a graded hierarchical order exist between the various subsidiary organizations, the more excellent will be both the authority and the efficiency of the social organization as a whole, and the happier and more prosperous the condition of the State."

2. Domination has followed from Free Competition

" It is patent that in our days not alone is wealth accumulated, but immense power and despotic economic domination is concentrated in the hands of a few, and that those few are. frequently not the owners, but only the trustees and directors of invested funds, who administer them at their good pleasure.

" This power becomes particularly irresistible when exercised by those who, because they hold and control money, are able also to govern credit and determine its allotment, for that reason supplying, so to speak, the life-blood to the entire economic body, and grasping, as it were, in their hands the very soul ofproduction, so that no one dare breathe against their will.

" This accumulation of power, the characteristic note of

the modern economic order, is a natural result of limitless free competition, which permits the survival of those only who are the strongest, which often means those who fight most relentlessly, who pay least heed to the dictates of conscience.

" This concentration of power has led to a threefold struggle for domination. First, there is the struggle for dictatorship in the economic sphere itself; then the fierce battle to acquire control of the State, so that its resources and authority may be abused in the economic struggles; finally, the clash between States themselves. This latter arises from two causes: because the nations apply their power and political influence, regardless of circumstances, to promote the economic advantages of their citizens; and because, *vice versa,* economic forces and economic domination are used to decide political controversies between peoples."

3. Remedies

(a) General Outlook

" Since the present economic regime is based mainly upon Capital and Labour, it follows that the principles of right reason and Christian social philosophy regarding Capital, Labour and their mutual co-operation, must be accepted in theory and reduced to practice. In the first place, due consideration must be had for the double character, individual and social, of Capital and Labour, in order that the dangers of individualism and of collectivism be avoided. The mutual relations between Capital and Labour must be determined according to the laws of the strictest justice, called commutative justice, supported however by Christian charity. Free competition and still more economic domination must be kept within just and definite limits, and must be brought under the effective control of the public authority, in matters appertaining to this latter's competence. The public institutions of the nations must be such as to make the whole of human society conform to the common good, i.e., to the standard of social justice. If this is done, the economic system, that most important branch of social life, will necessarily be restored to sanity and right order."

(b) Economic Life must be Inspired by Christian Principles

" For this pitiable ruin of souls [resulting from the conditions of social and economic life], which, if it continue, will frustrate all efforts to reform society, there can be no other remedy than a frank and sincere return to the teaching of the Gospel. Men must observe anew the precepts of Him who alone has the words of eternal life, words which, even though heaven and earth be changed, shall not pass away. All those versed in social matters demand a rationalization of economic life which will introduce sound and true order. But this order, which We Ourselves desire and make every effort to promote, will necessarily be quite faulty and imperfect, unless all man's activities harmoniously unite to imitate and, as far as is humanly possible, attain the marvellous unity of the Divine plan. This is the perfect order which the Church preaches with intense earnestness, and which right reason demands ; which places God as the first and supreme end of all created activity, and regards all created goods as mere instruments under God, to be used only in so far as they help towards the attainment of our supreme end. Nor is it to be imagined that remunerative occupations are thereby belittled or deemed less consonant with human dignity. On the contrary, we are taught to recognize and reverence in them the manifest will of God the Creator, who placed man upon the earth to work it and use it in various ways in order to supply his needs. Those who are engaged in production are not forbidden to increase their fortunes in a lawful and just manner ; indeed it is just that he who renders service to society and develops its wealth should himself have his proportionate share of the increased public riches, provided always that he respects the laws of God and the rights of his neighbour, and uses his property in accord with faith and right reason. If these principles be observed by all, everywhere and at all times, not merely the production and acquisition of goods, but also the use of wealth, now so often uncontrolled, will within a short time be brought back again to the standards of equity and just distribution. Mere sordid selfishness,

which is the disgrace and the great crime of the present age, will be opposed in very deed by the kindly and forcible law· of Christian moderation, whereby man is commanded to seek first the kingdom of God and His justice, confiding in God's liberality and definite promise that temporal goods also, in so far as he has need of them, will be added unto

(c) The Law of Charity must Operate

"Now, in effecting this reform, charity 'which is the bond of perfection,' must play a leading part. How completely deceived are those inconsiderate reformers who, zealous only for commutative justice, proudly disdain the help of charity! Clearly charity cannot take the place of justice unfairly withheld. But, even though a state of things be pictured in which every man receives at last all that is his due, a wide field will remain open for charity. For, justice alone, even though most faithfully observed, can remove the cause of social strife, but can never bring about a union of hearts and minds. Yet this union, binding men together, is the main principle of stability in all institutions, no matter how perfect they may seem, which aim at establishing social peace and promoting mutual aid. In its absence, as repeated experience proves, the wisest regulations come to nothing. Then only will it be possible to unite all in harmonious striving for the common good, when all sections of society have the intimate conviction that they are members of a single family and children of the same Heavenly Father, and further, that they are 'one body in Christ, and everyone members one of another,' so that 'if one member suffer anything, all members suffer with it.' Then the rich and others in power will change their former negligence of their poorer brethren into solicitous and effective regard; will listen with kindly feeling to their just complaints, and will readily forgive them the faults and mistakes they possibly make. Workingmen too will lay aside all feelings of hatred or envy, which the instigators of social strife arouse so skilfully. Not only will they cease to feel weary of the position assigned them by divine Providence in human society;

they will become proud of it, well aware that every man by doing his duty is working usefully and honourably for the common good, and is following in the footsteps of Him, who, being in the form of God, chose to become a carpenter among men, and to be known as the Son of a carpenter."

APPENDIX 7

Pope Pius XI on Socialism

Socialism conceives a society and a social character of men utterly foreign to Christian truth.

" According to Christian doctrine, man, endowed with a social nature, is placed here on earth in order that he may spend his life in society, and under an authority ordained by God ; that he may develop and evolve to the full all his faculties to the praise and glory of his Creator ; and that, by fulfilling faithfully the duties of his station, he may attain to temporal and eternal happiness. Socialism, on the contrary, entirely ignorant of or unconcerned about this sublime end of individuals and of society, affirms that living in community was instituted merely for the sake of the advantages which it brings to mankind.

" Goods are produced more efficiently by a suitable distribution of labour than by the scattered efforts of individuals. Hence the Socialists argue that economic production, of which they see only the material side, must necessarily be carried on collectively, and that because of this necessity men must surrender and submit themselves wholly to society with a view to the production of wealth. Indeed, the possession of the greatest possible amount of temporal goods is esteemed so highly, that man's higher goods, not excepting liberty, must, they claim, be subordinated and even sacrificed to the exigencies of efficient production. They affirm that the loss of human dignity, which results from these socialized methods of production, will be easily compensated for by the abundance of goods produced in common and accruing to the individual, who can turn them at his will to the comforts and culture of life. Society,

therefore, as the Socialist conceives it, is on the one hand impossible and unthinkable without the use of compulsion of the most excessive kind ; on the other it fosters a false liberty, since in such a scheme no place is found for true social authority, which is not based on temporal and material advantages, but descends from God alone, the Creator and last end of all things.

" If, like all errors, Socialism contains a certain element of truth (and this the Sovereign Pontiffs have never denied), it is nevertheless founded upon a doctrine of human society peculiarly its own, which is opposed to true Christianity. ' Religious Socialism,' ' Christian Socialism ' are expressions implying a contradiction in terms. No one can be at the same time a sincere Catholic and a true Socialist."

APPENDIX 8

Pope Pius XI on Atheistic Communism[1]

Introduction

The struggle between good and evil remained in the world as a sad legacy of the original fall. Nor has the ancient tempter ever ceased to deceive mankind with false promises. It is on this account that one convulsion following upon another has marked the passage of the centuries, down to the revolution of our own days. This modern revolution has actually broken out or threatens almost everywhere.

This all too imminent danger is bolshevistic and atheistic communism, which aims at upsetting the social order and at undermining the very foundations of Christian civilization.

I

Attitude of the Church towards Communism

In the face of such a threat the Catholic Church could not and does not remain silent. This Apostolic See, above all,

1 Encycl. *Divini Rtdemptorù,* March 19, 1937. The reader may be reminded that a summary, however carefully done, fails to do complete justice to the original. Although it is hoped that the summary here given faithfully represents the mind of His Holiness, Pope Pius XI, the Encyclical letter itself should be studied. It is only in the words of the Encyclical that the full Catholic teaching is presented.

has not refrained from raising its voice. Ever since the days when groups of " intellectuals " took it upon themselves to loose civilization from the bonds of morality and religion, Our Predecessors explicitly drew the attention of the world to the consequences of this separation of Christianity from human society. With reference to communism, Our venerable Predecessor, Piux IX, of holy memory, as early as 1846 pronounced a solemn condemnation, which he confirmed in the words of the Syllabus directed against " that infamous doctrine of so-called communism which is absolutely contrary to the natural law itself, and if once adopted would utterly destroy the rights, property, and possessions of all men, and even society itself." Later on, another of Our Predecessors, the immortal Leo XIII, in his Encyclical *Quod apostolici muneris* defined communism as " the fatal plague which insinuates itself into the very marrow of human society only to bring about its ruin."

During Our Pontificate We have frequently and with urgent insistence denounced the current trend to atheism which is alarmingly on the increase.

In 1924 when Our relief-mission returned from the Soviet Union We condemned communism in a special Allocution which We addressed to the whole world. In Our Encyclicals *Miserentissimus Redemptor, Quadragesimo anno, Caritate Christi, Acerba animi, Dilectissima Nobis,* We raised a solemn protest against the persecutions unleashed in Russia, in Mexico, and now in Spain. Our two Allocutions of last year, the first on the occasion of the opening of the International Catholic Press Exhibition, and the second during Our audience to the Spanish refugees, along with Our message of last Christmas, have evoked a world-wide echo which is not yet spent. In fact the most persistent enemies of the Church, who from Moscow are directing the struggle against Christian civilization, themselves bear witness, by their unceasing attacks in word and act, that even to this hour the Papacy has continued faithfully to protect the sanctuary of the Christian religion, and that it has called public attention to the perils of communism more frequently and more effectively than any other public authority on earth.

Yet despite Our frequent and paternal warnings the peril only grows greater from day to day because of the pressure exerted by clever agitators. Therefore We believe it to be Our duty to raise Our voice once more, in a still more solemn missive, in response to the tradition of this Apostolic Sec, the Teacher of Truth, and in accord with the desire of the whole Catholic world.

Hence We wish to expose once more in a brief synthesis the principles of atheistic communism as they are manifested chiefly in bolshevism. We wish also to indicate its method of action and to contrast with its false principles the clear doctrine of the Church, in order to inculcate anew and with greater insistence the means by which Christian civilization, the true *civitas humana,* can be saved from the satanic scourge, and not merely saved, but better developed for the well-being of civil society.

II

Communism in Theory and Practice

1. Doctrine

(a) False Ideal

The commtmism of to-day, more emphatically than similar movements in the past, poses as the saviour of the poor. A pseudo-ideal of justice, of equality and fraternity in labour impregnates all its doctrine and activity with a deceptive mysticism, which communicates a zealous and contagious enthusiasm to the multitudes entrapped by delusive promises. This is especially true in an age like ours, when unusual poverty has resulted from the unfair distribution of the goods of this world.

(b) Marxist Evolutionary Materialism

The doctrine of modem communism, which is often concealed under the most seductive trappings, is in substance based on the principles of dialectical and historical materialism previously advocated by Marx, of which the theorists of bolshevism claim to possess the only genuine interpretation. According to this doctrine there is in the world only one

reality, matter, the blind forces of which evolve into plant, animal, and man. Even human society is nothing but a kind or form of matter, evolving in the same way. By a law of inexorable necessity and through a perpetual conflict of forces, matter moves towards the final synthesis of a classless society. In such a doctrine, as is evident, there is no room for the idea of God ; there is no difference between matter and spirit, between soul and body ; there is neither survival of the soul after death nor any hope of a future life. The communists claim that the conflict which carries the world towards its final synthesis can be accelerated by man. Hence they endeavour to sharpen the antagonisms which arise between the various classes of society. Thus the class-struggle with its consequent violent hate and destruction takes on the aspect of a crusade for the progress of humanity.

(c) Man and the Family under Communism

Communism, moreover, strips man of his liberty, on which the spiritual rules of conduct depend, robs human personality of all its dignity, and removes all the moral restraints that check the eruptions of blind impulse. Since according to communism, human personality is, so to say, a mere wheel in the machine of the universe, the natural rights which spring from it are denied to individuals and attributed to the community. In man's relations with other individuals, besides, communists hold the principle of absolute equality, rejecting all divinely-constituted hierarchy and authority, including the authority of parents. What men call authority and subordination is derived from the community as its first and only source. Nor is the individual granted any property rights over material goods or the means of production, for inasmuch as these are the source of further wealth, their possession would give one man power over another. Precisely on this score, all forms of private property must be eradicated, for they are at the origin of all economic enslavement.

Such a doctrine logically makes of marriage and the family a purely artificial and civil institution, the outcome of a

specific economic system. There exists no matrimonial bond of a juridico-moral nature that is not subject to the whim of the individual or of the community. Naturally, therefore, the notion of an indissoluble marriage-tie is repudiated. Communism is particularly characterized by the rejection of any link that binds woman to the family and the home, and her emancipation is proclaimed as a basic principle. She is withdrawn from the family and the care of her children, to be thrust instead into public life and collective production under the same conditions as man. The care of home and children then devolves upon civil society. Finally, the right of education is denied to parents, for it is conceived as the exclusive prerogative of the community, in whose name and by whose mandate alone parents may exercise this right.

(d) Communist Society

What would be the condition of a human society based on such materialistic tenets? It would be a community with no other authority than that derived from the economic system. It would have only one mission: the production of material things by means of collective labour, so that the goods of this world might be enjoyed in a paradise where each would "give according to his powers" and would "receive according to his needs." Communism recognizes in the community the right, or rather, unrestricted power, to draft individuals for the labour of the community with no regard for their personal welfare; so that even violence could be legitimately exercised to dragoon the recalcitrant against their wills. In the communistic commonwealth, morality and law would be nothing but a derivation from the existing economic order, purely earthly in origin and unstable in character.

When all men have finally acquired the mentality necessary for this Utopia of a classless society, the political State, which is now conceived by communists merely as the instrument by which the proletariat is oppressed by the capitalists, will have lost all reason for its existence and will "wither away." However, until that happy consummation is real-

ized, the State and the powers of the State furnish communists with the most efficacious and most extensive means for the achievement of their goal.

Such, Venerable Brethren, is the new gospel which bolshevistic and atheistic communism offers the world as the glad tidings of deliverance and salvation ! It is a system full of errors and illusions. It is in opposition both to reason and to divine Revelation. It subverts the social order, because it means the destruction of its foundations ; because it ignores the true origin, nature, and purpose of the State ; because it denies the rights, dignity, and liberty of human personality.

2. Spread of Communism Explained

(a) Alluring Promises

How is it possible that such a system could spread so rapidly in all parts of the world ? The explanation lies in the fact that too few have fully realized the aims and purposes of communism. Very many instead succumb to its skilful propaganda and extravagant promises. By pretending to desire only the betterment of the condition of the working classes, by urging the removal of the very real abuses chargeable to the liberalistic economic order, and by demanding a more equitable distribution ôf this world's goods (objectives obviously and undoubtedly legitimate), the communist takes advantage of the present world-wide economic crisis to draw into the sphere of his influence even those sections of the populace which on principle reject all forms of materialism and terrorism. The preachers of communism are also proficient in exploiting national antagonisms and political divisions and oppositions. They take advantage of the confusion which enters the field of studies when the very idea of God is absent in order to penetrate into the universities, where they support the principles of their doctrine with pseudo-scientific arguments.

(b) Liberalism Prepares the Way

If we would explain the blind acceptance of communism by so many thousands of wotking men, we must remember

that the waÿhad been already prepared for it by the religious and moral destitution in which wage-earners had been left by "liberal" economics. Laicism was actively and persistently promoted, with the result that we are now reaping the fruits of the errors so often denounced by Our Predecessors and by Ourselves. It can surprise no one that the communistic fallacy should be spreading in a world already to a large extent estranged from Christianity.

(c) Shrewd and Widespread Propaganda

There is another explanation for the rapid diffusion of the communistic ideas now penetrating into every nation, great and small, advanced and backward, so that no corner of the earth is free from them. This explanation is to be found in a propaganda so truly diabolical that the world has perhaps never witnessed its like before. It is directed from one common centre. It is shrewdly adapted to the varying conditions of diverse peoples. It has at its disposal great financial resources, innumerable organizations, international congresses, and countless trained workers. It makes use of newspapers and pamphlets, of cinema, theatre, and wireless, of schools and even universities.

(d) Silence of the Press

A third powerful factor in the diffusion of communism is the conspiracy of silence on the part of a large section of the non-Catholic press of the world. We say conspiracy, because it is impossible otherwise to explain how a press usually so eager to exploit even the little daily incidents of life has been able to remain silent for so long about the horrors perpetrated in Russia, in Mexico, and even in a great part of Spain; and that it should have relatively so little to say concerning a world organization as vast as Russian communism. This silence is due in part to short-sighted political policy, and is favoured by various occult forces which for a long time have been working for the overthrow of the Christian social order.

3. Sad Consequences

(a) Russia and Mexico

Meanwhile the sorry effects of this propaganda are before our eyes. Where communism has been able to assert its power it has striven by every possible means, as its champions openly boast, to destroy Christian civilization and the Christian religion by banishing every remembrance of them from the hearts of men, especially of the young. Bishops and priests were exiled, condemned to forced labour, shot and done to death in inhuman fashion ; laymen suspected of defending their religion were vexed, persecuted, dragged off to trial, and thrown into prison.

(b) Horrors of Communism in Spain

Even where the scourge of communism has not yet had time enough to exercise to the full its logical effect, as witness Our beloved Spain, it has, alas, found compensation in the fiercer violence of its attack. Not only this or that church or isolated monastery was sacked, but as far as possible every church and every monastery was destroyed. Every vestige of the Christian religion was eradicated, even though intimately linked with the rarest monuments of art and science ! The fury of communism has not confined itself to the indiscriminate slaughter of bishops, of thousands of priests and religious of both sexes ; it searches out above all those who have been devoting their lives to the working classes and the poor

(c) Logical Result of System

Nor can it be said that these atrocities are a transitory phenomenon, the usual accompaniment of all great revolutions, the isolated excesses common to every war. No, they are the natural fruit of a system which lacks all inner restraint. Some restraint is necessary for man considered either as an individual or in society. Even the barbaric peoples had this inner check in the natural law written by God in the heart of every man. And where this natural law was held in higher

esteem, ancient nations rose to a grandeur that still fascinates—more than it should !—certain superficial students of human history. But tear the very idea of God from the hearts of men, and they are necessarily urged by their passions to the most atrocious barbarity.

(d) Struggle against all that is Divine

This, unfortunately, is what we now behold. For the first time in history we are witnessing a struggle, cold-blooded in purpose and mapped out to the least detail, between man and "all that is called God." Communism is by its nature anti-religious. It considers religion as "the opium of the people" because the principles of religion which speak of a life beyond the grave dissuade the proletariat from the dream of a paradise which is of this world.

III

Doctrine of the Church in Contrast

1. God the Supreme Reality

Above all other reality there exists one supreme Being : God, the omnipotent Creator of all things, the all-wise and just Judge of all men. This supreme reality, God, absolutely rejects and condemns the impudent falsehoods of communism. In truth, it is not because men believe in God that He exists ; rather because He exists do all men whose eyes are not deliberately closed to the truth believe in Him and pray to Him.

2. Man and Family according to Reason and Faith

Man has a spiritual and immortal soul. He is a person, marvellously endowed by his Creator with gifts of body and mind. He is a true "microcosm," as the ancients said, a world in miniature, with a value far surpassing that of the vast inanimate cosmos. God alone is his last end, in this life and the next. By sanctifying grace he is raised to the dignity of a son of God, and incorporated into the Kingdom of God in the Mystical Body of Christ. In consequence he

has been endowed by God with many and varied prerogatives : the right to life, to bodily integrity, to obtain the necessary means of existence ; the right to tend toward his ultimate goal in the path marked out for him by God ; the right of association and the right to possess and use property.

Just as matrimony and the right to its natural use are of divine origin, so likewise are the constitution and fundamental prerogatives of the family fixed and determined by the Creator.

3. Nature of Society

(a) Mutual Rights and Duties

But God has likewise destined man for civil society according to the dictates of his very nature. In the plan of the Creator, society is a natural means which man can and must use to reach his destined end. Society is for man, not man for Society. This must not be understood in the sense of liberalistic individualism, which subordinates society to the selfish use of the individual ; but only in the sense that by means of an organic union with society and by mutual collaboration the attainment of earthly welfare is placed within the reach of all.

Man cannot be exempted from his divinely-imposed obligations toward civil society, and the representatives of authority have the right to coerce him when he refuses without reason to do his duty. Society, on the other hand, cannot defraud man of his God-granted rights, the most important of which We have indicated above, or make their use impossible.

(b) Social-Economic Order

The directive principles concerning the social-economic order have been expounded in the social Encyclical of Leo XIII on the condition of the working classes. Our own Encyclical on the reconstruction of the social order adapted these principles to present needs. We explained clearly the right and dignity of labour, the relations of mutual aid and collaboration which should exist between those who possess

capital and those who work, the wages necessary for the worker and for his family which are due to him in strict justice.

In this same Encyclical of Ours We have shown that the means of saving the world of to-day from the lamentable ruin into which amoral " liberalism " has plunged us, are neither the class-struggle nor terror, nor yet the tyrannical abuse of State power, but rather the infusion of social justice and Christian love into the social-economic order. We have indicated how a sound prosperity is to be restored according to the true principles of a sane corporative order which respects the various grades of social authority ; and how all the vocational groups should be fused into a harmonious unity inspired by the principle of the common good. And the genuine and chief function of civil authority consists precisely in promoting this mutual harmony and collaboration of all citizens to the best of its ability.

(c) Social Hierarchy and State Prerogatives

Catholic doctrine vindicates to the State the dignity and authority of a vigilant and provident defender of those divine and human rights on which the Sacred Scriptures and the Fathers of the Church insist so often. It is not true that all have equal rights in civil society. It is not true that there exists no lawful social hierarchy. Let it suffice to refer to the Encyclicals of Leo XIII already cited, especially to that on political authority, and to the other on the Christian Constitution of States. In these documents the Catholic will find the principles of reason and the Faith clearly explained, and these principles will enable him to defend himself against the errors and perils of a communistic conception of the State. The enslavement of man despoiled of his rights, the denial of the transcendental origin of the State and its authority, the horrible abuse of public power in the service of a collectivistic terrorism, are the very contrary of all that corresponds with natural ethics and the will of the Creator. Both man and civil society derive their origin from the Creator, Who has mutually ordained them one to

the other. Hence neither can be exempted from their correlative obligations, nor deny or diminish each other's rights. The Creator Himself has regulated this mutual relationship in its fundamental lines, and it is by an unjust usurpation that communism arrogates to itself the right to enforce, in place of the divine law based on the immutable principles of truth and charity, a partisan political programme derived from the arbitrary human will and filled with hatred.

4. Beauty of Church Doctrine

In teaching this enlightening doctrine the Church has no other intention than to realize the glad tidings sung by the Angels above the cave of Bethlehem at the Redeemer's birth. This doctrine is equally removed from all extremes of error and all exaggerations of parties or systems which spring from error. It maintains a constant equilibrium of truth and justice, which it vindicates in theory and applies and promotes in practice, bringing into harmony the rights and duties of all parties. Thus authority is reconciled with liberty, the dignity of the individual with that of the State, the human personality of the subject with the divine delegation of the superior; and in this way a balance is struck between the due dependence and well-ordered love of a man for himself, his family and country, and his love of other families and other peoples, founded on the love of God, the Father of all, their first principle and last end. The Church does not separate a proper regard for temporal welfare from solicitude for the eternal. If she subordinates the former to the latter according to the words of her divine Founder, " Seek ye first the Kingdom of God and His justice, and all these tilings shall be added unto you," she is nevertheless so far from being unconcerned with human affairs, so far from hindering civil progress and material advancement, that she actually fosters and promotes them in the most sensible and efficacious manner.

5. Alleged Conflict between Doctrine and Practice

But the enemies of the Church, though forced to acknowledge the wisdom of her doctrine, accuse her of having failed

to act in conformity with her principles, and from this conclude to the necessity of seeking other solutions. The utter falseness and injustice of this accusation is shown by the whole history of Christianity. To refer only to a single typical trait, it was Christianity that first affirmed the real and universal brotherhood of all men of whatever race and condition. This doctrine she proclaimed by a method, and with an amplitude and conviction, unknown to preceding centuries ; and with it she potently contributed to the abolition of slavery'. Not bloody revolution, but the inner force of her teaching made the proud Roman matron see in her slave a sister in Christ. It is Christianity that adores the son of God, made Man for love of man, and become not only the " Son of a Carpenter " but Himself a " Carpenter." It was Christianity that raised manual labour to its true dignity, whereas it had hitherto been so despised that even the moderate Cicero did not hesitate to sum up the general opinion of his time in words of which any modem sociologist would be ashamed : " All artisans are engaged in sordid trades, for there can be nothing ennobling about a workshop."

Faithful to these principles, the Church has given new life to human society. Under her influence arose prodigious charitable organizations, great guilds of artisans and working men of every type. These guilds, ridiculed as " medieval " by the liberalism of the last century, are to-day claiming the admiration of our contemporaries in many countries who are endeavouring to revive them in some modern form.

IV

Defensive and Constructive Programme

1. Urgent Need for Action

The most urgent need of the present day is therefore the energetic and timely application of remedies which will effectively ward off the catastrophe that daily grows more threatening. We cherish the firm hope that the fanaticism with which the sons of darkness work day and night at their materialistic and atheistic propaganda will at least serve the

holy purpose of stimulating the sons of light to a like and even greater zeal for the honour of the Divine Majesty. What then must be done, what remedies must be employed to defend Christ and Christian civilization from this pernicious enemy ?

2. Renewal of Christian Life

(a) Fundamental Remedy

The fundamental remedy to-day lies in a sincere renewal of private and public life according to the principles of the Gospel by all those who belong to the Fold of Christ, that they may be in truth the salt of the earth to preserve human society from total corruption. With heart deeply grateful to the Father of Light, from Whom descends " every best gift and every perfect gift," We see on all sides consoling signs of this spiritual renewal.

Nevertheless We cannot deny that there is still much to be done in the way of spiritual renovation. Even in Catholic countries there are still too many who are Catholics hardly more than in name. There are too many who fulfil more or less faithfully the more essential obligations of the religion they boast of professing, but have no desire of knowing it better, of deepening their inward conviction, and still less of bringing into conformity with the external gloss the inner splendour of a right and unsullied conscience, that recognizes and performs all its duties under the eye of God. We know how much Our Divine Saviour detested this empty pharisaic show, He who wished that all should adore the Father " in spirit and in truth." The Catholic who does not five really and sincerely according to the Faith he professes will not long be master of himself in these days when the winds of strife and persecution blow so fiercely, but will be swept away defenceless in this new deluge which threatens the world. And thus, while he is preparing his own ruin, he is exposing to ridicule the very name of Christian.

(b) Detachment from Worldly Goods

And here We wish to insist more particularly on two teachings of Our Lord which have a special bearing on

the present condition of the human race : detachment from earthly goods and the precept of charity. " Blessed are the poor in spirit " were the first words that fell from the lips of the Divine Master in His sermon on the mount. This lesson is more than ever necessary in these days of materialism athirst for the goods and pleasures of this earth. All Christians, rich or poor, must keep their eye fixed on heaven, remembering that " we have not here a lasting city but we seek one that is to come." The rich should not place their happiness in things of earth nor spend their best efforts in the acquisition of them. Rather, considering themselves only as stewards of their earthly goods, let them be mindful of the account they must render of them to their Lord and Master, and value them as precious means that God has put into their hands for doing good ; let them not fail, besides, to distribute of their abundance to the poor, according to the evangelical precept. Otherwise there shall be verified of them and their riches the harsh condemnation of St James the Apostle : " Go to now, ye rich men ; weep and howl in your miseries which shall come upon you. Your riches are corrupted, and your garments are moth-eaten ; your gold and silver is cankered ; and the rust of them shall be for a testimony against you and shall eat your flesh like fire. You have stored up to yourselves wrath against the last days."

But the poor too, in their turn, while engaged, according to the laws of charity and justice, in acquiring the necessities of life and aho in bettering their condition, should always remain " poor in spirit," and hold spiritual goods in higher esteem than earthly property and pleasures. Let them remember that the world will never be able to rid itself of misery, sorrow, and tribulation, which are the portion even of those who seem most prosperous. Patience, therefore, is the need of all, that Christian patience which comforts the heart with the divine assurance of eternal happiness. " Be patient, therefore, brethren," we repeat with St James, " until the coming of the Lord. Behold the husbandman waiteth for the precious fruit of the earth, patiently bearing until he receive the early and the latter rain. Be you there-

fore also patient and strengthen your hearts, for the coming of the Lord is at hand." Only thus will be fulfilled the consoling promise of the Lord: "Blessed are the poor!" These words are no vain consolation, a promise as empty as those of the communists. They are the words of life, pregnant with a sovereign reality. They are fully verified here on earth, as well as in eternity.

(c) Christian Charity

Still more important as a remedy for the evil we are considering, or certainly more directly calculated to cure it, is the precept of charity. We have in mind that Christian charity, "patient and kind," which avoids all semblance of humiliating patronage, and all ostentation; that charity which from the very beginning of Christianity won to Christ the poorest of the poor, the slaves. And We are grateful to all those members of charitable associations, from the conferences of St Vincent de Paul to the modern organizations for social service, who are perseveringly practising the spiritual and corporal works of mercy. The more the working men and the poor realize what the spirit of love animated by the virtue of Christ is doing for them, the more readily will they abandon the false persuasion that the Church has lost her efficacy and favours the exploiters of their labour.

But when on the one hand We see thousands of the needy, victims of real misery for various reasons beyond their control, and on the other so many round about them who spend huge sums of money on useless things and frivolous amusement, We cannot fail to remark with sorrow not only that justice is poorly observed, but that the precept of charity also is not sufficiently appreciated, is not a vital thing in daily life. We desire therefore, Venerable Brethren, that this divine precept, this precious mark of identification left by Christ to His true disciples, be ever more fully explained by pen and word of mouth; this precept which teaches us to see in those who suffer Christ Himself, and would have us love our brothers as Our Divine Saviour has loved us, that is, even at the sacrifice of ourselves, and, if need be, of our

very life. Let all then frequently meditate on those words of the final sentence, so consoling yet so terrifying, which the Supreme Judge will pronounce on the day of the Last Judgment : " Come, ye blessed of my father . . . for I was hungry and you gave me to eat ; I was thirsty and you gave me to drink. . . . Amen, I say to you, as long as you did it to one of these my least brethren you did it to me." And the reverse : " Depart from me, you cursed, into everlasting fire ... for I was hungry and you gave me not to eat ; I was thirsty and you gave me not to drink. . . . Amen, I say to you, as long as you did it not to one of these least, neither did you do it to me."

To be sure of eternal life, therefore, and to be able to help the poor effectively, it is imperative to return to a more modest mode of life, to renounce the joys, often sinful, which the world to-day holds out in such abundance ; to forget self for love of the neighbour. There is a divine regenerating force in this " new precept " (as Christ called it) of Christian charity. Its faithful observance will pour into the heart an inner peace which the world knows not, and will finally cure the ills which oppress humanity.

(d) Duties of Strict Justice

But charity will never be true charity unless it takes justice into constant account. The Apostle teaches that " he that loveth his neighbour hath fulfilled the law " and he gives the reason : " For, Thou shalt not commit adultery, Thou shalt not kill, *Thou shalt not steal* . . . and if there be any other commandment, it is comprised in this word : *Thou shalt love thy neighbour as thyself.*" According to the Apostle, then, all the commandments, including those which are of strict justice, as those which forbid us to kill or to steal, may be reduced to the single precept of true charity. From this it follows that a " charity " which deprives the working man of the wages due to him, is not charity at all, but only its empty name and hollow semblance. The wage-earner is not to receive as alms what is his due in justice. And let no one attempt with trifling charitable donations to

exempt himself from the great duties imposed by justice. Both justice and charity often dictate obligations touching on the same subject-matter, but under different aspects; and the very dignity of the working man makes him justly and acutely sensitive to the duties of others in his regard.

Therefore We turn again in a special way to you, Christian employers and industrialists, whose problem is often so difficult for the reason that you are saddled with the heavy heritage of an unjust economic regime whose ruinous influence has been felt through many generations. We bid you be mindful of your responsibility. It is unfortunately true that the manner of acting in certain Catholic circles has done much to shake the faith of the working classes in the religion of Jesus Christ. These groups have refused to understand that Christian charity demands the recognition of certain rights due to the working man, which the Church has explicitly acknowledged. Is it not deplorable that the right of private property defended by the Church should so often have been abused to defraud the working man of his wages and his social rights?

(e) Social Justice

For, in reality, besides commutative justice, there is also social justice with its own set obligations, from which neither employers nor working men can escape. Now it is of the very essence of social justice to demand from each individual all that is necessary for the common good. It is impossible to care for the social organism and the good of society as a whole unless each single part and each individual member —that is to say, each individual man in the dignity of his human personality—is supplied with all that is necessary for the exercise of his social functions. If social justice be satisfied, the result will be an intense activity in economic life as a whole, pursued in tranquillity and order. This activity will be proof of the health of the social body, just as the health of the human body is recognized in the undisturbed regularity and perfect efficiency of the whole organism.

But social justice cannot be said to have been satisfied so long as working men are denied a wage that will enable

them to secure proper sustenance for themselves and for their families ; so long as they are denied the opportunity of acquiring a modest fortune and avoiding that pauperism which is so widespread ; so long as they cannot make suitable provision through public or private insurance for old age, for periods of illness and unemployment. In a word, to repeat what has been said in Our Encyclical *Quadragesimo anno* : " Then only will the economic and social order be soundly established and attain its ends, when it offers, to all and to each, all those goods which the wealth and resources of nature, technical science and the social organization of economic affairs can give. These goods should be sufficient to supply all necessities and reasonable comforts and to uplift men to that higher standard of life which, provided it be used with prudence, is not only not a hindrance but is of singular help to virtue."

It happens all too frequently, however, under the wage system, that individual employers are helpless to ensure justice unless, with a view to its practice, they organize institutions the object of which is to prevent competition incompatible with fair treatment for the workers. Where this is true, it is the duty of masters and employers to support and promote such necessary organizations as normal instruments enabling them to fulfil their obligations of justice. But the labourers too must be mindful of their duties of charity and justice and be convinced that there is no better means of safeguarding their own interests.

3. Social Study and Propaganda

To give to this social activity a greater efficacy, it is necessary to promote a wider study of social problems in the light of the doctrine of the Church and under the aegis of her constituted authority. If the manner of acting of some Catholics in the social-economic field has left much to be desired, this has often come about because they have not known and pondered sufficiently the teachings of the Sovereign Pontiffs on these questions. Therefore, it is of the utmost importance to foster in all classes of society an

intensive programme of social education adapted to the varying degrees of intellectual culture. It is necessary with all care and diligence to procure the widest possible diffusion of the teachings of the Church, even among the working classes. The minds of men must be illuminated with the sure light of Catholic teaching, and their wills must be drawn to follow and apply it as the norm of right living in the conscientious fulfilment of their manifold social duties. Thus they will oppose that incoherence and inconstancy in Christian life which We have many times lamented. For there are some who, while exteriorly faithful to the practice of their religion, yet in the field of labour and industry, in the professions, trade, and public offices, permit a deplorable cleavage in their conscience, and live a life too little in conformity with the clear principles of justice and Christian charity. Such lives are a scandal to the weak, and to the malicious a pretext to discredit the Church.

In this renewal the diffusion of Catholic literature can play a prominent part. The aim must be first to foster in various attractive ways an ever better understanding of Catholic social doctrine, and next to supply accurate and complete information on the activity of the enemy and the means of resistance which have been found most effective in various quarters. Finally, it should offer useful suggestions and warn against the insidious deceits with which communists endeavour, all too successfully, to attract even men of good faith.

4, Distrust of Communist Tactics

In the beginning communism showed itself for what it was in all its perversity ; but very soon it realized that it was thus alienating the people. It has therefore changed its tactics, and strives to entice the multitudes by trickery of various forms, hiding its real designs behind ideas that in themselves are good and attractive. Thus, aware of the universal desire for peace, the leaders of communism pretend to be the most zealous promoters and propagandists in the movement for world amity. Yet at the same time they stir

up a ciass-warfare which causes rivers of blood to now, and, realizing that their system, offers no internal guarantee of peace, they have recourse to unlimited armaments. Under various names which do not suggest communism, they establish oiganizations and periodicals with the sole purpose of carrying their ideas into quarters otherwise inaccessible. They try perfidiously to worm their way even into professedly Catholic and religious organizations. Again, without receding an inch from their subversive principles, they imite Catholics to collaborate with them in the realm of humanitarianism and charity ; and at times even make proposals that are in perfect harmony with the Christian spirit and the doctrine of the Church. Elsewhere they carry their hypocrisy so far as to encourage the belief that communism, in countries where Christian faith and general culture are more strongly entrenched, will assume another and much milder form. It will not interfere with the practice of religion. It will respect liberty of conscience. There are some even who refer to certain changes recently introduced into soviet legislation as a proof that communism is about to abandon its programme of war against God.

See to it, Venerable Brethren, that the Faithful do not allow themselves to be deceived ! Communism is intrinsically wrong, and no one who would save Christian civilization may give it assistance in any undertaking whatsoever. Those who permit themselves to be deceived into lending their aid towards the triumph of communism in their own country will be the first to fall victims of their error. And the greater the antiquity and grandeur of the Christian civilization in the regions where communism successfully penetrates, so much more devastating will be the hatred displayed by the Godless.

5. Prayer and Penance

But " unless the Lord keep the city, he watcheth in vain that keepeth it." And so, as a final and most efficacious remedy, We recommend, Venerable Brethren, that in your dioceses you use the most practical means to foster and

intensify the spirit of prayer joined with Christian penance. When the Apostles asked the Saviour why they had been unable to drive the evil spirit from a demoniac, Our Lord answered : " This kind is not cast out but by prayer and fasting." So, too, the evil which to-day torments humanity can be conquered only by a worldwide holy crusade of prayer and penance. We ask especially the contemplative orders, men and women, to redouble their prayers and sacrifices to obtain from heaven efficacious aid for the Church in the present struggle. Let them implore also the powerful intercession of the Immaculate Virgin who, having crushed the head of the serpent of old, remains the sure protectress and invincible " Help of Christians."

V

Ministers and Co-workers in Catholic Social Action

1. Priests

To apply the remedies thus briefly indicated to the task of saving the world as We have traced it above, Jesus Christ, our Divine King, has chosen priests as the first-line ministers and messengers of His gospel. Theirs is the duty, assigned to them by a special vocation, under the direction of their Bishops and in filial obedience to the Vicar of Christ on earth, of keeping alight in the world the torch of Faith, and of filling the hearts of the Faithful with that supernatural trust which has aided the Church to fight and win so many other battles in the name of Christ : " This is the victory which overcometh the world, our Faith."

To priests in a special way We recommend anew the oft-repeated counsel of Our Predecessor, Leo XIII, to go to the working man. We make this advice Our own, and, faithful to the teachings of Jesus Christ and His Church, We thus complete it : " Go to the working man, especially where he is poor ; and in general, go to the poor." The poor are obviously more exposed than others to the wiles of agitators who, taking advantage of their extreme need, kindle their hearts to envy of the rich and urge them to seize by force what fortune seems to have denied them unjustly. If the

priest will not go to the working man and to the poor, to warn them or to disabuse them of prejudice and false theory, they will become an easy prey for the apostles of communism.

When our country' is in danger, everything not strictly necessary, everything not bearing directly on the urgent matter of unified defence, takes second place. So we must act in to-day's crisis. Every other enterprise, however attractive and helpful, must yield before the vital need of protecting the very foundation of the Faith and of Christian civilization. Let our parish priests, therefore, while providing ofcourse for the normal needs of the Faithful, dedicate the better part of their endeavours and their zeal to winning back the labouring masses to Christ and to His Church. Let them work to infuse the Christian spirit into quarters where it is least at home. The willing response of the masses, and results far exceeding their expectations, will not fail to reward them for their strenuous pioneer labour.

But the most efficacious means of apostolate among the poor and lowly is the priest's example, the practice of all those sacerdotal virtues which We have described in Our Encyclical *Ad Catholici sacerdotii.* Especially needful, however, for the present situation is the shining example of a life which is humble, poor, and disinterested, in imitation of a Divine Master who could say to the world with divine simplicity : "The foxes have holes and the birds of the air nests, but the Son of Man hath not where to lay His head." A priest who is really poor and disinterested in the Gospel sense may work among his flock marvels recalling a Saint Vincent de Paul, a Curé of Ars, a Cottolengo, a Don Bosco and so many others ; while an avaricious and selfish priest, as We have noted in the above-mentioned Encyclical, even though he should not plunge with Judas to the abyss of treason, will never be more than empty " sounding'brass " and useless " tinkling cymbal." Too often, indeed, he will be a hindrance rather than an instrument of grace in the midst of his people. Furthermore, where a secular priest or religious is obliged by his office to administer temporal property, let him remember that he is not only to observe

scrupulously all that charity and justice prescribe, but that he has a special obligation to conduct himself in very truth as a father of the poor.

2. Catholic Action

After this appeal to the clergy, We extend Our paternal invitation to Our beloved sons among the laity who are doing battle in the ranks of Catholic Action. On another occasion We have called this movement so dear to Our heart "a particularly providential assistance" in the work of the Church during these troublous times. Catholic Action is in effect a *social* apostolate also, inasmuch as its object is to spread the Kingdom of Jesus Christ not only among individuals, but also in families and in society. It must, therefore, make it a chief aim to train its members with special care and to prepare them to fight the battles of the Lord. This task of formation, now more urgent and indispensable than ever, which must always precede direct action in the field, will assuredly be served by study-circles, social weeks, lecture-courses and the various other activities undertaken with a view to making known the Christian solution of the social problem.

The stalwarts of Catholic Action, thus properly prepared and armed, will be the first and immediate apostles of their fellow workers. They will be an invaluable aid to the priest in carrying the torch of truth, and in relieving grave spiritual and material suffering, in many quarters where inveterate anti-clerical prejudice or deplorable religious indifference has proved a constant obstacle to the pastoral activity of God's ministers. In this way they will collaborate, under the direction of especially qualified priests, in that work of spiritual aid to the labouring classes on which We set so much store, because it is the means best calculated to save these, Our beloved children, from the snares of communism.

In addition to this individual apostolate which, however useful and efficacious, often goes unheralded, Catholic Action must organize propaganda on a large scale to disseminate knowledge of the fundamental principles on which,

according to the Pontifical documents, a Christian social order must build.

3. Auxiliary Organizations

Ranged with Catholic Action are the groups which We have been happy to call its auxiliary' forces. With paternal affection We exhort these valuable organizations also to dedicate themselves to the great mission of which We have been treating, a cause which to-day transcends all others in vital importance.

We are thinking likewise of those associations of workmen, farmers, technicians, doctors, employers, students, and others of like character, groups of men and women who live in the same cultural atmosphere and share the same way of life. Precisely these groups and organizations are destined to introduce into society that order which We have envisaged in Our Encyclical *Quadragesimo anno,* and thus to spread in the vast and various fields of culture and labour the recognition of the Kingdom of Christ.

Even where the State, because of changed social and economic conditions, has felt obliged to intervene directly in order to aid and regulate such organizations by special legislative enactments, supposing always the necessary respect for liberty and private initiative, Catholic Action may not urge the circumstance as an excuse for abandoning the field. Its members should contribute prudently and intelligently to the study of the problems of the hour in the light of Catholic doctrine. They should loyally and generously participate in the formation of the new institutions, bringing to them the Christian spirit which is the basic principle of order wherever men work together in fraternal harmony.

4. Appeal to Catholic Workers

Here We should like to address a particularly affectionate word to Our Catholic working men, young and old. They have been given, perhaps as a reward for their often heroic fidelity in these trying days, a noble and an arduous mission. Under the guidance of their bishops and priests, they are to

bring back to the Church and to God those immense multitudes of their brother-workmen who, because they were not understood or treated with the respect to which they were entitled, in bitterness have grayed far from God. Let Catholic working men show these their wandering brethren by word and example that the Church is a tender Mother to all those who labour and suffer, and that she has never failed, and never will fail, in her sacred maternal duty of protecting her children. If this mission, which must be fulfilled in mines, in factories, in workshops, wherever they may be labouring, should at times require great sacrifices, Our workmen will remember that the Saviour of the world has given them an example not only of toil but of self-immolation.

5. Need of Unity Among Catholics

To all Our children, finally, of every social rank and every nation, to every religious and lay organization in the Church, We make another and more urgent appeal for union. Many times Our paternal heart has been saddened by the divergencies—often idle in their causes, always tragic in their consequences—which array in opposing camps the sons of the same Mother Church. Thus it is that the revolutionaries, who are not so very numerous, profiting by this discord are able to make it more acute, and end by pitting Catholics one against the other. Those who make a practice of spreading dissension among Catholics assume a terrible responsibility before God and the Church.

6. Invitation to all Believers

But in this battle joined by the powers of darkness against the very idea of Divinity, it is Our fond hope that, besides the host which glories in the name of Christ, all those—and they comprise the overwhelming majority of mankind—who still believe in God and pay Him homage may take a decisive part. We therefore renew the invitation extended to them five years ago in Our Encyclical *Caritate Christi,* invoking their loyal and hearty Collaboration " in order to ward off

from mankind the great danger that threatens all alike.0 Since, as We then said, " belief in God is the unshakable foundation of all social order and of all responsibility on earth, it follows that all thosc^who do not want anarchy' and terrorism ought to take energetic steps to prevent the enemies of religion from attaining the goal they have so brazenly proclaimed to the world."

7. Duties of the Christian State

(a) Aid to the Church

Such is the positive task, embracing at once theory and practice, which the Church undertakes in virtue of the mission, confided to her by Christ, ofconstructing a Christian society', and, in our own times, of resisting unto victory' the attacks ofcommunism. We have called on all classes of men to a share in this task. It is the duty of the Christian State to concur actively in this spiritual enterprise of the Church, aiding her with the means at its command, which although they be external derices, have none the less for their prime object the good of souls.

This means that all diligence should be exercised by States to prevent within their territories the ravages of an anti-God campaign which shakes society to its very foundations. For there can be no authority on earth unless the authority of the Divine Majesty be recognized ; no oath will bind which

what We have said with frequent insistence in the past, especially in Our Encyclical *Cantate Christi :* " How can any contract be maintained, and what value can any treaty have, in which every guarantee of conscience is lacking ? And how can there be talk of guarantees of conscience when all faith in God and all fear of God have vanished ? Take away this basis, and with it all moral law falls, and there is no remedy left to stop the gradual but inevitable destruction of peoples, families, the State, civilization itself."

(b) Provision for the Common Good

It must likewise be the special care of governments to provide for their citizens those conditions of life without

which the State itself, however sound its constitution, is in danger of collapse ; and particularly to secure employment for fathers of families and for young people. To achieve this end demanded by the pressing needs of the common welfare, the wealthy classes must be induced to assume those burdens without which human society cannot be saved nor they themselves remain secure. However, measures taken by the State with this end in view ought to be of such a nature that they will really fall upon those who actually possess more than their share of capital resources, and who continue to accumulate them to the grievous detriment of others.

(c) Prudent and Sober Administration

The State itself, mindful of its responsibility before God and society, should be a model of prudence and sobriety in the administration of the commonwealth. To-day more then ever the acute world crisis demands that those who dispose of immense funds, built up on the sweat and toil of millions, keep singly in mind the common good and make every effort to promote it. Public officials and State employees are obliged in conscience to perform their duties faithfully and unselfishly, imitating the brilliant example of distinguished men of the past and of our own day, who with unremitting labour sacrificed themselves for the good of their country. In international trade relations let all means be sedulously employed for the earliest possible removal of those artificial barriers to economic life which are the effects of distrust and hatred. All must remember that the peoples of the earth form but one family in God.

(d) Unrestricted Freedom for the Church

At the same time the State must allow the Church full liberty to fulfil her divine and spiritual mission, and this in itself will be an effectual contribution to the rescue of nations from the dread torment of the present hour. Everywhere to-day there is an anxious appeal to moral and spiritual forces ; and rightly so, for the evil we must combat is at its

origin primarily an evil of the spiritual order. From this polluted source die monstrous emanations of the communistic system flow with satanic logic. Now, the Catholic Church is undoubtedly pre-eminent among the moral and religious forces of to-day. Therefore the very good of humanity demands that her work be allowed to proceed unhindered.

Those who act otherwise, and at the same time fondly pretend to attain their objective with purely political or economic means, are in the grip of a dangerous error. When religion is banished from the school, from education, and from public life, when the representatives of Christianity and its sacred rites are held up to ridicule, are we not really fostering the materialism which is the fertile soil of communism ? Neither force, however well organized it be, nor earthly ideals however lofty or noble, can control a movement whose roots lie in the excessive esteem for the goods of this world.

8. The Erring Recalled

We cannot conclude this Encyclical Letter without addressing some words to those of Our children who are more or less tainted with the communist plague. We earnestly exhort them to hear the voice of their loving Father. We pray the Lord to enlighten them that they may abandon the slippery path which will precipitate one and all to ruin and catastrophe, and that they recognize that Jesus Christ Our Lord is their only Saviour : " For there is no other name under heaven given to man, whereby we must be saved."

In conclusion, His Holiness places the campaign of the Church against communism under the standard of St. Joseph. He reminds us that St. Joseph belonged to the working class and bore the burden of poverty, leaving an example for all those who must gain their bread by the toil of their hands. He won for himself the title of the Just, serving thus as a living model of that Christian justice which should reign in social life.

CHAPTER VI

FIFTH COMMANDMENT

SECTION 1. The Precept

The Fifth Commandment is "Thou shalt not kill" (Exod. 20, 13).

As affirmative, this precept commands us to preserve our own lives and the lives of those whose temporal care is committed to us. As negative, it forbids unjust lulling, wounding, mutilation, striking, and also anger, hatred and revenge, the latter three sins because they lead to violence, injustice and murder itself.

SECTION 2. Preservation of Life

By Natural law, man enjoys thejuse not the dominion of his life. He neither gave it nor may he take it away. God only is the Author of life. Man must preserve it by the use of ordinary means; he is not bound to employ extraordinarily expensive methods, nor methods that would inflict on him almost intolerable pain or shame. The obligation to work and therefore to choose some profession in which work is obtainable arises from the obligation of preserving life by ordinary means. If the means are at hand and if it is possible to lead a leisured life without working, there is no law that obliges a man to work. Neither is one obliged to work spontaneously for the prosperity of the State. It is laudable to do so, and it is an act of the virtue of charity, sometimes obligator}-, to improve the hard lot of others. This obligation is usually fulfilled by the wealthy, by giving alms for the needs of the poor, for the moral advance of the State, for hospitals, for schools for the poorer classes, for destitute children, for the spread of good moral literature, for societies that oppose irreligious and anti-social influences, and also by giving some of their time to serve on committees which work for the religious and moral advancement of the State. Some occupation

may be necessary to avoid idleness, or to make it possible for one to perform the duties of religion and charity. Nowadays, and in this country', there is no difficulty in knowing where to bestow alms, or how to advance religion and true morality.

SECTION 3. Suicide

It is never permitted to kill oneself intentionally, without either explicit divine inspiration to do so, or—probably—the sanction of the State in the case of a just death penalty. It is never permitted—with the limitations stated—to do that which is the cause of death, unless that cause—not being wrong in itself—has another effect, at least as immediate, that is good and important enough to justify death being permitted but never intended as the immediate object of the will ; for obviously, when we will a cause, we must permit, though reluctantly, all its necessary' foreseen results. S. Jerome appears to justify suicide in the case of virgins during times of persecution : " Unde in persecutionibus non licet propria perire manu, absque eo ubi castitas periclitatur."[1] But if the text is genuine, and if S. Jerome meant what he appears to mean, the opinion is not defended.[2]

It is assumed that the suicide wishes to take his life and adopts effective means to do so. The loss of life may be due to a positive act such as the act of drinking poison, or negatively, to the voluntary omission of that care which is necessary for the preservation of life. The suicide uses or neglects to use his powers to achieve an object, viz., his death, the very contrary' of that for which they are naturally disposed. This is a direct violation of Natural law and therefore of God's law. Furthermore, man as a rational animal achieves his perfection and last end by using his body. If by suicide he makes this use impossible, he is by that act making it impossible for himself to achieve his last end. This is the

[1] c. i Jonæ (M.P.L. 25, 1129) ; c. Jovin., n. 41 ; cf. S. .Ambrose, *de Virg.* (M.P.L. 16, 242) ; Eusebius, *Hist. Eccles.,* lib. 8, c. 12 (M.P.G. 20, 770).

[2] S. Thomas is directly opposed to this opinion of S. Jerome, and the comment of Lessius *(de Just.,* s.v. *suicidium)* is that the action was excusable cither because of divine inspiration or invincible ignorance ; cf. S. Th. *S.* 2. 2 q. 64, a. 5 : q. 59, a. 3, ad 2.

greatest perversion of rational nature that is possible. Moreover, suicide is a serious offence against society, for man is naturally destined for society and is an organism that belongs to it. It is obvious also that man was created by an intelligent Being, Who had a purpose in creating him. Man, by creation, is a servant of God ; no servant has dominion over those elements that are of the essence of his senice. The suicide prevents the divine purpose from being realized and interrupts his service of God. Again, man like all else must subserve the glory of God. He cannot do so equally well by putting an end to his life as by continuing to live.

A last will sometimes contains a direction that the heart or brain should be punctured, or a vein opened, in order to prevent the possibility of premature burial ; or the relatives may direct that such operations should be done. It is obvious that the intention of killing one who is only apparently dead or who may not be dead is not permitted. But if the signs of death are clear, or if a medical death certificate has been given, it is as defensible to puncture brain or heart or to open a vein as to bury the body in the earth. The procedure is not allowable as a precautionary measure.

Practical Applications

I. The hunger strike, as a political weapon against tyrannical usurpation, or as a protest against unjust imprisonment, has been justified on the ground that death is not thereby intended but permitted only, if in fact it happen ; that to abstain from food is not in itself wrong, and that the permission of death, a great physical evil, may be justified for a really good reason, if the object to be secured by the hunger strike has a good prospect of being realized. The Christian martyrs are not blamed for having refused food that had been offered to idols. We may risk our lives for others and give to others the food that is essential to preserve our own lives.

Much has been written on both sides of this question. The issue is a very clear one, and the statement of principles should be clear and capable of being easily understood.

In the concrete case, the application of principles depends on the correct balancing of *pros* and *cons* and on a knowledge of local circumstances. The following principles may, we think, be stated as self-evident :

(d) No intention, however good, will make a bad action morally right. In the case of the hunger strike, it is of first importance to examine the means employed, for we have to be careful to exclude motive when we are judging of means only.

(ά) The means employed are abstention from all food even to the point of actual death, if necessary.

(c) Such abstention will surely be justifiable if to take the proffered food would be sinful. This was so in the case of the Christian martyrs, for to take the food would have savoured of apostasy and w'ould have given great scandal.

(J) In the modern hunger strike, if the imprisonment is just, the complete abstention from food would be immoral.

(i) If the prisoner intend to starve till death, and intend also that his death shall be the means of bringing deserved odium upon his enemies, it seems that he would intend first to inflict on himself a great evil, namely, death, that it might serve as a means to a good end. This, we think is morally wrong even when imprisonment is unjust.

(/) If it is thought that there is a good chance of being freed from prison before death ensues, to refuse all food would be justifiable when the imprisonment is unjust and when the good to be attained is commensurate with the bodily harm, short of death, that is permitted.

2. A maid may expose herself to the danger of certain death in order to preserve hec virginity ; she may allow death to ensue rather than suffer herself to be violated, but she is not bound to do so, as she need not give internal consent to sin.

Thus, she may leap from a great height to certain death, for her act has two effects, the first of which is to escape from violation, the second, her death, which is not directly wished but only permitted. The distinction between the jump and the fall is obvious. In the case, the maid wishes the jump and puts up with the fall.

3. One may offer to another the means of life at the certain risk of one's own life, such as to serve the plague-stricken, engage in a forlorn hope, leave necessary food for others, as Captain Oates did in walking from the tent into the Antarctic cold to certain death. For the sake of the rule, the monk who is vowed to abstinence from flesh meat may refuse, during illness, to eat meat though that food alone would save his life.

4. A despatch rider is pursued by the enemy. His only chance of saving the despatches is to jump into a river. He does so, and then realizes that the current is too strong for him. He could return to the enemy, but goes on swimming till he sinks from fatigue. His act of swimming away has two effects, the first, to elude his pursuers and thus to save the despatches and this effect he intends; the second, his death, and this effect he foresees and puts up with. His act is morally good and would be so even if from the first he knew that he could not swim.

5. An officer, finding that the only way to induce his men to follow him in an important attack is to stand in the open and so expose his life, does so and is shot. His action had two effects. The first, which he intended, was to display that necessary courage which should draw on his own men; the second, his death, he foresaw and put up with. His action is morally good.

6. If a man jumps out of a boat in order to commit suicide, we should say that the first effect of his jumping into the water is to lighten the boat; the second, to place himself in the water; the third, to drown. Why is it that we defend another man who jumps out of a boat to certain death, in order to relieve the overloaded boat of his weight and to give the others a chance of surviving? We defend his action, because the first effect, viz., the lightening of the boat, was a good effect, intended by him as such, and the other effect, his drowning, was not at all intended in itself, neither as an end nor as a means. It was foreseen and permitted. In the first case, the man intended his death and took the means; in the second case, the man intended to lighten the boat and did so.

7. Bodily mortifications may shorten life, but they are lawful if prudently used. Divine inspiration may suggest serious penances that shorten life by a great deal.

8. It is sinful to expose one's life from vain ostentation or where there is no countervailing good to be obtained.

SECTION 4. Duelling

A duel is a prearranged fight between two persons on their own initiative with lethal weapons. It is, of course, distinguished from a fight in self-defence, and from a sudden quarrel. Sensible people have long ago seen the fatuity of duels, not to speak of the moral evil of them.

Duelling is directly opposed to Natural law, for it is not an act of self-defence but an ineffectual vindication of personal honour, for even the challenger risks his own life without healing his outraged honour. The death of his enemy is no real compensation ; his owm death adds constructive suicide to a dishonoured name. · Though duelling was not unknown in France, Desmoulins, Voltaire and Napoleon inveighed against it in vigorous terms.

Principles

1. A duel essentially includes the risk of death or of serious wOunds on both sides, without being an act of self-defence from uqjust and imminent aggression. As personal honour can be retrieved by other means, the duel exposes life without sufficient necessity, and invades God's dominion over life. It is condemnedl as contrary to both Natural and revealed divine law, a pest against the right order and discipline of the State, and a licence to individuals to avenge imagined insults. The glory that accrues to a Successful duellist is folly, because it is not the glory of rational good and subjection to the judgment of God.

2. Duelling has been condemned many times by the Church. It was condemned by Popes Gregory XIII (1582), Clement VIII (1592), Alexander VII (1655), Benedict XIV (1752), Pius IX (1869), Leo XIII (1891),

1 Pope Leo XIII, Ep. *Pastoralis Officii,* Sept. 12, 1891.

and as early as the year 855, the Council of Valence prohibited duelling.[1] The following summary represents the decisions of Popes Clement VIII and Benedict XIV : A soldier will incur guilt and penalty if he offer or accept a duel, even though he should be thought otherwise a coward and unfit for service and lose his rank and occupation. A duel cannot be accepted nor offered to defend honour or avoid disgrace, even if the principals know that the duel will not take place, because others will prevent it. It is not lawful to accept or offer a duel in a State so badly administered that justice is openly denied, whether from the malice or the negligence of the judiciary, nor is it lawful, even on the understanding that the fight shall cease so soon as blood is drawn, or after a definite number of blows have been given.

3. The penalties now attached to duelling are as follows : Certain persons incur, *ipso facto,* excommunication reserved to the Holy See, viz., duellists themselves, those who challenge or who accept a challenge to a duel, or who offer help to or countenance them, or who are deliberately present at them,[2] or do not, as far as they can, prevent them (c. 2351). Duellists and their seconds become infamous in fact (cc. 2351, 2293, 2294). Those who are killed in a duel, or in consequence of wounds received in a duel are excluded from ecclesiastical burial and from the solemn funeral rites, but such penalties are relaxed if some sign of repentance was given before death (cc. 1240, 1241).

4. It is not a duel to fight another, even to that other's death, if so much violence is necessary to defend one's own or another's life or property of serious moment. It is not a duel to proceed to an assigned spot and there to fight with lethal weapons, if one is forced to do so under the threat of death, for this is self-defence.

5. A duel, undertaken on the understanding that it shall cease as soon as one party is wounded or when blood

[1] The Council (12th canon) regarded a duellist who was killed as a suicide, and the survivor as a murderer ; cf. Hefele-Leclercq, *Hist, des Conciles,* IV, i, p. 207.

[2] Including a confessor and a doctor (S.O., May 31, 1884).

is drawn, is a duel in the forbidden sense of the law. The Sacred Congregation of the Council (Aug. 9, 1890), equally condemned the duels of German students, and later (June 20, 1925), decreed that even when there is danger of only slight wounds, those who engage in such duels are subject to the penalties of duellists.

6. In both English and American law, duelling is illegal. If death ensue from a duel, it is construed as murder or at least as manslaughter, and the seconds are liable as accessories.

7. As a form of judicial combat, the duel was legal in England till 1819,[1] but since 1614, every step towards or during a private duel has been an indictable offence.

SECTION 5. War

War is an armed conflict between sovereign States, undertaken by public sanction. Every just war is defensive, being the defence of some invaded rights. Strictly speaking, offensive war is one undertaken merely to injure another State, or for the purpose of self-aggrandizement, and is always unjust. Modern Governments, in declaring war, always make out a *prima facie* case for their aggression. Punitive expeditions, though apparently purely offensive, are not so in reality. If they are just, they are defensive. In the necessary vindication of violated rights, the State attacked will doubtless suffer, but this is not punishment. No State has the right to punish another sovereign State, for this would imply superiority. A State may, however, demand satisfaction by means of war, if that is necessary.

War is permissible, just as self-defence is permissible, for it may be the only means of maintaining existence or rights or defending them, and every independent society has the right of defence against unjust attack.

That war may be just the following conditions must be fulfilled :

It must be declared by the State itself; it must be neces-

[1] cf. the Thornton Case, in *Encyc. Brit,* s.v., p. 639, b. Trial by Battel appeared in England as a novelty in Norman times, and thereafter a duellist seems to have been a necessary adjunct to diplomacy, for kings were accompanied by champions to settle incidental points of diplomacy.

sary in the last resort after diplomacy has failed; there must be a grave and just reason for it; the method of it must be just, and in accordance with international law; an upright purpose must be intended; it may not be protracted after due satisfaction has been given or offered; the conditions of peace must be just, and may not be crushing, unless such severity is necessary for present self-defence.

When the reasons for undertaking war are not certainly just, it is more generally taught that war may not be undertaken, for another State may not be deprived of rights in possession, one of these being immunity from attack. But when a State is on the defensive, it is sufficient justification for defence that its own injustice is not obvious.

Soldiers who are conscripted, or those who joined before the war, may usually presume that their country is in the right: in doubt, they are bound to obey. If the war is manifestly unjust, a soldier may not lawfully inflict any damage on the enemy, though he may, of course, defend his life if the enemy attack him. Soldiers who freely join up after the war has begun, must satisfy themselves that the cause is just.

International agreements are contracts of fidelity, justice and honour. If they are repudiated by one side, they cease to bind the other, unless they are the subject of Natural law and justice.

Though methods of extermination (explosive bullets, poisonous gas) are apparently cruel, their use does not appear to be against Natural law.

Non-combatants, i.e., those not engaged in actual aggression nor under arms, nor in training, nor helping aggression, may not be, directly attacked. The ordinary populace, going about their private business, children, youths under military age and not training are non-combatants.

Prisoners of war who surrender and are accepted as prisoners may not be killed or mutilated, except for serious offences committed by them after capture.

Air raids on fortified towns, barracks, places of shelter for the forces, munition factories, are permissible, but reasonable care must be taken, if possible, though usually

this is impossible, to spare the lives and property of non-combatants. Indiscriminate air raids on non-combatants to sap the morale of a people, and on places of no military significance are wrong.

The sinking of hospital ships with the wounded on board, or of passenger vessels not carrying munitions is unjust, and the probability of the existence of munitions on board does not countervail the certain right to life of non-combatant passengers. The case may, however, be imagined, when even a hospital ship will be so valuable to the enemy for future aggression during a war that it may be of vital concern to sink it. Though such a necessity would be deplorable, we think the sinking of it may be justified, for what is attacked is the ship, the deaths of those on board are incidental and not wished, and the loss of a few lives is nothing in comparison with the defeat of a nation. When a nation's existence is at stake, the principles of humanity—as they are called—must be regretfully sacrificed to the very existence of a people, but never the principles of justice.

Enemy troops may be starved by blockade. If civilians suffer, it is not intended that they should suffer; it is their misfortune, and it is due to the fortune of a just war that they happen to be in the same place as their army. Blockade and siege are in principle not different from the bombing of fortified garrison to^vns.

Reprisals taken merely as an act of vengeance or on defenceless places or persons, in no way connected with war, are entirely unjustifiable. The plea of military necessity is sometimes invoked. The term is used to condone appalling cruelty. Carried to its logical conclusion, it leads to the cold-blooded destruction of women and children, a measure that may be alleged to be the only means of reducing the civilian population to its senses. Soldiers, however, in the heat of battle, or in desperate situations, cannot be expected to see the application of true principles through the bloody medium of war. The State that acts on the principles of justice and forbearance from evil in victory and defeat, will preserve the honour of its people and save its soul.

Victors in a just war may rightly insist on the restoration of honour, property and amicable relations. They may use all legitimate methods to safeguard a just treaty. But the fear of possible aggression by the enemy in the distant future is not a reason for utterly subjugating and breaking the spirit of a people, for patriotism—a necessary and a Christian virtue—may not exclude justice to other nationals. Justice, not to speak of charity, requires that the victors should live and let live, so far, that is, as is consistent with present self-defence and self-preservation. If the terms of peace are needlessly crushing or manifestly unjust, there is no obligation to observe them. But as it is exceedingly difficult to arrive at a true estimate in these matters, arbitration is often the only way to secure justice to both parties.

SECTION 6. Capital Punishment

God has given to the State the right over life and death, as He has given to every man the right of self-defence against unjust aggression. This moral power of the State has been universally acknowledged in Christian tradition. It is explicitly declared in Scripture to have existed in the Jewish State (Exod. 22,18 sqq.); it was recognized in the Roman polity by S. Paul (Rom. 13, 4) : " For he [the Prince] is God's minister to thee for good. But if thou do that which is evil, fear; for he beareth not the sword in vain." If, therefore, capital punishment is necessary for peace and the security of life and property, and if no less punishment avails, it is conceded to the State by God the source of all authority, whose Will is that man should live without unjust molestation. But this power must be exercised so as not to invade individual rights. Therefore, the accused must normally have opportunities of pleading his case ; the crime punished by death must be legally deserving of the supreme penalty, and it must be established beyond doubt. In emergencies, and where the crime is certain, the State may justly dispense with the usual formalities and execute the criminal without delay. Where the proscription of criminals, justly condemned to death by the State, has bpen declared, the State

makes and rightly makes individual citizens its legitimate executioners, but the procedure can be justified only in die rarest cases and with the most minute safeguards.

No one, however guilty, may be put to death by private initiative, except in a case of actual self-defence. Lynch law is, therefore, unjustifiable, as it is a rough and ready assumption by a section of the people of a power which they do not possess.

A father or husband may not put to death an adulterer who attacks his honour through the honour of daughter or wife[1] ; nor may a man put to death his own daughter or wife caught in the act of adultery'. It was stated in Rex *v.* Ellor, in judgment by Lord Chief Justice (July 26, 1929), that " If a man discovered his wife in the act of adultery, and then killed the adulterer, the law regarded that as manslaughter, because it was regarded as equivalent to a blow struck at the husband, that is to say, in its effect on his self-control." The crime of killing the adulterer even long after the fact, which is an act of revenge, has been condoned by-some modem juries, but it is indefensible.

It is sinful to kill a culprit who attempts to escape, unless this is done in self-defence, or with the sanction of public authority. Sentinels may shoot, if ordered to do so, at one who, after warning, disregards the challenge, but life should be spared, if possible.

SECTION 7. Indirect Killing

Everyone has a natural right to defend himself against unjust aggression even to the death of the assailant, if that be necessary. If less than death, such as wounding or disabling, is sufficient, to do more is sinful and against justice. The same right may be exercised to defend the life of another who is unjustly attacked, or to defend bodily integrity of great moment, or to safeguard material possessions, if relatively of considerable value, or to defend a woman's honour.

In the act of self-defence, the principle that justifies one's act, even if it issue in the death of the assailant, is valid to

[1] Pope Alex. VII, pr. d. 19.

its utmost limit, and if in my sclf-dcfencc the unjust assailant is killed, the principle that justifies my act which causes his death is not the principle that his right to life is subservient to my right to life, but that his unjust aggression may be repelled with all necessary violence. But the assailant's death is a secondary result of my act, the primary result being my own defence. The doctrine is justified on the universally valid principle of the double effect.1 The death of the aggressor need never be intended as an end nor as a means. The whole of my defensive action has as its intended and its first and direct result my own preservation ; its second, consequential, indirect and permitted result may be the death of the assailant. Those who permit the directly intended killing of the assailant are misled by the fallacy that what we can rightly permit we may rightly do.2 What we rightly do is to defend our life ; we need intend nothing else. It is not true to say that what we rightly permit we may rightly intend.

The aggression spoken of must be practically present or imminent and not past, since revenge is not self-defence ; but a thief, taking away property of great relative value, may be pursued and attacked if necessary, but he still retains the right to defend his life. A woman may not kill her ravisher after the event, though she may punish and maltreat him to deter him from future aggression. This is medicinal not vindictive punishment, and is permitted on' the ground of equity. She may also assail one who solicits her.3

If aggression is only materially unjust, as would be the case of attack by a madman, or of one who is intoxicated, one retains the right of self-defence, for these rights issue from one's right to life, whatever be the nature of the unjust aggression.

1 S. Th., S'., 2. 2, q. 64, a. 7. 2 Lugo, *de Just.,* d. 10, n. 149.

3 S. John Chrysostom, when a young priest, advised his hearers to chide a public blasphemer, and if that was not sufficient, to strike him on the mouth, thus sanctifying the hand that strikes (M.P.G. 49, 32). The law does not now allow one citizen to strike another for blaspheming ; but if moderate, such summary chastisement would not be sinful, though it would now inevitably lead to a breach of the peace.

The conditions, therefore, that justify self-defence, even to the death of the assailant, are :

1. The aggression must be actual or imminent.

2. The harm anticipated must be very grave, such as loss of life, mutilation, loss of chastity, loss of temporal goods of great value, absolutely or even relatively. What constitutes absolute value in the case, it is impossible to say ven' definitely. One may take as the standard the common opinion of people, and one could say, without exaggerated strictness, that one hundred pounds sterling would be considered by all people at present to be an extraordinary sum to lose.[1] This is not, of course, the relative standard.

3. The act of self-defence must be the only resource at the moment.

It is not lawful to kill another who attacks our honour in words only, for though it is a serious offence to dishonour people, less violent defence is always possible. The contrary was formerly held by some divines, but since the time of Popes Alexander VII and Innocent XI, the opinion has had no defenders. Furthermore, there are other ways of redress, and personal estimates of honour and good name are so various, and there is so grave a possibility of mistake, not to say passion, that if such extreme defence were permissible, murders innumerable could be committed.

Killing the Innocent

It is never allowed to kill an innocent person with direct intent to do so, whether by public or private authority, not even to secure the common good, for such killing is forbidden by divine positive law, and is contrary to Natural law also. Thus State eugenic murder is condemned.[2]

It is permissible, however, for a good reason to do that which, being in itself not wrong, may result in the death of an innocent person as a secondary effect. Such secondary effects, foreseen, permitted, but not directly willed, take place in the bombing of fortified towns, in the merchant ships or hospital ships which are conveying

[1] In 1679, Pope Innocent XI condemned the opinion that one gold piece regularly constituted such a sum.

munitions of war. But in all cases, the evil effects should not be greater than the good elTcct hoped for. This relative proportion can seldom be quite clear. But it would obviously be unjust to sink ships on the off-chance of their having on board munitions of war, as this would be to attack a probable aggressor, who has.a certain right to life until he has certainly proved to be an actual aggressor.

Manslaughter that results from dangerous acts, such as furious driving in frequented places, is imputable if foreseen as probable.

It is sinful to kill those who are fatally wounded or the dying, on the plea of putting an end to their pain, or to kill violent lunatics if their actual aggression can be countered without killing, or an innocent person in order to save a city from destruction, though, if he is already bound to offer himself to the enemy, in accordance with agreement in order to save the rest, he may probably be handed over by his own people.1 Similarly, it is sinful to kill enemy hostages or legates even if the enemy has broken faith.

Doctors, nurses and midwives sin seriously, if through grave negligence, and still more, if, of set purpose, they cause or hasten the deaths of patients, or do not use reasonable and ordinary precautions, for their duty is to keep patients alive, they have no privilege of killing them. Furthermore, doctors may not use the bodies of the sick as a *corpus vile* for experimenting with uncertain remedies when surer remedies can be used. When there are no sure remedies, a doctor may test the remedial nature of newly discovered drugs, if there is no risk to the patient.

It is sinful to sacrifice the lives of some in order to save others, but one may sacrifice oneself to save the lives of others, if the means taken are not wrong in themselves. A positive act by which one commits direct suicide would obviously be wrong. To allow others to get out of a building on fire first is not a positive act of suicide.

1 The Czechs handed over Admiral Kolchak to the Bolshevists, that the army might withdraw in safety. If a war is just, the victor may demand the surrender of Generals and may justly put them to death. It is not here stated that the above was a just proceeding. All depended on the circumstances.

SECTION 8. Mutilation and Sterilization

1. The body may not be mutilated unless mutilation is the only available means of saving the rest of the body, i.e., its life or health. Since man may not take away his life, so neither may he mutilate his body, for the members of his body are not his to dispose of, but are to be used in their integrity to help him to fulfil the divine purpose and achieve his own perfection and last end. But since life is better than a member of the body, the latter may be sacrificed, if necessary', to save the whole body.

2.The sterilization of criminals and defectives has been both practised and defended, and since the matter in the case of mental defectives is likely to become a practical one in the near future, it is necessary to state what is here apprehended as the Catholic opinion on it, without prejudice to the claims of health and without subscribing to exaggerated claims on behalf of the State.

The purpose of this operation is to prevent propagation, a result that is secured by preventing the male and the female elements, necessary for conception, from approaching one another.

The operation is a surgical one, chiefly on the male, but also, though less frequently, on the female. In the case of the male, it is done by severing both tubes, called the *vasa deferentia,* along which the male fecundating element passes into the seminal vesicles. The ends of the severed tubes are ligatured, and no more seminal secretion can pass from the place where it is made, viz., the testicles, to the place where it is stored ready for use. Such a person would, after a short time, be absolutely sterile if the operation had been perfectly done, because the fecundating element is blocked at its source, though it continues to pass its hormones into the blood circulation.

The female is sterilized sometimes by the severance of both fallopian tubes, the ends of which are buried under the peritoneum of the broad ligament. To make the result more secure, both cornua of the uterus are excised and the

cut ends or surfaces arc sutured. Another operation for producing an eschar at the uterine orifice of the fallopian tubes is said to be successful. Physicians arc also studying dietetic methods which have proved successful in the case of some of the lower animals. Irradiation of the ovaries by radium or X-rays is said to be effectual.[1]

The so-called unfit may be a physical or a mental degenerate. The physical degenerate is a person who is either physically tainted with some serious transmissible disease, and that condition is considered one reason for preventing marriage; or a person may be so deficient in ordinary physique that the offspring would be thought likely to be a useless burden on the State.

The mentally unfit are either mentally defective by the usual intelligence tests, or may evince criminal propensities. The term, moral imbecile, has given rise to controversy, for it is held that there are no inherited criminal propensities, moral imbecility being rather a matter of mental or temperamental deficiency.

Sterilization has been recommended on three distinct grounds, namely, therapeutic, eugenic, and punitive, In regard to the first, namely, therapeutic, it would be defensible if it were necessary for the life or health of the individual.

When the purpose of sterilization is eugenic, it is designed to prevent the propagation of unfit offspring, and disease, misery, and crime in future generations.[2][3] The dominant motive, therefore, of those who recommend the eugenic sterilization of the unfit is the benefit of the State. The State wants healthy citizens. For the sake of self-defence, progress in all the arts of civilization and therefore for the material happiness of the people, the State must have healthy citizens. It is the business of the State to see

[1] cf. *Medical Aspects of Contraception, A Report of the National Council of Public Morals,* p. 100.

[3] It is estimated that every three years about two millions of the less cultured classes pass up to take die places of the more cultured. This result is due to the difference in the rates of multiplication in these two classes. It is obvious that this tends to the lowering of the standard of civilization. Some therefore wish the subnormal to be sterilized.

to that, and we are justified in helping it to realize that object. Again, the State does not wish to burden citizens with crushing taxes that the unfit may have the opportunity of propagating their kind. It cannot be maintained that, whereas defectives have a right to marry', they have a right to impose on others the maintenance of their children.

But in defending our rights, we have to take care that the means we employ in doing so are not morally' evil, that is, unjust. We must, therefore, ask the questions : Has the State the right to sterilize the unfit that it may not be put to the expense of maintaining unfit citizens ? Has the State the right to mutilate citizens who are not criminals ? Has the State such supreme power over the bodies of its citizens ? Does man, by' living in society', so subject himself to the State as to become an instrument for the common good to the exclusion of his own natural rights ? It is evident that the State has no such rights. It is admitted that the State has power over a man's life and over less than life, namely, man's liberty and his bodily integrity. But the State has only' a qualified right. It may not use its power as it pleases, as we use chattels and animals, but the exercise of its power must be subservient to the prior rights of man. These antecedent rights a man does not forgo because he has chosen to live with other men in a State, chiefly for his own good, and that he might, under the protection of society, the more easily achieve that purpose for which he has a body and a life, namely, his own natural perfection and the purpose for which he was created, that is, to serve God and compass his ultimate end. Only for a crime can a man be punished by society. The defective is guilty of no crime by being defective. It is rather his misfortune that he is a defective, and he may righdy claim the protection of the State against those who go about to sterilize citizens who are by them judged to be unfit. It would be a manifest failing in its duty, if the State attacked the bodily integrity of an innocent citizen in any way at all, and still more so if it deprived him of the power which he possesses of being able to propagate, since the actual power to propagate is not an attack on the State even in the most remote degree.

Mutilation is, therefore, one thing and segregation is another. The State segregates the mentally defective, because they are a danger to themselves, or because they are a danger to others, or because those who are responsible for their well-being are unable to fulfil their duty. When the State has, as a fact, segregated them for a just reason, it is not obliged to give them the facilities of marriage and propagation. Two imbeciles, man and woman, have the right to marry if they have sufficient sense to make the contract, knowing what it means and being capable of bringing up offspring in a human way. But when they are segregated for a just reason, they cannot claim to have the opportunities of marriage. Since, therefore, segregation is sufficient for the protection of the defective and of the public, more than segregation would be unjust. We do not of course here say that the purpose of segregation may be simply the prevention of propagation. It is not the actual power of propagating that is inimical to the State. Since, therefore, segregation of defectives, merely for the benefit of the State and not for the benefit of the defective is indefensible, much more indefensible is sterilization of the unfit merely for the benefit of the State. It is not a case of self-defence against an unjust aggressor. In just self-defence I may employ all methods of warding off attack, even to the killing of my assailant, though I need not intend his death but only my own defence. But if by taking away his revolver I can sufficiently safeguard my life, to do more would be unjust. The State takes away from a drunken man his liberty, and that is sufficient to safeguard both himself and the public. Every punishment and every invasion of personal immunity that are excessive are unjust. Sterilization of defectives is, therefore, unjust, because it is not necessary, it is superfluous, it is excessive, it is an unjust invasion of personal integrity, because defectives are not criminals. To mutilate non-criminals differs only in degree from killing off the unfit.

It is sometimes said in justification of the sterilization of defectives that it is not a serious mutilation. It is induced by a very slight excision, and if necessary, it can be remedied.

The patient suffers no pain or inconvenience; indeed, he is sometimes positively improved. But this plea is hardly worth refuting. The keystone of an arch may be ven' small to look at; the optic nerve is a very small thing; the *pas deferens* is a small tube, through which a hair will hardly pass. But we judge of things by function not by size.

The third purpose of sterilization is punitive. In the case of criminals, the State has the undoubted right to inflict the legal punishment, if it be a reasonable one. The punishment of criminals for gross sexual offences by sterilization is not a punishment at all, for it would hardly deter them from crime; it is not a reasonable punishment, for if the criminal is kept imprisoned, there is no need for it; if he is turned loose on the community, he will remain a danger to society precisely in the same way as he was before, for sterilization does not extinguish criminal sexual tendency.[1]

3. Castration, with or without consent, is not permissible, if employed to preserve the beauty, tone and high pitch of the youthful voice. S. Alphonsus records two contrary opinions on the subject.[2] The view permitting it is not now held, nor was it held by more than a few. The fact that such males were permitted to sing in the papal choir is no proof that the Church ever approved of castration for the preservation of the vocal pitch. Indeed, the Church in its canons condemned and condemns (cc. 985, 2354) all such mutilations under severe penalties. Those who defend sterilization of defectives appeal to the custom of allowing these males to sing in church choirs, but the acknowledged difficulty of doing away with a custom that was sanctioned by civil authorities, and the difficulty was by no means imaginary, justified the bishops in tolerating the presence of such singers in church choirs. Pope Benedict XIV refers to the matter,[3] and says that the more common opinion in his day was opposed to the practice of castration for such purposes, but that owing to the attitude of civil authorities, bishops should not expel those singers from the choirs, lest great disturbance should arise.

1 The Holy Office condemned all direct sterilization (Feb. 24, 1940).
2 *ThioL* lib. 3, n. 374. *de Synod. Diac.,* lib. xi, c. 7, n. 3.

4. Mutilation, in the form of vasectomy, is said to diminish intolerable erethism, and if there is no other milder method of doing so, it is permissible with the consent of the patient. So many cases, however, are recorded of permanent cure of sexual erethism by hypnotic suggestion, or even by waking suggestion—we are certainly making no reference here to psychoanalysis—that the method of suggestion seems preferable, if the sufferer can secure the help of successful professional treatment. But there are other methods of curing this painful state, and these should be attempted if possible.1

When vasectomy, fallectomy or ovariotomy or any other operations are employed simply for the purpose of producing sterility, in order that sexual intercourse may still be used without issue, the intention and the operation are both grievously sinful and forbidden.2

Notes on Sterilization

1. Justification for the sterilization of defectives and criminals has been alleged—though wrongly—on the basis of the following cases : One female drunkard had descendants in six generations, amongst whom were 107 illegitimates, 181 prostitutes, 76 criminals in a grave degree, and 7 murderers. The Jukes sisters, two illegitimate prostitutes in New York State, were responsible, it is said, for 709 criminals in five generations.

2.Before the publication of the Encyclical letter, *Casti Connubii,* of Pope Pius XI, there were divergent views among Catholic writers :

(a) The view favouring the power of the State to sterilize defectives, though not in the concrete state of society at present, was maintained by two Catholic writers, and as far as we know, by two only.3 Their statement will be here set forth without comment, and it will be seen how divergent those views are from the view adopted in the present work, as also from the common view of Catholic

1 cf. Acton, on *The Reproductive Organs.*
2 S.O., May 22, 1895, a decree that is referred to later.
8 i.e., before 1930. We may now add a third writer, Dr. J. Ryan, D.D.

writers, and from the teaching of the Encyclical, *Casti Connubii.*

(i) " The real problem is whether public authority possesses such a right, i.e., to impose eugenical sterilization. This question is not yet settled."[1]

(ii) " The State has the right to protect itself, and if it becomes evident that the sterilization of defectives is the only effective protective measure by which the State can secure its continued existence and ensure the common welfare, the moralist can no longer refuse it the right to this measure ; this point will hardly be disputed."

(iii) " For its protection, the State may sacrifice millions of its best sons in battle ; for its protection, namely, for the prevention of epidemics, it may make vaccination obligatory and inoculate innocent children with the virus of cow pox, thus exposing them to violent fevers and even to the danger of death. The State must also have the right for its own protection to deprive mental defectives and the criminally insane of the power of generation by a relatively trivial operation."

(iv) "Society has the right to protect itself adequately against the danger resulting from the presence and increase of the mentally diseased. If sterilization can be proved to be the only sufficient means by which this purpose can be accomplished and national degeneration staved off, public authority cannot be denied the right to use it for the protection of the common good, which, according to the teaching of Moral Theology, prevails over private interests."

(b) Now, the common Catholic teaching, set forth in numerous books of Moral Theology, traverses these conclusions. The first principle of action, when we adopt a means for a particular purpose, is that the means must be in itself morally good, or at least morally indifferent, that is, not morally evil. Sterilization may be most effectual in checking the increase of mental defectives. No one will

[1] *Birth Control and Eugenics,* by Dr. Bruehl, from which work all these quotations are taken. This author quotes largely from the work of Dr. J. Mayer. These are the two authors mentioned above.

be found to deny that, provided the defectives are rounded up, as well as all the ' carriers ' of defect. But we have to inquire first of all whether the means are morally defensible. The great majority of. Catholic divines quite definitely condemn what these three authors defended, and they all condemn it on precisely the same ground, namely, that the sterilization of the defective for the purpose of preventing future propagation is a direct and intentional invasion of a natural right, which is not forfeited by mere defectiveness. No good motive can ever condone such an operation.

Before 1930 there was only one reply of a Roman Congregation, the Holy Office, May, 1895, that bears upon the subject, and the reply is a particular one, so that it is not here quoted as if it settled the matter generally. The question and reply were as follows : " Se sia lecita la pratica sia attiva sia passiva di un procedimento il quale si propone intenzionalmente come fine espresso la sterilizazione della donna ? Resp. *Negative.*"

The following are the Catholic writers who have dealt with the subject ; all of them condemn sterilization of the defective :

Fr. Finney, C.M., in *Moral Problems in Hospital Practice,* p. 149.

Fr. Slater, S.J., in *Questions of Moral Theology,* p. 266.

Fr. A. Koch, D.D., in *Moral Theology,* III, p. 84.

Fr. Noldin, S.J., in *Theol. Mor.,* II, n. 328.

Fr. Burke, in *Acute Cases in Moral Medicine,* p. 57.

FF. Coppens-Spalding, SJ., in *Moral Principles and Medical Practice,* p. 246.

FF. Aertnys-Damen, C.SS.R., in *Theol. Mor.,* I, n. 568.

Fr. Cappello, S.J., *de Matrimonio,* n. 376.

V. R. Canon de Smet, in *de Spons, et Matrim.,* n. 436, who quotes Vermeersch, Ferreres, Wouters, Stucchi, Gerrard, Tanquerey and others.

FF. Sabetti-Barrett, in *Theol. Mor.,* p. 272.

P. Michel, in *Diet, de Theol. Cath.,* s.v. Mutilation.

The conclusion is therefore patent, namely, that Catholic teaching is practically unanimous in condemning the sterilization of defectives. Consequently, both for the

ethical reasons as stated, and owing to the weight of Catholic common opinion against sterilization, the claim made on behalf of the State to sterilize defectives for the common good cannot be defended on moral grounds.

3. What was the common Catholic teaching on the matter of the sterilization of the mentally defective up to December, 1930, has been endorsed, approved and taken out of the region of discussion by the Encyclical letter, *Casti Connubii, of* our Holy Father Pope Pius XI. The following extract from the letter is of great moment :

"Finally, that pernicious practice must be condemned which closely touches upon the natural right of man to enter matrimony but affects also in a real way the welfare of the offspring. For there are some who, over-solicitous for the cause of eugenics, not only give salutary counsel for more certainly procuring the strength and health of the future child, which indeed is not contrary to right reason, but put eugenics before aims of a higher order, and by public authority wish to prevent from marrying all those who, even though naturally fit for marriage, they consider according to the norms and conjectures of their investigations, would, through hereditary transmission, bring forth defective offspring. And more, they wish to legislate to deprive these of that natural faculty by medical action, despite their unwillingness ; and this they do not propose as an infliction of grave punishment under the authority of the State for a crime committed, nor to prevent future crimes by guilty persons, but against every right and good they wish the civil authority to arrogate to itself a power over a faculty which they never had and can never legitimately possess.

"Those who act in this way are at fault in losing sight of the fact that the family is more sacred than the State and that men are begotten not for the earth and for time, but for Heaven and eternity. Although often these individuals are to be dissuaded from entering into marriage, certainly it is wrong to brand men with the stigma of crime because they contract marriage, on the ground that, despite the fact that they are in every respect capable of matrimony,

they will give birth only to defective children, even though they use all care and diligence.

" 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 . . . Furthermore, Christian doctrine establishes, and the light of human reason makes it most clear, that private individuals have no power over the members of their bodies than that which pertains to their natural ends ; and they are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, except where no other provision can be made for the good of the whole body."

4. When we consider the morality of the segregation of defectives, we find no divergence of opinion. The Church allowed the segregation of lepers, for their unrestricted liberty would have been a danger to other citizens. Similarly, the unrestricted liberty of certified defectives would lead, most probably, if not certainly, to the spread of disease, the increase of crime, and a deplorable amount of promiscuous sexual intercourse, for it is well known that some defective females are prone to sexuality, are taken advantage of by immoral youths, and when they have contracted venereal disease—a contingency that is only too likely—do not know, nor can they realize what a danger they are to others. Lastly, sterilization of defectives is not accepted as a practical remedy by the only two official Boards who have reported on the subject, and who have a right to express an opinion, since they alone have taken the trouble to base their recommendations on actual facts, and have kept clear of the *a priori* grounds on which the extreme eugenist bases his unfounded and ill-informed views. The reader is referred to the two Reports, respectively of the Board of Control (1928) and the Mental Deficiency Committee (1929). It must be added that the Board of Control (1929) would approve of sterilization in some cases, but not as a general policy. The recent Report of the Departmental

Committee on Sterilisation (1934) urges the sterilization of mental and physical defectives on a voluntary basis.

SECTION 9. Abortion and Feticide

One of the most distressing problems which surgeons have to face is that of saving the lives of both mother and child in difficult cases of parturition. Each has a right to life, and neither has a better right than the other. It is morally wrong to take away an innocent life directly, that is, with direct explicit intention. Surgical skill has not yet found a method of saving both lives in certain difficult contingencies—assuming that Caesarean section is, in some cases, not possible[1]—and it is, therefore, a matter of common practice, though morally indefensible, to sacrifice the life of the *infans in utero* in order to save the life of the mother, when this sacrifice is judged to be the only means of doing so.

In approaching the treatment of this difficult subject, it must be said at once that in dealing with life, we are on the plane of Natural law, which binds every man, and not merely on the ecclesiastical plane, that is the plane of positive church law. In this matter, the Church has re-enforced by her prohibitions the precepts of Natural law. Nevertheless, it is the business of the Moral theologian to be most careful not to condemn what he does not understand, and at the same time to state the reasons for condemning what he does condemn. If the surgeon wishes to act morally, he will not trust too implicitly to his textbooks, but will examine the morality of the procedure indicated and then act or refrain from acting.

Where induced abortion, *abortus provocatus,* is the procedure indicated, he will disregard his textbook, and save the mother in some other way, and if there is no other way, he will abandon the case. In the last resort, where nothing whatever can be done to save the mother except abortion, he may not destroy a nascent life directly. It is of the greatest interest to observe that at a certain hospital, out

[1] This assumption is not admitted at all by some surgeons, who would prefer Cæsarean section after transfusion.

of 10,000 deliveries in six years, there were 25 cases of *hyperemesis gravidarum,* in most of which—and five were almost on the verge of dissolution—the textbooks would have advised emptying the uterus. In point of fact, all the cases recovered and went to full term, being delivered of healthy living children.[1]

As soon as the human embryo is informed with a rational soul, it is a human being and a person. The distinction between animate and inanimate embryo based only on lapse of time from probable conception, cannot be maintained. There is no foundation for the notion that the female is quickened by the rational soul later than the male, though it seems certain that some time elapses before the chromosomes of the male and female pronuclei unite to form another differentiated cell. So soon as the cells unite vitally the result is a living organism, but it is disputed whether or not this principle of life is a rational soul at the beginning.[2] This consideration does not, however, justify abortions, for they, and all similar procedures, are not resorted to till long after the first days of conception. Equally indefensible is the use of the silver ring or spiral to prevent the fertilized ovum attaching itself to the uterus, and since it is not known when the rational soul is infused, such a procedure will result in destroying a human organism if the soul is present.

Abortion is the intentional expulsion of an inviable fetus.. Normally, the fetus cannot live outside the womb before the seventh month of gestation is completed ; exceptionally, it can be kept alive if expelled shortly after the sixth month. Expulsion of the fetus between the seventh and the ninth month is premature birth or acceleration of birth, not

[1] *Catholic Medical Guardian* (April, 1928), p. 56. Modern opinion condemns emptying the uterus in these cases on account of shock.

[2] cf. O'Malley, *Ethics of Medical Homicide and Mutilation,* p. 33 sqq., for an interesting discussion as to the moment when life begins in the fertilized ovum. It is stated by great theologians that the infusion of the rational soul into the fertilized ovum at the moment of fertilization cannot be proved. It is possible that some time elapses. This view was held by S. Thomas (5., I, q. 76, a. 3, ad 3 : q. 118, a. 2, ad 2), and is held today as possible. The fullest treatment of the matter may be found in Reancy's *Infusion of the Human Soul.*

abortion. When parturition is likely to be impossible or very troublesome, recourse is had to :

I. Abortion, namely, the expulsion of an embryo or fetus that cannot live outside the womb. [1]

2. Premature birth, or the expulsion of a viable fetus.

3. Feticide, or the destruction of the fetus *in utero.*

4. Cæsarean section, namely, the incision of the uterus and the extraction of the fetus.

5. Employment of the forceps.

Principles

I. It is never aUowed directly, i.e., by direct means, nor intentionally, i.e., with deliberate intent, to kill the human product *in utero,* nor on emergence from the uterus, however undeveloped it may be, for any reason whatever, nor to procure abortion of the living fetus with the deliberate intent to do so, or by using means that have abortion for their natural and inevitable result. No motive can justify these two actions, not even the motive of saving the life of the mother, for evil may never be done that good may ensue, the moral evil in the case being the deliberate extinction of an unoffending life. English law condones therapeutic abortion, but without warrant, for the fiction that the fetus is not a person is a pure fiction without foundation in fact.[1]

The Church, through the Holy Office (May 28, 1884 ; Aug. 19, 1889 ; July 24, 1895 ; May 4, 1898 ; March 5, 1902), has made it quite clear that craniotomy and every other operation that directly kills the fetus are forbidden. The formula used in the first decree, viz., *tuto doceri non posse*—i.e., that it cannot be safely taught that craniotomy

[1] Mr. Justice Talbot, addressing the Grand Jury at the opening of the Liverpool Assizes (1929) said : "The law on the matter [of infanticide] is unsatisfactory, and it is right that every appropriate opportunity should be taken to call public attention to it. It is a felony to procure abortion and it is murder to take the life of a child when it is fully born, but to take the life of a child whilst it is being bom is no offence whatever . . . the result of the law is that the newly-born child in many cases can be destroyed with impunity." The Moral law is however wider in its scope than the Criminal law, for the child's life is sacred before birth, during birth and after birth. If craniotomy of a sort is done immediately sifter birth and not on the *infans in utero,* this difference of time has no bearing on the moral issue.

is permissible—condemns feticide in point of fact. The Sacred Congregation has not, as some have wrongly thought, left any ground for the distinction between what cannot be safely taught in Catholic schools and what in practice can be morally done. The arguments of writers before the decree was published, namely, that in cases of abortion at least, the mother merely ceased to preserve the fetus in its natural environment but did nothing positively to kill it, are inconclusive, and even at the time the plea was considered to be a distinction without a difference. The result of condoning abortion in extreme cases leads, as experience proves, to a too facile recourse to abortions and feticides on a large scale.

Those who procure abortion, the mother included, incur excommunication (c. 2350) ; those also are included who order the abortion, and those who are effectual or necessary co-operators in it. Grave fear and, of course, ignorance of the penalty, excuses from the penalty. It is to be observed that mere intention does not suffice for incurring the penalty ; actual abortion must have taken place.

2. But indirect abortion is another matter. In'this, as in all cases where the principle of two effects of the one cause can be validly applied, many actions may rightly be done, the secondary effect of which is abortion, not intended, but foreseen and permitted. Thus, if a mother is in serious danger of death, she may take medicines or submit to treatment on herself necessary for her recovery and directly conducive to it, even if, at the same time, the fetus is ejected or dies *in utero,* provided that this unfortunate physical evil effect is not intended, and provided that it is guarded against as far as possible, and that nothing is done to induce it directly, i.e., by direct action on the fetus.

The mother is not forbidden to have recourse to such remedies, even though the fetus should die *in utero,* for its baptism can be secured by doctor or midwife, and in any case, if the mother is allowed to die, the *infans in utero* dies too, almost instantaneously, if not before the mother. Thus also, the entire uterus may, in certain diseases, be excised, if necessary, even though it contain a living inviable fetus.

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The death of the fetus need never be intended, nor is the method employed a method of killing the fetus; it is a method of saving the mother first, with the incidental result of the death of the fetus. How different such cases are from directly intended abortion and craniotomy a very little thought will show.

3. It will be obvious that as a pregnant mother may not permit direct abortion, so she may not perform actions that are calculated to provoke it, such as the taking of strong purgatives, very hot baths, jumping, riding, electric massage, and numerous other methods of stimulating the contractile muscles of the uterus.[1] All these methods must be avoided, as also every other action which is known to have a serious and direct influence in producing abortion. But Nature is so tenacious of nascent life, that the fetus defies many attempts at its expulsion—in normal cases—except those which are violent. Actions which are done with the intention of expelling the fetus, even though in the event ineffectual, are sinful.

It has been maintained by a few writers who have considered the matter, that in hydramnios cases, it is not direct abortion if the bag is ruptured in the case of an inviable child, when abortion is threatened and the membranes are protruding. It may be possible, in some situations, to drain off a very small amount of fluid without danger of abortion, a matter for doctors to decide, but to drain off all or most of it, is so fatal to an inviable fetus that it could not be justified, though some few authors would permit it in the extreme and imminent danger of the mother's life; but it must here be observed that the mother's life may not be saved by the direct and intended termination of the pregnancy.[2]

In case of doubt, when the mother's life is in danger and the attendant cannot determine whether the fetus is alive

[1] To these may be added that method of treating varicose veins which has an ecbolic effect.

[1] A few cases of tapping through the abdominal wall have been successful. If this procedure precludes abortion and the other does not, it must be employed. The case is fully dealt with on p. 189 sq.

or not, if it is highly improbable that the fetus is living, it may be treated as dead ; but this does not mean that the life of a probable fetus may ever be sacrificed to the rights of the mother, for it is not permissible to invade the probable rights to life of another person.

Premature delivery of a viable fetus is permissible for a grave reason but on condition that the lives of mother and child are safeguarded, as far as possible.

A woman who has had willing intercourse commits a serious sin by expelling the male element. This is constructive onanism. If rape has been committed on her, she may do so, if she act before probable conception, for the man was an aggressor, and if she may force him to interrupt the unjust act, she may interrupt the effect of his act, provided she do not interrupt a life. It cannot be stated with any certainty how soon conception takes place after congress ; it may be hours or days, for the fertilizing male element has to travel the whole length of the uterus and along the fallopian tube until it meets an ovule. The rate of progression is said to be 0.05-0.15 mm. per second. Even after fusion, impregnation is not instantaneous.[1]

SECTION 10. The Ectopic Embryo

1. The Facts

Ectopic gestation means pregnancy of a fetus or embryo outside the uterus. Fetus is a term employed when we speak of a human being as it is from the end of the fourth week of pregnancy to birth. Embryo is the name given to the undifferentiated product of conception from the second to the fourth week after fertilization. Ovum is the term used for the fertilized female ovule up to the second week of gestation.

It is generally thought that the female ovule is fertilized by the male element in the fallopian tube. The end ofthis tube farthest from the uterus is fringed and shaped like a funnel, called the *ampulla.* One of the fringed ends, the *fimbria ovarica,* is longer than the others, and forms a shallow

[1] cf. Sneidern and Sundquist, *Sex Hygiene,* p. 9.

gutter which extends to the ovary. The ovary supplies the ovules which burst from the surface of the ovary, Normally, the ovule travelling down the fallopian tube toward the uterus, either by the peristaltic action of the tube or by the action of the cilia, small hair like processes within the tube, meets a spermatozoon, the head of which pierces the ovule and sets up fertilization ; cell division ensues. It is stated by good authorities that fertilization takes place near the ovary a few hours after intercourse.

The fertilized ovum becomes embedded in the membrane of the uterus, which then extends and enfolds the ovum ; hence the name, *decidua refiexa.* As the ovum develops, it is contained in a fluid, the *liquor amnii,* which itself is enveloped by a membrane, the amnion, entirely fetal and covering the dorsal surface and the sides of the embryo. Another membrane enfolds the amnion, called the chorion. The chorion comes into contact with the walls of the uterus, and it is from the chorion and its *oilli* that the fetal part of the placenta is developed. The maternal portion of the placenta is formed from the decidua and is external to the placenta derived from the fetus. The placenta thus consists of three layers : the innermost entirely fetal, the outermost entirely maternal, and an intermediate layer comprising a complex arrangement of fetal *villi* and maternal sinuses. In normal cases, the fertilized product goes to term and a child is born. Accidentally, however, the fecundated ovum may remain in the tube and develop there. There is then danger of complete rupture of the tube or of tubal abortion ; in the latter case, the fetus is expelled through the fimbriated end of the tube into the peritoneal cavity. There is also a danger of a leakage of blood from the burst tube and the formation of blood clot in the pelvic cavity.

The bursting of the tube is ordinarily very serious for the mother, and death is likely to ensue, unless an immediate operation is performed. It is a matter for a surgeon to diagnose tubal pregnancy and tubal rupture. The diagnosis of the former is said to be very difficult. But an ectopic may be found, when, for surgical reasons, the abdomen has been opened. The modern practice appears to be to remove

the sac and fetus, whether the tube has burst or not, and not to exercise expectant treatment. Any woman, it is stated, while bearing an ectopic fetus is in constant danger of death, but the danger is not always so imminent as to demand immediate operation. It is asserted that 78 per cent of all ectopic gestations result in tubal abortion, and 22 per cent in rupture. The fetus usually dies in each contingency; it may, however, develop in the abdominal cavity outside the uterus, and go to full term. It may die though viable, and after a mock labour will shrivel up, and it is allowed to do so in modern practice, in consequence of the very serious danger to the mother in the endeavour by operation to remove the placenta which adheres to the adjacent organs. Haines found fifty operations for ectopic gestation done after the seventh month of pregnancy with ten maternal deaths. In 1903 Sittner compiled one hundred and fifty-two cases of viable ectopic fetuses. Since then more have been reported. From this account it will readily be seen that ectopic gestation is indefinitely dangerous to the mother, and in the laudable endeavour to save her, the surgeon is confronted with very serious ethical difficulties as to the treatment of a living inviable fetus, that is, if he discover the presence of one.

2. Surgical Opinion and Procedure

Since the treatment of ectopic pregnancy is a matter for the surgeon in the first instance, it is of great moment to find out what is the surgical opinion on this subject. The opinions of a large number of surgeons in the United States of America were solicited and with great courtesy given. The reason why that country was chosen was that there is a very large Catholic population there, and Catholic opinion is likely to have weight. Besides, with so great a population, it is credible that cases of ectopics would be numerous.

In collecting opinions, prominent surgeons were interviewed, the precise problem was submitted, letters were sent to Catholic hospitals with the request that replies should be sent by the most capable and most conscientious surgeons

on their respective staffs. Less than half the replies came from Catholic surgeons. The problem was stated as follows :

1. Catholic ethics permit the removal of a uterus, even during pregnancy, when there is a tumour threatening the life of the mother.

2. In tubal pregnancy, can it be said that there is a pathological condition which threatens the life of the mother, as the uterine tumour does ?

Many of the replies went into a detailed description of tubal pregnancy, its causes, dangers, etc. Forty-one replies were in the affirmative, namely, that tubal pregnancy is a pathological condition; in other words, is a disease. Five of the answers were vague, but seemed to favour the affirmative. Two denied the comparison with tumour of the uterus. One denied that there was a pathological condition in tubal pregnancy. By far the greater number, Catholic and non-Catholic, expressed their firm conviction that tubal pregnancy is not only a pathological condition, but is far more dangerous than cancer of the uterus. The detailed opinions, exactly as they were received, will be found in the Appendix to this section. There is practically unanimous agreement that an ectopic is always a very serious threat to the life of the mother.

3. Theological Opinion

In all discussions of this and allied subjects, the reader must bear in mind two replies of the Holy Office which have guided all subsequent theologians in the handling of the problem. In March, 1900, the query was sent to that Congregation : Is it ever permissible to extract from the maternal organs an ectopic fetus, not yet viable, before the sixth completed month after conception? In 1902, the reply was given : No, in accordance with the decree of May 4, 1898, in virtue of which, serious and opportune precaution must be taken, as far as possible, for the lives of fetus and mother ; in regard, however, to the time {of operation), let the questioner remember that by virtue of the aforesaid decree, no acceleration of delivery is permissible, unless

it is done at such time and in such way that, in accordance with usual contingencies, the lives of mother and fetus are safeguarded. Papal approbation had been given to the decree of 1898.

In regard to these replies of the Holy Office, it appears to be the common opinion of theologians that what the reply just cited envisaged and condemned was all direct interference with the ectopic inviable fetus. It is interesting to observe how, in this case, nature herself reinforces moral principles. In one of the classical works on Obstetrics and Gynaecology we read: "In recent years, operators have suggested conservative treatment of the tubes in cases of tubal pregnancy. Some, for example, *have dilated the abdominal end of the tube and pressed out the ovum; others have split open the tube and shelled out the ovum from its wall.* In the latter case, the wound in the tube is carefully sutured. We have tried this experiment upon several occasions, and in some cases with success. In the majority of cases, however, the oozing of blood is so continuous and difficult to control, that one is afraid to leave the tube behind." [1] What is printed above in italics would certainly, we believe, fall within the condemnation of the Holy Office.

It was generally admitted formerly, and it is still admitted even after the replies of the Holy Office, that a diseased pregnant womb that is causing imminent risk to the mother's life may be excised, if excision is really necessary and the only remedy, whether the fetus is inviable or viable, and if all precautions are taken to safeguard, as far as possible, the lives of mother and fetus. This is rightly defended on the principle of the double effect.

It must also be admitted, we believe, on the same reasoning, that a swollen tube, which is causing imminent risk to the mother's life, may be excised, whether the fetus is inviable or viable, provided that the excision is necessary and the only means, and if all precautions are taken to safeguard, as far as possible, the lives of both mother and fetus. The opinion is advanced merely as a probable one.

[1] J. M. Munro Kerr and Others, *op. oil.,* p. 244.

It was maintained in die earlier editions of Génicot's *Moral Theology* (n. 376) that if there is a doubt whether the fallopian tube contains a living fetus or a dead one, whether the tumour is a mere tumour or a fetal tumour, the mother's certain right to her life, which is in serious danger, prevails against a probable right of a probable fetus. The same argument has been repeated in recent textbooks, but we think wrongly, for there is no valid distinction, morally speaking, between a fetus that is probably present and one that is certainly present. However, some few authors prefer to say that when no certain signs of life are indicated in the tumour, it may reasonably be assumed that there is no fetal life present at all. The weakness of this view is that in the early stages of tubal pregnancy it is almost impossible to know whether the tube contains a fetus or not. This is true, even where the abdomen has been opened for some complication, and the actual tube is seen ; it is, of course, still more true when no incision has been made at all. It may be said at once that it is almost impossible to diagnose a very early unruptured ectopic merely from external symptoms, and therefore the excision of a fetal tumour is hardly ever a practical question, except in operations for appendicitis or analogous cases when, as a fact, an unsuspected swelling of the tube is discovered. At that moment a moral problem may arise, which will be discussed presently. If the tube has already burst, and the fetus is still in the burst tube, or its contents have fallen into the pelvic cavity, it appears permissible, on moral grounds, to remove the whole mass that is in the cavity, or to excise the part of the burst tube containing the fetal mass, if such is deemed necessary for saving the mother's life. This cannot be considered interference with pregnancy. But in some cases this is not found to be necessary, since the fetus shrivels up in the pelvic cavity, a mock labour ensues, and the woman may recover without operation. But a serious moral problem arises in cases of early ectopics, where bleeding has indicated that the tube is burst, and when the surgeon has, as a fact, Opened the abdomen ; what may then be done in respect of the fetus ? This is a problem which has

not been dealt with, at any length, by Moral theologians.[1]

Some maintain that the mother's arteries may be ligated to check the bleeding, an operation that shuts off the blood stream to the fetus, which therefore naturally dies ; others feel justified in taking out the fetal sac at once and putting it aside until the mother is attended to. It must be observed, however, that there is usually no possibility of discovering in such operations where the fetus is, for the whole mass is engorged with blood, and no one could expect a surgeon to imperil the life of a woman by delay while he searched for the fetus. One life has to be saved at a time, but the attendant nurse should be instructed to baptize the fetal mass at once. In regard to the first procedure, namely, the ligating of the arteries, we see no objection to that from the moral point of view, if ligation is the only means of saving the mother. In regard to the second procedure, namely, the removal of the fetal sac, fetus and membranes and the whole mass, it is certain, practically speaking, that when the tube has burst, the fetus is placed in such a serious condition that its death is a matter of some hours if not of some minutes ; consequently both for the sake of the fetus and much more for the sake of the mother, it is necessary, we think—though here we have to speak with deference to medical opinion—to extract the whole fetal mass, to baptize what is thought to be the fetus, and not to allow this extraneous mass of fetus, membranes and blood-clot to be a peril and to continue to be a peril to the mother's

We can imagine some Moral theologians insisting that the mother should be attended to and made safe, if possible, but that the fetus, membranes, cord and blood-mass should be left where they are, because, it is said, there have been cases in which an ectopic fetus has

[1] Very early ectopics have been diagnosed ; one such, at four weeks, was diagnosed, perhaps more by luck than skill. There are, however, some external symptoms which would suggest an early ectopic. In such cases, the arguments used above, for its excision, are as valid as when an ectopic is discovered after incision. If the mother is not bleeding, to ligate the arteries has the effect of shutting off the oxygen supply to the fetus. In that event, the operation is condemned by some authors as being a direct attack on the fetus.

gone to term and has been delivered by Caesarean operation. Any surgeon would say that such cases, in the liistory of surgery, are so rare as to be negligible. One cannot leave a permanent source of the most serious trouble to the mother within the pelvic cavity, stitch up the abdomen and await developments, possibly fatal. In regard to the Cæsarean operation for delivering a fetus, which in the rarest cases has gone to term in the pelvic cavity, an eminent surgeon has said that in such an operation " the placenta will be found hopelessly fixed to bowels, liver, etc., with very large blood vessels, and the mother dies whilst one is trying to remove the placenta." It is on account of such grave risks that the usual procedure in England, at all events, is not to operate at all to remove the child, that is, in cases when the mother has survived the bursting of the fallopian tube. A spurious labour occurs and the child dies inside the mother. Child and placenta shrivel up ; they may then be removed without so much danger.

We have now to take notice of the most acute moral problem, and it is here that the opinions of moralists are divided. We will state the case, first of all, as it usually occurs.

A surgeon is performing an operation for some disease, and has made the necessary abdominal incision. He notices, what was quite unexpected, that there is a slight swelling in the fallopian tube. It may be a tumour or an early ectopic fetus. He does not know which it is, nor, as has been stated by some surgeons, can it be known what it contains until it is actually opened. If the surgeon thinks that it is necessary to remove the tumour, we think that, being in doubt as to its real nature, he may do so, if he considers it seriously dangerous. But, there is another aspect to the case. Let us suppose that the surgeon is fairly sure that there is *in situ* a living fetus. How he can come to any certainty is for him to decide. It has been stated that, though early cases of ectopics cannot be diagnosed with certainty, one can form a good idea from the signs and symptoms, when the thing is actually seen. For the sake of the moral issue, we may suppose that the surgeon is

fairly certain that a fetus is present, though he cannot really be sure whether it is living or not. The question that has distressed Catholic surgeons and Moral theologians alike is this : May that swollen portion of the tube be excised, as a tumour which is likely, sooner or later, and perhaps much sooner than later, to bring the mother's life into jeopardy by the bursting of the tube ?

The surgeon who has discovered the tubal pregnancy—for we may call it that in order to take the worst possible case for the testing of moral principles—may have to remove the swollen tube, lest he become liable to an action in the Courts of law for wrongful treatment, and if he is legally punished, his professional career is ended. Even if a hospital case did not lead to an action, it would get round to his colleagues on the staff and to the students, that he had not treated a case of ectopic according to the recognized teaching of the day. This might lead to a forced resignation, and put an end to his career. Such is the actual situation, as stated to the writer by a gynaecological specialist. It behoves moralists, therefore, to be very sure indeed of their ground, before condemning the procedure.

A more positive help to the solution of the case, is to refer to the opinions of surgeons. It is fairly generally—if not universally—admitted that an ectopic in the tube is at *all stages* a very serious danger to the mother. It may possibly go on developing for a few months, it may burst in two weeks or less. It seems unreasonable to say to the mother : " What you carry in your body is not imminently dangerous, for you are not yet at the point of death, though it is admitted that at any moment you may be so, and in any case your disease is only very serious. You may recover, there is no need yet to operate, the surgeon will wait until the tube bursts, for only then is he allowed, on moral grounds, as some moralists allege, to operate. He may then save your life, though, unfortunately, he may not." If any moralist feels obliged to state the situation in that way, he must be very positive indeed that there is nothing else to be said. It is not the business of the moralist to examine—if he had the opportunity of examining—a tubal pregnancy, and to

say that this or that particular one is not imminently dangerous. He cannot say so, for he does not possess the requisite knowledge. But he may accept the \dew of eminent surgeons, that a tubal pregnancy is a serious and continued threat to the mother's life. To lay down as a condition for excising the tube, fetus and all, that the mother's life must be in imminent danger, is to lay down a condition that may easily mean instant death to the mother. Is it necessary to employ the word 'imminent' at all? Is it not sufficient that the tumour should be seriously dangerous? Is there really any room for degrees of seriousness? Can one distinguish in such practical, concrete cases between what is imminent and what is serious? The most morally conscientious surgeon would not feel obliged to do so. If that is true, and we are merely asking the question, may he not excise the tumour just as it is, completely regardless of what it contains?

If, according to some writers, it is permissible to treat every ectopic pregnancy, if thought to be very dangerous to the mother, as a tumour that may be removed, it remains to state quite plainly the alleged justification of it, both in view of the decrees of the Holy Office, and as an application of the principle of the double effect. In regard to the positive decrees of the Holy Office forbidding every direct interference with the life of the fetus, it is sufficient to state that theologians commonly hold—with indeed negligible exceptions—that what is forbidden is *direct* interference with the fetus or embryo, such as would certainly be verified in cases of craniotomy, directly induced abortion, emptying the pregnant womb, or shelling out the embryo or fetus from a pregnant tube, ovary, or cyst. These are all direct attacks on a living fetus, and they are all forbidden.

Secondly, the excision of part of the tube, provided it be granted that it is always a serious peril to the life of the mother, appears to be as much justified as the excision of a dangerously infected pregnant womb that is beyond cure, because in the moral order, as well as in the order of physical causality, the one and only thing aimed at is the excision of the womb, the only purpose being to save the woman's

life. The fetus if alive is not attacked except indirectly ; its death is not wished, though it is foreseen to be inevitable ; the mother is not saved merely by termination of the pregnancy. It is confusion of thought to advance the plea, that when a pregnant tube is excised as a tumour but not as a pregnancy, the distinction is one without a difference, the result being the same in both cases. It is true to say that objectively the result is the same, and so far as physical instruments and surgical operation go, it is indeed a distinction without a difference. But that is not the whole of the matter. In the moral order, it makes a vast difference whether a surgeon intends to remove a pregnancy in the tube, which is not permissible, or to remove a pregnant tube.

It appears possible, therefore, to state the following conclusions :

i. It is maintained, on good surgical authority, that an ectopic pregnancy is always a serious threat to the mother's

2.A very early ectopic is hardly ever diagnosed and therefore no question arises before actual incision in the vast majority of cases. But if a very early ectopic is suspected, we believe that, before any bleeding takes place, expectant treatment should be employed.

3.Where bleeding or collapse suggest the presence of a dangerous ectopic, it is the surgeon's business, not that of the moralist, to decide upon either expectant treatment or immediate operation.

4.Where the surgeon resorts to operation, if there is a tubal pregnancy, when the tube has burst, it appears morally justifiable to ligate the maternal arteries, even though the fetus will certainly die, if such operation is deemed necessary. Some moralists maintain that the burst portion of the tube with all its contents may be excised.

5.When a surgeon is operating for some disease other than tubal pregnancy, and discovers what he suspects to be an early ectopic in the tube, the moral question arises : What may he do, if he thinks that the early ectopic is a serious danger—as it is stated to be—to the mother's life ?

We think that' he may not open the tubal swelling and shell out its contents, suspected to be a fetus, for this would be a direct attack on a probable fetal life.

Whether or not he may excise that portion of the tube which is swollen, and is thought to contain a living inviable fetus, on that point, there is at present a difference of opinion. Some theologians and most surgeons maintain that since an early ectopic is always a serious threat to the mother's life, excision of the tumour as a tumour is justifiable. But it is obvious that here we are in the realm of facts. The fact in dispute is whether or not every ectopic is a dangerous threat to the mother. Surgical opinion undoubtedly more than inclines to the view that it is. May not the moralist accept this good susgical opinion and solve the difficulty in accordance with it? He cannot do more. He has to rely upon what professional specialists say, and what is more, every case must be dealt with on its own special merits. The moralists who condemn the operation must be very sure of their ground, for they are running counter to a large body of surgical opinion, in a matter that is confessedly obscure, they are asking the Catholic surgeon to run the great risk of either relinquishing all such cases or retiring from his profession. Nurses confronted with such cases in hospitals have their serious problems to face, although in their case the problem is not so acute as it is for the surgeon himself, since theirs is a problem of material co-operation, and not the problem of direct action.

The writer does not claim to settle the matter here discussed. Theologians must await an authoritative reply on it and must be prepared to obey the ruling of the Church on the moral issues involved.

APPENDIX 1

Some Medical Views on Ectopics

The problem submitted to the surgeons and repeated here for the sake of clearness, was as follows :

1. Catholic ethics permit the removal of a uterus, even during pregnancy, when there is a tumour threatening the life of the mother.

2. In tubal pregnancy, can it be said that there is a pathological condition which threatens the life of the mother, as the uterine tumour does ?

The following replies were sent :

1. "I would state absolutely that there is a pathological condition present in tubal pregnancy, which threatens the life of the mother exactly as in the case of tumour of the uterus."—J. F. Golden, M.D.

2." Tubal pregnancy is a pathological condition which always threatens the life of the mother, not as an uterine tumour would, but *per se.*"—G. A. Cobb, M.D.

3." I do not consider tumour (of the uterus) as a positive indication for termination of labour, but I do (so consider) a tubal pregnancy."—H. H. Ozelim, M.D.

4." The answer to this question must be in the affirmative. I do not believe there could possibly be any professional controversy over this question."—J. W. Nixon, M.D.

5-6-7. " In our opinion, the proposition contained in Question No. 2 justifies an operation even more clearly than the condition as outlined in Statement No. 1, because not infrequently, a pregnant woman may have a tumour of the uterus and be delivered safely in a normal manner, or finally by Caesarean section ; whereas extra-uterine pregnancy is practically always fatal to the child and frequently to the mother. In short, our answer is, yes."—W. M. Wolf, M.D., F. P. Herff, M.D., C. W. Taylor,

8. " Yes. In the majority of cases an extra-uterine pregnancy is even more threatening to the life of the mother

than is a pregnancy in a uterus which is the seat of a tumour." —M. J. Henry, M.D.

9. "Yes. While there have been instances of extra-uterine pregnancies going to full term with deliver}' of a living child by Cæsarean section, there are thousands upon thousands of instances where disease and even death have resulted from fertilization of the ovum outside the uterine cavity. In so far as the tube is not designed to receive and permit the development of the fertilized ovum, the occurrence of fertilization with arrest of the ovum at this point is, in my mind, surely pathological, and offers a definite menace to the health and even the life of the mother."—Irvin Abell, M.D.

10. "At no time, during the progress of pregnancy, wherein there is a tumour of the womb, is there any danger, in proportion to the dangers of a tubal pregnancy, as the tumour of the womb in itself does not cause sudden haemorrhage, but may cause a miscarriage or premature birth, whereas a tubal pregnancy causes a sudden haemorrhage, which endangers life immediately, and in which every minute is of vital interest to the patient, and this haemorrhage in itself causes death if not attended to. Further, in a tubal pregnancy, which is a pathological condition, any alteration of function causes pathology, and at no time have I ever seen, and on very few occasions do the records show that a tubal pregnancy has ever gone to term. History does state that such a thing has happened, but the percentage is so minute, that we are not justified in allowing a pathological condition to attempt arresting itself without our assistance."—Carl B. Young, M.D.

11. "Tubal pregnancy is abnormally located as the result of disease or some accident of nature, and is a menace to the life of the mother from its inception and is, therefore, in my opinion, a pathological process and threatens the life of the mother in a higher percentage of cases than does any uterine tumour of which I have any knowledge, except malignant tumours."—D. F. Barnes, M.D.

12. "In my own experience, and I am sure in the literature, tubal pregnancy presents a more dangerous

prognosis than a pregnant uterus which is also the site of a tumour. The possibility of development of the embryo in a tubular pregnancy is almost nil if not entirely so. My view of tubular pregnancy is that it is a distinct pathological entity, resulting from an abnormal implantation and development in a structure which is not suitable for its normal growth and retention. In other words, the tubular pregnancy will abort with most grave and serious haemorrhage."—A. Watkins, M.D.

13." Tubal pregnancy is a physiologically malignant tumour in that it is so located that after a given growth-period rupture of an organ is produced, and may occur in such manner as to cause a solution in continuity of a blood vessel that will bleed the host to death. All cancers do not produce the death of the host. Some heal spontaneously without treatment.

" Personally, I cannot see any difference from an ethical viewpoint in the two conditions, except that it takes cancer longer to kill the host than it does a tubal pregnancy. The secondary cause of death in each instance is very often the same, namely, haemorrhage."—D. C. Gann, M.D.

14." Ectopic pregnancy is always a serious pathological, surgical condition. The mortality of this pathological condition, when not interferred with, is 69 per cent, and on account of the imminent danger to the life of the mother, the extra-uterine pregnancy in the early months must be looked upon much as a malignant growth, and it is only from the seventh month of the pregnancy, when the child is viable, that it has any claim to consideration."—N. F. Weny, M.D.

15\ " As there is as yet no expectant treatment for a growing or ruptured tubular pregnancy, I regard it as a pathological condition endangering the life of the mother and future health should she recover. It is my humble opinion that on account of the high mortality, the removal of a pathological pregnant tube is as justifiable as the removal of a pathological pregnant uterus. They should be placed in the same category in Catholic Ethics."—J. M. R. Dibrell, M.D.

16. " In tubal pregnancy the mother's life is in a great deal more danger than in uterine tumour. The pregnancy practically never goes to the viable time of the child. The mother is in constant danger from both hæmorrhage and sepsis. She is an invalid as long as she carries the fetus."—John R. Beirl, M.D.

17. " I know of only one pathological condition of the pelvis that is more serious to the life of a woman than is tubal pregnancy. The chances for saving the life of the fetus are practically zero."—D. S. Wier, M.D.

18. " Tubal pregnancy is more menacing to the life of the mother than the various pelvic tumours in the presence of pregnancy. Some of the best obstetric authorities refer to the tubal pregnancy as 'an explosive body' (Werth) that must be removed at once; there is no expectant treatment (De Lee)."—Joseph R. Condon, M.D.

19. " In tubal pregnancy, there is an acute pathological condition threatening the mother's life."—D. E. Kelley, M.D.

20." Tubal pregnancy is a definite pathological condition which greatly endangers the life of the patient."—Daniel Fr. Crowley, M.D.

21."In tubal pregnancy there is certainly a pathological condition which threatens the life of the mother as the uterine tumour does."—Henry L. Lewis, M.D.

22. " An extra-uterine pregnancy should be considered in the same category with a tumour of the uterus endangering the patient's life."—Franklin S. Newell, M.D.

23. " Tubal pregnancy is pre-eminently a condition which threatens the life of the mother . . . The ovum in the tube behaves almost like a malignant growth."—J. Whitridge Williams, M.D.

24. " In tubal pregnancy there is a pathological condition which threatens the life of the mother more acutely and more positively than in the majority of uterine tumours. I believe no obstetric authority will dissent from this view."—Joseph B. De Lee, M.D.

APPENDIX 2

Some Medico-Moral Problems

The contact between surgical practice and moral conduct is very close, and it may be readily admitted that the moral problems which confront a surgeon are exceedingly acute. On the other hand, the moralist should be slow to lay down an opinion, and still slower to condemn unless he thoroughly understands the case, and the surgeon should not follow too implicitly the teaching of his textbook. Fortunately, of recent years, surgical practice has more and more taken account of the laws of natural ethics, and as surgical skill advances, the rough and ready methods of the past have given way to punctilious care for the life of the inviable product of human generation. In the few cases here presented, good Catholic authorities have been relied upon, and the conclusions, sometimes unfavourable to modem surgical practice, will be found, we believe, to be in accordance with accepted moral principles. The reader is reminded, however, that moralists are not specialists in medicine or surgery, so that a confessor, relying on his theological training alone, who may be confronted with acute cases, should most carefully acquaint himself with the exact nature of the case he is asked to pronounce upon before giving any decision.

1. Placenta prævia

By this term is meant the implantation of the placenta on the lower uterine segment, so that it covers either the *os uteri,* being then complete, or reaches up to the margin of the undilated *os,* or dips into the lower uterine segment, being in these two cases incomplete. The resulting haemorrhage, when the placenta becomes detached from its site, is called unavoidable haemorrhage. The cause of this condition of things is that the ovum has grafted itself in the lower part of the uterus. As the cervix dilates in preparation for parturition, the placenta detaches itself and

there ensues the bleeding from the maternal blood-vessels. There are as many problems in this matter as there are kinds of *placenta previa.* The subject is here treated in general terms, but the principles are applicable to all the varying conditions which are found.

It is stated that if *placenta previa* is suspected, pregnancy may be allowed to continue only if the patient has skilled aid available. But it is, of course, obvious that pregnancy may not be terminated so as to extinguish the life of the product of human conception. The most approved treatment of central *placenta previa,* when possible, is by Caesarean section. As this operation is unusually difficult amongst the artisan classes in their homes, if indeed it would ever be done there, doctors have recourse to podalic version and rupture of the membranes ; then a foot is brought down—and sometimes a weight is attached to the foot—and thus the thigh of the child compresses the placenta and controls the haemorrhage whilst the *os* is dilating. In such cases, induction of labour, when the child is viable, is permissible, even should there be considerable risk to the child, provided the procedure is necessary to save the mother's life, and everything possible is done to secure a live birth.

It is stated by Catholic authors, that if the woman is bleeding to death, the bleeding may be stopped by packing, if that is considered the only method possible, even though the fetus should die, for there is then no direct attack on the fetus. The bleeding must be stopped, and a method is adopted which has two effects, the first, the saving of the mother's life, the second, unfortunate but inevitable and not intended, namely, the death of the fetus.

In an analogous case, where the placenta—and a normal one—becomes detached from its site, the outlook for the child is said to be almost hopeless. If the child be viable, it must be delivered at once ; if dead, craniotomy hastens its extraction. If the accident happens before the seventh month of gestation, the fetus will die in about ten minutes and would be dead before delivery. It is therefore necessary to get the fetus out to stop the maternal haemorrhage. It will have been killed by the separation from the placenta

minutes before sufficient dilation of the cervix could be attained in an attempt to deliver it alive.[1] This, then, is not a case of induced abortion, which would be wrong, but of natural abortion, for the cause that gives rise to the mother's bleeding will already have killed the fetus. Extraction by forceps would then be permissible.

2. Hydramnios[2]

This term means the presence of an abnormal amount of *liquor amnii,* the fluid in which the fetus is suspended during gestation. In the acute form, which is said to be rare, the fluid is formed rapidly and the life of the mother is endangered. It usually sets in about the middle of pregnancy and the fetus is not viable. It is stated that in the acute form of hydramnios the pregnancy must be terminated at once. It is terminated by perforation of the membranes through the cervix and draining off the fluid. This operation does not appear to be a direct attack on the fetus, though incidentally it is fatal to it.[3] Concerning the morality of the operation on an inviable child, two authorities, viz., Fr. E. F. Burke[4] and Fr. P. A. Finney, C.M.,[5] are opposed to it, the former stating that the *liquor amnii* belongs to the ovum and is therefore necessary for the life of the fetus, the latter stating that to rupture the membranes would be to procure direct abortion. The present writer subscribes to this opinion, but the reasoning of the following case may be submitted for consideration. The case is that of the pregnant uterus being locked in the upper strait, owing to prolapse or retroversion, the fetus not being viable.

The solution of this case may be expressed in the words of Fr. Slater: "A pregnant woman who is suffering from disease or tumour or any complication which threatens life, may lawfully adopt the necessary means to save herself,

1 cf. O'Malley, *op. cit.,* p. 145; Burke, *Acute Cases in Moral Medicine,* p. 38.

2 cf. J. M. Munro Kerr and Others, *op. cit.,* p. 201; *Midwifery,* by Ten Teachers, p. 183.

3 Some authors hold that it is a direct attack on what belongs to the fetus, viz., the *amnion.*

4 *Op. cit.,* p-41.

5 *Moral Problems in Hospital Practice,* p. 72.

even if what is a remedy for her causes the death of the fetus . . . the mother is not bound to sacrifice her life by abstaining from adopting the remedy indicated, especially if her own death would also involve the death of the child. Thus, we may approve of the following solution of Dr. Capellmann [1] of the case when the uterus with the fetus is locked in the upper strait. If all other means of turning or replacing the uterus fail, I believe it to be allowable to induce abortion indirectly, by procuring the discharge of the waters, or by perforation of the fetal membranes."[2]

It will be observed that there is here no question of any direct attack on the fetus, but only on its environments, and that with the direct intention and the direct primary result of reducing an abnormal and fatal swelling. The distinction appears to be reasonable. Dr. Capellmann and Fr. Slater thought the procedure to be an application of the principle of the double effect. The conclusion is not, however, accepted by some Catholic wTiters, v.g., Fr. Finney [3] and Fr. Klarman.[4] Perhaps this case and that of hydramnios are not similar, though one can imagine a moralist thinking that the release of the *liquor amnii* in the former case is not a direct attempt at abortion. Vermeersch states that the amniotic membrane is part of the fetus. He thinks that a slight amount of fluid may be let out if this does not probably lead to abortion. The solution as stated may now be set aside. It is possible to pierce the womb below the sternum, the woman being seated or standing, and draw off sufficient liquid.

3. Fibromyomata

Uterine fibroids may, but of course do not always, constitute a serious complication of pregnancy. Profuse bleeding from them may threaten the mother's life. The tumour may be removed, if its removal is necessary, at the risk, or even with the certainty of the death of the fetus. If the tumour involving the fetus must be removed, the consequent risk to the fetus is indirect and permissible. Fibroids are treated occasionally by X-rays.

[1] *Pastoral Medicine,* p. 16.
[2] *Manual of Moral Theology,* I, p. 201.
[3] *Op. cit.,* p. 63.
[4] *The Crux of Pastoral Medicine,* p. 73.

4. Cancer of the Cervix

When the mother is operable and the fetus is viable, the operation for removal of cancer, if considered necessary to save the mother, is permissible, provided the fetus is not first directly attacked. Similarly, it is permissible to treat the cancer with X-rays, if the cancer would cause the death of the mother before the child goes to term. The incidental death of the fetus is indirect and a secondary effect. However, surgical skill may be able to screen the child from the X-ray emanation ; if this can be done, it must be done, in accordance with humane conduct, and the decrees of the Roman Congregations, which bid one to safeguard, as far as possible, the fives of both mother and child. Caesarean section, though preferable, is not always possible.

5. Hyperemesis gravidarum

The pernicious vomiting of pregnant women may lead to abortion or even death. Consequently, therapeutic abortion—an euphemism without moral defence—is employed to save the mother's life. If the child is not viable, the intentional and direct removal of it from the uterus is to remove it from one environment in which it can live to another in which it immediately dies. Such an evil unjust means may not be adopted to secure an end, however praiseworthy.

6. Eclampsia

This term describes the convulsions, chiefly during the second half of pregnancy, not due to such causes as hysteria, epilepsy, apoplexy. It is said to occur once in 500 labours with about 25 per cent of deaths. In severe convulsions, abortion takes place, or the fetus may die during an attack, infant mortality being about 40 per cent. When eclampsia is inevitable and the child is not viable, abortion may not, of course, be induced. If the child is viable, the moralist has no further interest in the condition, except to say that the surgeon must endeavour to save both mother and child,

but if the mother can be saved without any direct attack on the child, viable or not, by a method which is the only one available, and which is fatal to the child, the surgeon is justified in operating. It is stated that the expectant method, which has fortunately revolutionized procedure, has a very low maternal mortality, 5 to 6 per cent, and not a high infant mortality, 14.65 per cent as compared with the io.6q per cent by Cæsarean section.

1. An operation or any medical treatment during pregnancy for a disease not fatal to the mother is never permissible if it is likely to cause abortion or result in the death of the fetus, for there is no just proportion between the mother's gain and the probable harm to the fetus.

2. If the risk to the child is only slight and the disease of the mother, though not likely to be fatal, is serious, remedies may be applied though they may have a secondary and incidental effect of some slight risk to the fetus.

3. An operation for the removal of the appendix, for example, may be fatal to an inviable *infans in utero.* If the operation must be performed to save the mother's life, it may be performed, but it would clearly be wrong—if ever done—first to empty the uterus and then to operate.

8. Plugging

In cases of threatened abortion, in which the haemorrhage is not so serious as to endanger the mother's life, to tampon the vagina and the cervix has the result of damming back the blood and dissecting the fetus from the uterine wall. This commonly produces complete abortion, and if the fetus was living it is destroyed. This procedure is not permissible.

In cases, however, when the mother is bleeding profusely to the risk of her life, the tampon may be used if it is the only speedy available remedy, though incidentally the fetus is destroyed. When the product has been dissected from the uterine wall, it can no longer remain living, and when

it is thought dead, it may of course be removed, either whole or by morcellement.

9. Drugging in Pregnancy

The administration of morphine, etc., during pregnancy to dull extreme pain or prevent abortion is permissible if done carefully, even though there is a slight risk to the fetus. Larger doses of the drug, when the fetus is still connected with the placenta, are said to be neutralized through the mother's circulation. When the child is detached from the mother, the drug remains in its circulation and may be fatal to it. To administer large doses of the drug merely to relieve maternal pains to the imminent risk of the child is not permissible, since the relief of pain is not proportionate even to the permitted death of another. A too facile recourse to anaesthetics, merely to relieve pain, to the great risk of the child is morally indefensible.

10. Premature Delivery

The term is used only with reference to a viable child. If premature delivery has to be obtained, the conscientious doctor will abandon all dangerous and hasty methods. In cases where Caesarean section is out of the question, owing to home surroundings, the doctor is confronted with the most acute problem. Craniotomy and any other operation that is destructive of the fetus are forbidden. If craniotomy is absolutely indicated, according to the terminology of the textbooks, a Catholic doctor must give up the case, but he is not thereby precluded from telling those whom it may concern that other medical advice must be got, or rather may be got. If he is asked to send another doctor, mentioned by name, he may do so. But it is stated that premature delivery can be safely and cheaply induced in many cases even in unfavourable home surroundings by certain tablets or powders that act as uterine stimulants.

11. Twilight Sleep

This is a sleep induced by certain drugs to lull the sense of pain and to diminish the power of recollection, without

completely taking away consciousness. It appears from medical testimony that if the drugs are administered, a competent nurse should be in attendance and a doctor within easy call. Since the harm done by such drugs to the mother and child is almost negligible if a skilled doctor is in charge of the case and a nurse always in attendance, it does not seem to be wrong that this aid to difficult parturition should be adopted. The drugs may, of course, be abused and fetal death may ensue, but the Moral theologian will not condemn them for that reason, and he must leave it to the skilled doctor to devise methods of inducing twilight sleep that will do either no harm at all to mother or child, or will do so little, that the slight risk may be undertaken for the sake of relieving great pain or of dealing with an obstinate case. No confessor will either advise or assent to the employment of drugs ; he must refer such matters to the physician.1

12. Sterilization

When both fallopian tubes or both ovaries or the uterus are so diseased as seriously to endanger the woman's life, they may be removed. When only one of the tubes or ovaries is diseased the other may not be removed in order to prevent future conceptions. This kind of sterilization is becoming commoner than it previously was. The remaining tube or ovary is so important, that future possibility of disease is no reason for mutilating a woman in so serious a manner, provided she is still of an age to bear children.

Similarly, after Caesarean section it is not permissible to sterilize the patient merely for the prevention of future conceptions. When one ovary and both tubes have been

1 Dr. O'Malley *(American Ecclesiastical Review,* July, 1915, and in *Ethics of Medical Homicide and Mutilation,* p. 244) utterly condemns it. There is, however, a large body of medical opinion in favour of it, if cases are skilfully handled. For a full account, the reader may be referred to *Midwifery,* by Ten Teachers, p. 640 sqq., and to the *Combined Textbook of Obstetrics and Gynecology,* by J. M. Munro Kerr and Others (Edinburgh, 1923), p. 327. The reader is referred to O'Malley's full treatment of this question, that he may be aware of much that can be said against twilight sleep as commonly understood, i.e., as induced by morphine and scopolamine.

removed, there is no need to remove a healthy uterus, for women have borne children after such operations.

13. Curetting

The interior surface of the uterus and cervical canal are scraped for curative purposes, when pieces of the decidua or retained portions of the placenta must be extracted. The curette is also employed for purposes of abortion. When abortion is merely threatened, curettage is not permissible for this would be to produce an actual and direct abortion. If curettage is employed for acute endometritis (inflammation of the lining of the uterus) and if a fetus is present, it is obvious that the direct purpose and result of the treatment is to remove the fetus and if living, to kill it. This is clearly not permitted. If, however, the surgeon is satisfied that hæmorrhage in the decidua has already killed the fetus, there can be no moral objection to curetting.[1]

It is stated in the textbooks that in pre-eclamptic toxœmia —pregnancy kidney—if the condition is profound, or if, under treatment, there is no improvement within a week or so, eclampsia is likely to supervene and the pregnancy must be terminated at once. If the child is inviable, it is obvious that this may not be done. The same principle applies to the rare but very serious condition of *icterus gravis gravidarum,* which in its acute form supervenes with alarming rapidity.

14. Irradiation by X-rays

Irradiation by X-rays is applied directly to the uterus for adolescent menorrhagia (profuse menstrual periods). The ovaries are, however, shielded, otherwise sterilization ensues, a result which must be avoided. It is stated that a menorrhagia at the menopause is checked by sterilization of the ovaries. If this is done to save the woman's life or to prevent permanent invalidism, it may, we believe, be done.

15. Euthanasia

This term is an euphemism for the deliberate taking away of the consciousness of another, so that it will not return

[1] Curettage is, we believe, avoided in acute endometritis.

before death. The patient passes away in a painless sleep. We are assuming that the drugs do not shorten life. If they do, euthanasia is murder, and indefensible. It is clearly permissible, on moral grounds, to administer drugs to relieve suffering or to produce necessary' sleep. However, it would not be permissible to take away consciousness during the last hours of life, if the patient is not spiritually prepared for death, for it is possible with great care and attention, to dull pain without destroying consciousness, and it is a serious sin against charity to be the direct and voluntary cause of another dying unprepared. Nevertheless, if acute pain must be relieved, and if the patient is already prepared by all spiritual helps to die, it appears to be morally right to employ drugs to relieve pain and incidentally to take away consciousness. Opinions amongst Catholic writers vary on this matter. Some take a very severe view ; others allow even more than is here admitted. We believe that in the last moments of life, drugs may not be administered unless, as stated, the patient has been sufficiently prepared to die. In such contingencies, the Catholic priest who is attending the patient may remain passive, if he has moral certainty that the patient has had all possible ministrations of the Church.

16. Embalming

Embalming is easier before the blood has congealed, and the body is better preserved if decomposition has not set in. Now we know as a fact that life often persists after apparent death ; advanced decomposition is the only certain sign of death especially after drowning, paralysis and death from sickness. Embalmers therefore should have the clear assurance of a doctor, as no doubt they always have in civilized countries, that death has taken place, and a doctor must be sure of the fact before he issues his certificate. Again, arterial embalming is done by injecting a fluid into the veins to displace some of the blood. The blood of the corpse is disposed of anyhow.

The Holy See has issued two decisions in respect of the treatment of corpses. First, Pope Boniface VIII (1299)

excommunicated those who, before burying a corpse, removed the flesh from the bones and then buried the skeleton. In 1897, the Holy Office directed that a severed limb should, if possible, be buried in consecrated ground. The Church, then, appears to wish the whole of the human remains to be given decent burial,[1] and methods of embalming should be discovered that will safeguard the blood, or the blood should be collected in a vessel and buried with the body. After a post-mortem, the parts of the body should be replaced, the body should not be desecrated, no parts should be kept for demonstration, except with the permission of the relatives of the deceased and with legal sanction and for the notable advancement of knowledge.

17. Human Monsters

Some doctors apprehend no moral objection to the destruction of a human monster at birth. Their plea is that to destroy it is an act of mercy to it and its parents. If it is given the benefit of baptism, it is sent to heaven instead of perhaps living on to its own great distress and that of others. We can assume that a living monster born of woman may be human. The assumption is endorsed both by the Canon law (c. 748) and the Roman Ritual in the chapter on Baptism. Baptism must be given to such living human monsters, at least conditionally. Therefore, to destroy a monster bom of woman might be murder. As to conserving the life of such a monster, the doctor, nurse and parents must take as much care of it as they would take of any child. If more than ordinary care and skill are required, then they must be employed.

Monsters without heart or without a heart that functions sometimes grow in the womb together with a normal infant. They are born dead and sometimes some hours after the birth of the normal infant. They are not connected by their own cord to the placenta, but to the other infant, so that when the first and normal infant is born and its cord severed, the monster dies in the womb. If, however, the

[1] Frequent exceptions have been made in favour of heart-burial.

doctor or nurse knows that there remains a monster not delivered, it should be baptized conditionally in the womb. .After ejection, it may be dead, but it may not ; so it is again baptized conditionally.

18. Caesarean section.

This *incision made through the womb for the* purpose of extracting a viable infant, not capable of being delivered in the natural way, isjustifiable ifcare is taken to safeguard the lives of mother and infant.

APPENDIX 3

Contagious Diseases

Closely allied to the just treatment of self and others is the obligation of avoiding contagion, as well as that of not infecting others. The diseases of syphilis and gonorrhoea may be mentioned in this context. The former is widespread, and due in many cases, but by no means in all, to illicit sexual intercourse. It is said to yield to continued treatment if taken early in hand in its primary stage. It is easily propagated, is the cause of many serious diseases, reaching a climax in general paralysis of the insane, and is liable to infect the fetus, at least indirectly. Gonorrhoea is much more difficult to eradicate. Both are called venereal diseases, *par excellence,* because their seat is usually the generative organs and because they are most often contracted in sexual intercourse. But an innocent person can be infected and can infect others unconsciously.

A syphilitic does grave injustice by marrying without revealing his condition to the partner, or if already married, by using the rights of marriage without revealing his or her condition to the partner. It is stated on very good authority that once a syphilitic, possibly and probably always a syphilitic, no matter what the treatment or the lack ofclinical symptoms.1 Some, however, would permit a syphilitic to marry a year, some only four years, after the tests have failed to reveal the presence of the infecting organism.

It is maintained that the public should know ofthe prophy-

1 O'xVfalley, *op. cit.f* p. 205.

lactics against venereal diseases, that it should have ready access to them, and be taught how to use them. The knowledge was widely spread during the Great War in the Services, and many men were saved from the dreadful consequences of a single lapse from righteousness. On the other hand, such knowledge has been an incentive to sin, the treatment by the individual amateur was found to be very ineffectual, besides giving a sense of security, not verified in fact, and the setting up of public ablution centres has given offence to the public conscience. There are, in consequence, two opposite schools, which hold very pronounced opinions, the one being accused of condoning vice, the other of murdering innocents. The Catholic moralist cannot, we think, condemn the easy acquisition of valuable knowledge, even if it is abused, since abuse is incidental to most good things.

But in the present state of indifference to morality and religion in this country, it is certain that easy access to prophylactics—and still more instruction to all and sundry how to use them—would be an incentive to sin. The practice of and the propaganda in favour of self-disinfection has led to disease in young persons in large numbers. In Dresden, it was found that the number of boys between the ages of 14 and 18 years of age, coming for treatment to one clinic alone had increased during one year from 14 to 104, and of girls between the same ages, from 60 to 116. Notwithstanding all warnings, a certain number of people will persist in using the disinfectants after having contracted disease, under the delusion that they are making themselves safe, and they will spread the disease. Self-disinfection by females is practically impossible; though prostitutes in Constantinople were minutely instructed by medical men in the methods of self-disinfection, the number of infected women in this group worked out at 560 out of 2,000 each month. The reasons, therefore, for condemning the propaganda in favour of self-disinfection are that it is ineffectual and very likely to lead to an increase of vice.[1]

[1] cf. Letter to *The Times,* Nov. 29, 1921, on Venereal Disease, over the signatures of many eminent physicians.

CHAPTER VII

SIXTH AND NINTH COMMANDMENTS

SECTION 1. The Precepts

The Sixth Commandment is: "Thou shalt not commit adultery" (Exod. 20, 14).

The Ninth Commandment is: "Thou shalt not desire thy neighbour's wife" (Exod. 20, 17).

By the sixth Commandment adultery alone is forbidden explicitly, but all actions which are intended to lead or which naturally lead to it, and all actions contrary to the orderly propagation of the race are implicitly forbidden. By the ninth Commandment all lustful thoughts and desires are forbidden.

SECTION 2. Chastity and Modesty

Both Commandments inculcate the virtue of chastity, and the sixth that of modesty also. Chastity is the moral virtue that controls in the married and altogether excludes in the unmarried all voluntary expression of the sensitive appetite for venereal pleasure. This pleasure is normally associated as well with the full exercise of the generative function as with the movements of the generative organs as they are preparing to function.[1]

Since chastity moderates appetite, it is part of the virtue of temperance. The object about which the virtue is exercised is fleshly concupiscence, this being understood as the tendency towards the pleasure described above. The organs may function fully, as in the sexual act, or incompletely and inchoatively. The pleasure in the former case is termed complete, in the latter, incomplete venereal or sexual pleasure. The virtue regards both the one and the other.

[1] Cappello, *de Matr.*, n. 140, note 2: "Venerea delectatio ea est quæ oritur ex commotione organorum et humorum generationi inservientium, et conjungitur cum pollutione aut distillatione nec non cum actibus utrique proxime praeviis. Non omnes theologi idem sentiunt." Addendum videtur motus non ita proximos esse carnales, et delectationem venercam illos comitari. Aliis verbis, ista delectatio potest adesse in motibus sat remotis.

The rational motive of the virtue of chastity is the reasonableness of controlling sexual appetite in the married and of excluding it in the unmarried, as also of seeking and expressing it in marriage in a rational way, unless the exercise of some higher virtue or more pressing duty justify complete continence, temporary or perpetual, without prejudice to the rights of others. Chastity is a virtue for every state of life: There is a chastity of the married and of the unmarried. Perfect chastity is abstinence from all expression of the sexual appetite, both in the external act and internal thought, desire and complacency. This virtue connotes a great victory over an imperious appetite. Few persons of adult age are immune from the incitement and allurement of this appetite. The practice of the virtue is usually arduous, is highly meritorious, gives man a great mastery over himself in this respect, and is pleasing to God. Divines have good reason, therefore, for assigning a special aureole to virgins, as they do to martyrs and preachers.

Divine Revelation has enlarged the concept of the value and merit of chastity. In the New Dispensation, a divine seal was put on the ideal of Christian chastity by the sinlessness of Christ our Lord and the virginal maternity of His Blessed Mother. By Revelation we are taught that the body is the temple of the Holy Ghost, and that having been redeemed from sin we are the sons of God, and by the reception of the Holy Eucharist we become united to Christ, fount of purity as of all other virtues. The love of chastity does not lead to a hatred of marriage and, therefore, to an impossible ideal for the many, because marriage was instituted by God as well for the allaying of concupiscence as for the procreation of children.[1] We must take man as we find him, and man has a fleshly concupiscence that has a legitimate outlet in marriage. Married persons have been canonized by the Church, though it has ever held, in accordance with the teaching of our Lord, that the state of virginity is the higher and nobler state and absolutely more pleasing to God. Since chastity is a great virtue and so valuable

[1] S. Chrysostom thought that it was instituted much more for the allaying of concupiscence (*de Virg.*, c. 19); cf. Ball.-Pal., VI, n. 432.

an asset to the individual and society—a fact that cannot be denied in view of the appalling troubles, diseases and vices which impurity creates, fosters and multiplies—it will be to our purpose to suggest some means of cultivating and guarding this virtue.

Since ill-health is sometimes an occasion of temptations to unchastity, one obvious physical aid will be the cure of sickness when possible. Other physical aids are: healthy diet in moderation, erring by defect rather than satiety; abstinence from over-indulgence in calorific foods; abstinence from alcoholic drink; the use of clothing that is loose and not too warm; hard bedding; cleanliness of body; moderate exercises that tire but do not fatigue the body; prudent use of baths; occupation at definite hours of the day, for it is common experience that work, exercise and mental occupation are safeguards of continence and purity.

Moral education consists in implicit obedience to wise parents and superiors, who know the dangers to which the young are nowadays exposed; the curbing of curiosity, intemperance and anger; strict moderation in all gratification of the sensitive appetites; the practice of positive mortification, such as going without trivial necessaries or pleasant unnecessaries; the avoidance of sloth and of over-indulgence in sleep; the choice of good companions; the reading of good books; the immediate expulsion of impure phantasies; emulation in generous rivalry in games and studies; avoidance of what are called soft and sentimental friendships with those of the opposite sex at a comparatively early age, since such friendships induce precocious sexuality which is harmful to health and character; disapproval of mixed dances between small boys and girls, and much more, the co-education of the sexes close to the age of puberty, if not earlier; mixed games and camps especially after the age of puberty has been reached; promiscuous and general friendships between the sexes.

Religious education consists in the appreciation of the virtue of chastity, the abhorrence of impurity as sinful, the conviction that virtue is pleasing to God and vice most

displeasing to Him, the cultivation of modesty in all places and at all times, a sincere devotion to one's Angel Guardian the Blessed Virgin, S. Joseph, frequent reception of the Holy Eucharist, prompt resistance to temptations against chastity, however vehement they may be, sorrow for sins even of frailty, gratitude for victory over temptation, horror of the lax standards of worldly persons who proclaim that chastity is impossible.

It was held for a long time that continence was impossible both for the married and for celibates. Doctors lent their authority without much scruple to the widespread conviction that absolute chastity was dangerous to young men ; at the present time there has been a change of opinion in this respect, and it is admitted, not only by medical opinion but by the majority of the enlightened public, that continence has no dangers provided that it is the physical outcome of a moral attitude. The so-called sexual necessity of young people is often produced artificially through the nervous system under constant stimulation of an erotic nature. Under these stimuli there is increased desire ; on the other hand, desire diminishes, and continence therefore becomes easier, if occasions of this sort and their recall by the mind are sedulously avoided. It is, in fact, chastity of the mind which makes possible and renders easier physical chastity, while immoral thoughts or intentions make it difficult or unbearable.

" To confuse continence and chastity is an error. One who is chaste can be continent without much effort and without disorder ; one who is not chaste can be continent only with great difficulty, and if he achieves it, it is often at the expense of his physical and mental health. It is not chastity which is anomalous, it is continence plus impurity ; that is the real danger, and it is there that we must seek for the causes of nervous disorders which have been wrongly ascribed to continence as such."[1]

Modesty, in so far as it is a bulwark of purity, is a special aspect of temperance. It is seen in the external behaviour of one who wishes to preserve himself from the allurements

1 cf. de Guchtenecre, *Judgment on Birth Control,* quoting Dr. Pasteau, *Etude Médicale sur la Chastité chez l'Homme.*

of irrational sexual appetite and the temptations of fleshly concupiscence. It is the decorous inhibition of any act that would induce in oneself or others an incitement to lust.

Since modesty' is a virtue, it is a mean between pruriency and prudishness. Modesty in act is expressed as well by reasonable concealment of those parts of the body whose exposure might be an occasion of lustful desire, as by abstaining from all unnecessary touching of those parts and the parts adjoining them. Modesty of the eyes is expressed by abstaining from all prurient and dangerous curiosity. Modesty of speech consists in the avoidance of all suggestive expressions, as they are called, and much more of all gross expressions in the sexual sphere. Modesty of gait in man is the avoidance of effeminate behaviour, and in women, the avoidance of all attitudes that are bold and daring.

Chastity and modesty are also to be defined by their contraries, impurity and immodesty'. The distinction between these contraries is of great importance, for impurity is always sinful, whereas immodesty may or may not be. It is not, of course, implied that immodesty, as such, is sometimes excused, but that what are usually called immodest acts, conversations, looks and thoughts may be necessary and, therefore, need not be sinful. A patient who reveals to his doctor sexual troubles or diseases when he ought to reveal them does not sin against modesty, but we have to speak of such revelation as conversation about what is immodest or indelicate, though it is not contrary to the virtue of modesty.

SECTION 3. Impurity

1. The Object of Impurity

Impurity is often called luxury (Latin : *luxuria),* but in the present treatment of the subject the word luxury will be avoided, since, in English, it means rich diet or costly dress and has no connotation of impurity.

The sexual appetite is the sensitive appetite for venereal pleasure. The term is used here in that sense alone ; it is not used for the desire of sexual intercourse, for that is

desired as a means of gratifying the appetite for venereal pleasure. Impurity has for its object, as already suggested, venereal pleasure, which may be complete in man by the seminal ejaculation, and in woman by the diffusion of vaginal glandular secretions, especially that of the so-called glands of Bartolini; or it may be incomplete when it does not reach that degree, but still is present in the sexual organs, incipient, when the organs are preparing to proceed to the orgasm, full and vehement, when they are about to exert the orgasm. Impurity is, then, defined as the inordinate appetite for or use of venereal movements, that is, inordinate in respect of the good of the species.

2. Principles concerning the morality of sexual pleasure, solitary or mutual, outside wedlock

All sexual pleasure, outside wedlock, that is directly voluntary is grievously sinful. The term, directly voluntary, implies that this pleasure is intentionally procured or acquiesced in as an erid in itself or as a means to some end. The will is directed towards the pleasure as desirable and to be enjoyed. The will is so directed if the pleasure is deliberately procured and evoked, or if it is deliberately accepted when it has arisen spontaneously. Now this pleasure, as already explained, may be complete or incomplete. Both the one and the other are grievously sinful when directly voluntary.

(a) Complete venereal pleasure that is directly voluntary

Complete venereal pleasure is grievously sinful. That it is so, is evident from the following line of argument.

It is contrary to nature's purpose, and seriously so, if this pleasure is sought or accepted outside legitimate sexual intercourse, for the pleasure is annexed to an act that must be employed socially in legitimate wedlock, and not for the individual's gratification outside wedlock, since the obvious and only purpose in nature's, that is, God's, intention is that this pleasure should be experienced in, and should attract to, that mutual act between man and wife, designed

by nature for the propagation of the race, whether or not the effect ensue. No other purpose for this pleasure can be rationally assigned, and therefore no use of it outside wedlock can be rational. The result, too, is a matter of immense moment. The result, namely, orderly procreation, can be achieved only in marriage, that is, in the indissoluble and stable union of man and woman for the begetting, the rearing and the education, physical, moral and intellectual of offspring. If, by accident, and by reason of extraneous causes, generation cannot result in a given case, owing for example to sterility, it is still obvious from the reasoning given that man and woman outside wedlock could not, without grievous offence against nature, procure or accept this pleasure, for the reasoning is not based on the actual or possible genesis of offspring, but on the inordination of using a pleasure that has no purpose at all outside wedlock. Extrinsic and accidental circumstances cannot change the intrinsic disorder of an act, and make that indifferent which is in itself unnatural. The reasoning is valid also even if, in the case of fornication, the parents would see to the well-being of the offspring, for though this might be secured in some cases, it would certainly not be secured in general, and dubious paternity would lead to neglect of offspring on a large scale. The possession by man of the power of evoking this pleasure can be explained only in reference to woman as wife and vice-versa.[1] It would be the same in the case of vision. If all light were extinguished, there would be no use for the eye. If the eye has no other purpose at all except to see, it is clear that nature, that is, God, endowed man with eyes for that purpose alone. Since, therefore, sexual pleasure has no purpose at all except in reference to the sexual act between man and wife, it would be a perversion of nature for an individual to use that pleasure outside wedlock. Therefore, as directly voluntary sexual pleasure outside wedlock is a perversion of nature in a grave matter, it is clear that this pleasure

[1] S. Paul (1 Cor. 7, 4) : " The wife hath not control of her own body but the husband ; the husband likewise hath not control of his own body, but the wife."

directly procured outside wedlock is a grievous offence against nature and is a grievous sin.

A valid argument may also be derived from consequences, namely, that if it were permissible to procure or accept sexual pleasure outside wedlock, there would be little or no inducement to many men and women to undertake the burdens of married life. Solitary defilements and fornications, as well as other sexual irregularities would take the place of marriage in a vast number of cases, and would, therefore, tend to the destruction of the race and the neglect of the due rearing of offspring. It may be admitted that some love marriages, as they are called, might take place, but the number would be negligible. The same argument is valid against what are called companionate marriages, that is, temporary concubinage for appeasing the sexual urge in young men and women, with the added immoral implication that State instruction should be given to the parties to prevent conception. Both terms of the suggestion are a perversion of nature.

The reasons set out above are ethical. The Moral theologian may add, as further and theological arguments, the following. The unanimous opinion of divines on the subject is a clear indication of the teaching of the Church. There has been no variation in this teaching. The doctrine was crystallized in the condemnation by Pope Innocent XI of the contrary opinions, which maintained that fornication is wrong only because it is forbidden not because it is essentially evil, and that pollution is not forbidden by Natural law. Furthermore, Onan was punished with death because he was guilty of sexual self-defilement, and employed it as a sinful means of evading the Levirate law of raising offspring to his deceased brother (Gen. 38, 9), for death was not the penalty for refusal to obey this law (Deut. 25, 7).

(b) Incomplete venereal pleasure that is directly voluntary

Hitherto, we have treated of complete venereal pleasure outside wedlock, and have proved its grave sinfulness. It is necessary now to prove that incomplete venereal pleasure, directly voluntary, is also grievously sinful.

(1) The ethical argument

Even the smallest degree of incomplete venereal pleasure has reference by its very nature to legitimate sexual intercourse and to that alone. No other purpose can be rationally assigned to it. If, then, such pleasure be procured or accepted with no reference to its only purpose, a serious perversion of nature has taken place, for the purpose of nature, that is, of God, in giving mankind the capability of this pleasure is that man and woman may be attracted to the mutual office of propagating the race. 11 is, therefore, a perversion of nature that man or woman should procure even this incomplete pleasure for their solitary gratification. In the capability of arousing this pleasure, the individual must apprehend, what indeed is the fact, that the capability is his only that he may be subordinated to the species. The power is given for a definite purpose, and for that only ; his subjection to the divine purpose is manifest, for God has given definite capacities to man that a divine plan may be realized.

It must be admitted that the gravity of the smallest degree of this pleasure was not always taught by all writers. S. Alphonsus cites some authors who held that there could be venial matter in directly voluntary incomplete sexual pleasure outside wedlock.1 The Salmanticenses,2 in a lengthy treatment of the subject, give the full weight to the arguments that were alleged in its favour. There appeared at one time to be some extrinsic probability for the milder opinion. Fumo, de Soto, Martinus de Magistris, Ledesma, Araujo, Zanardi, Marchant admitted it. When the matter was further discussed, authors rightly distinguished between venereal pleasure and pleasure that was sensitive but not truly venereal. The distinction was clearly pointed out by Filliucci, Lacroix, Bauny, Escobar, Tamburini. But the question as a fact is whether all incomplete venereal pleasure outside wedlock that is directly voluntary is always a grievous sin ? All authors now hold that it is. For the Moral theologian the discussion is now closed, both on account of the intrinsic

1 *Thiol. Mor.,* lib. 3, n. 415.

2 *di Vitiis,* d. io, n. 265.

reasons for the view and in consequence of unanimous agreement, so that no writer could now venture to call it in question.

(il) The theological argument

Every venereal movement, as such, has an essential relation to the complete conjugal act, that is, to the complete sexual act which is legitimately exercised in marriage, for every venereal movement is the natural inception of and preparation for it. Now all venereal pleasure that is sought outside marriage destroys that relation, and transfers to the good (i.e., the pleasure) of the individual what is designed for the good (i.e., the perpetuation) of the race. This violation of that necessary relation to the race is intrinsically and seriously evil, precisely because it is the inversion of an essential order or relation. The individual who, outside legitimate marriage, seeks or accepts this venereal pleasure for his own satisfaction, is exercising an act as an individual that should be an act on behalf of the race. He is violating that subordination to the race which he should maintain. The relation that a man has to the race, in respect of the permanence of the race, is absolutely necessary and essential to the race. There is an order established between the individual and the race. By every act of seeking or accepting venereal pleasure outside legitimate marriage, that order and that relation are completely destroyed.

It will be obvious that if some necessary and essential relation is wholly destroyed by acts, there is no need to consider degrees in these acts. Each is a grievous inordination. Slight violations of duty in regard to charity, obedience, or justice, leave those virtues substantially intact, but in every use of venereal pleasure outside marriage, there is a complete inversion of an essential and necessary order or relation.[1] The difference between this inordination and that of lying—which is also opposed to the order of

[1] Vermcersch, *de Cast.,* η. 353 ; *Theol. Mor.,* IV, n. 112 ; Merkclbach, *de Cast, el Lux.,* p. 27 ; Wouters, *de Virt. Cast.,* nn. 25, 62.

society—will be obvious, whqn it is remembered that unchastity is subversive of both the essential and necessary order of society, whereas society could persist in spite of lying. Truthfulness does not preserve the human race, but generation of offspring in wedlock does.[1]

The Holy Office (1661) in reply to the question: Is a venial sin possible in the case of solicitation of a penitent by a confessor?—stated that in matters of impurity venial sin is not possible. Popes Clement VIII and Paul V ordered those to be denounced to the Inquisitors of the Faith who held that kissing, embracing and touching for the sake of venereal pleasure are not grievous sins. Pope Alexander VII condemned the proposition which stated that it is probable that a venial sin only is committed by kissing for the sake of the carnal and sensual pleasure that ensues, even though the danger of further consent and of pollution be absent. It appears to follow that there can be some incomplete venereal pleasure that is a grievous sin. Since this must be admitted in view of the condemned opinion, it follows that all incomplete venereal pleasure directly voluntary (outside wedlock) is a grievous sin, for in the moral sphere, this pleasure, of which we speak, is not the less venereal because it is slight. In the case of theft, there can be a greater or a lesser act of injustice, whereas the inordination in the venereal pleasure, of which we speak, is always the same, namely, it is subversive of the good of the race and precisely in the same way.[8]

From what has been stated, two conclusions follow, namely, that it is grievously sinful in the unmarried deliberately to procure or to accept even the smallest degree of true venereal pleasure; secondly, that it is equally sinful to think, say, or do anything with the intention of arousing even the smallest degree of this pleasure.

It may be objected that one cannot know when the smallest degree of such pleasure is present. In default of such consciousness it is clear that formal sin will not be committed, for sin cannot be committed without advertence. It is also

[1] cf. Merkelbach, *de Cast, et Lux.,* p. 27. [8] cf. Wouters, *de Virt. Cast.,* n. 62.

true that the beginnings of such pleasure, if very slight indeed, defy analysis, for they hardly enter within consciousness. Moral principles are, however, not laid down for what is elusive. They are laid down for true human acts. If, in fact, pleasure that is venereal arises, however slightly, and its presence is realized, there then exists matter of grievous sin for the unmarried. If such pleasure has been deliberately provoked or accepted, a grievous sin has been committed, at least materially. The sin will be formal if it is realized to be a grave sin. This fact is expressed by saying that in the matter of venereal pleasure there is no venial or morally slight amount.[1]

It may, however, seem strange that in this matter, so common and alluring to mankind, the point at which grievous sin becomes possible is reached so soon. But, in point of fact, the consequences of indulging in this incomplete venereal pleasure are so fatal to the race, that on rational grounds alone we are forced to conclude that since the effects of it would be so dreadful and inevitable, this abuse of a natural function must be seriously inordinate. The smallest amount of this pleasure is an inducement to indulgence in the fullest amount of it. Here again we must take people as we find them, and what is stated is true of mankind taken in the bulk. If a small amount of deliberate venereal pleasure outside wedlock were permitted, general defilement would ensue, to the grievous harm of the race. No ordinary man or woman could say that they would indulge in the small amount and then desist, for in their own despite they would expose themselves to actual pollution and it would take place. It is, therefore, true to say, and this is the opinion of all divines and is Catholic teaching, that from the first beginnings of venereal pleasure through its progressive development to the complete issue, there is all the time matter of serious inordination and sin, if we speak only of the unmarried.

But it has to be observed that this doctrine deals with

[1] A practically useless opinion is stated by De Moya when he says that in venereal matters, morally and practically, there is no pleasure which is a venial sin, though physically and speculatively there is : cf. Verm., *de Cast.,* n. 352.

objective facts, and it is quite another question whether formal sin is always committed. To determine this in a particular case it is necessary to take into account the moral training of the agent, his habits, his passions, his concupiscence, his good faith and his subjective conscience. But such factors have no bearing on what is true in point of fact. A man with honourable but misguided intentions may be guilty of grave excesses and injustice.

It will be seen, therefore, how important the distinction is between immodesty and impurity strictly so called. The former may be grievous, venial or no sin at all ; the latter, understood in its strict sense, as explained, and in the unmarried, is always a grievous sin.

The subject hitherto treated has been venereal pleasure that is directly voluntary ; but such pleasure may not have been the direct object of the will, either as an end in itself or as a means to some other end. When this pleasure is foreseen as certain or likely to arise from some free action or thought, but is not itself directly willed, it is then willed indirectly or in its cause. It is important to determine to what extent such indirecdy voluntary pleasure is imputable and sinful, and to what extent and under what circumstances the causes that produce it must be avoided or discontinued. That there is good ground for discussing its morality will be evident from two examples. If a doctor, nurse, or student of moral principles, foresees that complete venereal pleasure will certainly result in consequence of the necessary duties which they have to perform, it is obvious that this result may be permitted and its likely insurgence disregarded, no consent being given to it when it does ensue. In such cases there will be no sin at all. If, on the contrary, a youth read an obscene book without any justification whatever, foreseeing from past experience that complete venereal pleasure will arise in him as a consequence, it is obvious that he sins by exposing himself to such a result. On this all are agreed. It is a real inordination against nature to set in motion the causes of pollution without any justification, even if no consent be given to it when it ensues. Consequently, indirectly voluntary venereal pleasure may or

may not be sinful. The point is of considerable importance and principles must be stated as clearly as possible.

A cause is said to have, of its nature, a serious influence in producing venereal pleasure when it generally produces that effect in normally constituted persons.

A cause which sometimes produces this result but rarely in normal persons is said to be a remote or a slight cause in the nature of causes. It will be explained in the section on external modesty, and more fully in the section for the use of confessors, what causes are considered serious, what slight. These causes are the various acts of immodesty. The subject will not be fully treated here in the vernacular. Ordinarily, Catholic training and instinct will help one to discriminate. In doubt, the penitent will ask the confessor. More detailed knowledge is required in the latter, for he may be called upon to teach as well as to admonish his penitents.

A cause that would be serious in most persons might be accidentally slight in the case of one not easily moved to sexual feelings owing to habit or temperament, and vice-versa, a naturally slight cause might have a serious effect in one who is hypersexual.

In judging of the moral imputability of putting a cause that will or may produce venereal pleasure, we are assuming the absence of desire for the pleasure, since that would be a grievous sin in the unmarried, and the absence both of consent and of the proximate danger of it when the pleasure has arisen, since to consent or to expose oneself to the proximate danger of consent would be a grievous sin.

(c) Complete venereal pleasure that is indirectly voluntary

I. Complete venereal pleasure (pollution in man or woman), voluntary in its cause, is a grievous sin when the cause of it, within the sexual sphere, is put without a grave reason that would justify the cause being put, and when at the same time it is such as to have, by its nature, a serious influence in producing the effect.[1] Thus, certain actions

[1] Lchm., I, n. 1029.

would undoubtedly produce, in normal persons complete pollution, and certain other actions, if protracted, would normally produce the same effect. The reason for this principle is that to put a cause of a definite effect, foreseeing the effect to be certain or likely to ensue, and to do so without reason, is implicitly to wish and, indeed, to intend the effect. Such acts must, therefore, be avoided under grave obligation.[1]

2. When there is a good legitimate reason, such as necessity or great utility, for putting or protracting such a cause, the effect is not imputable as a sin, provided that the effect is not directly intended nor consent given to it, nor likely to be given to it, when it ensues. When consent is given oftener than not, the danger of giving consent is proximate; when consent is rarely given, the danger may be considered remote. Thus, doctors, nurses and students may find themselves in circumstances where they are obliged or find it extremely useful to put such causes, with a legitimate intention, and without proximate danger of consent should pollution take place. They may do so and disregard the consequences.[2] The principle has no application to the case of one who, wishing to be rid of vehement venereal sensations, puts a cause in order that pollution may result, for the effect in such a case is intended in itself.

3. When the full effect is foreseen as most likely or certain to arise from curious and dangerous reading, such as the not altogether necessary study of physiology, anatomy and kindred subjects, it is probable that a grievous sin is not committed, for it cannot be said that the effect is wholly willed in its cause, assuming, of course, that the effect is voluntary only in its cause, i.e., foreseen, permitted but not wished, and that when the effect ensues, consent is not given to it. But we have to guard against delusions in such matters.[3]

4. Complete venereal pleasure, not intended but foreseen as likely or even certain to ensue from a given act, is not a grave sin but is probably a venial sin, if it arise from an

[1] Lehm., I, n. 1040, n. 1; S.Alph., lib. 3, n. 484.
[2] Lehm., I,n. 1040, n. 4. [3] Venn., *de Cast.,* n. 378.

unnecessary act, which, in the sexual sphere, has, of its nature, only a slight (remote) influence in producing the effect. It is assumed that no consent is given. The reason for this principle is that the effect is evil in the degree in which the cause is evil.[1]

When a cause, in itself a slight one, is persisted in without sufficient reason, and incomplete venereal pleasure is already present to which consent is not given, there is obviously some danger of the complete pleasure ensuing. Though it is probable that the obligation of desisting at once is not a grave one, nevertheless, it must not be forgotten that to continue may involve the danger of consent.[2]

5. From ordinary actions, not sinful, that are altogether outside the sexual sphere, as, riding, swimming, physical exercises, there may ensue at times complete venereal pleasure. These actions have only an accidental causality in the production of such an effect. Provided there is no desire for the pleasure, or the effect, and no consent to it if it arises, nor any proximate danger of consent, these results are not imputable as sins against chastity, for the cause put is naturally insufficient. But if pollution is imminent and can easily be checked, not to try to check it will be a venial sin.[3]

6. If foreseen, but not intended, complete venereal pleasure ensue from some act outside the sexual sphere that is a grievous sin, such as drunkenness, it is held that a venial sin against chastity is committed, since the effect is foreseen and allowed without any reason[4]; if the act is a venial sin outside the sexual sphere, it is probable that a venial sin against chastity is committed. It is assumed that there is neither desire for nor consent to the effect. The reader will, of course, observe that we are here speaking of indirectly voluntary unchastity, not of that which is directly voluntary. The distinction is very important.

7. Complete venereal pleasure that would be voluntary

1 S. Alph., lib. 3, η. 404 î Lehm., I, η. 1040, η. β·
2 Lehm., I, η. 1030 ; Verm., *de Cast.,* η. 370 J S. Alph., lib. 3, η. 422.
3 Verm., *de Cast.,* η. 370·
4 Lehm., I, π. 1041, η. 2 ; Verm., *de Cast.,* η. 377.

only in its cause has to be prevented from arising under a greater obligation than die pleasure that is incomplete; a more serious reason is required for permitting the former than the latter, both because the former is a greater inordination against nature and the danger of consent is greater.

(d) Summary of conclusions in regard to incomplete venereal pleasure

1. When it is directly voluntary.

Outside wedlock, incomplete venereal pleasure that is directly voluntary, deliberately excited, or accepted when it has arisen, is grievously sinful, however slight its degree.

2. When it is involuntary.

When this pleasure is involuntary both in its cause and in itself it is not sinful.

3. When it is voluntary only in its cause.

(a) If there was a good reason for putting the cause which aroused this pleasure, and it was neither desired nor consented to, no sin is committed.

(Æ) Even if there was not any sufficient reason for putting such a cause, the incomplete venereal pleasure is not grievously imputable, because if, in fact, it has arisen, there was no intention of arousing it, and no danger of consent to it when aroused, two conditions that are here supposed to exist.[1]

(e) The duty of resisting sexual pleasure

When sexual movements are slight they may generally be disregarded, for innumerable trivial causes produce them. Continual apprehension about them and their many causes will serve only to keep the mind on the strain and would inevitably augment their vehemence. Disregard of them will be a sufficient antidote as a rule. In the case of those who are more easily and oftener excited, a more vigorous disregard and displeasure, without mental anxiety, will be necessary. Acceptance of venereal pleasure, even when its cause is non-voluntary, would be a grievous sin. When the movements and concomitant physical pleasure

[1] Gén., I, n. 403.

arc vehement, there is a grave obligation to resist them in some way if there is a proximate danger of consent to them. This can be known only from experience. Positive physical and direct forcible resistance is usually not to be recommended, for thereby the motions are sometimes increased. Indirect resistance is sufficient when the motions do not subside by disregarding them. This indirect resistance may be external, as when one changes position, place or occupation, or inflicts pain on the body. It is internal, when the mind is diverted by spiritual or secular preoccupations, or acts of virtue are elicited, or the determination not to sin is renewed. Usually this internal resistance is sufficient, but the mind must be kept tranquil.

But this positive resistance may be omitted for a just reason, as when it is found that the movements are more easily quietened and more rarely arise, if they are disregarded rather than positively resisted, or if the temptation persists a long time, and it is too great a strain to go on exercising a positive resistance.[1] In this case, as there is a just reason for passivity, one may be sure that divine grace will be granted to help the will not to consent. The reader will, of course, observe that passivity of will is not consent. The text does not imply that passivity means that all resistance to temptation may be given up and sin committed.

In those cases where the movements are due to some voluntary and unnecessary act that is not sinful, resistance consists in removing the cause.

If such movements arise from necessary or useful actions, they need not deter one from acting. Therefore, prayer should not be given up, nor frequent Holy Communion abandoned, merely because improper phantasms appear then most of all to insinuate themselves into the imagination. Persons of a highly sensitive temperament are sometimes beset with these phantasms, or even with bodily venereal motions, in the most prosaic or the most sacred circumstances, or they experience them in thinking of the Saints, of the love of God, of the mystical union in the Sacrament. Their burden is great and they may be considered as subjects

[1] Gén., I, n. 404 ; Noldin, I, n. 329, n. 1.

for medical treatment. The confessor will help them, not so much by sympathizing, as by urging them to be sensible and not to be misled by sentimental feelings. If the phantasms and bodily disturbances persist, these penitents must disregard them ; they may be told not to confess them as sins, not to speak of them, never to fall into pride, but humbly submit to the trial.

SECTION 4. External Sins against Chastity

The natural consummated external sins against chastity are called natural because the sexual function is not perverted but is used in the normal way. These sins are fornication, adultery, incest, rape, abduction. The unnatural consummated sins against chastity are pollution, sodomy and bestiality ; in these, the natural function is perverted and abused.

The unconsummated sins against chastity are those which fall short of the full sexual act and connote incomplete physical venereal pleasure, procured or accepted willingly. Authors sometimes include in this category of unconsummated sins against chastity all external acts against modesty. But since chastity and modesty regard entirely different objects, the latter will be dealt with separately.

SECTION 5. Internal Sins against Chastity

The internal sins against chastity are three ; voluntary sinful immodest phantasms, volitional complacency in represented sins against chastity, and unchaste desires.

1. Thoughts or Phantasms

Immodest thoughts, strictly speaking, are phantasms of immodest objects. They, like immodesty of all kinds, are not, in themselves, sinful, but they are capable of arousing venereal pleasure.[1]

The purely intellectual consideration of unchaste actions, such as the speculative consideration as to what constitutes adultery, fornication or incest, is not sinful. Such purely mental processes must take place in the Law Courts, in the

[1] This statement is explained in a note at the end of the chapter, p. 254.

confessional, and in writing and reading treatises such as the present one. But when this process is joined, as ordinarily it must be joined, with imaginative phantasms of the several sins in their physical aspects, it is possible that the thoughts may arouse sexual pleasure. The morality of entertaining such, phantasms is here considered.

1. Immodest thoughts or phantasms entertained with lustful intent, that is, with the motive of deriving pleasure in the venereal delectation which they do or may arouse, is a grievous sin. Their sinfulness consists both in the intention and in the actual fact of consenting to the pleasure.

2.To neglect to dispel immodest thoughts that arouse only slight sexual feelings, if the thoughts are entertained from levity, curiosity or sloth in putting them away, is a venial sin, provided there is no evil desire and provided no consent is given to the pleasure.

3.Immodest phantasms should indeed be dispelled at once. If, however, they persist, and cannot be dispelled without considerable trouble and anxiety, there is no sin committed so long as no consent is given. Those persons who are the unwilling victims of persistent impure phantasms may be reassured that they do not commit sin. They should cease to be over-anxious, since anxiety keeps the mind on the strain. They should quietly and firmly turn to other thoughts, especially to prayer. In circumstances where these evil phantasms are inevitable, the victim of them should proceed about his work as if the thoughts did not exist. Candid manifestation to a confessor will‘be a great help. At all costs, the victim should never become dejected, for dejection is a snare of the devil.1

4.To excite immodest phantasms from desire of lust is grievously sinful, as also if, from the nature of the phantasm, a person knowingly exposes himself to the proximate danger of consent to venereal pleasure ; otherwise a venial sin will be committed if there is not a sufficient reason for evoking the phantasm. No sin will be committed if there is a sufficient reason for doing so.2. Therefore, the positive

1 Verm., *de Cast.*, η. 367.

3 Verm., *de Cast.*, η. 367, note 2, b.

obligation of rejecting impure and useless phantasms is not a grave one except in so far as the proximate danger of consent to insurgent venereal pleasure is to be removed. The danger will normally be removed by an interior act of dissent once or twice in the same temptation.[1]

5. To entertain such thoughts for a good moral reason is not sinful, even though they may produce venereal pleasure, consent to which is withheld.

6. All immodest thoughts, as such, i.e., if they are not desires nor approval of sin, would be of the same specific moral species, if they all have the one aim and result, namely, to excite venereal pleasure. It is the pleasure alone that is then the ultimate object of the will. The confessor should not ask penitents what the subject of the thought was, apart from desires and complacency, for that is immaterial. The confession of bad thoughts includes, as may be supposed, the confession of intention of deriving pleasure from them, or the actual pleasure taken. The only point to explain or to understand is the gravity of the thoughts. When, how'ever, pollution, if sinful, has taken place, it would have to be confessed as an additional sin ; it is not confessed by confession merely of bad thoughts.

2. Deliberate Complacency

This internal act of the will consists in the volitional approval of some specific sin as represented by the imagination. It has no necessary reference to sexual pleasure aroused. In this, as in all other matters, the sin is the approval of what is sinful.

Deliberate complacency in any sin of impurity is of the same species and gravity as is the sin represented and approved, for the sinful object is the object of the will. Thus, complacency in imagined adultery—prescinding from desire for it—is a grievous sin against chastity and justice both.

This deliberate complacency is not usually concerned with the differentiating circumstances of the sinful object.

1 Verm., *de Cast.,* n. 367, note 3 ; NoIdin, IV, n. 61, r, d.

Thus, complacency in adultery and fornication is usually one and the same specific complacency, for the circumstance of marriage does not usually enter into the object of complacency. If any specific sinful circumstance, as a fact, has entered into the act of complacency, that circumstance would have entered into the specific sinfulness of the act, if it has a specific morality. Thus, complacency in represented adultery, because it is such, contracts the specific sinfulness of adultery. It is, however, reasonable to suppose that such circumstances do not normally enter into the act of complacency. Deliberate complacency can easily shade off into inefficacious desire, which is a different sin. It is right that the confessor should sometimes ask if any desires were fostered, and if they were, what their object was. Similarly, complacency in an obscene object represented differs from the consent to the sexual pleasure aroused. It is also right that a confessor should ask if consent was given to consequences. But it will often be prudent to omit such questions, for these distinctions are not very obvious to ordinary penitents.

3. Evil Desires

These desires have for their object the doing of an evil act. Since the inefficacious desire of doing what is evil does not differ morally from the desire that is efficacious, the distinction need not trouble confessor or penitent.

An unchaste desire is sinful to the same extent and in the same degree as the object desired: "But I say to you, that whosoever shall look on a woman to lust after her hath already committed adultery with her in his heart" (Mt. 5, 28).

Impure desires, as all other evil desires, contract the specific sinfulness of the circumstances of the object, for the object is a concrete one, and the will is drawn to it as it is. Thus, the desire of adultery is worse than the desire of fornication. The confessor may rightly ask what was the object of evil desires, but he should avoid doing so if scandal is likely.

SECTION 6. External Immodesty

1. Custom and Convention

External immodest acts are reducible to looks and touches. Other external acts that arouse sexual pleasure, as immodest conversation, reading and singing, do so indirectly, that is, through the medium of thoughts which they suggest. All Moral theologians have to take into consideration the different parts of the human body in respect of their influence, when touched or exposed to view, in arousing libidinous excitation. The distinction between part and part is reasonable and is endorsed by conventions among all civilized peoples. To those whose business it is to see nature close at hand, one part of the body is very much the same as any other part, so far as they are affected by the sight of or contact with them. But in the case of others, speaking in general, the organs of generation and adjacent parts, when touched or gazed upon, are apt to arouse sexuality, whereas other parts have not the same effect. Nevertheless, they may do so and are calculated to do so if the exposure is excessive and unusual and contrary to the customs and conventions of a given place. The parts of the body whose exposure normally arouses sexuality are termed the unbecoming parts, for they are normally concealed. But customs differ in different countries, so that it would be exaggerated to lay down general rules for all indiscriminately. The face, hands and feet are so completely exposed in nearly every country that the sight of them does not cause any trouble except in the morbid and in perverts for whom general principles are of no avail. What is customary does not affect us. If, therefore, in course of time, the prevailing present custom in this country for women and girls to expose a good deal more of their bodies than was' usual in former times becomes a universal practice, such exposure will cease to trouble men, and it may not be so necessary then, as we believe it now is, to speak of the present amount of exposure as unbecoming, dangerous and immodest. But the tendency of all civilized peoples has been in the direction of external

modesty, so that the extreme fashions now in vogue may be only a temporary' phase and will not have succeeded in breaking down the appreciation of the fact that modesty is woman's best adornment.

2. Immodesty as Object in the Moral Sphere

No act of immodesty, strictly speaking, is, in itself, either morally good or morally evil. Its moral aspect depends on various extrinsic circumstances. But all acts of immodesty have a natural tendency to excite to sexuality owing to human concupiscence. Experience proves that immodesty arouses venereal pleasure or entails the danger of its insurgence, and when it is aroused, there is the possibility of consent to it. Since that possibility may arise, it is precisely that relation which can make immodesty morally evil, when, that is to say, it is morally evil to expose oneself or others needlessly to the danger of the insurgence of sexual pleasure. The virtue of modesty safeguards the virtue of chastity by inclining one to close all avenues to impurity, and immodesty is undoubtedly a broad avenue. When modesty is violated, the way is prepared for impurity. Furthermore, since immodest acts produce normally a certain sensitive—and very often a venereal—gratification, it is very easy, through immodesty, for the judgment to be disturbed, and for one to suppose that what really proceeds from the desire of lust is merely an indifferent act, or a useful one. In reference to others, immodesty done in their presence evinces a tendency to lust and acts as an incitement to it. Immodesty, therefore, has to be avoided, chiefly owing to the danger of unchastity. Where there is no danger of sexual pleasure arising from immodesty, actions contrary to modesty are sins of sensuality, but not sins against chastity.[1]

Solitary acts of immodesty indulged in for the sake of the concomitant or ensuing venereal pleasure do not specifically differ from one another, for their inordination consists in procuring, or wishing to procure, or in accepting that pleasure. How that pleasure was stimulated, whether by this or that particular means, or this and that sense, is

[1] Noldin, *op. cit.*, n. 51.

irrelevant. Confessors will, therefore, check penitents who attempt to describe in detail the means by which they procured the sinful pleasure if it was solitary. It is obvious that acts of immodesty differ specifically from sins of impurity. The latter are not confessed by confessing the former, though a confessor may often legitimately presume that by immodesty an uninstructed penitent means a sin of impurity.

3. Motive in Immodesty

Immodest acts, however slight they may be, that are done from the motive of exciting lust, even though it do not ensue, are grievous sins.

When immodesty is indulged in from curiosity or playfulness, and therefore perfunctorily, it is usually a venial sin.

When bodily exposure or acts are permitted for a sufficient reason, no sin is committed, even should venereal pleasure arise, to which no consent is given. But a grave reason is required for those acts which more readily and normally excite sexual motions, and consequently necessity alone would excuse many actions in this sphere, such as those which have to be done to patients by nurses and doctors.

4. Immodesty differentiated by its Object

Just as adultery, incest, fornication differ specifically and must be severally confessed, so the immodest touching of another is determined in its moral aspect by the circumstances of that other. Thus, the immodest sinful touching of a married woman differs in its moral aspect from the same touching of the unmarried. Sinful immodesty with a female differs from that with a male. But the specific sinfulness must be intended that it may be morally incurred, for it is possible that in many cases the only aim intended is personal venereal gratification without any wish, desire for, or complacency in anything more. But the sin of scandal will always be an added sin, and that of injustice, in sins with married persons.

Immodest gazing at others may be morally differentiated by the kind of person looked at. It would indeed be so if desire of touching or of the consummated act were added. It is held by some authors that difference of sex in this matter constitutes difference of sin; this may be so in some cases, but it is not necessarily so in all, for specific difference of sin would depend on the interior act of desire or complacency.

5. The Circumstance of concomitant Danger.

Immodest acts done without the explicit and direct intention of exciting personal venereal pleasure—for this would be a grievous sin—must be judged, as to their moral aspect, by reference to the danger which they create of arousing venereal movements and pollution. They are to be judged in respect of their power of inciting the will to consent to the effects, where the effect is incomplete pleasure, and of their power to produce actual pollution, a gross inordination. Those immodest actions are, therefore, to be avoided under grave obligation which, of their nature and for a particular individual, can be said to excite to pollution, or proximately and notably to sexual motions, consent to which is likely. Those are to be avoided under at least light obligation which, of their nature and for a particular individual, have only a remote and slight power of doing so. Only the most general statements can be made as to what acts excite to lust notably, and what do so only slightly. Men are of such different complexions in this matter that what is true of one stage of life is not true of another; and custom, moral education, mental training, public opinion, conventions and fashion make an immense difference. Nevertheless, the following considerations will help to a just discrimination. To specify with any degree of plausibility the influence that certain acts have in exciting to sexual movements, we must consider the character of the acts, their circumstances, and the temperament of the agent.

Generally speaking, acts differ in their power of exciting to those movements, for some do so of their nature and

practically universally, and that to a great degree, whilst other acts excite only very slightly. Furthermore, acts that would not of themselves greatly excite will do so if repeated or protracted, and more especially if they are performed with ardour or under the stress of passion. Again, subjective disposition is a deciding factor in the influence of any act to stimulate sexual motions. These three elements will practically decide the sinfulness of immodesty, namely, the quality of the act itself, the circumstances, the disposition of the agent. When, therefore, divines put certain acts into the categories of grievous sins, they are speaking only of what normally happens, and they are taking general experience as their standard. When they say that certain immodest acts are grievous sins, they mean that these should normally be avoided under serious obligation.

6. Immodest Conversation

Immodest conversation or singing with the intention of exciting the hearers to lust is a grievous sin. If, however, the words used are merely suggestive or only slightly objectionable, or if, being obscene, they are spoken or sung jocosely, with no evil intention, the sin is venial. Coarse and detailed description of sexual matters might not greatly excite persons in middle age, but they would do so in the case of the young, and would then be a grave sin of scandal. Merely to overhear obscene conversation is a misfortune, but to listen to it so as to encourage it, or to take delight in it for the sake of the sensual pleasure that it excites, is a grievous sin. To listen from curiosity, as children do and are besmirched, or to laugh at obscene jokes from human respect, and even to add a word, is not *per se* a grievous sin.

The confessor will judge of the gravity of these sins of the tongue with the greatest difficulty. He should never ask penitents to repeat the objectionable words nor even to hint at them, and will check any attempt to do so. The obscenity and filth that are bandied about in shops and factories and wherever men and women congregate at work are most unbecoming to the sacred Tribunal. Such language is so common in most if not in all countries, that

it ceases to have much effect on the hearers. Nevertheless, the very young, going to work with the innocence of their childhood as yet unspoilt, are greatly shocked and distressed. The confessor will very wisely prepare them for these trials, by urging them to take no notice of the scandalous behaviour and conversation of others.

7. Dangerous Reading

The reading of a very obscene book without sufficient reason is usually a grievous sin. If the book must be read officially, or for the purpose of necessary refutation or necessary knowledge or for examination or style, always with permission, no sin is committed by the mere reading. If it is read in spite of the Church's prohibition, but is not likely to cause any sexual disturbance, nor causes any, the sin is one of disobedience, and is a grave one.

The reading of slightly objectionable books out of merely idle curiosity and without evil intention is a venial sin. This is the case with those novels which portray too passionate love. To read such books, not in themselves dangerous in a great degree, with an evil intention, is a grievous sin. In any case, much novel reading is dangerous for the young, as it fills their minds with thoughts on sex, and they fall victims to a not uncommon habit of thinking that sex is the only subject that matters, that sex pervades everything, and that it is the preoccupation of nearly half the race.

The greater the danger to the virtue of chastity the greater must be the justifying reason for reading what are called dangerous books.

8. Nude Objects and Nudism

Ancient statuary of the nude is not usually any incitement to lust. Modern statuary of the nude or of the scarcely veiled, and most of all, photographs of the nude, are much more dangerous. Account must be taken of the object represented, of the mode of representation, of the obvious purpose of it, and the reason for studying the nude. Protracted gazing without any just reason will usually be a grievous sin. The practice of painting and modelling from

the nude may be necessary for purposes of art and science. Where it is customary to paint from the nude, all reasonable precautions should be taken not to allow it to be the occasion of sin for the students. Amongst these reasonable precautions are the veiling of the sexual parts, the avoidance of mixed classes, the checking of obscenity and ribaldry'. If nudities are necessary or customary, a girl should not offer herself as a model, except under stringent conditions that will safeguard her, and only if such occupation is necessary for livelihood, and for a brief time, until she is able to find some other w'ork of a less dangerous nature. Solid models for the study of anatomy and physiology require no defence ; by those who have not to study these subjects professionally, they may be used or not according to the principles applied to the reading of dangerous books.

Sun baths and air baths taken by members of both sexes together and without costumes are fertile sources of grievous sins, and there is no justification for them. Gymnastic exercises of nude males and females together are unnecessary and an offence against modesty. In gymnastic exercises, even where uniforms are worn, special care is to be taken of Christian modesty in young women and girls, which is so gravely impaired by any such kind of exhibition in public.1

9. Films

His Holiness, Pope Pius XI, wrote an Encyclical letter on Films or Motion Pictures, June 29, 1936. His Holiness laid down rules which must regulate our attitude towards the cinema. These rules may be indicated briefly, since the cinema has presented for years and still presents a grave moral problem. These are the rules in summary.

I. The more marvellous the progress of the motion picture art and industry, the more pernicious and deadly has it shown itself to morality and religion and even to the very decencies of human society.

J Encycl. letter of Pope Pius XI on the Christian Education of Youth.

2.Recreation has become a necessity to people who work under the fatiguing conditions of modern industry, but it must be worthy of the rational nature of man and therefore must be morally healthy.

3.Since the cinema is in reality a sort of object lesson which, for good or for evil, teaches the majority of men more effectively than abstract reasoning, it must be elevated to conformity with the aims of a Christian conscience and saved from depraving and demoralizing effects.

4.Everyone knows what damage is done to the soul by bad motion pictures. They are occasions of sin ; they seduce young people along the ways of evil by glorifying the passions ; they show life under a false light ; they destroy pure love, respect for marriage, affection for the family. On the other hand, good motion pictures are capable of exercising a profoundly moral influence on those who see them. In addition to affording recreation, they are able to arouse noble ideals of life, to communicate valuable conceptions, to impart a better knowledge of the history and the beauty of the Fatherland and other countries, or at least to favour understanding among nations, social classes and races, to champion the cause ofjustice, to give new life to the claims of virtue and to contribute positively to the genesis of a just social order in the world.

5. At the very age when the moral sense is being formed, and when the notions and sentiments ofjustice and rectitude, of duty and obligation, and of ideals of life are being developed, the motion picture, with its direct propaganda, assumes a position of commanding influence. It is unfortunate that, in the present state of affairs, this influence is frequently exercised for evil. It is, therefore, one of the supreme necessities of our time to watch and to labour to the end that the motion picture be no longer a school of corruption, but that it be transformed into an effectual instrument for the education and the elevation of mankind.

Pastoral Notes

I. The pastor and confessor experience great difficulty in applying principles to the concrete case. A confessor will

often be left in doubt as to what a penitent means, whilst, on the other hand, he will rightly refrain from asking questions lest he ask too much and give scandal. Penitents have a natural repugnance to being precise in their explanations, and the confessor will not press them. Expressions are used which appear to the confessor very vague, yet to the penitent, with his lack of education and mental precision, may express the facts exactly as they are in his mind. With children below the age of puberty, the confessor will accept the confession as it is made, without troubling about species and without raising the matter of sex, unless the need is very obvious. This, we believe, is very important ; confessors should never harry children, for their sins are usually against modesty not against chastity. In the crowded and mean streets of our cities, children take sex as a plain matter of fact, and are so habituated to what the sheltered child would regard as shocking, that they take little notice of it, much less, indeed, than adults usually suppose. At the age of puberty or a little before, they become conscious of a curiosity which the Catholic child knows in some undefined way to be dangerous. They are then apt to begin to talk with those of their own age about what they know is forbidden by their conscience. They should be urged to keep a guard over their eyes and tongue.

2. The greatest care should be taken by parents that their young children should not be exposed to the danger of immature sexuality. Even the youngest children have a tendency to venereal excitation, and it would be both disgraceful and a grievous sin against chastity and justice to provoke them to it. Some deplorable practices obtain amongst sections of Hindus in view of early child marriages and sexual precocity. Mothers who have regard for the mental balance and physical growth of their children will check all immodesty and will scrutinize the behaviour of the nurses of their children and of their children's playmates. One of long experience has said that it is a delusion to suppose that a child below the age of puberty is a sexless being. The herding together of even tiny children without close supervision means, almost inevitably, that their animal

instincts lead them into indecent play. A judge of the Juvenile Court of Denver stated that nine-tenths of the girls who go wrong do so owing to the inattention of their parents, and that in the case of most prostitutes, the mischief is really done before the age of twelve. Every wayward girl to whom he had talked about'her downfall assured him of that truth.

3. If children appear to be beginning to contract bad habits or to go with bad companions, the confessor will do well to urge most strongly frequent confession and Holy Communion. The consideration which appeals most to young children and especially to the chivalrous boy, is the helplessness of the Divine Infant. A short prayer daily to the Infant Jesus should be the child's shield and refuge. The girl child who is being corrupted should be exhorted to resist her diabolical assailant, and the most effectual resistance is to cry. If she would reveal all to her own mother, if not a worthless one, the remedy would soon be applied; but children often cannot be induced to do so. Such pitiable cases have to be left to the Angels. The victims will later find a home in those children's hospitals where a ruined body is sometimes patched up.

Boys and girls should be urged to go to confession frequently, and to Holy Communion daily, if possible, and should join some sodality where they can meet other good Catholics. The danger to Christian virtue in every city is indeed great. Children are singularly screened from sin if they practise their religious duties, but their nature cannot cope with temptations without the graces of the Sacraments. When they cease to go regularly to Holy Communion, they will cease to attend Mass, and that is the beginning of inevitable relapse. Love of religion is fostered by the practice of Catholic devotions. Therefore, the confessor will encourage these children to have and to practise a great devotion to the Blessed Mother of God and to the Sacred Passion. We believe that, in the early years, devotion to our Blessed Lady has the greatest attraction for children. The crucifix, too, appeals strongly to them. The confessor will never tire of asking them if they have a rosary and if they recite

it, and will urge them to have a crucifix or a picture of it in their room at home. Without some such devotions, boys and girls give up the Sacraments and the Church and join the great army of the indifferent. The confessor who realizes that whereas he leads a sheltered life these weaklings are exposed daily and all day to pagan influences, will leave nothing undone, by prayer, advice and organization, to save these children from becoming early captives to the allurements of sin.

4. A morbid sexuality exists in some persons, due possibly to some factor of heredity, oftener due to early up-bringing, bad habits, environments, and false standards of morality. Under the influence of this tendency, at first slight and such as could be overcome without very great difficulty, turned into other channels and sublimated, the state becomes mainly pathological. Habits acquired in early youth become inveterate and produce the disease which the habit vainly seeks to assuage. The habit is sometimes contracted in childhood through want of cleanliness, or because childish ailments have been neglected, or by the discovery early on of voluptuous sensations that may arise from very ordinary actions. Local irritations in both male and female occasion tactile manipulations, which produce sexual excitement, and if self-restraint is abandoned, a disease ensues. The act of masturbation, even without pollution, often repeated, gives rise to hyperaesthesia of the internal organs to such a degree that the sufferer is forced to seek relief by solitary unnatural acts. The vicious circle is complete, and the disease with its supposed alleviation keeps the mind centred on sexual gratification. Both mind and body are in active alliance. Self-control is then very difficult. Medical treatment will be advisable, and the curative treatment may be long and troublesome. If the state has not become too accentuated, marriage may prove to be a remedy, but in many cases marriage is no remedy at all, and the patient has to suffer for want of an outlet that is never, nor can ever be, given to his excessive sexuality. Though it is easy to exaggerate the consequences of masturbation, those consequences do exist. The confessor will acquaint himself

with a little at least of the literature—often morbid and objectionable—on this subject, and will then be able to have a great sympathy for these sufferers. He will not make the mistake of thinking that exhortations to virtue will avail in curing what is a physical disease. One can sometimes over-emphasize the power of the will over the body, one cannot insist too strongly on the help which a well-regulated bodily regimen can afford the practice of virtue.

The morbid pathological condition described show$ itself sometimes in priapism which, however, may be due to many other causes, and also in satyriasis and nymphomania, terms which express a state of excessive sexual impulse in male and female respectively. Though such cases are fortunately rare, the confessor who lights on the rare case will bestow upon it his most earnest regard and help. But medical advice should be sought in the first instance.

5. Nocturnal emissions are sources of anxiety to the young, who should be plainly told what their attitude to them ought to be. It is stated by doctors that an emission during the night every ten days—perhaps a little oftener—in early manhood before marriage need cause no anxiety, if they do not produce a sense of depression and lassitude.[1] Later in life celibates may experience them monthly, half-yearly, or very seldom. Rigorous care in abstaining from all sexual thoughts, moderate diet at night, light covering, fresh air and exercise, will usually diminish too great frequency. When the emission is spontaneous and involuntary, both in itself and in its cause, it is no sin. When the effect of an occasional emission is felt to be beneficial, it may be desired for the sake of the benefit it gives in relieving congestion and diminishing concupiscence, but it may not, of course, be desired for its own sake or for the concomitant pleasure, and care must be taken that desire for the good effect does not become desire for the thing itself.

A natural, emission in one who is only half-awake, even if

[1] Notandum quod medici loquuntur de naturali emissione, quæ est cum erectione in maribus. De emissionibus inter diem, si frequentes sint, alia est quæstio. Opus est tunc medici ut fiat cessatio.

then consented to, is not a grievous sin, for the mind and will are not fully active. If, whilst it is taking place, it fully arouse the sleeper, it would be a grievous sin to take pleasure in it, or to provoke it still further. In doubt as to sin committed, one must judge by presumptions.

An emission that was voluntary in its cause, the result being foreseen but not intended when the cause was put, is imputable as a grievous sin if the cause was put without sufficient reason and with full advertence, and if the cause, of its own nature, that is, a cause in the sexual sphere, would have a proximate and serious influence in producing the effect; if the influence were remote and slight, a venial sin would be imputable. The sin is committed when the cause is put.

Actions that are in themselves permissible and done for a sufficient reason, even if it is foreseen that they will cause a nocturnal emission, are not sinful; such, for example, are moderate eating and drinking, necessary study, reasonable recreation, theatre going, where the plays are unobjectionable. Emissions arising and foreseen in consequence of sinful .thoughts and desires, obscene reading, sinful conversations, undesirable company-keeping, objectionable dances, plays and shows are imputed as grievous or as light sins against chastity, in proportion as these causes have a proximate and serious, or a remote and slight influence on the foreseen result.

6. As soon as sex ideas, and preoccupation with sex, find their way into consciousness, certain nerve centres are excited, and more blood finds its way to the sex centres of the spinal cord, thus highly sensitizing them. These produce physical effects on the external sex apparatus. There is then increased attention to the sex sphere and the mind is apt to become absorbed. Action and reaction continue to increase the excitation, unless there is some definite distraction of attention. Preoccupation of mind with sex thoughts makes for emphasis of feelings to such a degree that their suppression becomes extremely difficult. But the reaction which takes place in the tissues of the body is not so important as that which takes place in the brain, if

attention continues to be concentrated on sex subjects so exclusively as to prevent diversion of mind from taking place.

To explain this supersensitiveness of parts of the body to which concentrated attention is paid, Ramon y Cajal formulated what he termed the law of avalanche. This means that a disturbance, at first localized, is diffused over a great many of the cells of the brain if attention is focused upon it. Consequently, it is easy to understand how sex feelings get beyond control if the original stimulus is fostered rather than suppressed. When sex feelings are deliberately provoked by reading about sexual incidents or in any other way, and if the attention becomes concentrated upon them, sex excitement may carry a man away, so that ordinary motives will not control him. Persons who permit themselves to become addicted to sex thoughts act thereby on their own sex sphere and increase its sensitivity and irritability, so as to make it almost impossible for them to check their sex impulses. Before long, a slight impulse will be sufficient to produce a great effect. Obsession with sex becomes habitual, and repression becomes so difficult that the struggle is given up. On the other hand, when sex excitement is absent to as great an extent as possible during early years, and is controlled—as Catholics are taught to control it—during adolescence, continence becomes not very difficult; at least it may be maintained without the necessity for more than comparatively easy repressive measures in most cases.

For proper sexual conduct, therefore, it is ever so much more important to avoid sex excitements of various kinds than to have any amount of information given on sex. Young people must be helped to avoid these sex incitements. Avoidance of stimulation of sexual impulses much more than information will help men and women to live their lives properly. In recent years, sex has been positively obtruded on the minds of young and middle-aged, by plays, novels of a shameless character, by cinemas, the more abandoned conduct of girls enjoying a newly-won freedom, by scanty dress and many other factors. There is no doubt whatever that the young have been introduced to the realm of sex

prematurely and rather forcibly. If the boys at school, where large numbers of them are associated together without the wholesome inhibiting influence of family life, found it difficult formerly to keep a check on their sexual impulses, they must now find the task doubly hard.[1]

[1] The above is taken in substance from *Sex Instruction* by Dr. James J. Walsh, in the *Homiletic and Pastoral Review*, June, 1930. Other articles by the same writer have appeared in previous issues. The contribution to this pressing question is instructive and timely.

SECTIO 7. De Peccatis Externis contra Castitatem

Peccari potest externe contra castitatem quando voluntas ita suo imperio membra movet, ut eo modo agant quo functio gencrativa contra rectam rationem exercetur. Quum vero organa generationis ad id tantum inserviant ut rectum generationis ordinem expleant, manifestum est peccata adesse quando ille ordo per actum venereum turbatur. Jamvero, organa generationis possunt eorum actum naturalem complete per seminis effusionem in maribus, per humoris vaginalis effusionem in feminis exercere sive juxta sive contra naturam. Actio fit juxta naturam, physice loquendo, sive quando ex actione conceptio per se sequi potest, sive quando conceptio non positive in ipso agendi modo impeditur. Actio generativa fit contra naturam, physice loquendo, quando in ipsa actione conceptio prorsus positive physice impeditur, ut in pollutione, in usu instrumentorum quæ conceptionem impediunt, vel quando ipsa actio est innaturalis, ut in accessu ad eundem sexum vel vas indebitum vel diversam speciem.

Peccata juxta naturam sunt fornicatio, adulterium, incestus, stuprum, raptus. Peccata contra naturam sunt pollutio, sodomia, bestialitas. Quum vero omnia haec peccata specifice moraliter inter se differant, nam diversam specificam inordinationem singula important, confitenda sunt juxta speciem infimam moralem, et ideo necesse est eorum species morales singulae a confessariis et a pœnitentibus probe intelligantur.

1. De Peccatis juxta Naturam

1. Fornicatio

Fornicatio est completa et vera copula extraconjugalis, mutuo consensu facta, seu ea copula quae exercetur extra legitimum vinculum matrimoniale. In definitione supponitur copula in qua fit seminis effusio a parte viri. Si copula fit sine tali effusione, nam feminae effusio nil ad rem facit ratione hujus peccati, adest tactus impudicus cum attentata fornicatione. Si vero effusio seminis voluntarie fit post

abruptionem copulæ, adest pejus peccatum, *scii.,* onanismus. Caute interrogandi fornicarii de conceptione impedita; interrogari tamen possunt, quum hodie tam late spargatur hæc praxis nefanda, ut in multis supponi possit.

Specifica malitia hujus peccati, *scii.,* fornicationis in eo est sita quod actus luxuriæ contra ordinem naturæ exercetur, eo quod hoc peccatum per se connotât unionem instabilem parentum et consequenter ducit ad incuriam prolis circa educationem physicam, moralem et intellectualem, qua de re debitæ humani generis propagationi opponitur. Fornicatio nil aliud est quam vagus concubitus. Actus fornicationis non differt specie ab actu meretricii. Argumentum theologicum contra hoc peccatum hauritur ex epistolis S. Pauli (1 Cor., 6, 9 ; Ephes. 5, 5 ; Gal. 5, 19-21), ubi fornicarii enumerantur inter eos qui a regno Dei excluduntur. Quod Apostolus ibi loquitur de vel unico fornicationis actu inde manifestum videtur quod perspici nequit cur habitualis fornicatio intellegi debeat, nam numerus peccatorum speciem non constituit. Insuper, Pp. Innocentius XI sententiam damnavit eorum qui docebant istud peccatum malum esse quia prohibitum. Unde clarum est esse prohibitum quia est intrinsece malum, et quidem graviter ob rationes allatas. Meretricium est extirpandum publica auctoritate. Quod si hoc fieri nequeat, coercendum est inter limites, ubi non potest esse honestis civibus scandalosum et molestum. Si quando tolerari videatur, notandum est tolerantiam non esse approbationem.

2. Adulterium

Adulterium est copula inter virum et feminam, quorum saltem alterutra persona est conjugata. Hoc peccatum est contra castitatem et justitiam. Immo, omnia peccata externa luxuriæ etiam solitaria in conjugatis injustitiæ speciem contra compartem contrahunt. Si utraque persona peccans est conjugata, peccatur dupliciter contra justitiam, nam etsi unico actu peccetur non ideo est unica malitia, sed et jus propriæ compartis violatur et jus alienæ compartis violatur cooperando in actu injustitiæ. Jure ergo quærere potest confessarius utrum poenitens sit conjugatus atque

utrum altera persona cum qua peccatum commissum fuerit sit conjugata.

Prætcrca, conjux fovendo desideria copulæ cum aliena conjuge peccat interne contra jus ; non vero ita peccat delectationes venereas incompletas in se excitando. Insuper, verum adulterium committitur etsi alter conjux consentiat in peccatum sui conjugis. Aliqui dicunt non tunc peccari contra justitiam. At vero negatur compartem posse juri suo cedere, nam jura conjugalia sunt inalienabilia. S. Paulus (Rom. 7, 3) vocavit uxorem adulteram quæ viro suo vivente fuit cum alio viro, et Pp. Innocentius XI damnavit sententiam " copula cum conjugata, consentiente marito, non est adulterium."

3. Incestus

Incestus est copula carnalis et perfecta inter illos consanguineos vel affines qui, sive jure naturali matrimonium mutuo inire prohibentur, sive ab ecclesia prohibentur sine dispensatione matrimonium inire. Hæc prohibitio extenditur inter consanguineos in linea directa indefinite ; in linea collaterali ad tertium gradum inclusive. Sic, in schemate :

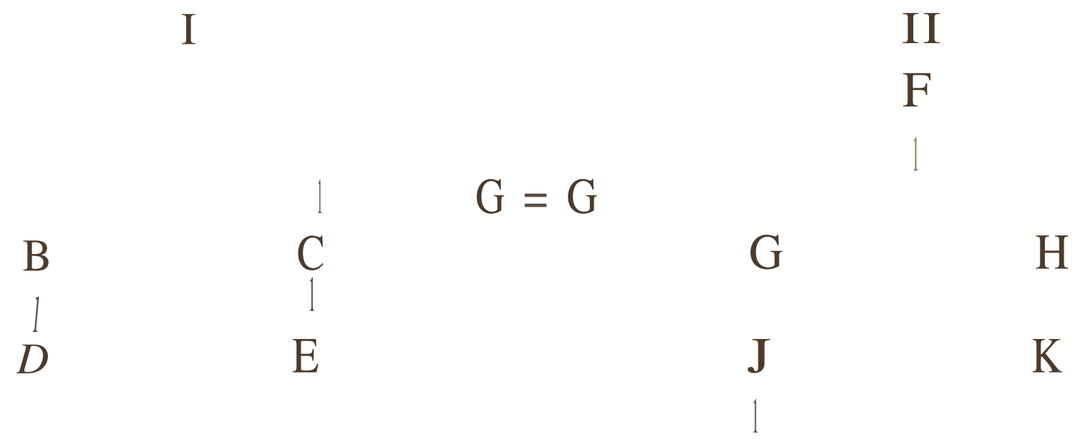
H J

In hoc schemate prohibetur matrimonium inter personas quæ hic representantur litteris A usque ad H aut J, quia omnes sunt in linea recta.

Præterea, prohibetur matrimonium inter, v.g., D et vel E vel G vel **J** ; inter F et vel E vel G vel **J** ; inter H et vel E vel G vel **J**, nam sunt intra tertium gradum consanguinitatis. Gradus noscitur per numerum generationum ad

communem stipitem (parentem). Ideo copula carnalis inter ullos hosce est incestus.

Inter affines, seu conjunctos per matrimonium, matrimonii prohibitio extenditur in linea recta indefinite, et in linea collaterali ad secundum gradum inclusive. Sic, in schemate :



In schemate representantur duae familiae diversae, I, IL Unde, matrimonio contracto inter C et G, copula carnalis inter C et ullum ascendentem vel descendentem indefinite respectu G esset incestus. Praeterea copula carnalis inter G et vel H vel K esset incestus ; a pari idem dicendum est respectu G Copulam habentis cum consanguineis C in linea recta vel collaterali. Malitia hujus peccati est contra castitatem et pietatem. Haec altera virtus est reverentia specialis inter filios et parentes, et a pari, inter omnes consanguineos et affines.

Omnis incestus est probabiliter ejusdem speciei, ideo major propinquitas non est necessario confitenda. Insuper omnis tactus lùxuriosus inter tales habet malitiam incestus.

Post dispensationem obtentam ad matrimonium ineundum inter consanguineos vel affines, peccata luxuriae inter tales dispensatos non sunt incestus.

Peccata luxuriae cum persona spiritualiter conjuncta ratione baptismi vel confirmationis, non induunt speciem incestus, at habent speciem contra specialem reverentiam debitam, eruntque gravia peccata sub hac ratione si cognatio dirimat matrimonium. Cognatio legalis incestus malitiam non gignit.

4. Stuprum (rape)

Stuprum est copula carnalis cum femina invita, sive per vim, physicam vel moralem, sive per dolum obtentam.

Hoc peccatum est contra castitatem et justitiam, nec refert utrum mulier fuerit virgo intacta necne. In jure canonico stuprum intelligitur simplex (illicita virginis defloratio) vel violentum (mulieris honestae oppressio), ut in cc. 2357, 2359. Virginitas in hoc contextu intelligitur mere physica, *scii.*, ubi claustrum virginale nondum apertum est per peccatum. Mulier oppressa resistere tenetur, tum interne per displicentiam, tum externe per vim, nisi vis sit prorsus inutilis. At mülier invita raro opprimi potest, si conscia.

5. Raptus (abduction)

Raptus est violenta abductio de loco tuto cujusvis personae sive maris sive feminae, libidinis excercendae causa, etsi libidine non expleta. Violentia moralis sufficit, et quidem vel contra ipsam personam raptam vel ejus parentes vel tutores. Peccatum est externe contra justitiam, et saltem interne contra castitatem. Prout raptus constituit impedimentum matrimonii respicit tantum raptum mulieris vel ejus detentionem in quolibet loco intuitu matrimonii (c. 1074) ; sponsa etiam est capax quæ rapiatur.

Raptus plectitur poenis injure (c. 2353), et tunc respicit etiam feminam minoris aetatis consentientem, insciis vel contradicentibus ejus parentibus vel tutoribus ; respicit etiam impuberes alterutrius sexus (c. 2354) ; rapiens vero sit mas non femina. Seductio (seduction) non est abductio, utpote cum mulieris consensu facta.

2. De Peccatis contra Naturam

1. Pollutio

Pollutio proprie definitur actus completus venereus sine concubitu, sive naturali in copula sive innaturali in sodomia et bestialitate. Hic et in decursu hujus tractatus vox pollutio adhibetur indiscriminatim, sive prout supra definitur, *scii.*, ut peccatum, sive prout significat ejaculationem seminalem in viris, vaginalem in feminis. In priore sensu semper intelligitur formaliter, ut definitur ; in altero sensu, semper intelligitur mere materialiter, ut physica effusio. Legenti

facile patebit in quonam sensu vox usurpetur. Definitio pollutionis prout hic proponitur differt a communi definitione auctorum antiquorum. S. Thomas satis innuit rationem formalem pollutionis ut peccati, *scii.*, usum inordinatum venereorum.[1] Definitio data magis recentioribus auctoribus placet.[3]

Igitur pollutio ut peccatum luxuriae non est delectatio venerea satiativa extra concubitum, nam delectatio sequitur operationem, et delectatio non est mala nisi ipse actus est malus. Neque est frustranea emissio seminis extra copulam, nam ejus malitia, ut peccatum, non consistit in jactura seminis, nam quantum ad hoc, deperditur semen in sterilibus et in prægnantibus, quibus tamen copula maritalis permittitur. Hinc malitia pollutionis consistit in usu inordinato actus venerei completi contra bonum speciei.[3] Ideo, quatenus definitur supra, pollutio adesse potest in mulieribus non minus quam in viris ; in juvenibus et senibus, quia sunt capaces copulae et possunt uti organis genitalibus, ut sic, *scii.*, cum erectione et humoris etsi non prolifici effusione ; in impuberibus, qui semen nondum habent, dummodo organis genitalibus uti possunt cum erectione et completa effusione ; in iis qui vasectomiam passi sunt, etsi verum semen post aliquod tempus emittere non possunt ; in eunuchis aetate adulta castratis si capaces manent erectionis et copulae ; non vero in parvulis qui non possunt producere plenam erectionem nec perficere copulam, etsi aliquam liquorem prostaticum et urethralem emittere possunt.

Pollutio non est distillatio quæ potius est infertilis secretio urethrae et prostatae, ad id a natura destinata ut elementa acida destruat forte in urethrae inventa veris spermatozois nociva, quae sunt maris elementa ad generationem necessaria et quandoque uxori proficua. Tamen, distillatio conjungi potest cum delectatione venerea incompleta, nam dum fit distillatio, praesertim copiosa, organa ad functionem generativam sese parant. Pollutio insuper differt in feminis a

1 5., 2. 2, q. 153, a. 3, *c.*

« Verm., *de Cast.,* n. 323 ; Mcrkelbach, *Quast. de Cast, et Lux.,* p. 46 ; Wouters, *de Viri. Cast.,* n. 50.

* S. Th., *de Malo,* q. 15, a. 1, *c;* a. 2, *c.*

menstruatione, uteri purgatione mucosa, quæ singulis mensibus ab ætate 15 ad 45 annos et amplius naturaliter fit, extra tempus prægnationis, cum tamen aliqua variatione.

Pollutionis malitia consistit in inordinato usu Venereorum eo quod est actus functionis quæ a natura ad actum mutuum inter virum et feminam in matrimonio destinatur. Ideo talis usus est directe contra ordinem naturæ. Quisque actus pollutionis est grave peccatum contra naturam. S. Paulus (1 Cor. 6, 10) hoc peccatum enumerat cum adulterio et sodomia, tanquam peccatum quod excludit illos qui illud committunt a regno Dei. Pp. Innocentius XI damnavit eorum sententiam qui pollutionem non esse prohibitam lege naturæ docebant. Quum directe voluntaria pollutio sit grave peccatum, non permittitur ne quidem ad sanitatem recuperandam, nec ad dolorem leniendum, nec ad tentationes carnis sopiendas aut extinguendas, nec ob ullam aliam rationem (ut, v.g., ad morbum detegendum et curandum ; S.O., Aug. 2, 1929),[1] neque licet illi consensum dare etsi naturaliter orta fuerit ejaculatio, nec licet illam jam inceptam ullo actu positivo consummando absolvere. At vero, passive se habere dum ejaculatio fit non est grave peccatum si nullus detur consensus nec sit proximum periculum voluptati annexæ consensum dandi, nec datur gravis obligatio eam cohibendi dum fit, nec dum imminet, dummodo ne sit periculum proximum consensus. Non praetereundum est quod violenta vis physica sanitati et nervis nocet. Qualem vero cohibitionem, saltem indirectam, adhiberi debeat, jam dictum est supra.

Pollutio est involuntaria et in se et in sua causa si sponte orta fuerit sine ulla advertentia ad causam, sine ullo desiderio præeunte et sine consensu concomitante. Est vero directe voluntaria si directe procuretur, sive physice sive psychice, vel si sponte exorta, grata acceptaque habeatur. Est voluntaria in sua causa (alias vocata indirecte voluntaria) si non intenditur ut procedat ex causa aliqua posita, sed praevidetur secutura tanquam illius causæ effectus.

[1] Si pro justa causa, v.g., sterilitatis vel morbi, medicus vult mariti semen examinare, illi suggerat extrudere in vas aliquod reliquias seminis quæ post copulam licitam in urethra manent, secluso motu sexuali.

Pollutio voluntaria in sua causa imputatur ut grave peccatum in causa si provenit ex causa quod est grave peccatum voluntarium in genere luxuriæ aut impudicitiae ; imputatur ut leve peccatum in causa si provenit ex causa levi in genere impudicitiae (non dicitur in genere luxuriae, nam non datur leve peccatum in luxuriae causis si ipsæ causæ sunt luxuriae peccata) ; non est grave peccatum in causa si provenit ex causa extra genus luxuriæ et impudicitiæ ; nullum est peccatum si datur justa causa actionem ponendi ex qua sequetur pollutio ; at semper supponuntur abesse intentio et consensus. Verum, ut jam dictum est, probabile videtur, saltem extrinsece, pollutionem voluntariam in causa quæ provenit ex causa extra genus luxuriæ quod ipsum est grave peccatum, ut perfecta ebrietas, esse veniale peccatum contra castitatem quia sine causa rationabili permittere pollutionem videtur esse inordinatum.

In iis qui ob temperamentum vel naturam physicam vel morbum vel aliquid hujusmodi pollutiones frequenter patiuntur, et quidem facile, propter actiones quæ sunt in se honestæ vel indifferentes, ut equitatio, natatio, honesta confabulatio, quaeque in genere et ut in pluribus nullum vel leve influxum haberent in effectum, utpote extra genus impudicitiae, nulla datur obligatio a talibus actionibus abstinendi, dummodo ne sit periculum proximum consensus in effectum. Si vero datur periculum proximum consensus, abstinere sub gravi tenentur, vel istud periculum remotum vel nullum reddere. Si est periculum remotum consentiendi, tenentur sub levi ; ideo data justa causa ponendi tales actus cum remoto periculo agere licet. Si vero iidem pollutiones experiuntur quibus consensus non datur, propter actiones venialiter peccaminosas in genere impudicitiæ, neque agendi ullam causam justam habent, tenentur ab illis actionibus abstinere sub levi. Ratio est quod effectus est peccaminosus in quantum causa est peccaminosa, nec effectus debet dijudicari ex subjectivo agentis temperamento. Hoc principium statuitur respectu causæ ponendæ, nam semper supponitur consensus in effectum secutum deesse, nam consensus in pollutionem ortam semper esset in casu grave peccatum, quia tunc ipsa pollutio esset in se et propter se grata

acceptaque. Si vero ex experientia constat pollutionem fere semper oriri ex causa levi in genere impudicitiae, nulla data sufficienti ratione agendi, quidquid verum sit theoretice loquendo, in praxi consensus magnum periculum vix aberit.

In pollutionis causa ponenda, indirecte quidem, adest in genere duplex periculum, *scii.*, periculum pollutionis ipsius et periculum delectationis captandae. Consensus in utrumlibet est grave peccatum, at ipsa pollutio physica non semper est grave peccatum, nam poterat esse justa causa actionem ponendi ex qua, praeter intentionem, secuta est pollutio. Discrimen est in eo quod effectus, nempe pollutio, non potest semper reprimi, dum e contra voluntas est semper sui consensus magistra. Manifestum est ergo majorem agendi rationem requiri ubi adest consensus periculum, quam ubi adest pollutionis periculum. Ideo, semper adest gravior obligatio ab actibus abstinendi unde oriri potest periculum consensus—et obligatio evitandi proximum periculum est gravissima—quam ab actibus unde oriri potest periculum proximum materialis pollutionis. In casu juvenis qui equitat, qui adit theatra honesta, qui cum puellis honestis saltat, si de facto ille venereæ delectationi pollutionis ortæ tanquam sequelæ harum occasionum honestarum fere semper consentit, gravius tenebitur tales occasiones evitare quam si nunquam vel raro consensum præstiterit. Immo, si suum consensum cohibere nolit, vel saltem illum cohibere serio conari, eas occasiones gravis peccati prorsus derelinquere tenetur, dum e contra, si consensum plerumque cohibeat, hasce occasiones sub gravi fugere non tenetur, nam sunt, ut supponitur, honestæ recreationes, et in multis casibus necessariae. Ita res se habet in vita quotidiana. Illi actus qui, in se spectati, non sunt pollutionis graves causæ non sunt sub gravi evitandi, si consensus non datur. Si tamen consensus datur, media adhibenda sunt aut ad consensum cohibendum, aut ad occasiones derelinquendas. Si actus in se et ex natura sua habent immediatam et proximam vim causalitatis respectu pollutionis, gravis ratio requiritur ut licite agatur, qualis esset necessitas aut magna utilitas, sive propria sive aliena. Sed etsi effectus ob illam

gravem rationem permitti posset, periculum proximum consensus in delectationem semper excludendum est sub gravi obligatione. Quam absurde dicatur delectationem posse licite captari e pollutione quæ naturaliter suboritur vel quæ involuntarie permittitur nemo non videt.

Si actus, in se et ex natura sua, habet tantum remotum influxum causalem respectu pollutionis, quaelibet ratio honesta actum cohonestabit. Hinc, saltatio honesta, ludus rationabilis, moderata comestio et potatio, oscula et amplexus juxta morem patriae inter sponsos et amicos, permittuntur, etsi sequatur pollutio, prævjsa, permissa, sed nullo modo intenta, nec dum peragitur habita ut grata et accepta.

2. Sodomia

Sodomia est concubitus usque ad pollutionem inter personas ejusdem sexus per aliquam conjunctionem corporum. Nil refert utrum in vas indebitum fiat penetratio an in aliam quandam corporis partem, nam in omni casu supponitur concubitus contra naturam. Distinguitur ergo hoc peccatum a tactus turpis peccato cum pollutione, nam in hoc fertur affectus in pollutionem, in illo, in concubitum innaturalem. Nec refert quis fuerit agens, quis patiens, nam species peccati eadem est. Utrumque peccatum confitendum, *scii.,* et sodomia in affectu et pollutio, seu sodomia consummata.

Ubi agitur de poenis canonicis vel de reservatione, hoc peccatum est stricto sensu intelligendum, nempe, maris concubitus cum mare cum penetratione vasis posteri cum seminatione ibi facta.

Perfecta sodomia habetur duplex, *scii.,* concubitus maris cum mare et feminæ cum femina. Imperfecta vero, in concubitu cum persona diversi sexus in vase innaturali. Utraque species potest esse consummata vel non. Essentia sodomiæ consistit in affectu ad eundem sexum. Hoc peccatum est gravissimum, id quod patet ex eo quod est maxime contra naturam, et ex poenis gravissimis in jure antiquo et ab ipso Deo ob illud inflictis, et ex verbis S. Pauli (Rom. i, 26-28).

3. Bestlalitas

Bestialitas est concubitus hominis cum bestia. Malitia hujus peccati consistit in affectu ad speciem diversam. Nil refert quomodo concubitus fiat, sive in vase naturali bestiae, sive in alia corporis parte, sive cum bestia masculina sive cum femina, dummodo affectus ad speciem diversam feratur. Si quando reservetur hoc peccatum, intelligitur perfecta bestialitas, *scii.,* vera copula cum bestia, cum effusione seminis in maribus, fluxu venereo in feminis. Hoc peccatum est omnium luxuriae pessimum nam naturali ordini maxime adversatur. Jure antiquo poena erat mors (Exod. 22, 19 ; Levit. 20, 15).

Notanda

1. Necrophilia, nefandum crimen, est perversio quaedam sexualis, qua vir cum cadavere se polluit. Inest huic peccato affectus sive ad fornicationem, sive ad sodomiam.

Inter tactus maxime impudicos reponitur irrumatio, oris alieni abusus ad pollutionem provocandam. Inest in illo peccato scandalum et pollutio, ad minus attentata, forte etiam affectus ad fornicationem vel sodomiam.

2.Perversio appetitus sexualis in iis invenitur qui modis insolitis extra omnem ordinem naturæ in se libidinem excitare conantur. Hæc perversio oriri potest ex quadam dispositione nativa inde a teneris annis manifestata, vel ex peccatis luxuriæ repetitis contra naturam, ita ut appetitus hebetior factus sit quam qui per stimulos ordinarios excitari possit. Inter has perversiones aliquae enumerantur :

(a) Sadismus exercetur quando delectatio sexualis excitatur poenas in alios infligendo, ut per flagellationes, punctiones, vel ipsam mortem. Invenitur hæc perversio in viris, raro in feminis.

(ȯ) Masochismus exercetur quando delectatio sexualis excitatur poenas et dolores ab aliis inflictos patiendo. Ipse dolor exquisitam delectationem excitat. Invenitur in feminis, saepius quam in viris.

(c) Fetischismus exercetur ubi adest singularis quaedam appetentia sexualis erga aliquam alieni corporis partem

indifferentem, ut sunt, os, manus, pes, collum, capilli, vel erga vestes alienas, vel etiam odorem.

(d) Aspectus furtivus rerum aut actionum sexualium exercetur ad libidinem provocandam.

(g) Exhibitio proprii corporis nudi ad excitandam propriam delectationem veneream inter perversiones enumeratur. Invenitur hæc perversio in senibus.

(f) Contraria sexualitas, *scii.*, sexualis attractio ad eundem sexum (homo-sexualitas) et in viris et in feminis invenitur. Si hæc perversio a viris in pueros fertur, vocatur vitium Græcum, seu pæderastia ; si vero a feminis in feminas fertur, vocatur amor Lesbicus seu Sapphicus. Utraque perversio in sodomiam et pollutionem tendit.

Tales perversiones raro inveniuntur in iis qui officia religiosa exercere solent. At vero, si quando vel inceptionem harum perversionum in pœnitente suspicetur confessarius, prudenter eum deterrebit ab omni occasione peccandi, quum vitium crescat eundo. Præsertim eum monebit ne phantasmatibus partium sexualium corporis, cruciatuum martyrum, flagellationum puerorum, aspectibus statuae vel picturae nudae, lectioni pravae indulgeat. Mitius tamen tales poenitentes judicabit confessarius, utpote quadam prava corporis dispositione maxime oneratos.

SECTIO 8. De Actibus Impudicitiae in Specie

1. De Tactibus

1. Tactus in proprio corpore non sunt peccaminosi si necessarii aut valde utiles, ne quidem si forte veneream delectationem et pollutionem excitent, quibus consensus non datur, seclusa etiam prava intentione motus excitandi. De pruritu abigendo infra dicetur.

2. Tactus proprii corporis verendorum ex curiositate vel petulantia et breviter sine prava intentione excitandi motus sunt peccata venialia, secluso periculo proximo consensus in delectationem, si qua forte oriatur, et secluso gravi scandalo aliorum. Si vero protrahantur sine causa et concomitante delectatione venerea sunt gravia peccata. Flagellationes pcenitentiales possunt in quibusdam esse

libidinis incitamento, et tunc melius jejunia et abstinentiae substituuntur, quae libidinem potius sopiunt quam excitant.

3. Tactus nudi corporis alieni in partibus obscœnis sine gravi causa sunt gravia peccata, nisi fiant breviter vel ex petulantia vel joco, et sine prava intentione libidinis excitandae. Causae justæ adsunt in medicis et iis qui aegrotis inserviunt, ut patet. Idem dicendum est de tactibus supra vestes, certo si diuturne et morose exerceantur.

Facilius peccatur ab iis qui sensualem—non venereum—affectum fovent, ut nupturientes.

Pueri et puellae, quibusdam praecocibus exceptis, non ita facile moventur ad libidinem si sunt infra pubertatem, et ideo non tam facile graviter peccant per tactus impudicos, seclusa prava intentione. Tamen a praxi prava vehementer dissuadendi sunt, nam per tales tactus ingeritur habitus pravus et fient pueri sexualiter præcoces, id quod in puerili ætate morum et sanitatis nocumento maximo est.

4. Partes quæ dicuntur minus honestae, ut sunt feminae ubera et pectus, intime connectuntur cum partibus sexualibus quoad reflexas sensationes. Hasce partes minus honestas morose tangere libidinem excitat et in femina et in tangente. Sub gravi a tali tactu moroso a solutis abstinendum est.

5. Tactus alieni corporis in partibus minus honestis, i.e., non obscœnis, breviter et sine prava intentione, sunt per se venialia peccata. In necessitate vero aut magna utilitate non sunt peccata.

6. Qui tangit bestiam in partibus sexualibus obiter et ex curiositate leviter peccat; si cum affectu libidinoso, graviter. Qui excitat bestiam ad pollutionem verisimilius sese exponit deliberate propriæ delectationi, de quo casu principia antea statuta applicanda sunt. In necessitate animalia conjungendi generationis causa, per se nullum est peccatum. In bestiarum tactibus non necessariis non supponendus affectus ad bestialitatem; immo talis affectus generarim abest.

7. Oscula consueta juxta morem patriæ, inter juvenes utriusque sexus, in pignus amoris honesti, amicitiae, honoris, vel inter consanguineos, non sunt peccata, etsi delectatio praevisa et non volita suboriatur, cui consensus non datur,

nam tales causæ censentur honestae et quadamtenus necessariae. Oscula vero non necessaria mutuo data ex joco, vel ex levitate, vel ob sensualem—non venereum—affectum sunt sæpc peccata venialia, quia sunt causæ leves, semper exclusis prava intentione, desiderio et consensu necnon periculo proximo consensus ; sed non ideo dicendum est omnia talia oscula veniale non excedere (Alex. VII,pr. d. 40), at manifestum est talem consuetudinem, sæpius repetitam, vix non secum ferre delectationem venereamque eamque vehementem, de qua judicandum juxta antea dicta.

Oscula data pueris ob eorum pulchritudinem sine affectu pravo sed cum affectu sensuali sunt per se peccata venialia, nam deest finis rationabilis.

Oscula inter juvenes utriusque sexus continuata et fervida, et præsertim columbina, quæ vocantur, i.e., ubi lingua in os alienum intruditur, sunt per se gravia, peccata, et secum magnum periculum ferunt, nam pollutionis proximum periculum necnon delectationi consensus vix evitari possunt.

Juvenes et puellæ consociantes ut sponsi et sponsæ, ratione futuri matrimonii, licite se invicem juxta morem patriæ osculantur, etsi delectationes, immo et pollutiones exsurgant, quibus tamen consensum dare non licet ; at tenentur evitare oscula inconsueta et quæ sunt supra omnem modum fervida, nam hæc sunt frequentium pollutionum causæ. At non prohibentur se invicem osculare cum magno et vero amore. Necessitas aderit in genere in femina causa amoris demonstrandi, caste tamen, ut maritum inveniat. E contra oscula fervida et morbida inter solutos qui matrimonium inire non intendunt sunt per se gravia peccata, nam periculum proximum pollutionis inducunt, vel saltem consensus in delectationem venereamen.

2. De Aspectibus

i. Aspicere nuditatem propriam justa de causa et sine prava intentione non est peccatum. Si vero aspiciatur ex curiositate vel levitate peccatum est veniale. Si aspectus est diuturnus, sine ulla justa causa, et cum excitatione phantasiae, potest esse grave peccatum, et talis aspectus est per se sub gravi evitandus.

2. Aspicere verenda aliena ejusdem sexus ex curiositate et breviter est veniale peccatum, si vero aspectus est diuturnus, cum affectu sensuali—non venereo—facile erit grave peccatum, praesertim si adulescens pulcher morose aspiciatur ab eo qui pronus est ad homosexualitatem. Quum vero assueta homines non moveant, aspicere nudos ejusdem sexus simul natantes, ubi talis natandi mos viget, non est peccatum, si fiat sine pravo affectu. In nudismi societatibus quæ vocantur, aspectus inhonestus exercetur diuturne inter personas sexus diversi. Hæc praxis est graviter peccaminosa.

3. Aspicere verenda alterius sexus, cum voluntaria delectatione, etiam non venerea, est grave peccatum, nisi aspectus fiat e longinquo et valde breviter, et nisi infans aspiciatur, aut aspiciens sit frigidus.

4. Aspicere partes minus honestas personæ diversi sexus ex curiositate vel levitate, sine affectu venereo, per se est veniale peccatum, si obiter fiat.

5. Juvenes sæpe multum moventur ad libidinem musæa visitando, ubi nudæ statuæ et picturæ exponuntur. Si visitatio est necessaria, vel etiam utilis ad sensum æstheticum bonum fovendum vel artem addiscendam, urgeantur ne pravis cogitationibus et motionibus, si quæ exsurgant, consensum dent, et addiscant odio habere quæ veram modestiam offendant.

6. Aspicere coitum humanum vel homines graviter impudice se gerentes est grave peccatum nisi fiat aspectus breviter et e longinquo et sine prava intentione. Hujus representatio obscoena in aula cinematographica merito publica auctoritate punitur, quæ populi moribus invigilare debet.

7. Aspicere coitum animalium ex curiositate sine ullo affectu sexuali est veniale peccatum. Ubi adest necessitas, nullum peccatum, at hoc opus potius a conjugibus vel senioribus exercendum est.

Notæ Pastorales

i. Pœnitentium longae narrationes circa modum quo pollutio procurata fuerit sunt a confessariis prorsus prohibendae,

nam modus nil refert, dummodo abfuerint scandalum et cooperatio et pravum desiderium. Inde ab initio fcminæ a longis fabulis in hac materia deterrendae sunt, nam haud ita raro fit ut istæ habitum acquirant de rebus prorsus absonis loquendi. Pollutio jam exorta nunquam vi comprimenda est ut effusio comprimatur, nam semen semel decisum non redit ad vesciculos seminales in viris, nec ad glandulas in feminis. Potius manet in urethra posteriore, et gradatim effluet. Praeterea, organis interioribus tanta compressione fiet nocumentum, ob congestionem et nervorum irritationem, et status hominis pejor fiet. Continuata et saepe repetita pollutio in juvenibus maribus per masturbationem non raro impotentiam physicam vel etiam psychicam, in feminis vero copulae fastidium gignit. Sed confessarius prudens cavebit ne pdllutionum sequelas physicas fervide exaggeret, nam illæ sæpe non eveniunt, nisi post consuetudinem sat longam. Ideo non necessarium est hic hujus vitii sequelas enumerare, nam homines a vitio per virtutis amorem et praxim melius deterrentur.

2. Sæpe fit ut post unam pollutionem sequantur altera et tertia noctibus subsequentibus, quod castis ansam desperationis dat, quum nil proficere sibi videantur. At probe instruendi sunt hasce effusiones esse tantum in plerisque naturae exonerationem.

3. Pruritus, praesertim in feminis, si tolerabilis, negligatur. Si vero valde vehemens est, nec tactus potest evitari, consultius est comprimendo uti pannis quam manibus, non ut pollutio procuretur sed ut irritatio citra pollutionem sopiatur. Sunt quæ ineluctabiliter coactæ videantur vi commotionis sese tangere usque ad pollutionem, id quod, si deliberate fit, esset grave peccatum. Indigent medici arte. At confessarius eas a praxi dissuadere conetur, nec tamen obliviscatur quanta sit violentia passionis. Operae pretium est ut confessarius noscat quid sit pruritus in feminis, nam morbus est qui medici arte sanari potest. In viris et adolescentibus pruritus sæpe ex causis provenire solet quæ evitari possunt, ut sunt, intemperantia, cibus conditus, cogitationes pravæ, consortia inhonesta. Verum pruritus naturalis quandoque oritur, qui potest licite abigi,

sive sit venereus sive non. At caute agendum est et cum honesta intentione, non ut pollutio eveniat et ita pruritui finis imponatur, sed ut ipse pruritus abigatur.

4. Auctores distinguunt pruritum venereum a pruritu nervoso, dicendo hunc esse superficialem, illum vero intus et profundius perceptum. Semper licet pruritum non venereum abigere etsi pollutio sequatur, sed hæc sit neque volita nec acceptata. Pruritus vero venereus non licet abigere ulla actione quæ pollutionem directa intentione causet. Si pruritus est mixtus, licet illum abigere, sed consensu cohibito si forte pollutio secuta fuerit. In pueris, ob longum præputium, materia quæ smegma vocatur, colligitur sub glandis corona. Hoc debet abstergi aqua callida sine anxietate, nam illa materia collecta pueros cogit ad frequentem masturbationem. In puellis, mundities vulvæ est magni momenti. Doceantur corporis curam magnam et honestam habere. Bene scripserat P. Vermeersch : " Ob practicam difficultatem quam pcenitentes habent hæc intelligendi, confessarius contentus sit hac generali indicatione, ut abstineant a tactibus qui pollutionem directe procurent." Addendum, valde breviter res est tractanda in confessione ne scandalum detur, nec medici partes unquam agat confessarius. Oritur casus haud infrequens ubi juvenis dormire nequit per longas horas ob vehementem venereamcommotionem. Verum et arduum supplicium est. Profecto talis non prohibetur situm eligere quem quilibet alius eligeret ad somnum facilius et melius captandum, vel situm ipsi magis convenientem, etsi pollutio sequatur, sine tamen directa intentione eam procurandi per situm mutatum, et consensu cohibito. Illud etiam addendum videtur quod auctores pruritum venereum a non venereo distinguunt in eo quod ille statim evanescit post pollutionem, hic vero non ita. Satis obscura sententia, nec multum juvat. Etiam ista intolerabilis sensibilitas in marium glande penis et in feminarum clitoride est potius nervosa et superficialis, etsi fatendum sit illam facile excitare solere delectationem vere venereamsed si abigatur tactu, secuta pollutione permissa sed non volita, convincitur fuisse venerea juxta aliquos, i.e., si sensibilitas de qua supra statim evanescit, juxta aliquos venerea fuit.

Illa species instrumenti ex gossypio compresso facti (vulgo tampax), quod intra vaginam per aliquot dies retinetur ad fluxum menstruum absorbendum, damnata est in Instructione confessariis in Anglia et Gwallia data ab auctoritate ecclesiastica (anno 1940) hisce verbis : " Praxim adhibendi, tempore fluxus menstrui, quaelibet instrumenta intravaginalia loco soliti linteaminis hygienici improbandam esse propter pericula non tantum physica sed etiam moralia eidem adnexa."

6. Iis qui dediti sunt luxuriae hoc consilium prudenter detur. Suggerat iis confessarius voluntatis actus serio elicere contra vitium inolitum, conatum non fucatum statim facere contra illud et ejus occasiones, ad eundem confessarium redire singulis hebdomadis, animum relaxare, mentem negotiis occupare, corpus defatigare non tamen nimis, jejunare et a carnibus comedendis abstinere, orationem quotidie recitare, qualis est haec : Dominus adjutor et protector noster, adjuva nos et refloreat cor et caro nostra vigore pudicitiæ et castimoniae novitate, ut ab omnibus tentationibus emundemur. Per D. N. J. Christum.

Notandum

De sensu in quo actus impudici (inclusis cogitationibus uti supra, p. 218, nota) dicuntur indifferentes :

Noldin, ὼ *Sexto Præcepto,* n. 51, ed. 1931 : " Actus qui dicuntur impudici in se nondum continent delectationem veneream, ideo in se sunt indifferentes, et ex fine honesto vel manifeste utili licite ponuntur."

Priimmer, *Manuale Theologice Moralis,* II, n. 691, ed. 1928: " Istos actus *(scii.,* impudicitiae), utpotc in se non peccaminosos, licite haberi posse ex rationabili causa. Difficultas igitur sola est quantum et quale peccatum sint hi actus exerciti, non quidem ex libidinoso fine, sed sine rationabili et sufficienti causa."

CHAPTER VIII

SEVENTH AND TENTH COMMANDMENTS

SECTION 1. The Precepts

The Seventh Commandment of the Decalogue is: "Thou shalt not steal" (Exod. 20, 15).

The Tenth Commandment is: "Thou shalt not covet thy neighbour's house, etc." (Exod. 20, 17).

The seventh Commandment forbids all external violation of commutative justice, and by consequence, bids us render to every man his due. But interior desires of injuring others are also forbidden, and therefore the tenth Commandment forbids us to covet our neighbour's goods: "Thou shalt not covet thy neighbour's house, neither shalt thou desire his wife, nor his servant, nor his handmaid, nor his ox, nor his ass, nor anything that is his" (Exod. 20, 17).

External theft and interior desires of theft are opposed to charity and justice both, but the two virtues differ in this respect that charity is based on the union of mankind by common origin and destiny, and God's love for man and our love of God are the motives of our mutual love, but justice is based on the distinction of man from man, and of their respective rights. If injustice is done, restitution must be made; if love is withheld, no restitution is possible, but love must be given. This circumstance in no way proves that charity is inferior to justice. Indeed, it is superior, for the motives for the love of our neighbour are God's love for him and our love of God. The motive of justice is that particular moral goodness which consists in giving to another what is strictly his due. Charity is a theological virtue, justice is a moral one. Charity, though formally distinct from justice, is the climax to which justice is a first and fundamental condition of peace between men. Respect for the rights of others can be considered the beginning of friendship, which, by charity, is brought to its culmination in the union with God and neighbour.

SECTION 2. Justice in General

Justice is a moral virtue which inclines us to give to every one that which is his due. A right is its object. There are rights, personal, social and international. The foundation of all right is the Divine Will and Wisdom, because God is Governor of the world and His Wifi is impressed upon all things according to the direction of His Wisdom, both being manifested in the invariable striving of all creatures to fulfil their end or purpose. "The concept that all rights are based on Natural law was, of course, enlarged by Christianity. It has been aptly said that the story of the spectral analysis of the Law of Nature into the prismatic colours of natural rights is a long one."[1]

Right may be defined as the moral power to possess and use a thing as one's own or to claim possession and use; this moral power has a sanction found in some law, Natural, positive divine, or human, and is such as to impose a correlative moral obligation on others to respect that right. The term is not used here, nor anywhere throughout this treatise able right. In this context, right, subjectively considered, is nothing else than a ground for the justification of autonomous action in the prosecution of the ultimate end for which a person exists, and the inviolable relation to that person of certain things and actions that are designed to help him to achieve his end, so that in some things and actions he has a preference before all others. This abstract definition will perhaps be made clear by taking the possession of life as an example, a possession that is inalienably man's own—subject only to God's dominion—and one that all other men must respect, unless and until that right has been forfeited.

The concept of right in Catholic Moral Theology or Christian ethics obviously differs from the concept of the civil jurist, who has to deal -with legal rights and penalties. For him there is no moral obligation to respect the rights of others on any other ground than the sanction of the law.

1 Muirhead, *Diet. Rel, and Ethics*, s.v. Rights.

But there are limits to the exercise of one's rights. Higher claims come first, and the rights of others may extinguish mine in particular cases.[1] There is a true hierarchy of rights, for some tendencies are more imperative than others ; the right to life, good name and marriage are very imperative ; God's rights are supreme ; those of the Church, in its own sphere, are inviolable ; those of the State within its own sphere are also supreme, if they do not conflict with divine, ecclesiastical or inalienable human rights.

The subject-matter of right includes not only the possession and use of things but also actions, omissions, forbearances on the part of others. There are, then, four elements in the concept of right : the person entitled, the object,' the act or forbearance, the person under obligation.[2] Our mental and physical faculties, bodily members, health, opportunities, are ours to use in order to achieve our proper end on earth, namely, personal and social development.

The virtue that harmonizes the exercise of rights as between man and man is commutative justice ; that which regulates a citizen's relations and obligations towards the State is legal justice, based on the exigencies of the common good, and this species of justice, though formally referring to the common good, comprehends the acts of all virtues since every virtuous act tends to the common good[3] ; the virtue which regulates the just conduct of a State towards its citizens is distributive justice. This virtue regards the State as the distributor of the common burdens and privileges so as to make it possible for citizens to five together harmoniously, and for each to exercise his natural rights.

Legal justice regards the rights which a complete polity—such as the Church and the State as separate entities and societies—can claim from its parts, the individuals, for the sake of its own preservation and perfection ; distributive justice regards the rights which the parts, viz., the individuals, can claim from the whole, since the whole exists for the perfection of the parts.

1 " Sic utcrc tuo (jure) ut alienum non lædas " is a canonical and a common-sense maxim.

2 Holland, *Jurisprudence,* p. 92.

In regard to duties, legal justice inclines the supreme authority to institute good laws and to administer the State befittingly; the virtue exists, therefore, in that authority, as the excellence of devising is in an architect. The same virtue disposes and inclines subjects to obey just laws. The subject-matter of legal justice is every good act that can further the good of the State. In the ruler, an offence against the common good is an offence against commutative justice.

Animals have no rights; they can give us nothing freely nor understand our claims. We have no duties of justice or charity towards them, but as they are God's creatures, we have duties concerning them and the right use we make of them. In the treatment of animals we may not give way to rage or impatience, nor invade our neighbour's right of ownership in them, nor may we give way to cruelty in the treatment of animals, nor wantonly misuse or abuse them, for this disposes us to dull the fine edge of pity and to be cruel to human beings. God, therefore, for this reason, forbade the Jews to muzzle the threshing ox (Deut. 25, 4) or to seethe the kid in its mother's milk (Deut. 14, 21).[1] To be wantonly cruel to beasts is to increase one's tendency to cruelty, but reasonable sport is not cruelty for its own sake, and the pain of animals may be permitted, as may also their suffering in vivisection, for the sake of useful experiment and the increase of knowledge. The contrary tendency of lavishing affection on beasts—not wrong in itself—may lead, and often does lead to the neglect of one's duty to a neighbour in need, and to an altogether false sentimentality.[2] Nevertheless, S. Thomas

[1] The version: "in its mother's fat" is defensible, but does not affect the argument; cf. also the application of the text by S. Paul (1 Cor. 9, 9; 1 Tim. 5, 8). The meaning of Deut. 14, 21 may be that God forbade the magical and superstitious rite of sprinkling the fruit trees in spring with the milk (or fat) in which the kid had been boiled, or sacrifice to the Phoenician deity of fertility.

[1] cf. S. Th., *S.*, I. 2, q. 102, a. 6, ad 8: 2. 2, q. 25, a. 3, where he says that though there can be no true love of friendship—which implies a real communication of favours—between man and brute animals, nevertheless, we can love irrational creatures in so far as we can wish them to be preserved in existence for God's honour and man's use.

well says, since brute animals can feel, there can arise in man a feeling of pity towards animals in pain, and thereby man is disposed to feel pity for fellow-men; therefore, God wishing to recall the Jewish people—naturally prone to cruelty—to a sense of pity, forbade certain appearances of cruelty in respect of dumb animals. One who seethes the kid in its mother's milk that he may eat its flesh would appear heartless in using for his own convenience what, by nature, was intended for the nourishment of the offspring.

Justice, being a virtue that regards actual rights, requires an exact balancing, so that absolute equality between what is due and what is given is to be established and maintained. It has, therefore, an objective mean which no other virtue has; all other moral virtues regard the reasonable use of appetites, and they are a mean between two extremes. The theological virtues are not a mean between extremes, for we cannot exceed in Faith, Hope, or Charity. The mean of justice in, v.g., buying and selling, is the exact just price, which is the same for every man; whereas such virtues as temperance or fortitude will incline men to different acts, and their virtuous mean has reference, not to external objects, but to the man himself, so that the mean is a rational not an objective mean, and what would be temperate or brave in one man could be excessive or foolhardy in another, and what would be temperate at one time could be the contrary at another.[1]

SECTION 3. Ownership and Possession

The right in a thing and the right to a thing *{jus in re; jus ad rem)* are to be clearly distinguished.

We have an established right in a thing when we possess it as our own and have immediate power over it, though the term possession is a wide one. We have right to a thing when the thing is not in our possession—even in the widest sense—but when there is an obligation on another person to allow us to take possession or to dispose of the thing as we wish.[2] A servant has a right to his wages for

1 S. Th., *S.*, 2. 2, q. 58, a. 10.

2 Holland, *op. oil.,* p. 147, note 2.

services rendered, *jus ad rem ;* when he has received the wages he has an established right to keep them, *jus in re.*

1. Ownership

Ownership is plenary control over an object in accordance with law.

It is absolute and perfect when one has the right to possession, use and disposal. The right to possess includes the right to claim, unless the thing is let, lent or mortgaged. The right to use extends to the fruits of the thing, unless others have acquired rights to them. The right to dispose includes the right.of alteration, destruction and alienation.[1] Destruction of one's own personal property is not an offence against justice, provided that no one else has any claim on it or its produce in any form ; it may be an offence against charity.

Ownership is sometimes limited and qualified, if the thing may be used in some ways but not in all. It is qualified and direct, if one owns a thing but may not use it ; it is qualified and indirect, if one has only the use of the

It is possible to have rights over the property of other persons in various ways.[2] A landowner may be restricted in his use of his owm land by the legal rights of a neighbour. Such restrictions are called servitudes. His domain is the servient tenement ; his neighbour's, the dominant. Examples of such servitudes are enumerated as follows :

Profits (as the right of pasture), easements (right of way, light, air),[3] user without products, usufruct, pledge (mortgage), pawn, lien (right to retain possession till claims are met), hypothec (security for unpaid debts as in bottomry).

These servitudes and all others were enumerated in three classes by Roman jurists, and the classification in textbooks of Moral Theology is the same, namely, servitudes of person to person, thing to thing, thing to person.

Personal ownership may also be subject to the dominion

[1] Holland, *op. at.,* p. 210 sqq. [2] Holland, *op. cit.,* p. 226 sqq.
[3] Also called incorporeal rights or hereditaments.

of the State, for with a view to the common good the State can rightly limit the exercise of personal dominion, and even deprive the citizens of their property, provided that the common good require the exercise of such power, and that justice is maintained by compensating the harm or loss suffered, if compensation is possible and reasonable. The following are the objects of ownership, whether it is qualified ownership, or absolute, a distinction which will be indicated in the following sections.

1. Life

Man has not complete and unqualified ownership of his life and bodily members, but qualified and indirect, or the use only : "I will kill and I will make to live, I will strike and I will heal ; and there is none that can deliver out of my hand " (Deut. 32, 39) ; " For it is Thou, O Lord, Who hast power of life and death and leadest down to the gates of death and bringest back again " (Wisd. 16, 13) ; "Thou shalt not kill" (Exod. 20, 13). God alone has complete ownership of man's life and members, as He has given them for a definite purpose, namely, to be used for personal and social development, and to achieve God's purpose, namely, His Glory and man's salvation. It is foolish to maintain that man need not accept the divine purpose, on the ground that salvation is a privilege and may be given up. On the contrary, man is bound by his rational nature to achieve his end and by the clearly expressed Will of God to achieve salvation. He can, of course, freely reject it but he is morally bound not to do so.

No man may take away human life unless it is necessary to do so in legitimate self-defence, or in just warfare, or when commissioned by the State in just capital punishment. God has given to the State the power of the sword for the common good, so that it may inflict death on malefactors for serious offences : " For he (the prince) is God's minister to thee for good. But if thou do that which is evil, fear ; for he beareth not the sword in vain. For he is God's minister ; an avenger to execute wrath upon him that doth evil " (Rom. 13, 4).

2. Bodily Members

His body is given to man for use in a rational way to subserve the end of his creation. He has only a qualified ownership in it. If he wantonly abuse or misuse it he commits sin. Mutilation, therefore, without a justifying reason, is a sin against God's dominion over man. There can be a justifying reason for mutilation of oneself, if it is necessary to save the body from death or grievous disease or sickness. Similarly, as the State can, for a just reason, cut off a malefactor as a rotten member of the body, it can also deprive a malefactor of less than life by mutilation. But as this would usually appear to be cruel and would entail protracted and unnecessary pain, it is a penalty not resorted to by Christian peoples.

3. External Things

Man can have complete ownership of external things. .It is a postulate, immediate or remote, of Natural law that individuals should be able to possess and hold property, landed or otherwise, for their own exclusive use, to call it their own, to use it as their own, and to give or bequeath it to others. It is necessary, both for the individual and for the State, that there should be private ownership, at least of some things. The well-being of the family requires that man should possess private property with the greatest stability and not precariously, and it is obvious that this right is more fundamental and inalienable than the right of the State, as the individual and the family are the foundation of the State.

(a) The Right to Property

The Catholic teaching in respect of property is stated thus by Pope Pius XI in his Encyclical letter, *Quadragesimo Anno* :

" Let it be clear beyond all doubt that neither Leo XIII, nor those theologians who have taught under the guidance and direction of the Church, have ever denied or called in

question the twofold aspect of ownership, which is individual or social according as it regards individuals or concerns the common good. Their unanimous contention has always been that the right to own private property has been given to man by nature, or rather by the Creator Himself, not only in order that individuals may be able to provide for their own needs and those of their families, but also that by means of it, the goods which the Creator has destined for the human race may truly serve this purpose. Now these ends cannot be secured unless some definite and stable order is maintained. There is therefore a double danger to be avoided. On the one hand, if the social and public aspect of ownership be denied or minimized, the logical consequence is 'individualism,' as it is called; on the other hand, the rejection or diminution of its private and individual character necessarily leads to some form of 'collectivism

(b) The Obligations of Ownership

"The right of property must be distinguished from its use. It belongs to what is called commutative justice, faithfully to respect the possessions of others, not encroaching on the rights of another and thus exceeding one's right of ownership. The putting of one's own possessions to proper use, however, does not fall under this form of justice, but under certain other virtues. Hence it is idle to contend that the right of ownership and its proper use are bounded by the same limits; and it is even less true that the very misuse or even the non-use of ownership destroys or forfeits the right itself.

"It follows from the twofold character of ownership which we have termed individual and social, that men must take into account in this matter, not only their own advantage but also the common good. To define in detail these duties, when the need occurs and when the Natural law does not do so, is the function of the Government. Provided that the Natural and divine law be observed, the public authority, in view of the common good, may specify more accurately what is licit and what is illicit for property-owners in the use of their possessions. Moreover, Leo XIII had wisely

taught that ' the defining of private possession has been left by God to man's own industry' and to the laws of individual peoples ' It is plain, however, that the State may not discharge this duty in an arbitrary manner. Man's natural right of possessing and transmitting property by inheritance must remain intact and cannot be taken away by the State, ' for man precedes the State, and the domestic household is antecedent, as well in idea as in fact, to the gathering of men into a community.' ' The right to possess private property is derived from nature, not from man; and the State has by no means the right to abolish it, but only to control its use and bring it into harmony with the interests of the public good.' However, when civil authority adjusts ownership to meet the needs of the public good, it acts, not as an enemy, but as a friend of private owners ; for thus it effectively prevents the possession of private property, intended by nature's Author in His Wisdom for the sustaining of human life, from creating intolerable burdens and so rushing to its own destruction. It does not therefore abolish, but protects private ownership ; and far from weakening the right of private property, it gives it new strength."

But there are reasonable and just limitations to ownership, namely, the extreme necessity of others, the common good of society, and necessary charity to the poor. Sometimes, therefore, a man holds his goods for the sake of others, but this does not invalidate his title, it merely determines the use to which property must be put. It is sometimes alleged that some of the Fathers of the Church favoured Communism, or the holding of all property in common. S. Augustine spoke of the superfluous wealth of the rich as robbery of others ; S. Bernard represented it as rapine ; S. Basil said : " The bread which you keep belongs to the hungry, the garments to the naked, the money to the needy." S. Jerome stated that " all riches, being a spoliation of others, are bom *of* injustice." It must be borne in mind that the Fathers quoted, and others who spoke in the same strain, were inveighing against those rich persons who did not give *of* their superfluities. There is no possible doubt that these writers upheld

the principle of a just title to the ownership of private property.[1]

Private ownership is practically necessary today, whatever may have been expedient in the case of primitive peoples. Man has become individualistic as a fact, and his tendency is to live an independent life, to build up a family as an independent entity, to acquire property for his sole use. This tendency is natural, and if thwarted, discord and unhappiness are the result.

(c) The Proofs of Private Ownership

The following reasons are given to establish the validity of the title to private ownership :

1. The right is as ancient at least as the Mosaic Law, by which the Jews were forbidden to steal or even to covet the goods of others. " Thou shalt not take nor remove thy neighbour's landmark " (Deut. 19, 14) : " Thou shalt not covet thy neighbour's house, etc." (Exod. 20, 17). There is no evidence that private ownership was then the result of Jewish custom or law or the social contract.

2. Though some members of the early Christian Church held property in common, individuals actually possessed land as their own, for we are told (Acts 4, 34) that those who were owners of land or houses sold them and brought the price of the things they sold.

3. Pope Innocent III (1208) defended private ownership as against the Waldenses ; the Encyclicals of Popes Pius IX *{Quanta Cura,* 1864), Leo XIII *{Quod Apostolid muneris,* 1878), and Pius XI *{Quadragesimo Anno,* 1931) are impressive defences of the same right. The Encyclical of Pope Leo XIII *{Rerum Novarum,* 1891) is a classical exposition of Catholic doctrine on the point. Its arguments are here set forth in the succeeding paragraphs.

4. When a man engages in remunerative labour, his motive is to obtain property and hold it as his own ; he intends to acquire a right to his remuneration and to the disposal of it. This is true, even if he invests his money

[1] cf. John A. Ryan, *Alleged Socialism of the Church Fathers»*

in land ; the land is his wages in another and a less fluid form.

5. As man is endowed with reason, he looks forward to the future and wishes to make provision at least for himself, if not also for his family. In order to do so, his ownership must be stable and permanent in those things that can be used by him on future occasions.

6. Man's needs recur. Nature, therefore, owes to man a storehouse that shall not fail, that his daily wants may be satisfied. He can, therefore, truly own not only the fruits of the earth but the very soil itself. That is, he must be able to get at the soil itself, on occasions, and use it for his benefit ; he must not be so dependent on others as to be kept from having access to this the most necessary of nature's gifts.[1] The limits of private ownership are left to be fixed by man's own industry and the laws of peoples, but to say that he shall have no complete dominion over anything is opposed to man's very' life and his human dignity.

7. In no other way can a father reasonably provide food for his family than by having lucrative property which he can hand on to his children. If he cannot or does not possess it in personalty—such as money—he can have it in land. It is thus evident that the right of the family to private property is anterior to that of the State. The State might perish, as such, and the world would continue to be peopled ; the family, however, is essential to continued life.

8. A man is more solicitous in procuring what he can treat as his own than what has to become property in common ; progress is better secured by the production of things which the individual can afterwards call his own, and peace is better maintained by each one having his own and being content to have it so.[2]

[1] The right of man to take, buy, inherit land is founded on the same principle as his right to take a wild animal for his sustenance. He takes things and may own them because he means to use them. The fallacies of Henry George on land ownership arc refuted in *77u Month,* May, 1929, by Dom J. B. McLaughlin, O.S.B.

[2] *cf.* S. Th., 5., 2. 2, q. 66, aa. 1, 2, which contain the essential arguments in brief against Communism.

9.In fine, to extinguish the right to private property is to take away the incentive to labour, to reduce all men to a dead level, to prevent personal development, to curtail seriously, if not to destroy altogether, personal contentment. Distribution of goods according to needs would inevitably result in confusionjealousy, contention, and would establish that inequality which it sought to remove ; it would destroy freedom of movement and occupation, make all men dependent, institute a system of prying inquisition, undermine parental control, filial respect and dependence, and extinguish the independent use of property by the Church.

10. We may add to these arguments a reason based on experience, and that a very recent one, namely, that attempts at Communism and Socialism—in the strictest sense—leave the majority of the people both unconvinced and dissatisfied, and from this one fact we may rightly infer that the acquisition and holding of private property—land included—is a fact of history that can only be explained by postulating a universal and ineradicable need in mankind.

(d) Limitations to Private Ownership

But it does not follow that private property can be used for the exclusive pleasure or profit of the holder. Even by Natural law, not to speak of Christian principles, the rich must share their superfluities with those in need. The use of property must, in a sense, be common, because the goods of the earth were created for all m'ankind, since all men have a right to subsistence. When the rich will not act as justice, charity and liberality demand, the State has a duty to force them to do so for indigent citizens and for the common good. Pope Pius XI has thus stated the case in the Encyclical, *Quadragesimo Anno* :

" At the same time a man's superfluous income is not left entirely to his own discretion. We speak of that portion of his income which he does not need in order to live as becomes his station. On the contrary, the grave obligations of charity, beneficence, and liberality which rest upon the

wealthy, are constantly insisted upon in telling words by Holy Scripture and the Fathers of the Church.

"However, the investment of superfluous income in securing favourable opportunities for employment, provided the labour employed produces results which are really useful, is to be considered, according to the teaching of the Angelic Doctor, an act of real liberality, particularly appropriate to the needs of our time."

The ideal State cannot allow excessive destitution to exist side by side with great wealth, nor the accumulation of great fortunes by the few to the detriment of the many.

There are some external things which cannot be subject to ownership, as the air, the waters of rivers[1] and the sea, for being in a state of constant flux they cannot be circumscribed. The old legal maxim: "*Cujus est solum, ejus est usque ad cœlum*" probably safeguarded landed property from trespass, but it has been called into question as a principle. The science of air-flying will do away with the principle, though occupiers of land will be protected from the dangers from above. The principle is still asserted in several Codes, and it was considered right by all neutral states during the war 1914-1918, to fire at belligerent air-machines flying over their territory'.[2]

4. Reputation

Man has complete ownership of his reputation, because it is normally the fruit of his own actions; but it is something accessory and accidental. God did not give any one at birth any reputation to use for his development. A man may forgo his good name; he may, if he wish, allow others to besmirch it, may even destroy it himself by lawful means, but he may never do nor permit any of these things if God's interest is at stake, or if his own dishonour redounds to the dishonour or harm—moral or material—of others. Those

[1] It is a useful fiction of English law that, as a general rule, the soil of ancient navigable tidal rivers belongs to the Crown, and the soil of other rivers and streams to the subject, that is, to the riparian owners, to each respectively as far as mid-stream.

[*] cf. Holland, *Jurisprudence,* pp. 192, 398.

in legitimate authority are usually bound to avoid dishonour for the sake of others. The State, for just reasons and for crime, even occult, may brand a citizen as a felon, but a citizen is not now perpetually outlawed for every grave crime ; society, however, justly protects its fair name by ostracizing certain evil-doers.

5. Slaves

Christianity did not at once abolish slavery, though the Church, by its constant action, worked for its abolition. The condition was not condemned as essentially opposed to Natural law. S. Paul urged slaves to be obedient to their masters and to bear their lot with patience.

Slavery resulted from free contract, or just sentence, or capture in war, or birth in the state of captivity. The first two of these titles to slave-ownership may be defended, but of the last two, capture in war could not now be justified, and birth in captivity could never be justified, except on the one ground that in certain conditions of society slavery was essential to the order and permanence of human society, as it once existed. Though no man can be the property of another in the sense that chattels or cattle are property, sendees, even lifelong, can be due from one man to another. But the slave retained his natural rights to life, sustenance, fair treatment, marriage, cohabitation if married. Slavery being, under certain conditions, justifiable, fair traffic in slaves is also justifiable, for a man can sell what belongs to him, that is, in this case, the service of his slave. But it is obvious that the abuses of the traffic were so great and almost so inevitable, that the abolition of slavery was too long delayed. No theoretical defence of slavery defended slavery as, in fact, it existed. The Church found the system in possession, and though it tolerated it, it rendered the condition of slaves less unbearable through its Christian teaching of justice, mercy and obedience, and extolled the ransom and manumission of slaves as a good and meritorious work. Traffic in slaves, however, still goes on covertly, even as late as the middle of the twentieth century, as Catholic Missionaries testify.

The later moralists have stressed the indignity of slavery as an affront to human equality before God in essentials, and as a state of subjection that leads to utter dependence for bare maintenance, and the impossibility of any intellectual development or moral education. The life of a slave inevitably produces a low type and a degraded moral standard, which had their influence on the slave-owning classes, who were addicted to gross immorality. In other words, slavery as, in fact, it has existed, has been proved to lead to such injustice and immorality that it is to be condemned out of hand. It is one of those natural developments of life in society which, though theoretically and under certain conditions defensible, had to be abolished.

6. Copyright

In a secondary sense, man can be the owner of copyright *[jus ad rem),* which merely implies forbearances on the part of others, in order that an author may secure the just reward of his skill and industry. To infringe these civil rights is at least a legal offence, and the fine imposed is just, for skill, art, invention and industry are great assets in civil society. Similarly, 'franchises' such as the privilege of a fair or market, free-warren, free-fishing, are subjects of ownership.

The Copyright Act of 1911 includes the sole right to produce or reproduce an original literary, dramatic, musical, or artistic work, or any substantial part of it. If the work is unpublished, the Act covers the right to publish it or any substantial part of it, and includes translation of literary work, conversion of a drama into a novel or other non-dramatic work, conversion of a novel into a dramatic work by way of performances in public or otherwise, the making of a record, roll, film, etc., of a literary, dramatic or musical work, by means of which or other contrivances the work may be mechanically performed or delivered.

Publication means the issue of copies of the work to the public, but does not include the delivery in public of a lecture, nor the issue of photographs and engravings of works of sculpture and architectural works. Copyright is not infringed by any fair dealing with any work for purposes

of private study, or review, nor the publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous notice at the main entrance of the building in which the lecture is given and, except whilst the building is being used for public worship, in a position near the lecturer, but this does not preclude a review or newspaper summary. The term for which copyright shall subsist shall be the life of the author and a period of fifty years after his death, except as otherwise expressly provided by the Act.

Prescinding from positive law, it is certain that an author has a right to ownership of his manuscript or raw material. To deprive him of it and to publish the work would be unjust, and would entail restitution of an amount equivalent to the author's loss. It is equally certain that the author has the right to use his work for his own benefit, but that benefit must be reasonable and not exorbitant. It is also certain that copyright law is just, but to what extent the ensuing benefit is just, is disputed. Some maintain that once the work has been made public, or an invention or discovery is known by others than the inventor or discoverer, the author has necessarily lost all ownership in the thing ; others restrict the right to the first edition in the case of a literary work ; others extend the right to every subsequent edition, until the legal time of copyright has expired. It is not clear that an author establishes a natural monopoly in his work. The sound conclusion appears to be to allow the author to derive reasonable benefit from his work, and this, we venture to think, is secured when the first edition is sold out. But it does not follow that copyright may then be infringed without moral fault. A sin against charity will be committed by infringement at any time up to the expiration of copyright, for authors and publishers would seriously resent a ' pirating ' of their work, and would quite reasonably take the benefit of the law.

2. Possession

Possession of an object does not always establish true ownership. In order that it may do so, it must be legal,

actual and intentional, that is, possession must be in accordance with law, otherwise there is no moral title ; it must be possession in point of fact, for mere juxtaposition is not possession, and a mere wish to have a thing does not give any tide ; it must be intentional, for a man cannot morally hold anything as his own unless he intend to do so.

For the purposes of English law, possession is " any power to control generally the user and location of a chattel, other than the mere physical power exercised by a servant to whom a chattel has been entrusted by his master."[1]

Actual possession is a wide term. Thus, delivery of the keys of a warehouse puts the purchaser of wheat stored in it in possession of the wheat, but an object hidden in my land is not my property, until I dig it up and take it.

SECTION 4. Subjects of Ownership

1. General

Only physical or moral persons are capable of ownership of property, for these alone can use it for the definite purpose for which things exist, namely, for rational and spiritual development. But all living human beings have a right to sustenance, and, therefore, infants, imbeciles and the unborn living child have, at the least, a qualified ownership *(jus ad rem)* in property. An infant *en ventre sa mère* is, for many purposes, supposed in law to be borQ ; a legacy can be bequeathed to it, a life interest in land can be given to it. Corporate bodies are capable of ownership for the furtherance of the ends—if moral—for which they exist, for as the State can own property for the common good, so any smaller aggregation of men can own property independendy of the State, if their end is not opposed to the common good. Societies formed for religion, education, commerce, are practically necessary for human progress, and they must possess the necessary means. The Universal Church is one such society, but divinely instituted, and within it there are other societies, as dioceses, parishes, Religious Communities, seminaries. Besides these, there are other

[1] J., n. 1527.

societies, as municipalities, Universities, colleges, Trade Unions. The State cannot forbid the formation of such societies, for if it did, it would contradict the very principles of its own existence, for both they and it exist in virtue of the like principle, namely, the natural tendency of man to dwell in society.[1]

But the common advantage requires that the goods of the world shall not be squandered. Civil law, then, can qualify the property rights of persons, such as minors; and church law can safeguard church property by restricting the valid or licit use and disposal of it.

2. Property Rights of Minors

English Law

In English law, a person attains majority on the first moment of the day preceding the twenty-first birthday. A minor is, however, emancipated by marriage, by leaving, when an adult, his parents' household to enter the army or to become a domestic servant or labourer with the consent of parents, and he may use the benefit of the law provided he is guilty of no injustice or uncharity. Such emancipation gives a right to a minor to his own wages.[2]

A minor can possess purely personal property, though the use of it can be reasonably restricted by law. The parents have no rights over the property; if they administer it, they do so for the minor's benefit only.

Similarly, a minor can dispose by gift of money given to him exclusively for his own use, but if it is given for definite purposes he has the disposal of it for those purposes alone, and would offend against justice if he spent it on other things. If he receives money for current expenses, he will not sin against justice by using it prodigally or for wrong purposes, but would sin against obedience. Attention must, however, be paid to the capacity of a minor to make contracts in accordance with English law.

[1] Pope Leo XIII, Encyc. letter, *Rerum Novarum,* 1891.

[2] Evcrsley, *The Law of the Domestic Relations,* p. 599. But a female minor is, to some extent, legally emancipated by marriage. If her husband predeceases her before she attains majority, her emancipation ceases.

A minor cannot exercise any power by testament, exception being made in favour of minors who are soldiers or mariners on active sendee.

A minor cannot, by English law, hold jointly or severally anv interest in land.

A father is entitled to the sendees of his child, being a minor, whilst the child lives with him, or not being in the service of some other person is only temporarily absent from home. It is not certain that a father may have the benefit of his children's labour while they live and are maintained by him, nor that he is entitled to the separate earnings of a child after sixteen years of age.[1]

Up to the year 1939, children had no legal right to a share in their deceased father's estate (unless he died intestate), but by the Inheritance (Family Provision) Act, which came into force on July 13, 1939, a husband or father is bound, in disposing of his estate by Will, to benefit his widow and surviving children, wdth certain restrictions.

Practical Applications

Parents should respect the claims of working children to part of their wages for reasonable recreation, unless the family resources are too meagre. Children do wrong and offend against charity, by withholding part of their wages if all is practically required for the family, though the obligation primarily lies on the father to maintain the family. The practice of retaining a portion of the wages leads to deceit and lying, but restitution cannot be urged. If, however, a child's earnings are squandered by parents on excessive drink, the child does well to put some of them to good purposes or to save some, unless his maintenance requires all.

A child who earns extra wages by labour out of the ordinary has a right to it and may keep it, unless charity obliges him to give it to parents who may be in need of it. Money won by a child through speculation or fair betting

[1] An infant, unless of very' tender years, is generally presumed to render service to his parents.

belongs to the child, but a habit of gambling in any form in children is clearly to be discouraged, since they become accustomed to the view that to get something for nothing—to the exclusion of productive work—is a desirable purpose, in life.

3. Property Rights of Married Women

English Law [1]

Since the Married Women's Property Acts, 1882 and 1893, every woman married after January 1, 1883, has independent rights in all property, both real and personal, which she owned at the time of her marriage or which, after her marriage, is acquired by or devolves upon her. She alone is entitled to any money she may earn in trade carried on separately, or any debt owing to her.

She can enter into contracts in respect of her separate property, hold and dispose of it, as though a *femme sole* [2]; if she have sufficient means she may be obliged to support her husband if otherwise he would be chargeable to the parish, and with her separate estate she may be obliged to maintain her children and grandchildren if the husband is not able to do so.

The wife may contract debts during coverture which her husband must pay, provided she has his authority to contract them; the law assumes that she has his authority to contract for necessaries, both for herself and her children, relatively to their state of life, but the husband may withhold his credit except for what is strictly necessary for their support.

Practical Applications

Prescinding from positive law, the following principles apply to property rights of married women during coverture:

I. Man and wife may have entered into a contract

[1] Rucgg, *An Elementary Commentary on English Law,* p. 147; Jenks, *Digest of Civil Law,* n. 1506 sqq.

[1] But the contract of a married woman does not affect separate estate which she is restrained from anticipating. The contract only affects income which is actually in her hands or accrued due.

before marriage concerning property belonging to either or common to both, which is not necessary to the reasonable maintenance of home or family. In such cases, they must abide by the contract unless positive law rule otherwise, in which case, 'either may take the benefit of the law if no manifest injustice is done to the other.

2. What the wife earns by her own labour, or what she receives as a gift or legacy, belongs to her and she may dispose of it as she wishes, but she has a duty of supporting the home, if the husband cannot do so.

3. The wife has a right to claim from her husband all that is necessary to maintain the home in reasonable comfort.

4. If the wife receive necessary support from her husband, she will sin against justice and charity if she squander such money or goods, for she is wasting what is not hers. The husband who squanders necessary maintenance money due to the home will sin against charity not against justice.

5. A wife is not bound to pay her husband's debts during coverture, unless she was a conscious and deliberate partner in contracting them and her co-operation was in some way necessary.

6. Since the husband is the head of the family, no family expenses should be incurred by the wife without his knowledge and consent, at least reasonably presumed. But the wife is a help and a companion, not a drudge, and, therefore, she has a right to spend the family income in the way she thinks reasonable.

7. It is, therefore, within her power to spend family income on the reasonable recreation of herself and her children, and to give alms to the poor or to religion, such as would be given by persons in her state of life. She can help her parents if they are in grave necessity, as she would help any poor in like necessity. But if she have property of her own, this burden of relieving the needs of the poor lies on her property as well as on her husband's.

8. A wife may put by, in Insurance Companies or in any other safe way, without her husband's express permission, what is necessary for the decent maintenance of the home, for the education of the children, for contingent sickness,

unemployment or death, provided she do not deprive the family of present necessary and reasonable maintenance.

9. The wife has a legal and a moral right to the support of her children by a previous marriage.

4. Property Rights of the Church

1. As men form societies for their intellectual, moral and social development, and as this right to do so is necessary for the well-being of men, so also they can form a society for their religious development. But such a society has been once for all established by Jesus Christ for all mankind, and, therefore, its legitimate and actual existence is beyond controversy.

2. The Church cannot carry on its mission for the conversion of the world, which it is bound to do by divine precept, it cannot support its pastors and Missionaries, nor fittingly adorn its churches, nor teach its children in or out of schools, without an indefeasible right to hold and administer temporal goods. This truth is expressed by Pope Leo XIII (Encyclical on the Christian Constitution of States, 1885) : " This Society is made up of men, just as civil society is, and yet is supernatural and spiritual, on account of the end for which it was founded, and of the means by which it aims at attaining that end. Hence it differs from civil society, and, what is of highest moment, it is a society chartered as of right divine, perfect in its nature and in its title, to possess in itself and by itself, through the will and loving kindness of its Founder, all needful provision for its maintenance and action. And just as the end at which the Church aims is by far the noblest of ends, so is its authority the most exalted of all, nor can it be looked upon as inferior to the civil power or in any way dependent upon it."[1]

3. Arnold of Brescia, the Waldenses, Marsilius of Padua[2]

1 cf. *The Pope and the People* (ed. J929) ; cf. also, ppr. d. 10, 32, 36 of Wycliff ; Pope Pius IX, pr. 26 of die *Syllabus.*

2 The *Defensor Pacis* of Marsilius of Padua and John of Janduno, condemned by Pope John XXII (1327) is unblushingly Erastian ; the clergy were to be subject to the civil power, deprived of their jurisdiction, and rendered incapable of holding property.

and a few others denied this right of the Church. Wycliff maintained that Holy Scripture forbade clerics to own property. These errors are not now worth refuting.

4. Though the Church, as a fact, observes when possible all legal civil formalities in the acquisition of property, civil law can obviously impose no obligation, and the Church rightly claims (c. 1513, 1) independence in such things as bequests for pious purposes, which are valid in conscience even if void or voidable in civil law.[1] It is obviously *ultra vires* for a State to determine what uses are superstitious. All laws of Mortmain that restrict the Church's rights in this matter are essentially unjust without the assent of the Roman Pontiff, and all confiscation of church property is an immoral and sinful invasion of its rights. In the past generally, and in the present century occasionally, as in Portugal, Russia, Mexico, Spain, church property has been confiscated by civil Governments, or rather by factions. Much of this spoliation has been graciously condoned by the Holy See : for England by Pope Julius III ; for Saxony by Pope Clement XI ; for France, Belgium, the Sicilies, the Duchy of Piedmont and Genoa by Pope Pius VII ; for the kingdom of Sardinia by Pope Leo XII ; for Spain, in part but not wholly, by Pope Pius IX.[2]

5. All religious societies founded or approved by the Church as separate entities have the radical power of owning property ; such are, monasteries, Religious Orders in accordance with their constitutions, provinces, religious houses, confraternities (c. 1495, 2). The ownership of goods belongs to that portion of the Church which has justly acquired them, subject always to the supreme administrative authority of the Holy See (cc. 1495; 1499, 2; 1518). It is the more commonly received opinion that neither the Holy See nor the Pope are the exclusive owners of all the property of the Church. They are said to enjoy the dominant ownership, but the term is used loosely, and there is a real difference between the supreme jurisdiction

[1] But it urges the faitliful to observe all civil formalities in making their wills in favour *of* the Church (c, 1513, 2). Even if they were omitted, the heirs must fulfil the wishes of the testator (P.C.C.J., Feb. 17, 1930).

[3] Lehm., I, n. 1237.

of the Holy See in the governance of the Church, even in matters of temporalities, and ownership by the Holy See of all church property to the exclusion of all others.[1]

It is said, and truly, that the State has a natural right to tax its citizens, justly and equitably. The Church also has a right to maintenance from its members, and not only that, but a right to exact from them what it deems to be necessary for the purposes of its mission to mankind. This truth has been clearly stated throughout its history, as in the Decretals, by the Council of Trent, by Popes Innocent III, Benedict XIV, Pius VI, Pius X, and by the present Code of Canon law (c. 1496).[2]

Objection

The objection is raised, and deceives even some Catholics, that the Church, being a spiritual power, should eschew all temporalities, and imitate the example of its Founder and the Apostles : "So likewise every one of you that doth not renounce all that he possesseth cannot be my disciple" (Lk. 14, 33) ; " Do not possess gold nor silver nor money in your purse, nor scrip for your journey, nor two coats, nor shoes, nor a staff" (Mt. 10, 9). In reply to this objection it must be said that the first of the texts quoted refers to all followers of Christ, and means that they should renounce all immoderate love of and attachment to temporal things. The second text was addressed to the Apostles alone, and it is not a precept imposed on all those who follow Christ. If it were conceived to be so, it would prove too much, since all present missionary enterprise would have to come to an end, and this result would be contrary to our Lord's precept to the Apostles and their followers in the ministry to go and teach all nations. Since, as a fact, the Church has sent Missionaries to and has taught all nations, its teaching cannot be false, and yet universally and at all times it

1 Wernz, *Jus. Decret.,* III, n. 139.

2 Decretals : c. 67, C. XVI, q. 1 ; c. 3, C. XVI, q. 2 ; c. I, *de Decimis,* III, 13 in VI0 ; Cone. Trid., s. 21, *de Reform.,* cc. 4, 7 : s. 24, *de Reform.,* c. 13 : s. 25, *de Reform.,* c. 12. But the Church relics on the voluntary offerings of the faithful and levies taxes only for certain official work.

has implicitly taught men that it has the right to own property by the very fact of owning it. S. Thomas Aquinas, speaking of clerics who are prodigal of their money on themselves, says that they deprive the poor thereby, but he does not deny that clerics have the right of ownership and have a claim to part of ecclesiastical goods for their own use.[1]

5. Property Rights of Clerics

1. Clerics who are not Religious under a vow of poverty can own and dispose of property, except in so far as the Church has restricted their disposal of such property as is given to them to use for church purposes, or for the benefit of the church fabric and its upkeep or adornment. The fruits of a benefice for clerical sustenance falls within the complete dominion of the cleric (c. 1473), with limitations in respect of what is superfluous.

2. The private property of clerics is that which they have received as heirs or legatees, or receive in the exercise of their ministry, namely, stole fees—unless by special precept they have to pool them—or by way of donation, such as the Christmas and Easter offerings, and money they are entitled to for maintenance, and the annual amount set aside from funds or mission income.

The *'dos beneficii'* consists of an endowment or, failing that, of some other source of revenue. A parish is an ecclesiastical benefice, whether it is erected on an endowment (c. 1410), or, if no endowment is possible, in accordance with canon 1415» 3› ^at 18› if h is prudently foreseen that what is needed will be forthcoming.[2] The parish priest has the usufruct of that part of the revenue which is necessary for his suitable maintenance ; further charges on the revenue of a *beneficium curatum* are upkeep of church, presbytery', school, and the fitting Conduct of divine worship, unless these are provided for from other sources.

3. All personal property is theirs to dispose of.

[1] *QuodI.,* q. 6, a. 12 ; *S.,* 2. 2, q. 185, a- 7-
[3] As an example of this, sec Liverpool diocesan synod, 1934, n· 230.

4. The salaries of parish priests vary in the different dioceses. It would be, of course, desirable that all priests, curates included, should have reasonable salaries. The bishop can fix a maximum salary for his parochial clergy, since he has authority to determine details in respect of benefices and endowments, and parishes are benefices.

5. The revenue of a benefice is primarily intended for the cleric's maintenance ; if any remain over, not being due to his economical way of living, such residue must be used, according to the canons, for the poor or for pious purposes (c. 1473), for the Church does not assign money to clerics to be squandered or to be given to relatives, or to others not in need. Pensions and salaries granted to clerics by Governments are ecclesiastical revenues.[1]

6. If such residue is used in ways other than those prescribed, a sin of disobedience is committed, grave or light according to the amount ; it is very probable that no strict injustice has been done, and, therefore, *post factum* no restitution is necessary.[2] The amount that would constitute a grave sin of disobedience is much greater than the amount necessary for an absolute grave sin of theft. The obligation, being probably one of religion and not of justice, is personal to the cleric and does not devolve upon his heirs or donees.[3]

7. Even if a cleric have a private income, more than sufficient for his maintenance, he may legitimately use church revenues for that purpose, for they who preach the gospel may live by the gospel (1 Cor. 9, 14).

8. In England the offerings of the faithful are partly church property, partly the priest's property, but this division is due to positive enactment? Thus :

( ) Offerings made for the support of the clergy, relief of the poor, propagation and adornment of religion, or any other religious purposes, are church property.

( ) The intentions of donors and testators are to be most carefully complied with. If these intentions are

[1] S. Pœnit., 1819, 1821, 1824.
[1] Verm.-Creus., *Epit.,* II, n. 798 ; Wemz-Vidal, II, n. 320.
[• Lehm., I, n. 1073 › Gén., I, n. 476 ; Wernz-Vidal, II, n. 320 ; Noldin, II, n. 782 ; Aichncr, n. 233 ; also Lugo, Lcssius, Molina.
[4] West. Syn., *Epitome Synodorum,* p. 21.

doubtful, a morally certain judgment is to be formed by the aid of general rules and canons.

(ή Churches, schools and other buildings, intended for religious uses and erected or provided, wholly or in part, from the offerings of the faithful, or from money granted by a society that administers alms, shall belong to the place where such buildings stand. The same rule holds good in the case of buildings erected by a benefactor, unless the contrary is clearly proved, namely, that such building was not intended for the advantage of the faithful of the place, but for a particular Religious Order.

(J) The following methods of raising money for the support of missions are permitted, and the proceeds belong to the Church : Bench-rents,1 collections made at the Offertory, charges for definite seats other than rented seats and free places (without prejudice to free admission to sacred functions, c. 1181), collections made on the occasion of special sermons, house to house collections, and periodical parish contributions.

ᵴ Renovations, improvements, additions, made out of the general revenues of the mission, are the property of the mission ; if made out of the priest's private property, or from the gifts of his friends, or from the income allowed to him for maintenance, they are to be considered as his property, provided he has kept in good order all that he received.

(/) Things adapted to ecclesiastical purposes given to a priest on the mission are given to the mission, unless the contrary is evadent. Gifts adapted to personal use are assumed to be given to the priest, and also other gifts bestowed out of gratitude and friendship, even though they could serve church purposes.2

(^) Mass stipends, Easter and Christmas offerings, belong to the clergy.

1 Without prejudice to canon 1263 which requires the sanction of the Ordinary for reserved places, and canon 1181, which requires that entrance to the church *for* the sacred functions shall be free.

2 There arc certain local prohibitions against acceptance of a tabernacle as a personal present. In these dioceses, it must be left to the church.

(A) Stole fees ordinarily belong to the priest, but there are various ways in which such sums arc distributed. That distribution seems to be the best which is most conducive to alleviate the burden of the mission.

(i) Nothing may be exacted, as of right, for Baptism or Marriage, but bishops are to determine in diocesan synod what seems best adapted to the custom and state of the place.

This last prescription of the Synod is found substantially in the Gode (c. 736), which says that for the administration of the Sacraments the minister may not demand nor ask for anything directly or indirectly, for any reason whatsoever, except in accordance with the canons (cc. 1056, 1234,1507).

Small charges—but not on the poor—may be made to cover secretarial expenses of the episcopal Curia for matrimonial dispensations (c. 1056), but no emolument may be demanded for the granting of such dispensation, and if demanded, restitution must be made. It is the business of the Ordinary to determine the amount of funeral dues ; it is strictly forbidden to exact more, and the funeral services and burials of the poor are to be done decently and gratuitously (cc. 1234, 1235).

SECTION 5. Title to Ownership

A person can hold and possess a thing—land or chattel—without any right, legal or moral, to the ownership of it. Some valid title to ownership is, therefore, necessary. Title is natural or legal, founded on Natural or on Civil law. All true titles may be reduced to four : Occupancy, accession, prescription, contract. The last title, namely, contract, is dealt with at length under its distinct section.

1. Occupancy

Occupancy is essentially a natural title ; the others are indeterminately natural, but are defined more exactly by positive law. Occupancy is primitive, the other three are derived titles.

In English law, ownership of chattels corporeal may be acquired absolutely by capture, production, delivery, deed, transfer of bill of lading, sale.[1]

Occupancy, the first title to ownership, is the actual taking of a tiling belonging to no other with the intention of making it one's own. It is a valid title to ownership if it transgresses no existing rights of others and no just positive law, for nature[2] offers the earth and all her goods indiscriminately for the good of all mankind. No land could ever be owned even by States unless taken over and defended from subsequent aggression.

The condition for valid occupancy is that the act of seisin should be intentional and physical, exercised on an object capable of ownership, and in such quantity only as can admit of immediate and proximately future use. A mere act of the will gives no title, nor mere juxtaposition without the intention of occupying, nor can things necessary to the common good be occupied, nor such quantities of an object—such as land—as cannot be used or effectively controlled.

It has been stated erroneously—and the error is apt to recur periodically—that land cannot be occupied and privately owned, because it is not. the result of labour, it is not produced but exists bpfore occupancy. If the principle were true, clothes could not be owned, nor the fruits of the earth, nor money, nor in fact anything, for the raw material of all things which we fashion existed antecedently. On the contrary, most of the valuable qualities possessed by cultivated land are due to labour, which practically changes the very nature of land. Labour can certainly establish a good title to land, but even virgin soil and a primeval forest may be seized and held—if no existing rights are violated—for man can get at the earth for his own life and development and can become master of it.

[1] The reader may be referred to Jenks, *op. cit.,* n. 1551 sqq., for a full description of these titles. In the text we adhere to the traditional division of the subject.

[2] It will readily be understood that we use the term nature not as an abstraction, but as a convenient way of expressing the laws, deep-rooted in the nature of man, that regulate human conduct.

A man cannot effectively hold the air above his ground property, nor the subjacent interior; nevertheless, by a legal fiction, he may be considered the owner of these in a qualified sense, owning them, so far forth, as reasonable law permits; he can, at all events, be protected against danger from above and undermining from below.

The value of the title of occupancy is applicable now only to things that are found, or animals caught, in a state *fera natura,* as free fish and wild animals, but English law does not sanction all that natural justice, undefined by law, would permit. In English law, appropriation is a good title, but the person taking may have to prove that the thing was abandoned. The finder of a chattel that has no apparent owner is entitled to retain it against all persons other than the owner, unless he is an employee who finds an article on his employer's land whilst engaged in his employer's work. Exceptions to absolute acquisition are made in English law in the cases of taking treasure-trove,[1] waifs, strays, wrecks, and animals killed within an area where one is entitled, *ratione soli,* to kill game, but taken outside that area.

Things that are found, may be such as never had an owner *{res nullius},* or such as have been abandoned *{bona derelicta},* and these may be of the nature of treasure-trove, or property of an intestate, without heirs *{bona vacantia},* or thirdly, things recently lost, whose owner exists but is unknown *{res amissa}.*

Practical Applications

I. Things which have no owner may be taken by any finder, and among such things are wild animals, derelicts, the property of alien enemies, and treasure-trove, but by English law the right of the finder is qualified. Enemy property vests in the nation, wild animals may be claimed by the landowner on whose land the animals are taken or

[1] Any gold or silver in coin, plate, or bullion, found hidden in a house or in the earth, or other private place, the owner thereof being unknown.

killed, treasure-trove is claimed by the Crown,[1] and wreckage stranded must be delivered to the district receiver and after a year and a day belong to the Crown. But law on these points is penal only and does not bind the conscience before legal decision is given. The property of an intestate without heirs reverts to the Crown and this disposition of law is also penal.

2. Expert knowledge, due to chance or education, as to the existence of minerals under landed property, or as to the value of a work of painting, potter}', bronze, etc., need not deter one from buying such things at a low price. If, however, fraud intervene, injustice is done, since every man has a natural right that he should not be the victim of fraud, and no one can claim to hold an advantage won by deceit.

3. If a chattel, not one's own, is found, these rules hold :

(a) There is no obligation injustice to take possession of it and to find the ow'ner and restore it ; but there may easily be an obligation in charity to do so, which will be serious or light in accordance with the subjective reasonable feeling of the loser, and this, if unknown, can be gauged ordinarily by the value or utility of the article.

(ά) If such lost chattel be taken up it must be restored to its owner, or at least reasonable care must be taken to find out the owner. The finder is entitled to compensation if put to trouble or expense.

(r) So long as such a chattel is retained, it must be restored to the owner whensoever discovered ; this principle of justice is embodied in English law, which gives no acquisitive prescriptive right over movables. Where a person found a sovereign in the road and had no means of knowing the owner, but intended at the time he found it to appropriate it even should the owner become known, if he refused to give it up when the owner soon became known, it was held

[1] Coroners are empowered to inquire *re* treasure that is found, who were the finders, or who suspected thereof. They settle no claims to it. Treasure-trove belongs to the Crown until the true owner be found. The finder is usually rewarded to the value of it in money. Concealment of treasure-trove is punishable by fine and imprisonment.

that he was not guilty of larceny. But it is obvious that he would be bound in conscience to restore it. Where a bureau was sent to a carpenter for repair and he discovered 900 guineas in a secret drawer and appropriated them, he was found guilty of felony. When a man buys a chattel at an auction, and later discovers valuables concealed within it, he does not acquire a right to them, unless the vendor intended to sell all the contents, whatever they might be.[1]

(*d*) If the finder has used up or consumed the thing in good faith after fruitless reasonable attempts to discover the owner, he has no moral obligations in respect of the latter; if, however, the thing had natural product, both it and its product, if they or either still exist, must be restored to the owner *{resfructificat domino}*.'

{e} If the finder gave the thing away in good faith, and after fruitless reasonable attempts to discover the owner, he is bound to no restitution of-any sort, if the owner subsequently appear.

(*f*) If the finder, in the same circumstances, converted the chattel, receiving something in exchange, he is obviously the richer by the deal. His obligations thereafter are as follows:

(i) If the sale was in market overt and in good faith he is bound to nothing. All sales and contracts of goods in market overt are indisputable. The maxim, *caveat emptor,* applies. Market overt is open market. In the country, it is held on particular days, and is the market place or spot set apart by custom for the sale of particular goods. A shop is not market overt for goods other than those usually sold therein. In London, every day, except Sunday, is market day, and all shops (except those of pawnbrokers) are market overt for their usual commodities, but only within the City. West End and suburban shops are not market overt.[2] The sale of horses is governed by additional formalities.

(ii) If the sale was not in market overt, but merely a private deal, it is commonly held that the seller cannot claim any benefit from the law, and as he should have guaranteed

[1] Cases quoted in *Emol.,* p. 596.

[2] *Emol.,* p. 593.

peaceful possession to the buyer, if the buyer has to restore (or restores) the article to its true owner, the seller must, in justice, make good the buyer's loss. This appears to be the most reasonable solution of the case, as everybody concerned is *in statu quo ante.* But if the seller himself both bought and sold the article *bona fide,* it is probable that he may wait till the law is invoked against him.

(iii) If, in the last hypothesis of private sale, the buyer has disappeared, and the seller discovers the true owner of the article, who, we suppose, cannot recover his property, many authors think that the seller is bound to make good the loss of the owner. But, on the contrary, it is difficult to see how the owner can have a right both to his chattel and to its equivalent, and how the seller, who sold in good faith and got money for valuable consideration, can be bound in justice to anything. His obligation is at least doubtful.

4. Tame and domestic animals may not be appropriated, however much they stray, provided they can be recovered by any reasonable means by their owners.

An animal tamed or reclaimed, though it fly or run abroad at its will, remains in its owner's possession, if it habitually returns to a place under his complete control. Such animals, therefore, cannot in justice be appropriated. Where they are kept within an enclosure to prevent them straying, they belong to the owner of the enclosure. It is maintained, however, that this is true only if the enclosure is so small that the owner has effective control. If the enclosure is large, the animals are practically wild. Thus, " they are not in possession unless they are either so confined or so powerless by reason of immaturity that they can be taken at pleasure with certainty."[1] Wild animals that were reclaimed but have regained their complete liberty are not in this category and may be taken.[2]

Poachers do no real injustice by shooting or snaring wild

[1] Pollock and Wright, *Possession in Common Law,* p. 231.

[1] This is said without reference to the penal laws against trespassing, poaching in general, and night poaching. The penalties for the latter are severe, and rightly, since human life is often imperilled by it.

animals which are in no way enclosed or under control, but they are guilty of injustice if they damage property, or if they lessen the value of shooting rights; and are guilty of trespass.

The law wisely protects land from trespass, and penalties imposed for trespass are just. They must be undergone when inflicted, for the common good and security of property require all men to respect the rights of others. Though no injury be done, an action will lie against one riding over the land of another, or shooting game on or flying over another's land; even a shot that strikes the soil of another's land is trespass, and firing at game over the highway is trespass.1

2. Accession

Accession is a good title, whereby the owner of a principal object becomes the owner of the accessory increment. Increments or improvements can be made to corporeal substances, either naturally, as by fruitage of trees, grass of land, pregnancy of animals, or artificially, as house-building on land, embroidery on cloth, painting on canvas. The questions to be settled in law and conscience are: Which substance is of principal importance, and what compensation, if any, is sometimes to be made? There are four kinds of accession: Land to land (accretion, alluvion); movables to land (fixtures); movables to movables (commixture, confusion); movables to labour (specification). Examples of accession are: Soil carried by a river from one bank to another, an island formed in a river near landed property, a dried-up river bed, beams fixed into a house, trees, grass, crops acceding to another's soil, embroidery or painting on another's materials, though these latter are considered in practice exceptions to accession. When solids, as grain, or liquids, as oil or wine, have been commingled, since separation of the component elements is impossible, the respective owners have a right to a proportionate part of the whole or its equivalent.

1 *Emol.*, p. 515.

Principles

1. The owners of the principal and of the accessory-objects respectively may take the benefit of the law.

2.In natural accession, as fruitage, birth, alluvion, the increment belongs to the owner of the principal object, unless positive laws determine otherwise (as in the case of cygnets, which belong equally to the owners of each parent bird). The owner of the female is naturally the owner of the offspring.

3. In specification, or the working of a substance belonging to another into a new form—as making bread from another's wheat, a ring from another's metal—the owner of the original substance must be compensated for his loss. He has obviously no claim to the product of another's labour, but it is difficult sometimes to say that ownership is acquired by manufacture.[1]

4.In mere juxtaposition, as wffien a gem is put into another's ring, the articles can and should be separated in strict justice, unless compensation is accepted.

5. In commixture, as in the union of solids, such as grain, stfgar, proportionate compensation is to be made, but it seems just if the law, when invoked, gives benefit to an innocent party. This is true also in confusion, the mixture of liquids. By English law the entire bulk of such a mixture goes to the person from whom the property so mixed by the thief with his own was stolen. "If the stolen property has been altered in form, the owner may seize or recover it in its new shape, if he can identify the original material. If the identity cannot be proved—as if barley is converted into malt—an action for damages will lie. If the stolen material has been used in building or repairing, it cannot be retaken, though capable of clear identification."[2]

6.Mixed accessions are the growth of seed and the produce of trees sown or planted on another's land. That which thus grows on land belongs by law to the land-

[1] Holland, *Jurisprudence,* p. 217. The Roman doctrine of *Specificatio* is not fully accepted in English Jaw. Thus, if A mingles his goods with those of B indistinguishably, A loses his property (J., n. 1553).

[1] Attenborough, *Recovery of Stolen Goods,* p. 88.

owner : *Quidquid plantatur, solo cedit ;* but though the full benefit of the law may be justly taken, it would appear equitable that some division of profits should be made.

3. Prescription

1.Prescription is a title to ownership of goods or to incorporeal hereditaments—as rights of way, light, water—such title being given by law, in consequence of possession or user in the manner and during the period determined by law. In English law, the term is not strictly applicable in the case of corporeal things, but only to easements. In earlier law, the theory of the validity of prescriptive title was that the user held by prescription was held in virtue of a personal law made by the grantor in favour of the grantee, and thus it was only things against common right that could be prescribed. In later law, the theory of prescription appears to rest on the fact that user from time immemorial is conclusive evidence of a grant made before the time of legal memory (ann. 1189).1

2. The title given by prescription is a positive title and confers a right ; prescription must therefore be distinguished from limitation of action, for in the latter case, the Statutes of Limitation do not directly confer a right but bar legal rights of action. These Statutes limit the time within which a legal remedy may be sought, thus protecting people against old claims. They»do not destroy a right. The periods vary greatly, and the effect of the Statutes will, in case of debt, be avoided by a subsequent written acknowledgement of the debt. Mere statement of inability to pay a debt after six years does not revive the debt. Again, compensation for accidental death must be claimed within twelve months ; action for slander must be brought within two years ; for infringement of copyright, within three years. We believe that in such cases, with the exception of debts, one may rightly take the benefit of the law, since neglect to invoke law, when it is possible to invoke it, on the part of an injured person, is equivalent to condonation. But

1 Holdsworth. *Hist, of English Law,* III, p. 135.

injustice would be done if he were prevented from using his privilege. Mere ignorance of the law does not prevent the statutory period from running.

Statutes of Limitation in so far as they apply to land act indirectly, for in extinguishing one title to land they implicitly confer another. This is sometimes illogically called extinctive prescription. English law, then, practically changes long possession of real property into ownership by bringing to an end the right of the original owner to any action at law (3 and 4 William IV, c. 37, s. 34 ; 37 and 38 Victoria, c. 57). Actions for the recovery of land, i.e., of corporeal hereditaments of whatever tenure must be brought within twelve years from the date when the right first accrued. Where, however, the claimant is under disability, i.e., infancy, lunacy, etc., when the right first accrues, he can bring his action within the stated period of twelve years or six years from the cessation of his disability whichever is the longer period, but in any event, the action must be brought within thirty years from the right first accruing. Where an owner is deprived of land by concealed fraud (by some ruse, by which he is not only deprived but defrauded by being led to believe that the claimant and not he is the legal owmer), time does not run until such fraud is found out or might with reasonable diligence have been so. In addition, the fraud must be committed by the person claiming through the Statute or some person through him. The law goes on to provide that in such circumstances the only person protected would be a *bona fide* purchaser for value.

But *malafides* will not avail in conscience, though it may, if not discovered, have no effect on legal possession. Nevertheless, where a person having a claim of right obtained possession of a house and premises in fraudulent manner, it was held that she could not defend an action of ejectment. Possession had to be given up before contesting the title. In the case, a woman had asked leave to get vegetables out of a garden, and having obtained the keys, she took possession of the house and set up a claim of title.1

1 *Emol.,* p. 307.

3. Prescription may be liberative or acquisitive. It is liberative, when it frees one tenement, called the servient tenement, from some right of user such as right of way which another tenement, called the dominant, lawfully exercised over it. Acquisitive prescription gives a positive title to ownership or user if all legal conditions have been fulfilled.

4. In law, no right can be acquired against the public good—such as obstructing a highway—or one that is against common law or Statute, or if unreasonable or uncertain. The time necessary to establish a prescriptive title to an easement is that "whereof the memory of man runneth not to the contrary" (fixed at ann. 1189). A user of twenty years was taken as *prima facie* presumption of immemorial user, and the Courts resorted to the fiction of a lost modern grant in these cases. The user, however, must have been, *nec vi nec clam nec precario,* i.e., peaceful, open and as of right, and exercised by what was of a continuous nature, such as a person and his forbears, a corporation and its predecessors. The consent or acquiescence of the owner of the servient tenement lies at the root of the fiction of a lost grant.[1]

5. The Prescription Act of 1832 was an Act to shorten the time of prescription in certain cases. One particular illustration is that of the right to light, which, if actually enjoyed for twenty years without interruption, openly and not by virtue of licence or agreement, becomes absolute and indefeasible, any local usage or custom to the contrary notwithstanding. This overrides the custom of London to thé effect that the owner of an ancient building might pull it down and erect another of any height, notwithstanding any claim of light by a neighbour.[2]

Principles

I. For valid and licit prescription, five conditions are necessary, namely, capacity of the thing to be prescribed,

[1] *Encyc. Laws of England,* s.v. Prescription ; Stephens, *Com.,* I, p. 468.

[2] J., n. 1451. But it has recently been determined that the Prescription does not give one an absolute right to the full amount of light enjoyed for twenty years. All that may be claimed is what is necessary for the beneficial use of the property whose lights arc diminished *(Emol.,* p. 295).

good faith, title, actual possession or user, legitimate lapse of time.

2. Good faith is conscientious conviction that the thing or right held is not unjustly held. Possession in bad faith cannot, so far as justice is concerned, establish a title by prescription. But in liberative prescription, it is sufficient to establish the good faith of the user, and that no obstacle had been put in the way of another's use of his right. It is obvious that common law or Statute can never establish a title in conscience where there is bad faith ; the only effect is to bar legal action. An heir who doubts about the good faith of his predecessor in acquisitive prescription may continue to allow time to run in his favour, since bad faith is not to be presumed.

3. A good title, or one thought to be good, must be present, for without it good faith is impossible. This title must at least be a supposed one at the beginning of the period ; after the period has been running, a presumed title would seem sufficient. No title is required in English law, though fraud, if proved, may bar prescription.

4. Actual possession of the thing or exercise of the right, either in person or in one's name, is a necessary condition for prescription. This possession or exercise must be certain, continuous, peaceable, and open ; litigation, opposition, arrangement, apology for user, are all contrary to peaceable and open possession.

Prescription in Canon law (cc. 1508-1512)

The prescription that is in force in civil law is accepted by the Church in respect of ecclesiastical property, without prejudice however to what follows :

I. The following things are not subject to prescription: What is of divine right, natural or positive ; that which can be obtained only by apostolic privilege, but possession continued for a hundred years, or being immemorial, establishes presumption of a privilege ; spiritual rights, of which the laity are incapable, if prescription is claimed in them on behalf of the laity ; the right of patronage is also

excluded (c. 1450) ; definite and clear boundaries of certain ecclesiastical territories ; Mass stipends and obligations ; ecclesiastical benefice without title ; immunity from all visitation and obedience ; payment of the *cathedraticum* (a tax paid for the support of the bishop).

2. Sacred things, privately owned, are subject to prescription by private individuals, but may not be used for secular purposes ; if they have lost their consecration and blessing they can be acquired for secular but not indecorous purposes. Sacred things, not privately owned, are not subject to prescription by private persons, but can be so by one ecclesiastical corporation or society against another.

3. Immovables and precious movables, rights and claims, personal or real, which belong to the Holy See, will be prescribed by a period of a hundred years ; if belonging to some other corporation, not the Holy See, by a period of thirty years.

4. Good faith during the whole period is essential for prescription.

5. Prescription runs in favour of one who has held a benefice for three years in good faith though his title is null, provided that simony has been absent (c. 1446).

SECTION 6. Injustice

1. Injustice in General

Kinds

I. Injustice is the violation of the right of another. If intended, it is formal ; if inadvertent, it is merely material and not, of course, sinful, unless in so far as the inadvertence was antecedently culpable ; if intended as such, it is both formal and direct ; if not intended but foreseen in consequence of some act, it is indirect. Injustice may result from a positive act, such as theft ; it is then positive. It may result from an omission, as when parents wilfully neglect their children ; it is then negative. If the person of another is injured, as in unjust striking, injustice is personal ; if the external goods of another are unjustly taken or damaged, it is real. Intentional injustice may or may not result in

damage to another. A sin is committed interiorly, even if no external injustice ensue.

2. Legal justice, as it is called, is transgressed by violating the common good of the State of which one is a member, or by culpable neglect to foster that good when one ought to do so. But as a man by violating legal justice sins against himself, at least constructively, such injustice entails no restitution. The good is violated also by declining to obey legitimate Superiors in the exercise of their jurisdiction for the common good. Every' act that conduces to the common good is antecedently a morally good act, for it is the act of some virtue. Legal justice is, therefore, a general virtue, inasmuch as it has no particular object of its own, like charity and religion, but bids us perform those acts which are already morally good, or are enjoined, and are due to the common good of the State. It inclines the supreme authority to frame good law's and to administer them well, and subjects to obey the laws. In obeying the laws, subjects are exercising acts of virtue imposed by the law, as in religion, temperance and chastity.[1]

3. Distributive justice is transgressed by rulers who discriminate unfairly between classes of citizens in the distribution of rewards or the imposition of burdens. They would discriminate unjustly if they appoint the unworthy to such offices as are necessary to the common good. If they do so, they violate strict commutative justice, and are bound to reparation both in respect of the State, and of private citizens. When a worthy official is chosen, others equally w'orthy are not wronged, since they had no antecedent right to be chosen ; but in competition for office, the most successful has a right to be nominated, if such is understood. In the unfair distribution of burdens, as when a class is unfairly taxed, commutative justice is violated and restitution must be made.

4. Commutative justice is transgressed by the invasion of a specific right of a particular person or corporate body and restitution must be made.

1 cf. Verm., Π, η. 347·

Obligation

There is a striet moral obligation to act justly, because God has assigned man a definite supernatural destiny, wills the means necessary to each one,[1] and thereby gives man an inalienable right to use those means amongst which are obviously the rights to life, sustenance, opportunities. If serious injustice against another is done, God is seriously offended and the sin cannot be forgiven unless due sorrow for it is elicited, and a desire of making reparation, if possible, is entertained.

Gravity

In its essence, the violation of another's right is a· serious sin because it is opposed to right reason, good order and divine law : " Do not err ; neither thieves nor extortioners shall possess the Kingdom of God " (i Cor. 6, io). But the gravity of the external sin must be measured by the actual injustice done. In this matter, the distinction between what is grievously ■wrong and what is slightly wrong is accepted by every Catholic, and the denial of it leads to gross error and confusion. As there are offences against God which are not deadly,[2] so are there such offences against our fellow-men. The gravity of injustice is determined also by the harm done to society. Not only are the rights of individuals to be respected, but the peace, security and stability of society are to be upheld by all citizens. Amongst the rights of the individual are included rights to health and salvation, which are spiritual goods, natural and super-natural respectively ; right to integrity of life and members, which are natural and physical ; rights to honour, good name and external possessions. Injustice may be done as well by damage to another's goods as by actual theft. In the former case the wrongdoer need be none the richer by his act ; in the latter case he is.

[1] For the case of unbaptized infants, the reader is referred to the dogmatic treatises on Grace.

[2] The reader is referred to the treatise on Sin, and especially to the section on Mortal and Venial Sin (vol. I, p. 209 sqq).

Intention and Injustice

1. The deliberate intention of employing some act that one has an antecedent right to do to the hurt of another cannot make that act unjust in point of fact, as when a seller sells his wares at the lowest price—which he is allowed to do—in order to crush rivals in the trade. This is not an external offence against justice, but it may be, and usually is, an offence against charity. Everything, however, depends on local conditions and the opportunities of rivals who are crushed. There is no question of restitution *post factum*; but *antefactum* there would be a question of refraining from a serious sin against charity.

2. If an action is done with the intention of harming another, the actual result being unlikely to happen, either owing to the cause being in itself insufficient, or because, as a fact, the result does not ordinarily happen, it is a matter of dispute whether this is an act of injustice and entails restitution for the harm that actually ensues.[1] Those who think it is, affirm that the evil intention supplies the causal connexion; those who deny it, think that intention cannot change the nature of causes. An example given is that of X, setting a man-trap in his field, without notice, where trespassers very rarely pass, with the hope that should his offensive neighbour pass that way he may be caught in it. All agree that serious damage that results in this supposition is a serious external offence against charity and a serious internal sin against justice.

2. Theft and Rapine

1. Definitions

If the property of another is unjustly taken in secret, it is theft; if taken openly and forcibly, it is rapine. Theft is an offence against real commutative justice; rapine, in addition, is injustice against personal immunity. The two are specifically distinct sins, the latter being worse than the

[1] The following think it is not: Lessius, II, c. 9, n. 113; *S.* Alph., lib. 3, n. 636; *Lehm.,* I, n. 1167; D'Annibale, II, n. 200; G£n.-Sals., I, n. 517.

former. It is of the essence of theft that a thing be taken with the intention of keeping it, at least for a time, against the owner's reasonable will; this is unjust taking away.

2. Theft

Theft, like all injustice, is opposed to charity, for every harm done to another is contrary to that virtue which bids us wish well to another. Theft is, therefore, a grave sin by its nature, though accidentally it may be a slight one for want of sufficient matter. But the essential reason why some quantity may be unjustly stolen without grave sin is not the lesser harm done thereby, but it is the fact that in spite of a small theft, in many circumstances, the rights of others remain substantially intact; it may be added that a man cannot usually be supposed to take grave offence at a slight theft, and human friendship and solidarity are substantially maintained in spite of minor offences. If this were not generally true, friendship would be impossible.[2]

A person who is bound-in justice to give up a thing cannot be said to be reasonably desirous of retaining it, however much he wants to do so; but if he were bound only in charity to help the poor, he might still be reasonably unwilling to be deprived of a particular thing, for he can help the poor in many ways. It is true, therefore, to say that theft is not committed—except legally—when a person in really extreme need takes from another—secretly or openly—what is urgently necessary for his own life or the life of another, for of course what he may morally do for himself he may morally do for others in like need. But the cases of such extreme need are very seldom verified, at least in civilized countries, where provision is made for the poor at the public expense. Doctrine that is true in theory is distorted very readily by Communists in practice. It is untrue to say that in grave

[1] Travelling on a railway without paying one's fare is not theft in the strict sense. It is, however, unjust, because it is taking, i.e., using the services of a company which have a definite value without paying, and contrary to its will. It entails restitution.

[2] cf. Verm., II, n. 639; S. Th., *S.*, 1. 2, q. 88, a. 1: 2. 2, q. 59, a. 4, ad 2.

necessity all property becomes common and there can be no theft; a proposition condemned by the Church,[1] and contrary to common sense and the good of society.

It is not theft to take from another who will not pay his debts an equivalent of what is our own, nor for a wife to take from her husband what is necessary for the maintenance of the family. But a person can offend against charity by taking what he is entitled to take so far as justice is concerned. But the offence against charity does not entail restitution, whereas that against justice does.

Gravity

Theft is by its nature a grievous sin. However, it would be only a slight sin against justice, if the injustice is slight. It is a sin against a Commandment of God, and we cannot enter into eternal life if we violate the Commandments in a serious way unless we repent (Mt. 19, 17). S. Paul enumerates theft among those sins which exclude from heaven (1 Cor. 6, 10). It is against Natural law, for if the goods of others could be taken without moral fault, there would be an end to social peace, stability and progress. But a small theft, not being a serious threat to these social goods, is not a serious moral fault. It is necessary, therefore, to suggest some standard by which to determine when theft is a serious injustice and when it is not. In this, as in all similar matters of conduct, to cavil at the casuistry of distinguishing between great and small sins, is to take leave of common sense and universal conviction.[2]

The standard must be determined by the harm actually done, for we must speak of objective, concrete and actual injustice, and prescind from the personal annoyance of the victim of theft and the subjective conscience of the thief. We must speak of standards that affect both the individual and society. The standard that is taken in respect of an individual is relative; that taken in respect of society is absolute.

[1] Pope Innocent XI, pr. 36.

[2] Such casuistry is daily practised in the Law Courts, and rightly, for no sane man would condemn to the same term of imprisonment a poor man who stole a loaf of bread, and a well-to-do clerk who embezzled a large sum of money.

Two Standards

There are and must be two different standards, one in respect of the individual robbed, the other in respect of society in general.

I. The standard in respect of the individual robbed is determined by the injustice done to him, and this is measured by that individual's condition of living. It is a relative standard; it must vary considerably. The same amount stolen will not affect rich and poor equally. A rich man would not feel a loss which to the poor would be a most serious one.

2. The second standard has reference to society, and this is an absolute standard for a particular country at a particular time, on the supposition that throughout the place the exchange-value of money is uniform. The standard implies that there is a sum of money which, if taken without grave moral fault, would tend to make property insecure, and render men generally unwilling to undertake the labour necessary to advance their own welfare and that of the State. Let us say, for example, that if the sum of £100 could be taken without the serious moral obligation of restitution, men would feel that even State property was very insecure, that peculation to that amount would be only a trifling moral fault, and that Divine Providence had put into men the natural instinct and practical necessity of aggregation in society without giving sufficient sanction in human conscience for its maintenance and security. It is true to say, therefore, that there is an absolute sum, the unjust taking of which is certainly and always against a serious precept of Natural law. This is the absolute standard.

Relative Standard

In regard to the relative standard, it is reasonable to hold that to deprive an individual who has to work for his living of a day's wages or of what would suffice for a day's expenses for himself and his family—nourishment being only one factor—would be a serious loss, and would be resented by

everyone.1 This standard refers to a father of a family. For the unmarried, the concrete relative sum would be twice as great. It is generally thought that the relatively grave amount would be the day's wage of all who work. It is the day's wage which keeps the family for the day, for numbers of the working class can never put by any money, except by stinting themselves, and the amount they can put by daily is trifling. As the family has to be maintained for seven days on the week's wages, it will be correct to say that one seventh of the weekly wage is a grave amount, Where a family is living on the 'dole,' one seventh of that would be a grave amount.

There is fairly unanimous agreement among divines that the following amounts—with slight variations—express that standard, taking the exchange-value of money in the year 1933 * one shilling in the case of the very poor ; six to eight shillings in the case of day labourers ; eight to ten shillings in the case of skilled workmen, artisans or tradesmen ; twenty shillings in the case of the moderately rich, and the absolute sum—to be determined later—in the case of the very wealthy or of companies.2

Absolute Standard

In regard to the absolute standard, and writing for England alone, the sum of £3 will be acknowledged to be a serious sum for the following reasons :

After 1914 the purchasing power of 20s. declined in 1916 to 16s. 3d. and in 1917 to 9s. 8d. A little later the value fell as low as 7s. or less. The cost of a week's food for an ordinary family of the worker was computed to be 25s. in 1914, 51s. 6d. in 1917, and in 1930 (April 1st) retail prices of general family commodities were as 157 to

2 These amounts arc suggested as probably correct, assuming that the skilled workman receives about £3 to £4 in wages per week, and that the manual day labourer receives about £2 to £2 10s. There are many workers, as farm labourers, luggage porters, railway porters, miners on half-time, who receive much less. About one-seventh of their weekly earnings would be relatively grave in their case.

100 in comparison with July, 1914, in June, 1932, they were 142, and on Nov. 1, 1941, as 200 to 100. If then £1 was generally considered in 1914 as the absolute sum, £2 to £3 would have represented that sum in successive years and very little less than £3 in 1933, with the price of food stuffs and rents still high, though Slightly falling. A reasonably good wage for manual labourers in 1914 was £1 10s. A wage of £3 today (1943) is equivalent, in real wages, to about £1 los. before 1914. We think, therefore, that now (an. 1943), £3 represents very accurately the absolute sum; it will not be much less ; perhaps in the opinion of others it will be a little more. The computation will be found to be reasonable in comparing it with the sums formerly assigned by writers in other countries. But the sum must vary in different countries and also at different periods in the same country.

Thus, the following sums were assigned by writers for their respective countries (French francs being taken, where mentioned, as a standard of value) : Marc (ann. 1911 for Italy), 20 to 30 francs ; Tanquerey (ann. 1910 for U.S.A.), 7 to 8 dollars ; Crolly (for Gt. Britain and Ireland before 1900), £1 ; Ojetti (ann. 1900 for Italy), 30 francs ; Sabetti (ann. 1897 for U.S.A.), 5 dollars ; Barrett (ann. 1919 for U.S.A.), 35 dollars ; Slater (ann. 1909-1925 for England), £1—though we believe this estimate is, after 1914, too low ; Noldin (ann. 1902 for Austria), 30s. ; Ferreres (ann. 1919 for Spain), 20 to 30 francs for all countries—we believe this estimate is too low ; Lehmkuhl (ann. 1910 for Germany), 30 marks ; up to £2 for England ; 7 to 10 dollars for U.S.A. ; D'Annibale (ann. 1900 for Italy), 30 francs ; Bucceroni (ann. 1917 for Italy), 30 francs ; Génicot, Waffelaert (ann. 1912 for Belgium), 40 francs ; Arregui (ann. 1919 for Spain), 40 to 50 francs ; Vermeersch (II, n. 639 : for ann. 1924) cites with approval the opinion of Génicot-Salsmans that 100 francs is the absolute sum ; furthermore, he thinks that the pre-war sum must be at least doubled, which would represent £2, or even more. Piscetta-Gennaro (III, n. 251) think that now the absolute sum is four times the pre-war sum (£4 in England) ;

Garriepy, for Canada, thinks die sum would be eight to ten dollars (£2 10s. in England) and Prümmer, writing for Switzerland, puts the absolute sum there at 100 francs, gold standard (£4 in England). Considering the variety of opinion, it will appear that a definite sum is hard to find. We think, therefore, that with the increasing rise in real wages in England, £3 will represent a safe and not too rigorous nor too lax a standard to take.

It is rhetorical to ask the question : For what sum should we think a thief worthy of damnation ? There is, indeed, no such sum. The question ought rather to be : What is the sum, the taking of which with impunity, so far as grievous moral guilt is concerned, would be very prejudicial to the security of society ?

These considerations may help the confessor to come to a just decision in urging restitution under serious obligation, but they are for the study and not for the pulpit, for, as has been well observed, the casuistry that must be employed in theory to help a confessor, may very well, in practice, confirm the dishonest in petty thieving, if practice is to be guided by too absolute a standard. The clearest conclusion, perhaps, on which a confessor may rely is that in England £1 should not now be considered the absolute sum, and £5 may be considered as certainly exceeding the absolute sum. But even here, though it is desirable to have a uniform standard amongst confessors, different minds will be differently impressed by the arguments put forward, and a fuller knowledge of wages and prices may very well lead to a slightly higher standard being taken, and though the estimate of Barrett (35 dollars) appears to us a very generous one, even for the United States, we must remember that when his book was published, the wages in that country were very high, and the wealth of many individuals was abnormal.[1] Koch-Preuss (V, p. 361) accepts the estimate of Barrett.

[1] But in these years great unemployment prevails in U.S.A., and the amassing of gold in the banks has not prevented very general hardship, though the dollar maintains its high relative value with a tendency (Nov., 1933) '0 depreciate.

Other Relative Standards

In the case of thefts by members of a family—as wife or child, from the wealthy father of a family—more than the sum just assigned would be necessary before arriving at a serious theft. Such a father is presumably less unwilling to be deprived of his money by members of his own family than by strangers. The grave amount will probably be twice as large as the absolute sum, that is, £6. But this is an absolute sum, and therefore less would constitute a grave sin in the case of the less prosperous family. The matter then becomes relative, and serious matter would be twice the ordinary relative amount. But this does not mean that children do not commit sin by even petty thefts. They do, indeed, for the money does not belong to them—prescinding from real necessity—and they may neither take nor dispose of it. The wife, however, is entitled by law and conscience to maintenance, even if she have a separate estate of her own, and it is, therefore, no sin for her to take what is necessary for decent and ordinary family maintenance. In general, the obligation of restitution need not be imposed on wife or children, since the father cannot usually be presumed to wish restitution to be made. He wall object more to the manner in which his money is spent than to the fact of the theft.[1] But there are limits here, for a spendthrift son could be obliged to restitution, if possible, since fathers do not condone extravagance.

In regard to thefts of money which belongs to a company or to several persons, the following principles are laid down :

1. The absolute sum here is as stated above if this sum was stolen by one act of theft.

2. If no individual of a company has been seriously harmed by a theft from the company, the absolute sum as stated constitutes a grave theft. But if the company is small and indigent, the relative standard must be adopted.

Petty Thefts

I. That petty thefts and acts of damage can coalesce and become grave matter, to be restored under grave

[1] Noldin, II, n. 417.

obligation, is obvious from this one fact, that small amounts of money can be stolen at short intervals, as, for example, daily, and kept by the thief, until they amount to a considerable sum, v.g., £10. It is clear that when the amount is large, the thief is guilty of retaining another's property to a grave amount, and is, therefore, bound under grave obligation to restitution. The statement does not mean that a multitude of small venial sins become a grave sin, but that a multitude of small losses can become ultimately a grave loss, and that when they become so by the addition of the last theft in the series, a grievous sin may then be committed, and a grievous obligation may arise. This possible coalescence is endorsed by the condemnation by Pope Innocent XI of the false opinion that small thefts can never reach a sum which has to be restored under pain of mortal sin. Nevertheless, in this matter, intervals between petty thefts may be so great, and the separate thefts may be so small, that coalescence does not practically take place. In other words, the loss then is not felt to be great. To put the matter, therefore, on a clear basis, divines lay down certain principles in order to establish the gravity of the obligation of restitution.

2. Petty thefts or acts of damage can, as a matter of fact, coalesce.

(û) They do so in respect of the same person or of a society, for a corporate body can be harmed as well as an individual. Prescinding, therefore, from reasonably presumed condonation, which might be assumed *postfactum* to operate in the case of insignificant thefts from a rich person or wealthy society, the several acts of theft or damage, if not entirely inappreciable, will certainly coalesce if they are frequently repeated at short intervals, and if, in the event, the person harmed is reasonably unwilling to suffer repeated losses.

In point of fact, small thefts repeated at haphazard and not intentionally accumulated, and separated by intervals (probably a fortnight, certainly a month) do not coalesce; the smaller the theft, the smaller the several intervals will be to prevent coalescence. Very small pilferings by domestic servants of ordinary comestibles or

drink, if consumed there and then, will not coalesce at all. If the thefts are considerable and not far short of grave matter (relative or absolute, as the case may be), probably they will coalesce if the several thefts are separated by intervals of less than two months. The principle may appear gratuitous. It is, however, generally laid down, and has recommended itself to divines who are by no means indifferent to the sanctity of property.

(b) Petty thefts or small acts of damage coalesce when they are the result of one and the same act, or of several acts morally united. Sums of money belonging to partners, if taken by one and the same act of theft, certainly coalesce, as also do several petty thefts of money that is held in common, by distinct acts at very short intervals. Though each individual may suffer only a small loss, in the aggregate the loss may be great, and the security and peace of society demand that the aggregate should be looked upon in the lump, and if it is a grave amount, should be condemned as a grave violation of justice.

But the case is held to be different if small acts of damage, not of theft, are inflicted on several persons, than if inflicted on the same person. In the former case, coalescence probably does not arise. The reason given is that in the case of benefit accruing to the thief, and especially in the case of money, the cupidity of thieves has to be kept in check and a severe sanction laid upon it, for men are prone to this vice and would indulge in it, if they could do so without grave moral obligation arising. Some authors think it probable that where small losses have been successively inflicted on one and the same person, the obligation to make reparation is not a grave one, if the sum total, though grave, was not intended or foreseen.

(c) Repeated petty thefts coalesce in consequence of being unified by intention. If, therefore, a thief intend ultimately to reach a great amount by his several petty thefts, the several thefts certainly coalesce, for his several acts are merely so many instalments of the one serious act of injustice. We are assuming that the thief continues in the same frame of mind.

(</) Repeated petty thefts coalesce if hoarded ; it is a grave injustice to retain a grave amount belonging to another.

(«?) Petty thefts at short intervals coalesce when committed by several persons conspiring together.

3. When petty thefts coalesce, it is necessary to determine what is then the grave amount.

(a) If the thefts are committed against several persons, no individual suffering grave loss, the grave amount will probably be twice the absolute sum of theft.[1]

(b) If thefts are committed against one and the same person, and the objects stolen are in various categories (v.g., money, watches, boots, clothing), more than the monetary' relatively grave amount would then be the grave amount, since the loss is, presumably, less in the one case than in the other.[2]

(c) If the petty thefts are separated by intervals, but still short enough to permit coalescence, probably twice the ordinary relatively grave amount will then be the grave amount, for the loss is felt less than if the whole amount were taken at one and the same time[3] ; but this estimate is the most generous. Others think that half as much again as the relatively grave amount would be grave in thefts from one individual.[4] If there is no relative amount to be considered, because the sufferer is very wealthy, twice the absolute amount will then be grave.[5]

Practical Applications

1. Shopkeepers and tradespeople, who regularly defraud their customers by giving short weight, would be guilty of grave injustice when they reached twice the absolutely grave amount. If they continue the practice, they are continuing the one grave sin.

2.When several act in conspiracy to defraud another, the grave amount will be what is for that other the relatively grave amount, since the same loss is felt whether inflicted by one or by several. If, however, there is no relatively

1 Gén., I, n. 510; Lehm., I, n. 1115 ; Verm., II, n. 645.
1 Verm., II, n. 645.
1 Gén., I, n. 510; Verm., II, n. 645.
* S. Alph., lib. 3, n. 530.
5 Gén., *loc. cit.* ; Verm., *loc. cit.*

grave amount to be considered, because the sufferer is wealthy, probably more (50 per cent) than the absolutely grave amount would be required.[1] But if there is no conspiracy, each is morally responsible for the amount which he has stolen, which, therefore, may be grave or light.

3. If a thing stolen is not of much value in itself, but is highly prized owing to associations or other reasons, as heirlooms, pictures, photographs, a grave sin of injustice is not committed, but a grave sin against charity is committed if the owner is reasonably seriously affected by the loss.

4. If the thing stolen is of trivial value, but exceedingly necessary to its owner for his livelihood, obviously a grave sin of injustice is committed.

5. If we disregard coalescence, and consider cases where one act of theft is committed :

(a) A grave sin is certainly committed when the grave absolute amount of money is stolen by one act of theft, though it is owned in shares by several people.

(*b*) Even less than the grave absolute sum, if stolen, may be a grave sin, if the sum stolen belongs to several, as to a corporate body or society, which is seriously affected by the loss. We have then to take a relative standard.

(i) When the stolen amount belongs to some pious purpose, as Masses for the departed, or needy orphanages, we should not then consider whose right is violated, for no one has a right to the money *(jus in re)* until it is allocated. We should, more accurately, consider the purpose to which the money is to be put. If the theft seriously interferes with even a part of that purpose, provided that it be an important part, a theft smaller than the absolute sum may be a grave sin.[2]

6. Domestic servants will commit injustice as other people and to the same extent when they steal money, for masters and mistresses are usually unwilling that they should be more leniently regarded than strangers. The position, of trust which servants enjoy does not make injustice more difficult. But in the matter of food and drink consumed by

[1] Verm., II, n. 645.

[1] cf. Verm., II, n. 640 *contra* Gén., I, n. 509, 30.

them, unless quite unusual and very expensive and reserved for the family, they will not commit serious injustice.

7. In coalescence the several thefts must not be negligible, for unconsidered trifles do not constitute even a slight sin, since no one is reasonably unwilling to be deprived of what he does not esteem. But the practice of taking small things from workshops is altogether wrong, as the sum total taken is a serious loss where there are many workers, and employers seriously object to the practice.[1]

8. Petty thefts committed after a grave amount has already been stolen are severally, according to some writers, venial sins, until an additional serious amount is reached. According to others, each successive theft in the case is a grievous sin, if the thief advert to the fact that each petty theft, with the preceding thefts, constitutes a grave injustice which he has no intention of repairing. He really renews the intention of not making restitution of a grave amount, and in this sense the opinion is reasonable.[2] If he do not renew his intention not to restore, the subsequent petty thefts are an aggravating circumstance of the one grievous sin.

3. Taking not Theft

One may take the property of another without being guilty of moral fault, both in the case of extreme necessity and for legitimate occult compensation.

1. Extreme Necessity

Necessity is extreme when life is in danger or some comparable evil is imminent, and the person in need cannot extricate himself from it unaided. A person in such necessity may take so much of the goods of another as will relieve present need, unless that other is in a like necessity. In such need, the goods of the earth are common property; rights of exclusive private ownership lapse; there ds, in fact,

[1] The Vice-President of Sheffield Chamber of Commerce stated in 1914 that the estimate of loss due to petty thefts from workshops in Sheffield was about £50,000 per annum.

[2] cf. Lehm., I, n. 11 r7 ; Noldin, II, n. 422 ; S. Alph., lib. 3, n. 538 ; Lugo, a- 10, n. 43 ; Lessius, hb. 2, c. 12, n. 44.

an obligation to preserve life, which is a higher good than property. Even before extreme necessity is actually present but when it is imminent, the same principles are true. However, in merely grave need—that is, such as a person can relieve, though with some difficulty—it is not permitted to take others' property,[1] for many live in grave necessity, and if such appropriations were allowable, the insecurity of private property would be very great. The distinction between ordinary and grave need would be drawn fine by many persons. Before appropriating in extreme need that which is necessary, the needy person must beg it as an alms if there is reasonable hope of success. Those who will not allow others who are in extreme need to share their goods sin against charity but not against justice, for whilst they hold their things, they hold what is their own. It is only when a person in extreme need has taken actual possession of another's goods that ownership passes. He cannot then be deprived without injustice. If violence be used to prevent the one in extreme need sharing goods, a sin of injustice is committed, and the obligation of desisting from such violence remains as long as the other is in extreme need. If the use of a thing is sufficient to relieve present extreme need, the thing must be restored when the need for it has ceased ; if the thing has been consumed, no restitution is obligatory. This would be true of money, food and drink. One may do for another what that other may do for himself. It would, therefore, not be unjust to help a person in extreme need to take from others what is necessary. But this true and valid principle is liable to be misapplied. It is disputable whether a person in extreme need could take a very large sum of money, or a very expensive chattel, for as no one is bound to save himself by taking extraordinary means, so no one is allowed to appropriate goods of extraordinary value.

2. Occult Compensation

Occult compensation is the act of one who takes secretly from another what that other owes him. This kind of

[1] The contrary is condemned by Pope Innocent XI, pr. 36.

compensation is permissible, for it is to take what is one's own ; but it would be wrong except under certain conditions, for there are other ways of recovering one's own, such as appeal to law, and in recovering our own we may not do injustice to others. The conditions necessary to justify occult compensation arc as follows :

1. The debt must be a debt of justice, otherwise the act is unjust spoliation.

2. The debt must be certain and not doubtful, for everyone has a right to keep what he has, until it is proved that it belongs to another. Lugo was not persuaded that this condition should be insisted upon, if the supposed creditor has solid and positive probabilities in his favour, but not certainty. He cites, as opposed to him and as agreeing with the doctrine stated in the text, an array of authors who would make an opinion probable in the highest degree, if not certain.[1] The authors cited by him are : Molina, Vasquez, Sanchez, Suarez, Lessius. Consequently, in his conclusion (n. 106), Lugo refrains from deciding the matter against these authors, and in practice he would adhere to the common opinion. Authors, therefore, who quote Lugo as opposed to the common opinion, misquote him. One case may be admitted, viz., the case where the fact on which a debt is based is certain, but where the right to compensation is merely probable in this sense, that a judge in Court—if the matter were brought into Court—could, in conscience, assign compensation to the claimant, and very probably would do so.[2]

3. The debt should not be recoverable except by occult compensation ; if there are other ways, it is against legal justice to take the law into one's own hands. But if this condition is not fulfilled, no sin against commutative justice will have been committed, and, therefore, there would be no obligation of restitution.

4. The thing taken should be of the same kind as the thing owed, for it is not at all certain that loss of reputation,

1 cf. Verm., II, n. 648; Gén., I, n. 504; Arregui, n. 318; Lehm., I, n. 1125.

for example, should be repaired by a money equivalent. Lugo, Lcssius and others think that even in this case occult compensation for defamation by taking some monetary equivalent is permissible, provided that the traducer will not repair the slander, and provided that, if the case were taken to Court, the judge would assign a monetary compensation. The opinion, though probable, is never, we believe, to be approved in practice by a confessor, who also should never suggest occult compensation. *Post factum* he will be justified in acting upon probable opinions, that he may not enforce restitution when it is doubtful.

5. Additional accidental loss to the debtor must be prevented. This is an obligation of charity not of justice.

Anticipated occult compensation—where the debtor is not likely to be solvent at the legally due time—is not against justice, provided the debtor is not made to suffer additional loss.

Practical Applications

Servants, workmen and employees of all sorts have a right to a just wage, and after their work is done their wage is a debt of justice. They may, therefore, lawfully compensate themselves if all the foregoing conditions are verified. But employees are not always the best judges, any more than employers, as to what constitutes a fair wage. It is condemned doctrine to teach that household servants may compensate themselves from their employers' goods when they think that they ought to have a bigger wage.[1]

In this case, the foregoing conditions will be verified if workers have been forced to work for less wage than is just, provided that they are not engaged out of pity, or that others could not have been found to do the same work for the same salary, and also if they have been burdened with work not contracted for or quite unusual. But they may not compensate themselves if they freely entered into a low-wage contract. If they do additional work freely, they have

[1] Pope Innocent XI, pr. 37.

no claim injustice to be paid for it ; if the work, however, is implicitly asked for, they have a just claim. In any case, the amount that canjustly be taken is very hard to determine, and the advice of a wise counsellor should be asked. Confessors should be very reluctant indeed to give advice in such matters. The value of the principles is that, *post factum,* a confessor will be slow to insist on restitution, until he understands all the conditions of the case, and he will prudently deter penitents from the practice.

If one has been legally obliged to pay a debt not contracted or already paid, obedience to law must ordinarily be given, except where the matter is evidently wrong, in which case passive resistance is allowable. Recourse may be had in such cases to occult compensation, but without scandal and without disturbing public peace. The receiver of such money not owed may not keep it, though the law may be in his favour.

If recourse to law is impossible or expensive and the debt is certain, occult compensation for the debt may be taken without recourse to law, if the other conditions are fulfilled.

SECTION 7. Restitution

1. General Principles

Restitution is the reparation of the violated right of another. It is restoring the balance of rights, reconstructing the natural order of justice.

I. Restitution of violated rights is manifestly a precept of Natural law, based on social security and peace. Actual restitution, and if that is not possible, the intention of restitution when and if subsequently possible, is absolutely necessary for salvation, if the right violated was one of great moment. The precept of restitution is also a positive one, like the precept of almsgiving : "If the wicked man restore the pledge, and render what he has robbed, and walk in the commandments of life, and do no unjust thing, he shall surely Eve, and shall not die" (Ezech. 33, 15) ; "Go to now, ye rich men, your gold and silver is cankered, and the rust of them shall be for a testimony against you, and shall

eat your flesh like fire. You have stored up to yourselves wrath against the last days. Behold the hire of the labourers who have reaped down your fields, which by fraud has been kept back by you, crieth ; and the cry of them hath entered into the ears of the Lord of Sabaoth" (James 5, 1-4).

2. Since the duty of restitution is measured by the amount to be restored, if part restitution be made and the residue is not a serious amount, the remaining obligation is not serious. This principle is helpful in difficult cases, but it is apt to be misunderstood, to give scandal, and to be condemned as misapplied casuistry.

3. Restitution is to be made as soon as possible ; culpable delay may, and often does, amount to additional injustice if the creditor suffers by the delay, and in this way internal sins of injustice may be indefinitely multiplied. That they should be multiplied the obligation has to be wilfully and repeatedly disregarded.

4. Restitution for goods of one kind by goods of an entirely different kind[1] is not necessary, because there is no strict equivalence between them. Thus, though monetary damages are rightly imposed for libel, the damaged reputation is not really restored and never can be restored by these means. But this legal fiction is valuable, and for the public peace and the prevention of similar offences the penalty is just. Many authors think that such a method of restitution ought to be made when identical restitution is impossible even before law imposes the penalty,[2] but many others do not admit the obligation.

5. It is assuredly an act of charity to the living—and perhaps too to the Souls in Purgatory—to pay their debts. There is a pious opinion that these Souls are helped thereby. It is based on supposed private revelations, on very credible communications from the dead, and perhaps on the Decretals (c. *In litteris de raptoribus'),* where heirs are bidden to pay

[1] Kind, i.e., genus not species. Thus, all things that can be purchased for money are of one kind in this context.

[1] So apparently S. Thomas, followed by many others : cf. *S.,* 2. 2, q. 62, a. 2, ad i et 2, unless he is speaking of a counsel ; cf. Tanq., III, n. 565 ; *Prümmer, II,* n. 204 ; Piscetta-Gennaro, III, n. 485.

the debts of the dead that these may be freed from sin. It is certainly credible that God would accept for the dead the prayers that accompany the payment of such debts?

6. Practical considerations for confessors :

(a) Though a person may not be able to make full restitution, he must have the wish to do so, when possible, and must take reasonable means to do so. One of these means is to put aside small amounts from time to time, and thus to pay off at least part of the debt. Debtors are not exempt from part payment because they cannot pay the whole debt.

(b) It is seriously unjust wilfully to incur debts that will never be paid ; such is the practice of putting and keeping children at expensive schools with no prospect of paying the fees.

(c) A very trifling debt must be paid under pain of venial sin ; but with the reasonably presumed wish of the creditor it may be paid to the poor.

(d) Betting and gambling debts, though not recoverable at law, are debts of honour and conscience. It is nowhere stated and never maintained that any debts are extinguished by any Statutes of Limitation.

(i) In the case of the dying who are in debt, the greatest prudence must be used, so as not to deprive them of the benefit of the Sacraments if they are in good faith.

2. The Grounds of Restitution

When injustice has been done it must be repaired. Commutative justice is violated either by wrongful possession of another's goods or by unjust damage. Co-operation may take place in either, but cannot strictly be considered as a third separate ground of restitution. We will, however, treat of these three grounds separately, for clearness sake.

(a) The First Ground of Restitution, viz., Possession of Another's Goods

The unqualified owner of anything has the right to possess it and dispose of it as he pleases. If another unjustly

1 Ball.-Pal., V, p. 625 ; Lugo, *de Pasnit.,* d. 26, n. 33 ; Fcrreres, I, n. 767.

withholds the thing from the owner, he is bound to restore it *(res clamat domino}.*

Secondly, such owner alone has the right to the natural product of his goods *(resfructificat domino).*

Thirdly, when a thing perishes, the owner is normally the loser *(res perit domino).*

But as one person may hold or may have consumed the goods of another in good or bad or doubtful faith, the respective obligations to restitution will be different in these three cases.

i. Possessor in Good Faith

This possessor is one who, without any fault, is ignorant of the fact that he holds or held another's property. His obligations and privileges are as follows :

1. When he discovers that he is in possession of another's chattel, he must restore it, if he can, to the owner, being known, unless, either prescription or purchase in market overt has given him a good title to keep it.

2.The same is true if, having used up some of the property, he still holds the remainder.

3.If the chattel has automatically depreciated during his possession in good faith, he must restore it as it is now, even though it has depreciated in value through his carelessness. But if the depreciation of it has materially benefited him, he must restore both the chattel and that amount of benefit—if possible—to the owner, except that he may retain the fruits of his own industry.

4.If the condition or value of the chattel has improved, he must restore it as it is, though he may make deduction for any expense he has been put to in keeping it or in improving it, if such was the case.

5.If he wilfully delay when he could make restitution, he becomes a possessor in bad faith, and must make good the owner's foreseen losses that directly ensue from such delay.

6.If he cannot find the owner after using reasonable means, he may keep and use the chattel as he likes. He is,

in this case, not bound to any restitution to the poor, since *ex hypothesi* the owner is unknown and the possessor began in good faith. If, after he has used up or destroyed the chattel, the owner becomes known, he is not bound to restitution of the value of the used-up chattel. But if by using or destroying it he has become the richer by the amount of the value of the chattel or any other amount, that amount he must restore, for he retains that equivalent of the chattel, or some profit, which now he has no right to keep, always excepting the fruits of his own industry.

7. If he received the chattel as a gift and discovers the true owner, he must restore it, if he can, as soon as possible.

8. If he bought a stolen chattel, not known to have been stolen, in market overt and in good faith :

(a) He may keep it, if the rightful owner, becoming known, do not prosecute and convict the original thief.[1]

(b) If the owner prosecutes the thief, English law will order restitution of the chattel to the owner ; the purchaser must then restore it and can be indemnified from the goods of the thief, if he have any.

(i) If, before prosecution and conviction of the thief, the holder in good faith sells the chattel, even after notice of theft, he is not liable to an action at the suit of the owner. The owner can, however, recover from the sub-purchaser. It is doubtful whether the sub-purchaser can recover damages from the vendor on the implied warranty that he should have and enjoy quiet possession of the chattel.[2] Many divines think that the vendor should indemnify the sub-purchaser, since a guarantee of peaceful possession is implicit in every contract of sale. The opinion is probable but not certain. He may, therefore, wait till the sub-purchaser legally sues him.

9. If he bought the stolen thing in good faith but not in market overt, no legal title is given and the owner can

[1] In English law, all sales, bargains and contracts of goods and chattels in fairs or market overt are binding and indisputable, An exception is made in the case of stolen horses purchased in market overt, for these may be legally claimed by the owner.

[2] Attenborough, *Recovery of Stolen Goods,* p. 22.

recover. It is stated that in law the owner may take his chattel wherever he finds it ; but it is generally advisable to procure the aid of a constable before doing so. If the owner recovers, a sub-purchaser can probably claim compensation from the vendor, for, as stated above, the latter should guarantee peaceful possession.[1] If the owner do not effectively claim, the vendor to a sub-purchaser is bound to no restitution to the owner, for he has not the chattel nor has he its equivalent so as to be the richer by it unjustly. Furthermore, it is in accordance with English law that if a seller gives valuable consideration in good faith for money, he acquires a title to the money. The same is true when a stolen bank note passes, for a party taking it in good faith for value can retain it. The same has been held not to apply to the case where a stolen jubilee £5 gold piece was changed for five sovereigns, for the gold piece is not considered cash but a curio, and an order may be made for its restitution to the original owner.

10. If A purchased the stolen chattel in good faith privately and sells to B, then if B, coming to know who the owner is, restore it without warning A, the latter has no obligations to B.

11. If A having received stolen goods in good faith for nothing, sells to B, and the true owner cannot recover, then A is probably bound to nothing, because an owner cannot have a claim both to his chattel and to its equivalent. This is probable, though denied by many authors.[2]

12. If A bought stolen property in good faith and the true owner is discovered but does not prosecute, A may return the property to the thief and recover his money, for he does not place the property in any worse situation than it was before the sale, and is not bound to retain property for the sake of another (the owner) at his own probable loss.[3]

[1] Crolly, an undoubted authority on the ethical aspects of these cases, does not admit this opinion.

[2] Lugo, *de Just.,* d. 17, n. 26 ; Gén., I, n. 526, III, 30.

[3] S. Alph., lib. 3, n. 569 ; Noldin, II, n. 438 ; Gén., I, n. 524, and authors generally.

13. If the thing perishes, through loss, destruction, consumption :

(a) The person who held it in good faith is bound to nothing, except that if he is the richer through possession, the increment, if natural, belongs to the real owner, with deduction for expenses, if there were any.

(ά) If the tiring perishes in another's, B's, possession, to whom A, the first possessor, gave it, B is bound to nothing.

(i) If the thing perishes in another's, B's, possession, to whom A sold it at a profit (whether A got it for nothing or bought it), A is probably bound to nothing, for he has received money for valuable consideration.

ii. Possessor in Bad Faith

One who knowingly retains another's property unjustly is a possessor in bad faith. In general, such a person is bound to make good that loss of which he is the cause.

1. If he still retains the thing, he must restore it as soon as possible ; if he cannot ever restore the actual thing, lest, for example, he should be convicted of theft, he must restore its equivalent in any way he can. If he cannot even do so much, he may wait for an opportunity, but may not meantime derive profit from the property of another. Like the possessor in good faith, he may resell it to the thief from whom he bought it, if he has no other means of recovering his money.

2.If he has destroyed the thing or given it away or sold it—all the time being in bad faith—and its owner cannot recover, he must restore its value to the owner.

3.If the thing has accidentally perished in consequence of unjust retention, he must repair the owner's loss ; but if the thing would have perished in any case, even had it remained with the owner, he is not so bound, and this is true whether the thing would have perished through the same cause, as fire, or through a different cause. But he may be bound to some restitution if the owner was at a loss during the actual retention of the chattel.

4. If the present possessor in bad faith holds a thing which would have been lost to the owner had the latter retained possession :

(a) He must restore it, but may compensate himself for any expense he has incurred by saving another's property.

(ò) He is probably bound to nothing if he consumed it when and where the owner would have lost it, for then it was practically of no value to the owner. This would be true, for example, in the case of food or drink consumed whilst the owner's premises were on fire. In the raids on German shops in England (1917), food thrown into the street was practically of no value to the owners and became *res nullius.*

5. If the thing in the possession of one in bad faith fluctuated in value :

(a) If the owner would have sold it, restitution must be made of the amount it would have realized. As this is often a matter of uncertainty, if the thing cannot now be restored, its value at the time of theft must be restored. But if it is certain that the owner would have sold it at its highest price, that price must be restored.

(i) If the variation in value takes place by natural increment or improvement without any effort bestowed upon it, the whole enhanced value must be restored.

6. Other allied conclusions are :

(a) All increase in value due to the skill or industry of the thief must be restored, if it is certain that the owner could and would himself have produced the same enhanced value, for the owner has been deprived of a certain profit.

(b) Money being nowadays productive, considerable delay in paying debts, legally claimed, whose money equivalent would easily and normally bring in interest, entails the obligation "to restore interest at the Bank rate at least.

(i) The thief is not bound to restore that product of a stolen thing which is due solely to his special industry, nor the value to himself of the thing in its use for business or pleasure, even if he has saved his own money by such use, provided always that the thing is none the worse, and can

be restored in its full value, and the owner would not have certainly realized similar profit.

(d) Those who knowingly circulate false coin are bound to restitution to him who suffers loss in consequence. If the victim is unknown, restitution must be made to society, as, v.g., to the poor, or to charitable purposes. It is no excuse that false coins have been passed on to us, for if we are defrauded, this misfortune does not justify us in defrauding others. But we may pass false coins to one who passed them to us, only, however, to the same amount, for that is legitimate compensation. If false coins have been circulated in good faith by one who himself received them for value, there is no restitution necessary until a claim is put in, proved and enforced by law. The penalties for uttering counterfeit coin (Coinage Offences Act) are severe.[1]

(j) If a stolen chattel has been held successively by several possessors in bad faith, the last holder must restore the chattel, if he still has it; if he has disposed of it irrevocably, he must compensate the owner; in default of the present holder, that one who first stole the chattel must make compensation, and in default of both of these, the other unjust holders must make restitution in part or in whole, according to principles of restitution *in solidum.* Each one is also bound to repair that loss to the owner for which he was responsible.

iii. Possessor in Doubtful Faith

This possessor is one who has good but not convincing reasons for thinking that he is in wrongful possession of another's property.

I. A possessor in doubtful faith must make inquiry commensurate with the value of the thing as to the true owner. If his efforts are fruitless, he becomes a possessor in good faith. Some authors hold that he must restore to probable owners *pro rata,* an opinion that bases a certain obligation on probabilities, and despoils a possessor of what is probably his own.

1 cf. *Encycl. Laws of England,* s.v. Goin, British.

2. If he neglect to make inquiries he becomes a possessor in bad faith. If, after such neglect, he again try to find the owner and fail, he may keep the thing, since no one else has a clear right to it. Some, however, think that part should be given to the poor, and in proportion to the chances which the owner had when the doubt arose.[1] If the owner could certainly have recovered his property when the doubt arose—this being known to the possessor—then the possessor is in bad faith, and in the event of his not restoring to the owner, he must restore all to the poor. If the owner had no chance of recovering when the doubt arose, nothing need be restored.

3. If there was no moral fault in omitting inquiry and the thing has been consumed or has perished, he is bound only to restore that whereby he is the richer, if such is the case, and taking compensation for his own industry, trouble or skill, if he employed any.

4. It he despoiled another of the thing, being held by the other in good faith, he must restore it.

5. If he bought the thing, or received it as a gift from one who was in doubtful faith, or whose good faith was reasonably suspect, and if this doubt persists, he must make inquiries as to the true owner. If he fail, he may keep the thing. It is more commonly held that in this case he must give to the poor that by which he is the richer, if he cannot discover the probable owner. It is also commonly held that if he discover the probable owner, the chattel is to be returned to him. These views are held even by Probabilists, who do not apply the principles of Probabilism in matters of justice. It is, however, difficult to see why a possessor, who probably has a right to retain a chattel, should be dispossessed of it in favour of another whose right is not certain.

6. If he bought the thing or received it from another who was in good faith, and a doubt supervenes, after fruitless attempts to dispel the doubt, he may keep the thing, for the good faith of the former holder favours him.

[1] The reason for this is given later under the section : To whom restitution is to be made.

THE

Payment of Doubtful Debts

The moral obligation of paying doubtful debts is a much disputed point. When the debt was certainly incurred and probably discharged, a very serious question arises as to the duties of the supposed debtor. It would, of course, be honourable to acquaint the creditor with one's doubts; it might even be possible to settle the matter by compromise or on presumptions. But when debtor and creditor are respectively pressing their claims, one must try to hold an even balance between them. There are various opinions on this most difficult matter:

1. Some authors[1] think that the debtor need not pay, because there is no valid reason why a creditor should derive greater benefit from an uncertain though probable right, than a debtor from a probable discharge. Many who hold this opinion, hold it only in the case where the debtor has not been the cause of the uncertainty. But it is pointed out that the principle is true, whether he was the cause or not. He is not now certainly in bad faith. Should he be deprived of money that is certainly at present his own,[2] in order to satisfy the doubtful though probable claim of another? Many Probabilists shrink from such a solution, because they think that there was a certain undoubted right acquired which has not been certainly satisfied and is probably being invaded. A reasonable point of view is to wait till the debt is claimed and proved or the law invoked.

2. The second set of authors[3] think that such a debt must be paid in full, because an undoubted debt must be certainly paid; obligations that are certain are not satisfied by uncertain fulfilment. This solution appears to be an application of Equiprobabilism, but it is a glaring *petitio principii,* since a debt probably paid is not a certain debt. But this was the common opinion in the time of Lugo.

1 Génicot, Waffelaert (who works out the point very fully: *de Just.,* II, n. 260), Bucceroni, Ferreres, D'Annibale, Slater, NoIdin, S. Alphonsus (who merely lays down the principle: I, n. 35).

1 This appears a *'petitio principii,'* and is urged by Lugo, *de Just., d.* 18, n. 10.

3 S. Alph., H. A., tr. i, n. 20; Lugo, d. 18, n. 12; Lacroix, n. 571.

3. A third set of authors[1] think that part payment should be made in proportion to the strength of the doubt, for it is not equitable that the creditor should be given as much as when the debt is certainly unpaid, nor is it equitable that a probable debtor should be wholly released. But it is usually most difficult to balance doubts. Even after part payment is made, the supposed debtor can hardly ever feel satisfied that he has paid strictly in proportion to his doubts, and in these, matters strict equality must be restored.

Each of these three opinions has sufficient patronage to render it probable. A prudent confessor would, we believe, advise full payment, if possible, of small debts, not as a matter of obligation but for future peace of mind. In cases of large debts, a less strict counsel should prevail, for serious obligations should not be imposed unless they are certain. Where there is no likelihood of the debt ever being paid, it would be reasonable to advise the debtor to wait for clearer proof of indebtedness, and meantime to dismiss the matter from his mind.

(b) The Second Ground of Restitution, viz., Unjust Damage

i. General Principles

He is said to inflict unjust damage who does injury to another with or without material benefit to himself.

In general, such a person must make good the whole damage done and all foreseen additional losses that are strictly consequent upon the damage. But that there should be a clear obligation of reparation, three conditions must be simultaneously verified, namely :

1. The harm must have ensued in point of fact.

2. The act must be the real and effectual cause of the damage.

3. The act must be deliberately and consciously unjust.

These three conditions will now be examined :

I. The harm must have ensued in point of fact, because only then is commutative justice violated and reparation

[1] Lehmkuhl, who denies that the debtor has peaceful possession (I, n. 1144) ; this is to setde the matter off-hand ; Ballerini-Palmicri, Marcs, Laymann, Diana, Tamburini ; cf. Lugo, d. 18, n. 12, for a refutation of this view.

obligato^. The intention of inflicting unjust damage without actual damage ensuing is, indeed, a genuine offence against the moral law, and, therefore, against God, but if no damage has ensued there is no reparation to be made. If a sufficient cause of damage has been inculpably set in motion, he who has set it in motion must check it if he can do so without proportionate inconvenience,[1] since every man has a right to immunity* from the result of my act, so long as I can check the result. This obligation, however, is stated not to be so great as when the cause was deliberately set in motion. If the inculpable result is not checked, when possible, there will be an obligation to repair the ensuing damage that has been foreseen. Some few notable writers traverse this teaching, and hold that there is no obligation in justice, prescinding from contractual obligation, to make good the harm done, for there was no real fault in the beginning, and the cause, having been inadvertently set in motion, is as though it had been set in motion by someone else.[2] Most modern writers urge the obligation of justice.[3]

A question here arises concerning the obligation of one who has prevented another from obtaining some advantage or averting misfortune from himself.

It is clear, in the first place, that the former would be bound to restitution if the latter had a strict right to the advantage. Secondly, if the latter had not a strict right to the advantage, there would still be an obligation to restitution, if the means employed by the former were unjust in themselves, such as unjust physical or moral violence, calumny, lies, detraction, violation of secrets, since every one has a right that he should not be prevented, through unjust measures, from obtaining any lawful advantage. Nevertheless, if the advantage cannot be taken without sin,

[1] Gén.-Sals., I, n. 513.

[1] Sanchez, Lessius, Villada, Arregui (n. 331, 2, and note).

* The well-known example is given of a traveller inadvertently throwing a lighted match away, which sets fire to a farmer's hayrick. The traveller becomes aware of the conflagration, but does nothing to extinguish it. We think that there is here a manifest obligation of justice to do what is possible to extinguish the fire. The contrary view has not, we believe, either intrinsic or extrinsic probability.

there would then probably be no restitution to make for the employment of unjust measures, since that which is prevented is, *ex hypothesis* unlawful to take, and, therefore, the deprivation of it is a good. If a son, by undue influence, prevents his father from assigning a legacy to another, he is bound to restitution to that other. If a wife dissuades a husband from giving money to another on the correct plea that he can utilize it to a better purpose, she is not bound to restitution.

2. The second condition is that the act must be the re^l and effectual cause of the damage, otherwise it is merely an occasion or a conditional or an accidental cause, and in none of these cases can the agent be said to be the true author of the damage. The illustrations usually given are these :

(a) If another is punished by mistake for my offence, my offence is only the occasion of his punishment.

(à) If poison is dispensed *bona fide* to a customer who, as a fact, uses it to commit suicide, the dispensing of the poison is a necessary condition precedent of the suicide, but the dispensing chemist is not the effectual cause of the suicide.

(c) If I burn stubble or gorze bushes in my fields, using every precaution against danger to my neighbour's property, and a sudden unexpected gust of wind carries sparks to a neighbour's rick, which is consequently burnt down, the fire I lit was an accidental cause of my neighbour's loss.

Bad example given to another is not a cause but may be an occasion of harm to a third person ; inducement of another to do harm is a true cause in the moral order, as also is the deliberate employment of means that are sufficient to cast the suspicion of one's own evil act on an innocent person.

3. The third condition is that the act must be deliberately and consciously unjust. This condition is usually called the *culpa theologica.*

Without advertence and consent an act is not a human act ; no one is bound in conscience—prescinding for the moment from positive law—to repair harm done which he did not intend to do. Thus, as stated above, one who in good faith uses up another's property which he held in good

faith is not bound to restitution, unless he now happen to be the richer for the use. If, however, deliberate injustice had been intended from the beginning and has taken place, or if foreseen harm to another has resulted from culpable negligence, no amount of internal regret can extinguish the obligation of restitution.

But men are held responsible at law for the consequences of even inadvertent actions, and they may be justly punished though clear in conscience. Citizens are rightly presumed tor know the law, and the peace and immunity of others are safeguarded by penal laws. One, therefore, guilty of merely juridical fault is bound to pay the damages assessed after judgment is given ; those, however, whose positions are contractual, are bound in conscience to exercise more than ordinary care, and are obliged to make reparation for even juridical negligence before judgment is given. Such is the case with doctors, judges, barristers, confessors.[1]

Corollaries

1. Grave harm deliberately done must be repaired under a grave obligation.

2.Slight harm done deliberately must be repaired under a light obligation.

3. If damage, whether slight or serious, is done but without sufficient advertence or deliberation, there is no obligation to repair the damage—it being supposed that the wrong-doer is in no way the richer for the harm done. This is an accepted opinion, for if the damage was serious there cannot ensue a serious obligation from a slight fault, nor can there be even a slight obligation to repair a serious harm, since there can be no reasonable exact proportion between repairing serious harm, which is a grievous *onus,* and a small formal injustice. If then serious damage need not strictly be repaired, it is obvious that slight damage need not be repaired. Some divines (Molina, Laymann) take a stricter view, and maintain that reparation must be made, at least in proportion to the fault committed. They

[1] The *Codex Juris* hints, not obscurely, at imputability for juridical fault (c. 2203, I).

would, therefore, urge some reparation, but not of a serious amount. It is also maintained with reason 1 that if serious unjust damage was deliberately done, but, through error, it was not considered a grievous sin, there is an obligation of restitution, since the obligation arises much more from the fact that the harm was knowingly done, than from the fact of its being theologically sinful. A person who deliberately does unjust harm to another knows that he is offending against Natural law, and it is that established order which he has violated and must repair.

4. If only slight damage is done, though it is imagined to be serious, a grave sin is committed, but the obligation of reparation is light.

5. If one intend to damage another's property seriously but by mistake damages it slightly only, the damage actually done must be repaired. If the intention was to damage what is of less value, but by mistake greater damage has been done, the damage that was intended must be repaired, for to that extent only has formal injustice been committed.

6. Opinions differ as to the case where a person intended to do damage to A, but by inculpable mistake did damage to B.

(a) Many authors2 maintain that there is no clear obligation to restitution, because there was no formal deliberate and intended injustice in respect of B, and no damage at all done to A. The act in respect of B was not voluntary ; B may even be an intimate friend of the person. There has, therefore, been no intentional injustice.

(b) Other authors3 maintain, with equal probability, that there is an obligation to repair the harm done, for the act was certainly a conscious unjust invasion of rights (v.g., property rights), and it is immaterial who the sufferer was. Some person's rights have been violated, and that person has a claim to reparation. The prudent counsellor would

iGén.-Sals., I, η. 519.

* Lugo, d. 17, η. 72 ; S.Alph., lib. 3, n. 629 ; Gén.-Sals., I, n.522, and many others.

» Ferreres, I, n. 801 ; Lehm., I, n. 1164 ; Noldin, II, n. 463 ; Ball.-Pal., III, n. 441 ; Verm., II, n. 585.

advise though not impose reparation, and a person of honour would certainly make it. An application of the principle involved in each opinion is the case where A sets fire to the house of B not knowing that the house is insured, for no actual harm has come to B, and no intentional harm was done to the Insurance Society.

7. In doubt as to whether damage has ensued or not, there is an obvious obligation to make inquiry. If nothing certain can be ascertained, no obligation as yet arises. The same must be said when damage has certainly been done by one of several persons, but it is unknown who is the sufferer, or who was the actual author of the damage.

8. If several persons have been the common cause of damage, each is bound, in default of the others, to make complete reparation if all conspired together to do the damage, or failing that, if each knew that the whole damage was being done by at least one or several of the party, though he does not know by whom in particular.

9. We are bound to take ordinary care that neighbours do not suffer in consequence of our negligence. Thus, the damage done by a farmer's cattle to another's property will usually have to be repaired, for precautions are to be taken that such things do not happen.

10. The evil example that influences another to inflict damage on a third party is not a true moral cause of the damage, not even if the damage was foreseen. The resulting damage is a violation of charity, but that one who inflicted it is bound to make complete reparation.

11. If A's evil act, such as theft, be the occasion but not the cause of harm to B, as when the theft is imputed to B who is made to suffer for it, A is probably not bound to any restitution in respect of B, not even if he foresaw and intended the harm to B, except in the case when A deliberately acted in such a way as to make it appear morally certain that B was the culprit.

12. If a series of damaging acts is done against the same person, so that in the aggregate the harm becomes considerable and is realized to be such, although each act was a slight injury and a slight sin, it appears certain that there

is a grave obligation to repair the grave harm.[1] But if the coalescence of the several acts of damage—separated by long intervals—was not thought of, and the doer forgot—if that be possible—his previous acts of injustice, he must still certainly repair the whole series of harmful acts, but the obligation is probably not a grave one. It appears reasonable to hold that he is obliged to repair each separate damage, for each was deliberately done, and the several obligations still exist.

Furthermore, if the several acts of damage were committed against different persons, so that no one suffered seriously, it is probable that each separate damage must be repaired, but the obligation is obviously not a grave one. An obligation exists nevertheless. The case is different from the case of petty thefts from a number of persons, for in the case of theft, society has to be safeguarded and the obligations of restitution may be grave.[2]

13. One who has a duty to a client is more liable to the obligation of reparation for harm done than are others not so placed. But if, though ordinary care and skill were used, unintentional harm ensued to a client, there will be no obligation of reparation. Cases are quoted in which a doctor caused serious harm in a necessary operation on a mother, but, when sued, was acquitted on the ground that he had used ordinary medical skill.

14. Though an evil unjust intention is a necessary factor in cases of obligatory restitution, it will not serve as an excuse that the intention was withdrawn before the effect took place. Thus, if a calumnious letter is posted, sincere regret for the calumny before the letter is delivered will not avail to excuse the calumniator from restitution of the foreseen harm that ensued.

ii. Restitution in Particular Cases

i. Restitution due on account of harm done to the spiritual goods of another.

By spiritual goods are understood both those which are supernatural and those which are natural. We have a

[1] Gén., I, n. 519 ; Lehm., I, n. 1155.

[2] Gén., I, n. 519.

right to the inviolability of our spiritual possessions no less than to that ol physical possessions. In general, reparation must be made in the· order or kind of goods violated, and probably no other kind of reparation is necessary, because it is inadequate. If, however, it is legally imposed, it must be made.

If another has been induced by us to sin through our violence, fraud, lies or from fear, the cause must be removed at once, and the harmful effects, if any followed, must be repaired or countered if they were foreseen. If, however, another was moved to sin by evil counsel only, it is a matter of charity to him, not of justice, to revoke the counsel. It is a matter ofjustice to repair harm if a third person has thereby been injured.

If another has been led into error that has a practical bearing on life—such as that calumny need not be repaired—the error must be revoked, and all evil effects that followed, if foreseen, must be repaired. All the chief articles of faith and principles of morality fall into this category ; hence the fearful responsibility of those who write books against faith or morals.

To deter another from obtaining a spiritual good, such as life in the religious state, by using violence, fear or fraud, is a sin against justice and the unjust means must be withdrawn.

In the matter of natural and physical goods, it is against justice to deprive ariother, against his will, of the use of reason, and restitution must be made for any foreseen losses accruing to the victim. Similarly, it is unjust to prevent another by deceit, force or fear from obtaining some lawful temporal good and restitution must be made of all foreseen losses. But as the foresight of consequences is uncommon, in practice there will usually be nothing more to be done than effectually to revoke the unjust means employed.

2. Restitution due for defamation and dishonour.

Both detractor and calumniator are bound to repair the harm which they have consciously and culpably done, according to the principle already laid down in reference to damage. Reparation must be efficacious and positive.

In the case of calumny, it must be withdrawn, for the lie will else remain an unjust aggression. One's own character for veracity has, sometimes, to be sacrificed, but a public apology will disarm ill-feeling. In the case of detraction, since the truth has been told, though very wrongly, it cannot now be contradicted, but reparation is possible by the direct means of restoring the other's good name, or indirectly, by praising or commending him for his good qualities.

This reparation, in both cases, must be made in respect of those persons who were first spoken to, and of those also to whom the words were retailed, for the whole of the harm, if foreseen in some way, must be undone. But generally it will be sufficient to undo the harm in the minds of the former.

One is excused from making reparation if no harm at all followed, or if none now persists, or if the fault or crime retailed in detraction has become publicly known, or if it is impossible, absolutely or morally, to make reparation. It would be morally impossible if one had to suffer much more harm by offering reparation than was the harm inflicted, for justice must ever keep the mean. Furthermore, it is possible sometimes to presume condonation, or reasonably to presume it to be given, and it is in accordance with justice to withhold reparation from a person if he has himself been guilty of detraction in our regard.

External honour is similarly to be restored. By contumely another is dishonoured. It is commonly held that even occult contumely must be repaired; whether this is an obligation of strict justice or of charity is disputed. To repair violated honour, some honour must be shown to the dishonoured, and that amount will be sufficient which ordinary people would think sufficient. Consequently, Superiors will usually repair any violation in this matter by additional marks of friendship; equals and inferiors will usually be obliged to tender an apology, unless some indirect reparation is accepted.

One is excused from repairing dishonour for the reasons which excuse in respect of detraction. Indirect means are generally effectual, so that the confessor will suggest such

rather than impose a direct apology', which, in some cases at all events, might foster further dissensions and hatred.

3. Restitution due for some physical injuries.

Injuries caused to others in legitimate self-defence, if they bear a reasonable proportion to the rights invaded, need not be repaired ; even if the defence was more than necessary, probably no reparation need be made.[1]

As bodily members and life cannot be restored, no monetary compensation is an equivalent for their loss, and, therefore, probably need not be made, unless imposed by a just legal sentence. But reparation must be made for consequent foreseen losses, such as the loss of his wage to a wounded man, expenses incurred by him or others, losses to himself and family and parents, in so far as they were dependent on him alone. No compensation need be made for possible legacies that he would have assigned to his heirs or creditors, because their loss is only accidentally and remotely connected with either his forced inactivity or death.[2]

The victim can, of course, excuse the wrong-doer from all restitution, just as anyone can condone personal offence, injury or losses. It is held that he can excuse the wrong-doer from restitution to his family, since he is the source of all the rights and claims which his family has.[3] But this opinion is opposed on the very reasonable ground that his family do not derive their claims from him, but in consequence of the harm actually done to them.

Since the compensation to be made by the wrong-doer is a burden upon his property, it is held by many that the obligation, if unfulfilled, devolves on his heirs, just as his estate is fiable for unpaid debts. Such money that is owed is incapable of passing to others by will or legacy.[4]

The survivor of a duel is not bound to restitution of any sort, since both parties to a duel freely undertake all the consequences of the duel. If the duel had been forced by the surviving party on the other, he is then certainly

1 Gén., I, n. 567. » Gén., I, n. 566, 3.
' S. Alph., lib. 3, n. 630, *contra* Lugo, d. 11, n. 63 ; Gén., I, n. 566.
« Ferreros, I, n. 865 ; S. Alph., H. A., tr. x, n. 90.

bound to make compensation, as stated above in the case of unjust killing or mutilation.

4. Restitution due for certain sexual sins.

In no case is there any certain obligation of reparation for sexual intercourse itself, whether virginity was violated or not, nor for the loss of the good name of the woman, if she had any, nor of her parents, if the woman was a willing partner in the sin. If she was not, reparation must be made for the woman's lessened chances of marriage, if such be the case, and for any expenses she may have been put to by reason of the sin, through sickness, disease, or pregnancy.

If a woman consented to sexual sin, she forfeits all right to reparation for injury done to her within the limits of the sin. In case of rape, if the man made no promise of marriage, he must make reparation for his injustice, either by marrying the woman, if she is willing, or by making it as easily possible for her to marry as it would have been before the offence. If marriage is the only possible reparation, he is bound to marry her. If there are other methods of reparation, he is not so bound, even though she refuse all other forms of it. If offspring has been the result of rape, the man is bound to compensate the woman for expenses incurred in the rearing of the child.[1] If the man used great moral suasion and threats, with promise of marriage, he is bound to keep his promise, unless the disparity in social status, or in education, is found to be such as would make the marriage most unsuitable and unhappy, or if the woman has sinned with others.

In cases of fornication, the woman consenting to the act, the following principles are laid down.

If the man made no promise of marriage, there is no injustice to repair. The woman may, however, legally claim maintenance for offspring, if any.

If the man verbally promised marriage, honour and

[1] A mother in this ease has legal redress for the maintenance of the child, if she apply to the Courts within a year from birth for an affiliation summons. Even if she do not apply, the man's moral obligation remains, unless he can reasonably presume that the mother wishes to have no dealings with him in any way.

fidelity but not justice binds him to marry her. If the promise was fictitious, the act was seduction, and then he is bound in justice to compensation. If he realize that marriage with her would be unhappy, he may compensate in some other effectual way, unless marriage is the only possible reparation of the woman's good name. In every case, he is bound equally with the woman to provide for the rearing and education of the offspring, if any, according to the social status of the mother.

In cases of adultery[1] the following principles are laid down.

If both parties were guilty and offspring is born, each is bound to maintain it in default of the other, or to compensate consequent outlay by the husband. Injustice would also be done to the husband who maintains an adulterine child unaware of its paternity, and to members of the family succeeding to an intestate father.

If no offspring is born, there is no question of monetary compensation, but the wronged husband (or wife) has the right to demand adequate compensation.

In well-founded doubt as to the paternity of the offspring, as between husband and paramour, no compensation for the rearing of the child is obligatory on the adulterer, as it may be presumed legitimate. If, however, the offspring is certainly illegitimate, being the child of one out of several adulterers, no restitution by any one is obligatory in cases of doubt, but if each was the conscious cause of the uncertainty, each is bound to part compensation, and in default of the others, to entire compensation.

A child born of adulterous intercourse should be sent to foster parents, since there is no valid substitute for home life. If admitted to an institution for such children, payment will usually be exacted, but probably payment does not appear to be a matter of strict justice if the institution is a public one.

If such child is reared in the family of a married adulteress, the paramour is bound in justice, if possible, to pay for its maintenance and education, and to compensate any losses, if foreseen, which other children of the family

sustain in consequence of the existence of the said child. The adulterer is under no obligation if the mother could easily have put the child away for its upbringing. If such a child inherited property which, by natural or legal right, belonged to the other children, he would have to make restitution, not, however, at the sacrifice of his own good name. No child is obliged to believe that it is illegitimate on the word of its mother alone, nor even though the mother has been proved guilty. This is in accordance with many civil Codes.

The offending mother is not bound to reveal her sin, but she is bound to repair the harm done, if any, to her legitimate offspring, if she has any, and also to her husband, provided she can do so without revealing her sin. Such reparation is often impossible, and in fact unnecessary, if the husband accept the bastard, even implicitly. But in practice, it would be difficult to know whether he did or not.

5. Military service evaded.

In a State where there is universal conscription, evasion of military service, even by wrongful means, is not an offence against commutative justice, though it may be one against legal justice. This is also true, where there is limited conscription, since justice does not bind a man—though charity may—to prevent the losses of others, unless he is officially or by contract bound to do so.

When a man has volunteered to serve, and has received pay in view of service, evasion of duty would probably be only a penal offence. The penalties are so severe that this view appears to give sufficient sanction to the law. But he is bound, if possible, to restore pay for service not rendered.

Until actual enlistment and pay given, the matter has to be considered from different points of view.

In a nation's real need, citizens are bound by Natural law, legal justice and obedience, to help the State in time of war, and if military service is the only, or the more effectual way, it becomes obligatory. Desertion is then a sin against patriotism, which is the Christian virtue of *pietas*, i.e., dutiful love, but if the penalty for desertion is death, or some

other extreme punishment, the deserter is not bound to surrender himself. Conscientious objectors, as they are called, object to war *in toto,* but their attitude is unreasonable and sinful, provided a war is just, as it may be, for every State has the right to defend its honour, citizens, homes and property. Every just offensive war is ultimately defensive. The State has as much right to defend itself as a father has to defend his family. The vaunted principle of non-intervention is then most of all seen to be absurd, when one's own nation is on the verge of a disastrous defeat. Furthermore, the State has a strict right to exact sendee from citizens in a just war so far as that service is necessary. Where a man, called up for service, renders himself unfit, he offends against legal justice.

Soldiers who evade further sendee and draw pensions in consequence of self-inflicted wounds offend against legal justice. But *post factum,* if the wounds were inflicted in ignorance, of duty to the State, it is maintained that the incapacitated may continue to draw the pension for the sake of his dependants, for a man has a duty to his wife and family, and since, in his default, the State should maintain the family somehow until its members are able to maintain themselves, if the circumstances have incapacitated the father, he may for their sake draw the pension. The most minute and exact balance of rewards and deserts cannot be maintained in any State, and we may say that citizens prefer not to discriminate between wounded soldiers.

6. Evasion of Taxes.

The obligation of paying direct taxes is most probably an obligation in conscience, unless by custom, interpretation of law in a given country, or intention of the lawgiver the contrary is evident[1] : " Render to Caesar the things that are Caesar's" (Mt. 22, 21) ; "Therefore, one must needs be subject, not merely for fear of the wrath, but also for con-

[1] The opinions of other authors writing for their respective countries cannot be universally adopted for this country. Lehmkuhl and Marres take very strict views for Germany and Holland ; and Gousset for France ; whilst Génicot, Waffclaert, Bucceroni, Palmieri, Vermeersch and Crolly consider

science' sake . . . Render to all their due, tribute to whom tribute is due, taxes to whom taxes arc due, fear to whom fear is due, honour to whom honour is due (Rom. 13, 5-7). The Roman Catechism says: "Among those guilty of this crime of rapine are included persons who do not pay customs, taxes, tithes and other such revenues, which are due to those who preside over the Church, and to civil magistrates" (Pt. 3, c. 8, q. 10). The State has to be maintained for the common good, peace and security, and therefore it is a part of legal justice that citizens should contribute their just share when it is claimed.

In most States nowadays, and prescinding from periods of urgent need and imminent danger, it is questionable whether this obligation is more than penal. In England it is certainly penal only, because the executive exercises considerable vigilance, inflicts heavy fines, and imposes heavy direct taxes to recoup losses. It appears unreasonable to expect good citizens, who certainly are in the minority, to be obliged in conscience to pay taxes, whereas so many others openly repudiate the moral obligation, if there is one. It seems unjust that good people should feel an obligation to be mulcted and to pay readily, in order to balance the evasions of so many. Nevertheless, there is no possible excuse for studied evasion of taxes, and therefore though, *post factum,* it is not necessary to urge restitution, *ante factum,* citizens should be urged to pay their share of the taxes. No countenance can be given to the employment of fraud, deceit, or lying, in the matter of income-tax returns. But such acts are not clearly sins against justice and do not necessarily entail restitution; they are usually sins against truthfulness, and no confessor can ever condone them under any circumstances. Nevertheless, whatever may be held in point of theory as defensible, Catholics should err on the side of strictness, for even the statement, and still more, the putting into practice, of the complete doctrine on taxation, are apt to give scandal and do harm to religion. It is chiefly *postfactum* that the confessor may use—but with the greatest prudence in speech—the common teaching without scandal. It remains true, however, that if State

officials and Municipal Councillors acted on the principles of Moral Theology, both the State and cities would greatly benefit, general income would be larger, taxes would be smaller, and the people would be happier. But as they do not so act, their quarrel with certain points of common teaching is not quite disinterested.[1]

Those who bribe tax-collectors and thus evade payment of just taxes sin against strict justice and are bound to restitution, for the bribed tax-collector sins against justice by taking pay from the State to which he is not entitled, and one who bribes him to do so shares in his sin.

Those whose business it is to collect taxes certainly offend against commutative justice, if they deliberately neglect their duty, and they are bound to restitution, except probably in the rare cases where they occasionally neglect to collect a trifling amount, or fail on rare occasions to collect from one who habitually pays his taxes.

It is very doubtful whether tax-collectors are bound to restitution for not reporting defaulters; nevertheless, if they fail in their duty in more than a small extent, they are taking pay without work. In general, when restitution has to be made, it need not be made to the Exchequer, but may be made to the poor, or in aid of some social utility, but payment to the Chancellor of the Exchequer is a good payment. In the case of State services, such as the postal, telegraph and telephone services, strict justice demands that payment be made for services rendered. To evade or to neglect such payments, which nowadays are not exorbitant, is an offence against commutative justice and entails restitution.

(c) The Third Ground of Restitution, viz., Co-operation in Injustice

I. It is possible to co-operate with another in inflicting injustice, positively by actual help or moral suasion, or negatively, by not preventing injustice when one could and should prevent it. A clear general principle is that

[1] Verm., II, η. 567, 6.

one who positively co-opcratcs in injustice is bound to repair the harm which he effectively and knowingly caused, even though the harm would have ensued without his help ; and one who negatively co-operates in injustice is bound to repair the harm which he could and ought to have prevented.

2. Positive co-operation may be given by counsel, by command, by consent, by defence, by praise or flattery, by participation ; negative co-operation, by silence, by passivity or failure to prevent, by concealment.

(a) Of injustice by counsel given.

He co-operates in injustice by counsel who effectively persuades another to do injustice, or shows him how to do it. If the doer of injustice was not already determined to act unjustly, the counsellor is bound, in default of the principal, to repair the harm due to his evil counsel. If he had effectively retracted his counsel, he is not so bound. If he advised the method, failing which the injustice would not have been done, he is bound positively to prevent the result, so far as he can.1

If the principal agent will not be deterred, the counsellor is bound to forewarn the likely sufferer. The counsellor will then generally be quit of all obligation of restitution. However, if he showed the evil-doer the method of inflicting harm, which otherwise could not have ensued, he is bound to restitution. That the retractation of his evil counsel should be effectual, he would have to prevent the harm.

When A is determined to harm B, C probably does not act unjustly if he advise A to do a lesser injustice to B.2 If A is determined to steal, and G advises him to steal rather from a rich person or company who would feel the loss less than from one who would feel it more, C probably

1 English law takes a severe but a just view of what is called the suicide pact. If two persons mutually agree to commit suicide together and accordingly take poison, or attempt to drown themselves together, and only one of them dies, the survivor is held guilty of murder. The gist of the crime is that the survivor was guilty of murder by incitement. Even {n the case in which the survivor is not present when the other party acts on the agreement, the survivor is an accessory to the crime (Rex *d.* Symonds, Dec. 19, 1928).

1 cf. *supra,* vol. I, p. 339.

is not bound to any restitution for his advice, but the contrary view, namely, that C is doing an injustice, and is, therefore, bound to restitution is strongly maintained by not a few authors. The reason for the milder opinion is that he who suffers cannot reasonably be unwilling that such advice should be given, for the advice is in accordance with the law of charity; but he is, of course, reasonably unwilling in respect of the actual wrong-doer.

Professional men, confessors included, are bound to refrain from giving harmful advice to their clients; there is an implied contract existing. If they do so, they must revoke it; if they neglect to revoke it, they are responsible for its harmful effects. One who is officially consulted and who should have given advice or warning and did not give it, is bound to restitution if harm ensues, for he was obliged by contract, as is supposed. The same may be said of one who makes a pretence of having professional knowledge, and tenders advice that proves a cause of harm to others. One who inadvertently gives harmful advice is bound, if possible, to retract it with some relative inconvenience to himself. If he culpably neglected to do so, he is responsible for the harm done. The contrary view is, we believe, not probable.

(ά) Of injustice by command.

One who co-operates in injustice by command bids another to do injustice on his behalf. He is bound in the first instance to repair the ensuing harm, namely, the amount of harm which he ordered, not any additional harm beyond the limits of his order. Request, promise and threat, entail the same obligation. The actual doer of the harm is bound in the second instance to repair the harm done. If the command (request, promise, threat) is revoked before the harm is done, the doer is alone bound to reparation. If the command is *de facto* not revoked, though efforts have been made to do so, he who commanded is still bound to restitution. If the evil-doer himself suffers in the prosecution of the command, he who commanded is not obliged to repair such harm, unless his command was unjust, that is, imposed by force, fraud, or fear.

(r) Of injustice by consent.

One who consents to an act of injustice about to be done may be an efficacious abettor of injustice, and is then bound to repair the harm that was done, in proportion to the efficacy of his consent. In the case of voting for an unjust law, if all the voters act conjointly, each is severally responsible; if they act successively and not by secret ballot, it is possible that the votes of those who voted last are ineffective, and they will then be under no obligation to repair harm done, apart from agreement to vote in the same way. It will, however, be permissible to vote for an unjust measure—if not fundamentally and intrinsically wrong, such as a measure for full divorce—in order to avoid greater evil, when the one or the other evil must ensue, and provided that grave scandal is not given.

(s) Of injustice by defending the ill done.

One who shelters an evil-doer or receives stolen goods sins against justice, if by his act he defends the injustice as such. He is bound to restitution in default of the main agent. The formal and therefore the sinful co-operation in receiving stolen goods is obvious; they may not be retained, except for a time, in order to prevent greater injustice, but the law will not permit so much. By screening an evil-doer the co-operation results in depriving a sufferer of his right to compensation, or in making it easier for the culprit to repeat his injustice. To screen a friend for friendship's sake is not necessarily co-operation in injustice; the act of friendship may or may not be disproportionate to the loss accruing to a third party, and must be judged by that standard. A friend's name may be safeguarded by secret restitution.

(t) Of injustice by praise or flattery.

Praise, ridicule, fault-finding, may be efficacious ways of co-operating in injustice. One who induces another to do injustice, or deters him from obligatory restitution by praise, etc., is a moral cause of the harm done. He is practically an evil counsellor, and is bound in the second instance to repair the harm done, in so far as his act was conducive to the injustice.

(/) Of injustice by participation.

(i) One who takes an active part in an unjust action is bound to repair the harm of which he was the efficacious and culpable cause. If he has what belongs to another he must restore it. If he took part in doing harm to another, even without profit to himself, he must make good the harm done if culpable.

(ii) If his co-operation was necessary for the result and inexcusable, he is bound equally with other co-operators to repair the whole harm done.

(iii) If his co-operation was not necessary, he is bound to repair that amount of harm which he actually did.

(iv) If there was strict conspiracy, each conspirator is bound to make full restitution in default of the others.

(v) Where several persons, not having conspired, have given evil advice from which harm has ensued, but it is unknown whose advice was the effective factor, those who clearly foresaw the future difficulty of fixing liability and acted notwithstanding, are bound to restitution, since they were willing to act in unison to the harm of others. In cases of doubt, however, the obligation cannot be imposed, but there is an obligation to resolve the doubt as far as it is possible to do so.

3. Negative co-operation in injustice is present when one neglects to prevent injustice by silence, passivity, or concealment. When one is bound in justice to prevent injustice to another, and refrains from doing so, though one could have prevented it without an equivalent harm to oneself, there is an obligation of restitution. One may be so bound by office or contract. Thus, a father is bound to prevent his children, who have not yet come to the age of discretion, from doing harm to others; a custodian of property, servants in matters strictly confided to their care, caretakers, owners and keepers of animals, are bound by contract to safeguard the rights of others. Failure to do so, if culpable, will entail restitution.[1]

[1] No one is bound to forestall harm to another at the cost of greater harm to himself. Ibis is a principle of supreme importance in matters of reparation *postfactum,* and in matters of charity to one's neighbour *ante factum.*

Pastoral Notes

1. If a confessor, culpably in a grave degree, absolve a penitent from making necessary restitution—a very rare case—he acts unjustly, is an evil counsellor, is a moral cause of injustice, and is obliged to withdraw his wrong advice. This is an obligation of justice, and if he disregard it culpably he will be bound to repair the harm done by his advice.

2. If culpably in a grave degree, he obliged a penitent to make unnecessary restitution, and it has taken place, he is bound to indemnify the penitent. This, too, must be a rare case. But it sometimes happens that confessors neglect to acquaint themselves with principles and circumstances. Much will depend on advertence to duties. When he finds that he has made a serious mistake in respect of restitution, he must correct his mistake, if possible, but without violating the seal of confession.

3. If he has culpably kept silence when a penitent erroneously thought restitution to be necessary and has made restitution, he is not bound to repair the penitent's loss, because he is not bound to prevent such temporal loss. He would, however, be bound to do so, if his silence were rightly construed as positive approval. In any case, he is bound by charity to prevent another, penitent or not, suffering loss by his silence.

4. If he keep silence, even culpably, when a penitent is bound to restitution, and no restitution is likely to be made, he is not bound to restitution, but he is bound by charity to the third party to tell his penitent of his obligation, if he can do so without grave inconvenience, and without violating the seal.

SECTION 8. The Amount to be restored

The whole injustice is to be repaired by those who were the cause of it.

1. In cases of co-operation, the principal cause is bound to repair the whole ; in his default, the others are severally bound to repair the whole or their several parts.

2. In the case of several co-equal causes—each one being

sufficient to produce the whole harm, as when several set fire to a house—each one is bound to repair the whole harm done in default of the others. But if one alone has made restitution, he has a right to compensation from the other agents ; he may exact it and even take it.

3. In the case of several causes, each being only a partial cause, each is bound to repair his share of the harm done.

4. Each of several agents is responsible for the whole harm done if they conspired together, or if each was a necessary, though by himself an insufficient, cause of the whole harm.

Note

A confessor should seldom urge on one of several co-operators in injustice—except in very obvious cases—reparation of all the harm done, for he cannot be sure that the others have not repaired their share of the harm. He wall usually fail to persuade a penitent of an obligation that is not so evident to an untrained mind, and the person who suffered the harm will prefer to recover part of his loss, rather than run the risk of getting nothing at all. Nevertheless, restitution *in solidum,* as it is called, namely, complete restitution by each in default of the others, is obligatory :

1. In cases of real conspiracy to do injustice.

2. When partial co-operation was essential to the whole harm done.

3. When partial co-operation was sufficient to produce the whole harm, and was, in fact, an element in it.

SECTION 9. Persons to whom restitution is to be made

As a general principle, the victim of injustice is to be indemnified, but as this is sometimes impossible, various cases have to be considered.

1. Where a creditor for, v.g., £20, could not be traced, the debtor gave that sum to an orphanage as compensation for the debt. Later, the creditor appears. As the debtor had fulfilled his obligations in-the best way possible, he is most probably free from further obligation.

2. If the loser of a chattel is known, restitution—if pos-

sible, not physically only, but morally also—must be made to him. Incapacity that is only temporary does not extinguish the obligation. Restitution is impossible when it cannot be made without injustice to others, for evil may not be done that good may ensue; or without greater harm or loss to oneself. It may then be deferred, but the obligation is not extinguished.

3. If the State has suffered, it must be indemnified if possible. Often, however, restitution may be made to public charities or to the poor.

4. If a society has suffered which has no moral right to exist, or to possess property for its immoral purposes, restitution should be made, not to its general funds, but to individual members. If the society has a right to exist, the society must be indemnified, even if it makes a wrong use of legitimately held property, for such use does not extinguish dominion.

5. A chattel stolen from a baillee or a borrower must be restored to such in the first instance, and not to its owner; but if restored to the owner, justice is fulfilled.

6. A chattel stolen from its owner, the owner being now dead, must be restored to his heirs; failing heirs, it should be given to the poor or to charitable uses.

7. If the owner of a stolen chattel is not known, or cannot be got at, the following rules apply:

(a) A person who came into possession of the chattel in good faith may retain it.[1]

(b) A possessor in bad faith must give it to the poor or to some charitable use, for such a possessor can never establish a right to keep the chattel not even by prescription, though it run legally in his favour. The same must be said of debts that have become matter of uncertainty through the bad faith of the debtor. The reasons for urging restitution to the poor in such cases are the following:

(i) Because natural equity demands that a possessor in bad faith should restore, somehow or other, for the common good of society, and to give to the poor or to a charitable

[1] S. Th., *S.*, 2. 2, q. 62, a. 5, ad 3, appears to urge restitution in all cases.

use is likely to benefit the owner. At all events, he may be supposed to wish restitution to be made in that way.

(ii) Because this principle is an extension by custom of the precept of the Decretals in the matter of usury and simony.

In the case of chattels wrongfully retained, there is now general agreement that if restitution cannot be made to the owner it must be made to the poor. But the ground of this obligation is not clear. Modern authors base it on natural equity. Some older authors base it on the Decretals. Since the *Codex Juris* is silent on the matter, it is thought that the argument from the Decretals has ceased to have any relevance. Where it is a matter, not of chattels wrongfully retained, but of mere damage done to others who are now unknown, it is not obvious that restitution must be made to the poor or charitable uses, for though society has to be safeguarded against thieves, as when the obligation for the benefit of society is imposed, mere damage that brings no personal profit does not appear to carry the same obligations, since theft is the result of cupidity, whereas wilful damage is the result of other vices. Restitution is a corrective for cupidity, but not for destructiveness. Furthermore, obligations of restitution are not vindictive, but are the moral constraints of acting virtuously.

8. If the owner of a stolen chattel is not certainly known, but is one amongst several, reasonable means must be taken to find the certain owner, but if he cannot be discovered :

(a) If he is certainly one out of a few (three or four), the chattel or its value must be divided, if possible, amongst those few.

(ά) If he is certainly one of many in a given place, restitution must be made to them or to some charitable cause or to the poor of that place by preference, or of any other place.

(c) If he is certainly one of a set amongst many sets of a given place, restitution must be made to the citizens of that place, although if the value be small, restitution may be made to the poor.

9. If tradesmen defraud their customers by overcharges or

underweight, they must make restitution to the same customers somehow, if that is possible, or failing that, to the poor.

SECTION 10. The Order of making Restitution

1. If several agents were unjust to the same person in the same degree, all arc equally bound to make restitution, and no particular order need be observed.

2. If several were unjust in different degrees :

(a) In the case of theft, the order in restoring is this, viz., the unjust possessor, the unjust consumer, that one who ordered or counselled the theft, he who executed it under orders or advice, except that if the order or advice benefited the thief alone, the latter is bound to restore in the first instance ; then all the other positive co-operators, and lastly, all negative co-operators.

(b) In the case of mere damage done, the following order must be observed, viz., he who gave the order or counsel, the doer, all'other positive co-operators, all negative co-operators.

If the principal agent in injustice restore, the secondary agents are quit of their obligations. If one secondary agent restore, the principal agent must restore to him. If one of several co-equal agents makes full restitution, the others must restore to him rateably. If the victim of injustice forgo restitution by the principal agent, all other agents are free, but if he excuse a secondary agent, the principal agent is not excused.

Possessors in bad faith of stolen property who were not the actual thieves sometimes think that they are not bound to restore. This is, of course, a delusion.

3. The order of precedence among creditors is as follows :

(a) If the debtor is solvent, no particular order is necessary.

(/») If the debtor is insolvent and adjudicated bankrupt, his assets will be divided rateably, but in English law priority is given to some outstanding debts, such as taxes, rates, wages of servants or labourers, workman's compensation, State insurance.[1]

[1] The statement of the amounts is given in Bankruptcy Acts, 1914,1926, sec. 33.

Furthermore, the debts of a deceased person are paid after the necessary expenses of funeral, probate, administration, executorship.

(c) If a person, foreseeing probable bankruptcy, make a payment to a creditor, not in the ordinary way of business, and without pressure or demand, he is guilty of fraudulent preference in English law, if this was done within three months next preceding the filing of the petition of bankruptcy. Such preference is void as against a Trustee in bankruptcy. Apart from positive statute, a preferred creditor who knew nothing of his debtor's probably forthcoming bankruptcy and received payment in full, is not bound to make any restitution until the law exacts it, since he accepted in good faith what was owed to him. But a debtor cannot in justice offer preferential payment. If it is demanded, he may give it.

SECTION 11. The Manner of making Restitution

1. Strictjustice is satisfied by full restitution in whatsoever way made.

2. Restitution may be made without the knowledge of the creditor, and even without the debtor's actual advertence, as if he gave an unusual alms to some charitable purpose, when—as sometimes happens—he is obliged to restore to the poor or charitable purposes.

3. Restitution can be made by a fictitious donation, though this is deceitful. If the creditor makes a gift strictly in return and from gratitude, the debt is not proportionately extinguished.

4. In the case of servants, restitution can be made by them *postfactum* by additional work or greater diligence, but they are not at all justified in robbing their masters with the intention of doing extra work. This procedure is wholly outside their contract.

5. Any ordinary means that is normally safe may be employed to make restitution, and therefore payment through the post is a valid discharge in conscience for debtors. But by law, unless a creditor has requested payment by

cheque sent through the post, remittances by post are at the sender's risk.

6. If the actual stolen chattel cannot be restored without relatively great expense (v.g., about half its value), restitution may be made in money, so far as conscience is concerned, unless the owner is reasonably unwilling to accept its money value. There is then nothing to be done but to wait.

SECTION 12. Time and Place of Restitution

1. Restitution must be made as soon as possible; culpable delay that causes additional injustice is a sin of injustice and must also be repaired.

2. The possessor in good faith, when the true owner of a chattel is discovered, need not restore it at his own expense. The possessor in bad faith must restore at his own reasonable expense, and foreseen unjust loss to the owner, even from inculpable delay, must be repaired.

3. The place to which a stolen chattel is to be restored must be consistent with the full rights of the owner to take possession of it. In the case of detention in good faith, it is sufficient to notify the owner where the chattel is. In the case of detention in bad faith, this is not sufficient, but the chattel must be delivered to the owner.

4. In cases of contract, all the terms of the contract must be fulfilled.

SECTION 13. Causes which excuse from Restitution

1. Physical impossibility to restore, so long as it endures, excuses from restitution. If, however, it is not possible within a reasonable time to make restitution, small sums should be set aside at fixed intervals, so that some restitution may be made.

2. Moral impossibility similarly excuses. This consists in the relative and genuine inconvenience which restitution would entail for the debtor or a third party, as, for example, if the debtor or another should suffer in good name, health, life, or justly acquired goods, to an extent greater than deferred restitution would entail for the creditor; justice

should never be violated in order that restitution may be made. But there is need here for a just estimation of relative inconveniences. It may be added that restitution may be deferred, if the creditor is likely to misuse the restored money or chattel on evil objects.

3. Condonation excuses from restitution, whether it is express, or tacit, or reasonably presumed, but presumptions must be used cautiously, and the advice of a prudent counsellor might usefully be sought.

4. A composition or arrangement freely entered into by creditor and debtor, or remission by superior authority, as when the Holy See extinguishes the obligation in respect of usurped church property', excuses from all further obligation.

5.Equivalent payment to the creditor of one's creditor extinguishes that amount.

6.A gratuitous gift by debtor to creditor extinguishes that amount.

7. Equivalent indebtedness excuses *pro tanto.*

8.Liberative prescription excuses when it extinguishes moral rights. This is not always so, for civil law usually bars action only.

9.The poverty of a debtor excuses him, when he is bound to restore only to the poor or to pious causes.

10. Use by consumption in real necessity of the thing owed, when there was no reasonable hope of making restitution, excuses from that amount equivalently.

11. Restitution already probably made excuses from restitution, as long as the probability endures. This reason is in accordance with principles already stated in respect of probable debts, principles which are not, however, admitted by all Probabilists.

12. Absolute discharge of a bankrupt excuses from future payment of those debts which were the subject of his petition. This excuse avails certainly wherever English law operates. The common opinion of the older divines, and of many modern authors, who write for their respective countries, appears to be that the obligation of paying such debts in full is not extinguished, if payment can subsequently be

macle. But the milder view, approving of complete freedom, is held by a few authors in the case of a *bona fide* bankrupt, unless his creditors expressly excluded this claim of a discharged debtor.[1]

The view is based on one of two reasons, firstly, that the law absolutely extinguishes the moral obligation ; secondly, that the creditors waive all claim to any future compensation. It is difficult to prove either of these contentions. The fact that a bankrupt who has been released by judgment in the Courts is again received into business circles, is a fairly cogent proof that the risks incidental to trade are freely undertaken. All men are liable to misfortune. It seems a little rhetorical to make a distinction between poor and opulent creditors. Both know or ought to know the risks of trade to which poor and rich are liable.

SECTION 14. Contracts in General

1. Definition

A contract is a mutual agreement entered into by two or more persons, and externally manifested, to do or refrain from doing certain acts at the request of or for the benefit of another, the promise being given for valuable consideration, or in a particular form.

2. Kinds of Contract

1. Unilateral contracts create obligations in one of two parties as in promise, gift.
2. Bilateral contracts create obligations in both parties, as in contract of sale.

[1] The contrary opinion of authors (v.g., Lugo, S. Alphonsus, Ballerini, Bulot, Bucceroni, Ferreres) is quoted by Regis Noel in *The Catholic World,* Oct., 1918, p. 36 sqq. But if we confine our attention to English law only, there seems little doubt that in the minds of jurists an absolute discharge makes the discharged bankrupt a free man. Thus : " If he (the debtor) is insolvent, it is for their benefit that his creditors should have his property equally distributed among them, and it is for his own benefit that he should be released from all further claims " (cf. Knight's *Business Encyc.,* s.v. Bankruptcy) ; " The bankrupt's pre-bankruptcy debts (with certain exceptions) are wiped out, and can no longer be enforced against him " (Jenks, *The Book of English Law,* p. 270).

3. Formal, specialty, or solemn contract is one that is expressed in writing and under seal, and therefore fulfils certain legal formalities, such as contract by deed. This requires no valuable consideration.[1]

4. Simple or parole contract is not made by deed, although it may be in writing and signed, but in virtue of some consideration present. All contracts not under seal, whether oral or in writing, are simple. Writing is sometimes required as evidence, v.g., in a policy of insurance. The Statute of Frauds (29 Charles II, c. 3, re-enacted by Law of Property Act, 1925, s. 40) requires five simple contracts or some of their terms to be in writing, as does the Sale of Goods Act, 1893, s. 4, in the case of Goods of £10 and upwards unless certain other formalities are complied with. .As a fact, the Statute of Frauds has enabled persons to repudiate just contracts, because they were not in writing ; guaranty to answer for the debt of .another is one example.

5.Express contract shows in word or writing the terms of the agreement. Implied contract is created by such conduct as indirectly indicates an agreement.

6.Gratuitous contract confers advantage on one only, as in loan for use. Onerous contracts confer advantages on both parties, as in hire.

7.Consensual contracts are completed by mere consent. Real contracts require transference of an object, as in loan.

8. Aleatory contracts regard fortuitous events, as betting, gaming, assurance.

9.Innominate contracts are reducible to four kinds : *'Do ut des' ; 'Do utfadas' ; 'Fado utfadas' ; 'Fado ut des'.*

[1] Valuable consideration is some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other. To constitute an enforceable agreement not under seal, i.e., a simple or parallel agreement, there must be good and sufficient consideration. This is essential for all simple and parallel contracts ; and as to this, the rule is that a sufficient consideration, or recompense for making, or motive or inducement to make a promise upon which a party is charged, is of the very essence of a contract not under seal, both at law and in equity ; and that such consideration must exist, or the promise will be void and no action be maintainable thereon ; cf. Anson, *Law of Contract.*

The Courts dealt formerly only with nominate contracts, such as contract of sale. Private conventions were not enforced. But by the end of the sixteenth century, the principle of valuable consideration was adopted, which thereafter was the test of every contract not scaled. It is considered to have been an extraordinary evolution.

10. Qualified contracts have a condition annexed.

11. Contracts void and voidable. Since a legal contract creates a legal obligation, an agreement that fails to do so, is a void contract, if such expression may be used. A contract that is legally good, but which one of the parties may affirm or reject at pleasure, is a voidable contract. A contract upon which one of the parties cannot sue is unenforceable, such as a betting contract.

3. Object of Contract

1. The object of every contract must be possible, both physically and morally ; it must exist, actually or potentially (as future crops) ; it must be capable of precise determination ; it must be within the moral (or in respect of enforceability, the legal) power of each party to offer at once or later. Thus, stolen property cannot, in conscience, be the object of sale ; what is *extra commercium*—as public property—cannot be transferred. Natural law forbids contracts concerning that which belongs to all men ; church law forbids and nullifies simoniacal contracts ; Civil law annuls sale of public property.

2. What is already due in justice to another cannot be made a matter of contract ; what is due on other grounds, cannot, in conscience, be made a matter of contract, though in fact it would not be contrary to justice to receive compensation for it.

3. The object of a contract cannot be that which is morally wrong, since wrong-doing can never be obligatory. *Ante factum,* such agreement is wholly void ; *post factum,* when one party has fulfilled his engagement, the other party is probably also bound to fulfil his part, provided he can do so without additional sin. A reply of the Sacred Penitentiary

confirms this view in a particular case. The contrary, however, is held by many authors on the ground that as the agreement was void *ab initio,* it can beget no obligation. In practice, the party who has received valuable consideration for something done or given, cannot be obliged to restore, and the party who has not given the *quid pro quo* cannot be obliged to give. Money given for immoral actions already performed may be kept. The argument used here is that though an agreement to perform an immoral act is null and void, there arises in the actual performance of the act, a good contract : v.g., *facio ut des ;* the act done, under the aspect, not of its immorality, but of its laborious or benefiting or pleasure-giving nature, is worth something.

In English law a party' who has paid money for an illegal contract—such as assault—may recover if the contract is wholly unperformed on the appointed day. If he allow the day fixed upon to pass, he has no room—legally—for repentance and cannot recover.

4. Lastly, the object of a contract must be appreciable, if temporal value is offered in exchange on one side. What is useless or costs no trouble is not an object for contract.

In English law, certain contracts are illegal and wholly void, such as contracts entered upon for an illegal consideration, as to commit crime, to injure the public service by sale of offices, to prevent the course of justice by stifling criminal proceedings, to encourage litigation, to restrain trade, to offend against sexual morality ; maintenance, i.e., meddling in legal proceedings which do not concern the meddler and not actuated by motives of charity ; champerty, an agreement to share with a benefactor in a suit the fruits of litigation ; ordinary trading contracts made on a Sunday, wagering (except that Insurance is legalized).

In reference to unenforceable contracts, it is to be observed that they are sometimes binding in conscience. Thus, betting contracts are good in conscience, and *postfactum* the bet must be paid. When Civil law bars action, it leaves unsettled the morality of a contract ; that has to be judged on the merits of each case.

4. Capacity of Contracting Parties

The capacity of making contracts may be conditioned by law.

1. Natural law dictates that any person having the actual use of reason can enter into a contract in respect of what is his own to dispose of. One who is *non compos* is incapable of a human act, and therefore can neither accept nor transfer rights. ,

2. Positive law, Ecclesiastical or Civil, can lay down essential conditions for a valid contract, and this has been done in such contracts as sale, barter, hiring, marriage and many others.

It will not be necessary to enumerate all the contracts that are void by English law ; the following are amongst the most noteworthy :

(a) Married women cannot, without their husband's consent, contract for unnecessary articles of dress, unless they wish to do so with their separate estate.

{b} Minors, i.e., those under twenty-one years of age, have limited capacity of contracting, their contracts for luxuries being voidable. The Courts use a large discretion in determining what is or what is not necessary, relatively to the minor's station in life.[1]

(c) Loans of money to infants, contracts for money to be lent or for the sale to them of unnecessaries, and accounts stated with them are void. Even promises made after majority to pay debts contracted in minority, and ratification of contracts made during minority after attaining majority, are void. In other words, an infant cannot be made to pay his debts, except for necessaries, but he must answer for contracts for his benefit, and in strict justice and in conscience, he must pay for benefits received, even by contracts that are void in law, for the " disability of an infant is to be used as a shield not as a sword " (Lord Mansfield in Zouch *o.* Parsons). In any case, whether the law favours him or not, he cannot in conscience continue to hold a

[1] cf. Pollock, *Principles of Contract,* p. 57, and especially p. 67.

benefit due to illegal contract and repudiate his obligations.[1]

3. It is obvious that corporations, if legal and righteous, can enter into contractual relations.

A Corporation sole consists successively of one person only, as diocesan, bishop, rector of a parish ; a Corporation aggregate consists of several individuals, two at least. A Corporation created by definite Statute may act only within the limits of the Statute ; other Corporations created by the Companies Act (an. 1908) are generally limited in their scope, as also are Corporations created by Royal Charter? These are called artificial persons and are masses of property (funds, hereditas, estates of bankrupts) or groups of persons (State, parishes, colleges), to which the law gives fictitious personal status.

5. Consent in Contracting

In every contract the necessary consent is, as it were, the vital principle. This may be vitiated by mistake, misrepresentation, fraud, duress. The consent necessary to induce obligations in conscience must be consent that is true, internal, mutual, deliberate, free and externally manifested. It must be internal, for' otherwise it is a fictitious agreement, which cannot bind the conscience, though the deceiving party must indemnify the other if loss ensue, and failing all other means of reparation, must

[1] In Pearce *v.* Brain, Pearce, an infant, sued by his next friend and claimed from Brain the recovery of a motor-bicycle and sidecar which he had exchanged for a two-seater motor car of Brain's. Pearce used the car, and it broke down after 70 miles driving. He claimed that the contract of exchange was void under the Infant's Relief Act, 1874, and in the alternative was voidable, and had been avoided by him. The Judge of Appeal upheld the decision in the County Court that the plaintiff had had the benefit of the contract, for he used the car. Valentini *o.* Canali was quoted in which Lord Coleridge had said : " When an infant has paid for something and has consumed or used it, it is contrary to natural justice that he should recover back the money which he has paid."

Both decisions are in conformity with all the moral text-books, and the obvious basis of the teaching is that if an infant has derived benefit and cannot restore the thing bought or exchanged precisely as it was, he cannot recover ; cf. also, Slater, I, p. 485.

' R. . Holland, *Law of Contract,* p. 85 ; T. E. Holland, *Jurisprudent»,* pp. 98 and 350.

stand by the contract. In English law such contracts are voidable at the option of the party injured ; in some cases, indeed, the contract is void, as when fraud amounts to larceny. It must be mutual since each party must consent and in identical terms—*consensus in idem*—though the two consents need not be simultaneous. If an offer is made, die contract is complete when the offer is accepted, and in general, or by some fiction, manifested to the offerer. Acceptance of the terms of a contract through the post, by the posting of a letter, is valid acceptance, even if the letter is lost in the post.[1] At an auction acceptance is punctuated by the hammer.

1. Mistake is present when the contracting parties did not mean the same thing, whether in respect of the kind of contract they wished to enter upon, or of the subject-matter contracted for, or of the identity of one of the parties, where the other party is aware of the mistake. But the mistake must be substantial or fundamental and one of fact. Such agreements are void and impose no obligation in conscience. But in law, a mistake will not avoid a contract, unless the other party induced the contract by misrepresentations (even innocent) or fraud. If I buy a picture under the misapprehension that it is a Romney, I have no remedy.

2. Misrepresentation is present, when one party is misled by statements innocently made or facts innocently withheld by the other party. Such contracts are voidable at law, but until avoided by the injured party, they are to be fulfilled. The rule in law is *caveat emptor.* In contracts, however, which are called *uberrima fidei*—as contracts of Insurance—all material facts must be disclosed, else the contract can and may be voided.

3.Fraud takes place if one party is deliberately misled by the other party, with intent to deceive, or mis-statements are made recklessly. Obviously, such agreements do not bind the conscience, but at law they can be avoided. A mere expression of opinion is not fraud. Mere non-disclosure

1 cf. R. W. Holland, *Law of Contract,* p. 9 sq.

is not fraud. ‘ To make a man liable for fraud, nothing short of moral fraud must be proved against him.” [1]

4. Duress consists in any personal violence or imprisonment, actual or threatened, exerted by one party on the other or on his wife or child, with the intention of influencing that other to enter into a contract. Such agreements are void in conscience, and void from the beginning, and voidable at law, if avoided within a reasonable time after duress has ceased.

Closely allied to duress is undue influence, viz., the unconscientious use of power to induce another to contract or to give, and it is less than duress or coercion, but it may beget a kind of obsession in the mind of one party by the other party employing some moral power. It is generally presumed to exist between guardian and ward, parent and child, solicitor and client, clergyman and parishioner, doctor and patient, spiritual director and penitent. A solicitor cannot purchase for his client without this presumption being assumed. Such contracts, though often perfectly valid in conscience, may be avoided in law. But consent should really be outside the province of law. Law presumes consent, when by external acts consent would be ordinarily expressed. All that law should look to is the external behaviour of contracting parties.[2]

This view, being the more logical, is coming into favour since, in 1838, in Pickard *v.* Sears, it was decided : “ The legal meaning of such acts on the part of a man as induce another to enter into a contract with him, is not what the former really intended, nor what the latter really supposed the former to intend, but what a reasonable man would put upon such acts.” This luminous principle, as is well said by Holland, at once sweeps away the ingenious speculations of several generations *of* moralists.[3]

[1] Bramwell, L.J., in Weir r. Bell.

[3] The *Code Civil, Codice Civile,* Codes of Prussia, Saxony, Zurich, arc said to have regard to internal consent ; *per contra,* the Austrian Code, the Civil Code for Germany look to the outward expression (cf. Holland, *Jurisprudence)* p. 264, notes).

[1] Holland, *Jurisprudence,* p. 265.

6. Consideration

I. In contracts, consideration means a *quid pro quo.* In English law, that a contract may be enforceable, there must be evidence of the contract, which is secured either by the form, as in a deed, or by the consideration. This may be what is styled good consideration, i.e., some natural love or affection borne by one party to the other, or it may be—and in commercial contracts must be—variable consideration, i.e., either money or what is reducible to money value.[1] This value need not be the strict equivalent of the consideration offered, except when money is given for money; thus, A may sell for £5 to B what is worth £20.

Valuable consideration must be present in every contract not under seal that it may be enforceable. The consideration must be in writing, if the contract is in writing, unless the price is stated as to be fixed later. It must be real, that is, something which a party is not already legally bound to do. It must be legal, that is, not contrary to law, nor fraudulent, immoral, or criminal. The consideration for a promise must move for the promisee; it must be executory, or at least executed at the moment of contracting, but cannot be past. Thus, if I promise to give A £50 for having recovered my watch, there is no contract, nor is a promise for past consideration legally binding, though it is so in conscience, and I may not move to avoid a genuine promise. But if I promise A £50 if he will recover my watch and he does so, that is a contract. A promise is, however, valuable consideration for a promise, as in cases of betrothal. Law takes no notice of the inadequacy of consideration, unless it be so grossly unfair as to suggest fraud. Thus, if A lose a ring and offer a reward for its recovery, he offers to pay for services rendered. If B find the ring and restore it to A, there is a contract by A to pay the reward based upon the consideration executed. Again, if a debt has been Statute barred, a subsequent promise to pay revives the debt, and

[1] The distinction between good and valuable consideration, or family affection as opposed to money value is only found in the history of the Law of Real Property.

the time runs against the debtor from the moment of the promise. However, the Statutes of Limitation, in respect of recovery of debt, does not extinguish the debtor's moral obligation, it merely extinguishes the creditor's remedy in law.

2. In conscience, mutual agreement is sufficient without any consideration passing between the parties, provided all other conditions as to natural capacity are fulfilled.

7. Effects of Contract

1.Contracts bind the contracting parties only ; the obligation is one of commutative justice. If one party unjustly repudiates a good valid contract, the other has a moral, and usually a legal, right to sue for fulfilment of contract. The gravity of the moral obligation depends on the intention of the parties, which can be gauged by law, custom and usage.

2.When a contract is made under oath, there is added an obligation of religion. But as the oath is accessory, its obligation lapses if the contract lapses.[1]

3.A contract may be made conditionally on a past event, unknown to both parties, or on a future event. In the former case, the contract is at once valid if the condition is fulfilled, but the obligation arises only when this fact has become known. In respect of future events, a condition is precedent when performance depends on the happening or not happening of a given event, as, v.g., if a contract is made to accept goods if they are examined and passed by an expert. There is obviously an obligation of awaiting the issue, and if the event takes place, of fulfilling the contract. A condition is subsequent if an event happen during the performance of the contract, and the parties agreed that on the happening of such given event one or both should be discharged.

4.Damage for breach of contract or earnest money for fulfilment of contract may be made a matter of agreement

[1] Thus, canon 1318, which appears to dispose of a good deal of speculation as to whether the oath had to be observed though the contract had lansed cf. Verm.-Creus., *Epit.,* II, n. 652.

between the parties, and would have to be paid for moral fault, and even for actual involuntary non-discharge, if such were agreed upon. But in English law, damages for breach of contract arc not vindictive but compensatory ; only pecuniary loss is recoverable. Cases of breach of promise to marry are the only cases in which the plaintiff's feelings are assessed. Marriage is a valuable consideration for the promise of money.

When parties agree upon sums payable for cases of breach, such damages if liquidated and equivalent to the loss actually sustained by the breach, are recoverable ; if such sums are agreed upon as a mere penalty for breach, they are not recoverable ; where damages are not agreed upon in the contract they are unliquidated, and the Court will award damages equivalent to the monetary loss sustained. Thus, carriers are not liable for special losses incurred by the non-delivery of goods, such as machinery ; the amount recoverable would be the ordinary loss consequent upon the delay in normal circumstances.[1]

8. Termination of Contract

1.Contract is terminated in accordance with the terms of a contract, or equivalently, always in conscience, and legally, if law permits. Thus, there may be an agreement to vary a consideration, and release from a contract that cannot be discharged ; it is a discharge by accord and satisfaction. A and B may agree to discharge their contract by B accepting £10 and some gift in kind, in lieu of an original £100. The value of the gift is immaterial ; it is a new consideration.[2] Release from a contract already broken may be treated in the same way.

2.Assignment can serve as escape from liability in certain contracts, but usually, one may not legally assign rights and liabilities without the consent of the other party ; this is a case of novation. Assignment of debts must be in writing, signed by the creditor.

1 R. W. Holland, *The Law of Contract,* p. no.
1 R. W. Holland, *ofi. cit.,* p. 93.

3. Rescission is mutual arrangement to quash the contract, subject to rights of third parties which may have arisen.

4. Release takes place when one party elects not to proceed against a defaulting party. It is only valid if by deed under seal, unless a new consideration is given for release by accord and satisfaction. This, however, would be a new contract.

5. Death terminates purely personal agreements which have become impossible of performance.

6. A disclaimer of what are called unprofitable contracts may be made by a trustee carrying on a debtor's business.[1] He disclaims property burdened with such contracts.

7. Rights to enforcement of contract are extinguished by law; it is not the contract that is terminated (either in law or in conscience), but the remedy is barred, by the Limitation Acts of 1623, 1833, and 1874. Nevertheless, in many cases the Statutes do not run in favour of the debtor (as in cases of minority, ignorance, fraud, absence), but once the period of limitation has begun, nothing can stop time running against a creditor except an acknowledgement of the debt or a part payment. Again, though the remedy for the recovery of debts is barred by Statute, the enforceability can be revived in many ways, the most common of which is a written and signed acknowledgement of liability amounting to a promise to pay. There is no proof that the law intends to extinguish debts by the Limitation Acts, as it apparently does in the case of an absolute discharge in bankruptcy.

8. Merger terminates contract. Thus, if two parties make a contract without sealing, and subsequently enter into a new contract under seal about the same subject-matter, the first contract is merged in the second. So, too, merger acts when a judgment is obtained; the contract is merged in the judgment, which acts by way of estoppel, that is, a contracting party is prohibited legally from disproving statements actually made, or made equivalently by contract.

9. Breach of contract by one party does not necessarily

[1] Bankruptcy Act, 1883, see. 55.

release the other party. It gives him a right of action. But breach will operate as discharge if it is a breach of condition (or terms of contract) vital to the contract.

SECTION 15. Some Particular Contracts

1. Promise

A simple promise, if accepted, is an offer accepted, and is a gratuitous and unilateral contract, whereby the promisor binds himself to do something for the promisee. Such a promise, made by word of mouth or in writing not under seal, is not legally binding because deficient in form or consideration. No simple contract is binding unless valuable consideration is given for the promise. But a promise binds the conscience by virtue of fidelity, and the obligation is *per se* light ; if the promisor binds himself in justice, it is *per se* grave. To become a contract in conscience, a promise must be accepted and the acceptance manifested to the promisor. In mutual promises and in such as receive valuable consideration, the obligation is one of justice, as well as of fidelity. The obligation would be serious in considerable matters, unless the contrary was made evident. A fictitious promise does not bind the promisor, but if loss resulted in consequence to the promisee, and was foreseen, it must, in justice, be repaired.

The obligation of a promise lapses :

1. If circumstances change the nature or matter of the promise.

2. If the matter promised becomes unlawful, useless, impossible, or immoral.

3. By release on the part of the promisee.

4. By any cause that would terminate the contract.

5. By death of the promisor, unless he wished to bind his heirs in justice, a wish that has to be clearly proved in order to be of any avail.

2. Gift

I. By a gift, one party passes property to another. In English law, this contract must be entered upon by deed, and if legal, is then irrevocable, but gifts in contemplation

of marriage are not considered pure liberalities, and law treats them in a special way.

2. Gifts *inter oivos* are as defined above. Gifts *mortis causa* are made in contemplation of the death of the donor as an essential condition, and by a person suffering from an illness, though it is not necessary for the validity of the gift that he should believe he will die of the illness; a gift in contemplation of suicide, followed by the suicide of the donor, is not a valid gift *mortis causa.* The intention of the donor must be to make an immediate gift, but subject to the condition that title to the property shall not pass till his death, and that if he resume possession of the matter of the gift, it being revocable, or recover from illness, the gift shall be void. Thus, a cheque given *mortis causa* is of no value as it must be cashed in the lifetime of the donor. The gift is not valid till actually delivered with intent to pass ownership. The property given may be taken to pay the creditors of the deceased if his assets were insufficient.[1]

3. The contract of gift is good in conscience when the gift is accepted; it is good in law when the deed is signed and delivered, or in case of chattels when delivery has been made. A case is given of a father offering to give a horse to his son. If the horse is not taken away by the son at once, the gift cannot be enforced. If the father offered to sell the horse for £50, and the son accepted the offer, the horse belongs to the son at once.[2] Gifts to the Church for its purposes are valid in conscience, because the Church has the right, quite apart from legal formalities, to accept as its own what another has the moral power to convey.

4. If the validity of a gift is disputed—there being no *mala fides*—law may be invoked and judgment will be binding, if the matter is within the province of the law. Bequests for Masses never were within the province of the law.

3. Last Will and Testament

I. A will is not a contract at all, because there are not two contracting parties. It has some analogy, however,

[1] Jenks, *Digest of Civil Law,* nn. 2041, 2042, 2046.
[2] Jenks, *Book of English Law,* p. 368.

to unilateral contracts and is, therefore, treated with contracts. The beneficiaries under a will need not accept the benefit, but if they do, they must also undertake obligations that arise in consequence.

2. A will is the voluntary and revocable declaration in legal form—with exceptions to be presently stated—of a person's intentions, to be carried out after his death and of no avail during his life, in respect of the disposition of his property in so far as he can dispose of it, and whatever it may be at the moment of his death, or (and) fulfilment of specified wishes, such as place and mode of burial. This power of disposing of property is not at all due to positive Civil law, it is based on Natural law.[1] Legal conditions are, indeed, reasonable and in many cases necessary in order to avoid litigation. It is assumed that the person has testamentary capacity.

3. Generally, and for British subjects domiciled in Great Britain and disposing of property therein, a will must be in writing, (except in the case of soldiers on active service, or mariners at sea, who may make nuncupative, verbally declared λνϊϊϊε, in presence of witnesses at and after the age of sixteen), signed or marked at the foot or end by testator or proxy in his presence or by his direction, the signature being made or acknowledged by the testator in the presence of two or more witnesses, present at the same time, who afterwards attest and subscribe the -will in the presence of the testator, though not necessarily in the presence of each other. For the validity in conscience of a will, all that is needed is, probably, the expressed intention of the testator; if, however, the will is not legally executed, it may be revised or modified by legitimate authority—except where the Church is concerned — to which interested persons may conscientiously have recourse, and if they do, they are bound to conform to the judgment given.[2] Anyone can be a witness to a will who understands what he is doing, namely, attesting

[1] Wernz, *Jus. Decret.,* **III,** n. 274.

[1] For the Church, all that is required is proof of the intention of the testator. This may be supplied by two or three witnesses, or in writing, or in any other legitimate manner: cf. Wernz., *Jus. Decret.,* **III,** n. 279.

a document, the contents of which he need not know, nor even the fact that it is a will at all. No witness can take any benefit from a will attested by him or her, nor husband or wife of the witness.. A holograph will is one that is written in the handwriting of the testator. No special privilege is given in English law to a holograph will in the matter of legal formalities.

4. A codicil is a declaration of intention formally modifying a will or adding to it. To be legally valid, it requires the same legal formalities as the will itself, and as a later testamentary document it overrules an earlier one. A codicil is read as part of the will, but if the latter is not forthcoming and cannot be proved, the codicil can operate alone. There is no difference, for legal purposes, between a testament and a codicil.

5.If there is evidence that a will or codicil was made but if it cannot be found at the death of the testator, there is a presumption of law that he destroyed it with intention of revocation,[1] but not if the testator became insane. Alteration on the face of a testament or a codicil may be sometimes presumed to have been made after the execution of the testament or codicil, but persons benefiting must prove that it was made before execution.

6.A specific legacy is a gift which the testator separates from his general personal estate and bequeaths to a legatee, who will receive such legacy from the executor of the will. Devises of real property are treated like specific legacies. A legacy bequeathed to a creditor is presumed as intended to satisfy debt, if it is equal to or greater than the debt due. The presumption does not arise if the legacy is smaller than the debt, or if the debt was incurred after the will was executed, or if the testator has left directions that his debts should be paid, or if the testator devises real estate to a creditor, and, perhaps, if the testator bequeaths a specific chattel.

7.Legacies may be bequeathed on condition that the legatee does or refrains from some act. An illegal or immoral

[1] Secondary evidence may be accepted to prove the contents of a lost will. The contents may be proved by only a single witness.

condition precedent is void ; the impossibility, illegality or immorality of a condition subsequent destroys the condition. The commonest conditions relate to marriage, making payments to others, change of religion (a condition against change of religion is legally valid), bankruptcy, alienation, temporary use of the legacy.

8. If a legatee owes money to the estate of the testator, he cannot claim until he has brought into account the sum which he owes to the deceased.

9. The capacity of persons to make or attest a testament or codicil is stated as follows :

(a) According to English law, no person under twenty-one years of age can make a valid testament except that a soldier on active service or mariner or seaman at sea may do so at the age of sixteen, and no person at all, unless of sound mind, memory and understanding when he makes it, nor one who suffers from a particular delusion—though otherwise sane—if influenced by that delusion, nor one who is in a state of intoxication at the time of making it, nor one who was, at the time, subject to force, fraud, or undue influence.[1]

(£) All persons, even minors, having the use of reason, are competent witnesses to the execution of a testament, if they understand the act which they are doing.

(t) By Natural law a person of unsound mind, or one not having the use of reason, cannot make a valid testament.

(W) Religious under Solemn Vows are similarly incompetent, for they have nothing to dispose of. All property bequeathed to such Religious goes to their Order, or Province, or House, in accordance with the rule, if capable of ownership ; otherwise to the Holy See (c. 58a).[2]

10. A person whose estate is not burdened with debt can leave all property which is his own at death and of which he can dispose, except his own life interests, which then

[1] cf. **J.**, n. 1993. Undue influence is not presumed in case of wills, as it is in case of gifts *inter vivos,* by the relation of the parties, nor by the fact that a party benefits under the will.

[1] But the Holy See may grant an induit permitting solemnly professed Religious to retain, administer, acquire, and dispose of property (c. 582).

come to an end, to whomsoever he chooses, at least by *English law, and for a* reasonable cause he may do so. But immediate offspring, unless justly excluded,[1] have a natural *right to* reasonable share in the inheritance, since the preservation and propagation of families require some stability of goods. In case of intestacy, the estate is distributed according to Statute, and in England the division is equitable.[2]

Last Hills that are legally void but do not infringe the certain claims of others, such as creditors, may—if this be possible—be used by the beneficiary in his own favour, unless contested by law.

ii. In English law (Wills Acts, 1837, 1861) every will or codicil is revocable or alterable if the testator so wishes except that in cases ofjoint wills, when one party dies and the other takes benefit under the wall, the estate of the latter will be liable to carry out the original arrangement. A will can be revoked either by the testator destroying it with intent to render it invalid, or by tearing off the signature, or by a later will or other writing executed in the same manner as a will, and declaring an intention to revoke, as by codicil, or by marriage. So, too, revocation or alteration can take place by intentional obliteration, interlineation or other changes, if done so that the original words of the testament are not apparent without physical interference with the document, and the changes made are duly executed. No revoked will can be revised, except by the re-execution, or by codicil, duly executed and attested.

Notes on Wills

I. The father of a family has a moral duty to provide, by will or legacy, if possible, for his wife and children who need assistance for reasonable maintenance according to their station in life. He is now obliged by law to do so.

[1] Up to an. 1926, illegitimate oflspring were excluded, but by the Legitimacy Act of 1926 such offspring can enjoy the same rights of succession as would be enjoyed by legitimate offspring under certain conditions.

[*] For the rules of intestate succession, cf. Jenks, *Book of English Law,* p. 303 sqq.

2. Civil law is competent to determine in the concrete the order of inheritance, and in cases of intestacy to distribute the estate of the deceased.

3. Prescinding from the provisions of Civil law, heirs and legatees are bound in conscience to pay the real debts of the deceased, for such debts are a burden on the estate. They are bound to pay *pro rata,* that is, in proportion to the several amounts received.

4. If a testator disposes by will, whilst *sui compos,* of what he has a right to dispose of whilst living, in accordance with Natural law, such will is valid until set aside by just Civil law.

5. Devises and legacies for secular purposes in a will that is irregular so far as Civil law is concerned are good and valid until set aside by the Courts. Consequently, benefit may be taken from such a will. It would be unjust, however, to use fraud or deceit to prevent legal action. Similarly, heirs to an intestate, on discovering an invalid will, are not bound to publish the fact, but if legacies were bequeathed by word of mouth, and a beneficiary under a will duly proved had promised to see that the legacies were executed, he would be bound to do so.

6. Testaments, devises and legacies in favour of pious purposes are good and valid notwithstanding the absence of legal solemnities. The Church is not subject to invalidating dispositions of Civil law.[1] However, the Church wishes all legal forms to be observed, but if they have not been observed, heirs to an estate are to be admonished that they must fulfil the wishes of the testator (c. 1513, 2).[2]

7. Pious purposes are interpreted to be those purposes which relate primarily to the honour of God and the salvation of souls, to churches or monasteries and institutions for divine worship, or relief of the poor.

8. The intention of a testator in respect of legacies, etc., orally promised may be known from his actual words,

[1] The singular opinion of D'Annibale, II, n. 33g, that, outside the Papal States, the contrary view could be acted upon is not accepted; cf. Wemz, *op. cil.,* III, n. 279, note 33.

[2] That there is an obligation in the case is now made clear by the P.C.C.J., Feb. 17, 1930.

signs, writing, or the agreed testimony of at least two trustworthy witnesses.

9. After legacies have been disallowed by the Courts on the grounds of their not being named in the will, or because they were destined for what the law calls 'superstitious uses the confessor should urge obligations, but with great prudence.

Note on Trusts, Uses, Charitable Purposes

A Trust is an obligation to hold or administer or deal with property conscientiously for the benefit of a person or persons other than the person subject to the obligation.[1] This is a simple Trust. Trusts may be created *inter vivos* as well as by testament. The Statutes of Mortmain, passed to prevent the alienation of land to religious houses, led to the introduction of 'uses', whereby the grantor gave or bequeathed his land to a friend to hold to the 'use' of some religious house. This was merely a method of evading the law. To prevent such evasion, die Statute of Uses destroyed these uses of land and turned 'use' into lawful seisin. But lawyers circumvented this Statute also, by devising a method of transferring the first use to a second holder, whom the law could not touch.[2][3]

In a special Trust, the object is the execution of some particular purpose. Generally, whoever is competent to dispose of the legal estate, may vest it in a trustee, but this must be done legally. Trusts in favour of charities were formerly in many cases rendered void by 9 George II, c. 36, commonly called the Mortmain Act ; this Act has been repealed and replaced by recent Acts (51, 52 Victoria, c. 42 : 54, 55 Victoria, c. 73), so that property left for charitable objects is exempt from the adverse rules affecting Trusts.[3]

Trusts, moreover, are liable to be avoided by the rule against perpetuities, which prevent the tying up of property

1 Jenks, *Book of English Law,* p. 379 sqq.

2 Ruegg, *An Elementary Commentary on English Law,* pp. 80, 8r.

3 But land devised to a charity may be ordered to be sold within a year from the testator's death, unless the Court is satisfied that it is wanted for actual occupation and not as an investment *(Encyc. English Law,* s.v. Will, p. 609).

for any period longer than a life or lives in being and twenty-one years. Many Trusts are illegal, such as those to avoid payment of income-tax, or for purposes subversive of religion or morality, or for superstitious uses. Bequests for Masses are now good bequests, in accordance with the judgment given in appeal to the House of Lords (June 3, 1919), a complete reversal, as already indicated,[1] of all previous decisions, all of them misconstruing, so it was maintained by the Lord Chancellor, the original Chantries Act (1 Edward VI, c. 14). The chief ground of the favourable judgment was that Masses for the dead ceased to be a superstitious use when Catholicism was permitted to be openly professed in England. The Irish Courts had ruled bequests for such Masses to be for pious uses, and therefore good, though subject to the rule against perpetuities. In U.S.A, several of the States place restrictions on bequests for charitable purposes,[2] and in regard to bequests for Masses for the dead, these have been declared invalid in some States, because the beneficiaries could not demand the execution of the trust. In spite of contrary Statutes, legacies left for Catholic purposes are good in conscience, may be retained, and cannot be moved to be set aside by co-heirs or other legatees. To do so would, in effect, be an offence against justice.

4. Loans for Consumption (Mutuum)

Definition

This contract takes place when money or other things that are consumed in their first use are given to another, on the understanding that he shall restore, at some future time, their equivalent in kind. Such things are called fungibles. Such are, for example, current coin, bread, wine. Money at a Banker's is such a loan, to be returned when demanded by cheque. Tools, machinery, horses, a house are not fungibles. The loan is usually gratuitous, though interest may be agreed upon in the case of money lent. The contract for consumption *(mutuum)* differs from that of loan for use

[1] *Supra*, vol. I, p. 144, note 1.

[2] Slater, I, p. 505.

{commodatum) in that in the former case an equivalent in kind is to be restored, in the latter, the thing itself.

Principles

1. Profit may not be demanded by the lender for both the tiling lent and for the use of it, since the tiling is consumed in its very use. All that can be demanded—apart from free agreement—is the same amount of the specific commodity that was lent. When an equal amount of the thing lent has been returned, all justice has been fulfilled.

2. Certain extrinsic titles to a reasonable charge for such loans are justified. These titles are : Actual loss sustained by the lender on account of the loan ; the forgoing of such profit that would certainly have accrued if the lender had not parted with his thing ; real and unusual risk incurred by the lender ; the penalty agreed upon by the lender and borrower in case of default, and the legal interest in the case of money lent. Money lent by a publican to a guest to enable the latter to play at a game forbidden by law cannot be recovered, nor if lent to lay bets on games of chance. But the borrower cannot, in conscience, take the benefit of the law, if the lender acted in ignorance of the law ; if he acted, taking the risks of non-recovery, he did so knowingly, and must be supposed to have lent the money with the expectation of loss. Charges by a money-lender on account of incidental expenses relating to loans are illegal. The provision of the law is wholly in accord with the principle of *mutuum.* The Courts presume, unless the contrary is proved, that 48 per cent per annum on loans is harsh and unconscionable ; they may rule even a lesser percentage to be excessive.

3. The obligations of the borrower are to return the equivalent of the loan in quality and quantity, and at the fixed time ; otherwise he must compensate. If the loan was one of money, he must return the fixed amount, disregarding any change in money values, but delay to restore will strictly entail an obligation to pay interest due for the delay.

4. The obligations of the lender are to refrain from claiming what was lent before the agreed period, except where inconvenience, wholly unexpected, has arisen; he must warn the borrower of injurious qualities—if any—in the thing lent, and may exact no advantage from the loan unless agreed upon freely and justly.

5. The virtue of charity obliges men to lend to others what is necessary to relieve pressing needs. It is merely an aspect of alms-giving: "From him that would borrow of thee turn not away" (Mt. 5, 42). The obligation of lending will rarely be a grave one in ordinary life, but it may well be so at times. One ought to be more willing to lend to neighbours—a virtue more common amongst the poor than the well-to-do—than to balance obligations too

Usury

It is important to distinguish usury from excessive interest.

I. As a transaction that is unjust, usury is committed by lending a thing which is consumed in its use, and for such use demanding a greater quantity of the thing to be returned, without the justification of any of the extrinsic titles mentioned above. It is unjust, because gain is sought for a thing which is not, in itself, fruitful, without any labour, expense or risk on the part of the lender. Nowadays, and for centuries past, money has been virtually productive, for it is so readily exchanged for articles and the means of production, such as machinery, land, cattle, seeds, that its loan has now a reasonable price. It is not here suggested that interest may be justly taken for money lent for productive purposes. There must always be some extrinsic title to justify the taking of interest. In point of fact, money loaned is now usually imperilled, for so many enterprises fail and wild speculation is so rife, that it is reasonable to assume that money lent is lent at great risk. This, however, is an extrinsic title. Even as far back as the year 1645, the Church, through a Roman Congregation, permitted Chinese Christians to take 30 per cent for money lent in accordance with Chinese law, and with the proviso

that this large interest was proportionate to the danger of loss.1

2. The *Vix Pervehit* of Pope Benedict XIV (an. 1745) is the best official exposition of the scholastic condemnation of usury'. The Pope there says that profit exacted for the loan of money is unlawful and must be restored, but that extrinsic titles may justify' it, that there are ways of investing money so as to yield income, but charity may demand gratuitous loans. The reader may be referred to the *Irish Theological Quarterly*2 for a refutation of Lecky's attack on the Church and her attitude to commercial progress. The unscrupulous methods of moneylenders are rife even today in India3; it was the radical injustice of exacting interest for the use of money that called forth the Church's condemnation of usury. As commerce increased, the extrinsic titles to a reasonable charge on money lent became very real. It is an extrinsic title alone that justifies interest. The great authority of Ashley, Cunningham and Marshall may be cited: "We have not to trace a series of adroit subterfuges," says Ashley, "introduced or apologized for by the canonists, in order to meet the necessity for commerce; we have rather to observe the way in which the canonist doctrine, as it gradually formed itself, treated a practice which was already established." *

3. Mohatra is the name given to the artifice by which the prohibition against usury was evaded. A sells to B on condition that B at once sells back to A at a cheaper rate, but undertakes to return to A at the specified time the full amount borrowed. Thus A sells to B £100; B sells the £100 to A for £80 and receives £80, but must return £100 at

1 cf. canon 1543: No profit may be taken for the contract of the loan of a fungible, but it is not necessarily wrong to stipulate for the legal prefit, unless that is obviously immoderate; even more may be taken, if there is a just and proportionate title to do so. Canon 2354 inflicts severe penalties on both lay and cleric who are guilty of usury. The former may be excluded from legitimate ecclesiastical acts and from office, the latter may be subjected to censures, privation of office and benefice, and even to deposition.

1 1910, p. 16: 1912, p. 460 sqq.

3 cf. Reports of Missioners, *passim*.

4 The reader is referred to an article in *Studies,* Tune, 1932, by E. J. Coyne, S.J., on "Mr. Belloc on Usury."

the time due. This transaction was condemned by Pope Innocent XI, as a method of exacting usurious interest and avoiding the appearance of doing so. It is not now unjust if only reasonable interest is taken.

5. Buying and Selling

1. Sale is a contract by which the seller transfers the ownership of a commodity to a buyer at an agreed price. The agreed price must be just, and in order to be just, it may be the legally fixed price, or the common price, or where both of these are non-existent or not known, the price agreed upon by the contracting parties without deceit or unjust pressure.

2. The common price is that which is fixed by the common judgment of those who have to deal with the commodity, including producers, distributors, dealers, sellers, buyers, and it depends on utility and supply and demand.[1] This price, being a general estimate and depending on so many factors, is incapable of exact mathematical determination. Therefore, there are highest, lowest and mean just prices. To sell above the highest, or to force prices down below the lowest, would ordinarily be a sin against justice and would entail restitution. These are the ethical principles that rule the sale of commodities for common use. They have appeared obvious to generations of Catholic teachers. There is, however, a tendency to depart from these principles, either partially or altogether, as when it is stated that the price of a thing is what can be got for it without deceit or fraud. To depart from the commonly received doctrine is, however, to condone the evils of sweated labour, rigging the market, extortion and usury. English economists have long ago departed from ethical standards in the matter of prices.

3. The just price of curios or articles of luxury is either what the buyer agrees to pay, without being subjected to

[1] For the traditional teaching in Catholic schools on the just price, the reader is referred to "The Theory lying behind the Historical Conception of the Just Price" by Lewis Watt, S.J., in *Stockholm,* July, 1929 (Oxford University Press).

fraud or deceit, or the price settled by experts. These two prices will usually coincide if the buyer and seller know their business ; failing that, they may agree on any price. Thus, cheap trinkets are sold to uncivilized tribes at the price, though high, current among such tribes. There is no injustice done, for the articles sold are worth the price given. Social utility then determines the price. To charge a buyer more than the prevailing price on account of his need or desire is contrary to justice, for his need or desire is not the property' of the seller to .sell or haggle about. Conceivably a man might be willing to give £100 on an occasion for an ordinary walking-stick or for a lifebelt in shipwreck. But the value in use to a particular buyer is not the real exchange value of the stick or belt. We may not trade with the needs of others, though we may supply their needs for a just price.

4. There is a tendency on the part of some recent Catholic writers to qualify' the common teaching. These permit a seller to charge more than the highest prevailing price—but not an exorbitant one—if a buyer is very anxious to buy. It is maintained by these that the buyer consents to the .extra price as the value to him of his own pleasure or convenience, and he makes a present to the seller of the excess. This may be arguable, but the case is different when A, wishing to buy an article from B, is willing to give more than the normal price, because the article will produce for him a larger just profit than it would produce for others.[1]

5. It is permissible to sell an article at the present normal just price, though the seller knows that its value will soon depreciate. Similarly, it is not unjust to buy at the market price, as marked or agreed upon, an article which the buyer

[1] Gousset, Schwane, Marres, Waffelaert, Génicot, Aertnys, Noldin, Berardi, *contra* S. Thomas, S. Alphonsus, Palmieri, Bucceroni, Marc, Lehmkuhl, Ubach. In view of this growing opinion, it must be admitted that there is good extrinsic probability for the milder view, namely, that more may be charged relatively to the desire—not the need—or to the personal advantage of the buyer, and, therefore, *postfactum,* there is no clear obligation of restitution if this has been done. If the buyer's advantage was not purely personal, but was shared by him in common with others—not, however, a very few others—that factor would certainly justify an extra charge.

has reason to know from his expert knowledge ought to be much dearer ; the proceeding may, however, be a violation of charity.

6. If an article offered for sale is not what it purports to be, or is useless, or harmful, ordinarily the contract will not be good in conscience. We say ordinarily, for if the buyer had opportunities of examining what he was going to buy, and is not deceived by the seller, but deceives himself, then '*caveat emptor*' he takes the risks. The seller is not bound to disclose merely accidental defects in the thing for sale, provided he do not charge more than the highest just price. If the seller is asked by the buyer concerning an accidental defect of an article for sale, he is bound in conscience either to disclose the defect or decline to guarantee the article. Gross exaggeration of the value of articles is usually discredited ; cheapjacks deceive no sensible person. When a buyer has paid much more than the article is worth, without deceit or fraud, he has had a common experience, which has its value for future conduct.

7. To sell adulterated goods as pure is not unjust, if there is no substantial error, or if the mixture is equally good for all practical purposes, provided always the just price has not been exceeded. But since goods are, in fact, adulterated, buyers take the risk.

Notes on Sale and Hiring in English Law

1. Of Title to Peaceful Possession

In a previous section on the holder of a chattel in good faith, the general principles of moral conduct were laid down. Here, brief reference is made to the legal aspect of certain transactions.

It is a general rule of law that no one can give or sell what is not his. A *bona fide* purchaser must give up property to its true owner. There are some exceptions to this rule. Thus, a holder, in due course of business and having taken all precautions, of negotiable instruments (Bills of Exchange, cheques, promissory notes, bearer bonds), gets a legal title which is unaffected by the title of the person from whom he

got them. This is true also of current coin of the realm, bank notes, treasury notes (withdrawn from circulation in 1928), if value for them was given; and also in case of purchase by a third party of goods not taken over by a previous buyer, and in cases of purchase from a mercantile agent who wrongfully sells what he was empowered by the owner to dispose of only in a particular way, and lastly, of purchase from a stallholder in market overt, not, however, of land or of things in action (ordinary debts, annuities, pensions, shares, stocks, copyright, trade marks, goodwill), nor of sale to a stallholder, in which case the ordinary law of sale applies.[1]

2. Sale of Goods Act

The English law on the Sale of Goods is here codified, and the summary is helpful to practical guidance in very ordinary cases. The object of the writer is not to suggest that the reader may dispense with the services of a solicitor, but rather that he may be aware that conditions of sale are most minutely safeguarded by English law, and that it is to his interest, in dealing with goods of some consequence, to acquaint himself with all the provisions of the law. He may err in good faith, but he may find that he has no redress at law. The law defends both seller and buyer, and holds an extraordinarily just balance between the two.

1. The term 'goods' includes all personal chattels other than things in action and money, all annual crops produced by labour, and things attached to land or forming part of it, which may be severed before sale. 'Goods' include existing and future goods.

2. If the goods are worth £100r more, in order that the contract may be enforceable, the buyer must accept part, or give something in earnest to bind the contract, or give a note or memorandum in writing signed by the party to be charged.

3. If the specific goods contracted for have already perished, the contract is void, and if they perish before the risk passes to the buyer, the contract is avoided.

[1] Jenks, *The Book of English Law*, p. 353.

4. In a contract for sale, there is an implied warranty that the buyer shall enjoy quiet possession of the goods, and that they are free from any encumbrance in favour of a third party.

5. If goods are sold by description as well as by sample, the goods must correspond with the description.[1]

6. If goods are bought by description from one who deals in such goods there is an implied condition that they are of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination should have revealed.

7. When there is a contract for sale by sample, the bulk must correspond with the sample in quality, and the buyer must have a reasonable opportunity of comparing the bulk with the sample.

8. When the property in specific or ascertained goods has passed to buyer—whether they are delivered or not—the goods are at the buyer's risk. In case of delay through the fault of either, the goods are at the risk of the person in fault, as regards any consequent loss.

9. When the seller delivers less than he contracted to sell, the buyer may repudiate, but if he accept, he must pay at contract rate. When the seller delivers more than he contracted to sell, the buyer may reject the surplus or the whole. If he accept the whole, he must pay at contract rate.[2]

10. If the seller deliver goods contracted for, mixed with goods of another description not contracted for, the buyer may reject the whole, or those not contracted for, subject

[1] In Scaliaris *v.* Ofverberg & Co. (June, 1920), judgment was given in favour of the plaintiff who rejected certain cases of saccharine which, though substantially what he had ordered, had the label of another firm affixed.

[1] In Barrow & Others *v.* Phillips & Co., an extension of this point was made. A set of 700 bags of Chinese groundnuts was sold by A to B, who resold them to C, without removing them from the warehouse. At the time of resale, 109 of the bags had been stolen. After the sale, 441 more of the bags had disappeared, so that when C went to take delivery, he found only 150 bags left. C refused to pay. The learned judge said that the contract was for the sale of 700 bags, and for nothing less. He gave judgment for C. He thought that the position in law was the same as if the whole 700 bags had ceased to exist before the contract was made.

to trade usages, or special agreement, or course of dealing between buyer and seller.

11. When goods are sent by sea transit, the buyer has a right to be notified so as to insure them. If the seller fails to notify, the goods are at his risk during the sea transit.

12. A buyer is deemed to have accepted goods sold to him when he has accepted them, or when they have been delivered, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after a reasonable time, he retains them without notice of rejection. If a buyer has a right to refuse acceptance or delivery, he is not bound to return the goods to the seller ; it is sufficient if he notify the seller of his rejection.

13. Where delivery was agreed upon at a place other than that where they were when sold, in default of other agreement, the buyer must take the risk of deterioration in the goods necessarily incident to the course of transit.

3. Hire and Purchase

•The hire and purchase systems, though legitimate and useful, are not infrequently the occasions of material loss and injustice. They are dangerous agreements, unless legal advice is taken and followed. A case is quoted, where an agreement was made to purchase a piano, priced £60, on the hire and purchase system, by instalments of £5 each month for 12 months. After paying £50, the purchaser neglected, or was unable to pay the last two instalments on the days on which they were due, but offered them later, when they were refused. The piano firm seized the piano, and kept the whole of the instalments already paid. The law was on their side, but there is no doubt that they were morally bound not to take full advantage of it.

6. Auction

Definition

An auction is a public sale of goods to the highest bidder. The auctioneer is the agent of the seller, and as soon as the sale is over, his authority ceases. When he brings down the hammer, the sale is completed, and he becomes

the agent of the buyer, to write down the name of the latter and to make the contract effective.1

Principles

1. A bid may be revoked before the fall of the hammer.
2. The goods for sale must be truthfully described, though mere expressions of praise or value, if not actual misrepresentation, will not render the sale void.
3. A sale without reserve price is one in which neither the seller can bid, nor anyone for him. A reserve price, if stated before auction, is lawful. The auctioneer must accept all bids, except for a very good reason to the contrary.
4. If one or more persons are secretly commissioned by the vendor to bid, with the view merely of raising the price or puffing, the sale can be voided, and it is certainly void in conscience.
5. If the highest bidders conspire to interfere with the sale, and either depreciate the property, or prevent others from bidding, the sale may be discontinued.
6. A knock-out (commonly called the K.O.) is created, where parties agree not to bid against one another, so that after the sale, the goods bought may be put up for private sale among themselves, or sold at the usual commission of ten per cent. This procedure at an auction is a ring. It is more common at auctions of Art collections. A ring usually works against the seller, and things are knocked down at far less than their value, and dealers attend auctions in rings, in the hope of getting valuable articles for a very low price. It is still more objectionable when a private auction is held afterwards by these gangs, who dispose of the things at a good price—often by forcing up the bidding—and subsequently

1 In Sims *v.* Landray (1894), was stated by Mr. Justice Romer that the auctioneer, after the property is knocked down to the highest bidder, is the purchaser's agent to this extent, that he is entitled to sign, in the name and on behalf of the purchaser, a memorandum, sufficient to satisfy the provision of the Statute of Frauds (replaced now by the Law of Property Act, 1925, sec. 40). In Mews *o.* Carr (1856), it was held that the auctioneer could not sign after the lapse of a few days, for the authority was over when the sale was finished. However, in Chaney *v.* Maclow, Mr. Justice Maugham ruled that the auctioneer could sign the memorandum on returning to his office immediately after the sale, as his signature could be held to be part of the transaction of sale.

share the profits among themselves. The ring is practically a conspiracy to defraud. It is the more dishonest when auctioneers themselves are in league with a ring. On the other hand, at mock auctions, the auctioneer *entices people to bid, by knocking* down articles at a figure below cost price, and then deceives them by putting up imitation jewellery, etc., at high prices. This is fraud, *for* buyers are misled into buying trash.

7. It is not unjust to ask a prospective buyer not to bid, since the vendor has not a strict right to the bid of each person present.

8. It is not unjust for one person to agree not to bid against another person, provided the auction remains free and others can bid. If a set control the bidding, they act unjusdy, for then the seller is always taken at a disadvantage, and the ring is always the gainer. The precise injustice in the case is that the seller is forced to sell at a low figure ; in other words, the sale is not free. It might be said that the seller ought to fix a reserve price on everything he really values. This is practically impossible,' for he would have a great many articles left on his hands. No bids would be made. It is true that at auctions, a thing is worth usually what it will fetch ; there is no just price. Nevertheless, knock-outs prevent a reasonable price being got, and to that extent they are wrong. The seller, however, knows that knock-outs are common, and if he puts up his things for auction, and takes the risk of a knock-out, he is giving away a percentage of his expectations, and no injustice is done him. He is, however, the victim of a very fraudulent system. Even if no injustice happens—as may sometimes be the case—the virtue of charity is violated, and may be violated seriously. There is, we believe, a moral obligation to avoid sharing in knock-outs and rings, unless it is quite clear that a just bid is made, which is rarely the case.

7. Loans for Use (Commodatum)

Definition

This is a gratuitous contract, in which A agrees to lend or lends B goods for use for a limited specified time without

valuable consideration. It is of the essence of this particular contract, as opposed to the contract of loan for consumption *(mutuum),* that the identical thing lent, as a horse, bicycle, should be restored. English law appears to be in complete agreement with the principles laid down by Moral theologians on this matter. Indeed, the law is usually as punctilious in all that concerns justice as any moralist could wish.

Principles

1. The lender is not legally bound by a promise to lend, unless the promise is under seal, but he is bound by fidelity to his word, and may be bound in justice, if he undertook such an obligation. The obligation is presumed to be one of fidelity and binding under light obligation.

2. The lender is bound, both legally and morally, to reveal to the borrower any known latent defects in the thing lent, which are likely to render the thing dangerous to the borrower, and whilst it is being used for the known purpose for which the loan was made and accepted. If the lender fails to do so, the borrower is entitled morally and legally to compensation for damage, harm, or loss, which he has incurred in the legitimate use of the tiring.

3. It is the duty, both legal and moral, of the borrower —apart from any other express agreements—to exercise care and skill in the use of the thing lent, such as any prudent man would exercise, and even special skill, if such is required. He may use the thing lent, only for the purpose for which it was lent, and during the specified period ; he must return the thing lent at the expiration of the fixed period, or within a reasonable time after it is demanded by the lender. He must restore it in the condition in which it was when lent, allowing for reasonable deterioration by wear and tear. But all legal and moral obligations are extinguished if the thing lent perished, or was lost, without fault on the part of the borrower, though the law will interpret default in a narrower sense than divines, who regard culpable moral fault alone.

4. The right to use the thing borrowed is personal, apart from other agreements and, therefore, the borrower will be

obliged to make good any loss consequent upon his loan of it to a third party.

5. Since the loan is gratuitous, the lender may legally demand the return of the thing at any time, but morally, he should abide by his agreement. He may, however, take the benefit of the law without moral fault should necessity arise, since loans are presumed to have been made in accordance wdth all legal dispositions.

S. Deposit of Chattels

Definition

The contract of deposit is one in which the depositor places in the custody of the depositee some movable to be kept for him, gratis or for payxnent.

Principles

1. A paid depositee, apart from agreements to the contrary, is bound legally and morally to exercise that care and skill in regard to the deposit, which any prudent man would exercise, and special skill, if such is required.

2. A gratuitous depositee is bound to exercise what skill he has, and such care as a prudent man would exercise, and if he professes a particular trade, to exercise the skill customary in that trade. He may not go beyond the limits of the agreement, and must return the deposit on demand, together with its profits or increase.

3. In conscience, he may restore the deposit, if stolen property, to its rightful owner, but legally he will be obliged to prove the owner's title. Similarly, he is bound in conscience to withhold the deposit from the depositor, if the latter is likely to use it to the harm of a third party.

4. If the deposit has perished or deteriorated owing to the culpable negligence of the depositee, the latter is bound to make reparation ; if the fault was only a legal one, and not a moral one, he may await the decision of the Courts, and then he must abide by it.

5. Though the depositee may not use the deposit in any way other than that agreed upon, he may reasonably presume permission to do so, and in the case of money may use

it, provided he is certain that he will be able to repay the amount deposited at the fixed time. He may retain any increment due to his own industry or luck.

6. The depositor is bound to reveal defects in the deposit which might prove dangerous to the depositee.

9. Stakeholder (Sequestrum)

Generally, a stakeholder is bound in conscience to hold an even balance between two parties, and to give the stakes to the winner. The stakes are a deposit, and the principle ruling a deposit apply to a stakeholder. But legally, all agreements by parole or in writing, by way of gaming or wagering, are null and void. Consequently, deposit money held for the winner of a wager can legally be recovered from the stakeholder, if before the payment over, a party gives notice to the stakeholder that he has broken off die bet and wishes his money to be returned.

If the loser of an illegal wager cancelled the agreement, and demanded the return of his money from the stakeholder after the event had come off, it was decided in the Courts that he could recover. That is the law ; but many illegal wagers are not morally wrong. If such be the case between two parties, that one of them who demanded his money after losing it to the other party could not be said to be acting honourably or justly.

If the stake is held by mutual agreement, the stake is in the nature of a deposit, and morally, the obligations are those of a depositee.

10. Money-changing (Cambium)

The money-changer is one who changes one currency for another at an agreed rate. When the exchange is made in cash, it is manual ; if effected by a bill drawn upon a drawee, it is local or written. The money-changer is entitled to a reasonable profit, in accordance with law or custom. If he has sunk his capital in the business, he is further entitled to the legal interest on his money. To pay in European countries with a Bill drawn upon a foreign bank and to be cashed in foreign currency, may be very unprofitable for the

recipient. The transaction was called *cambium siccum* by the Venetian and the Genoese merchants, because it was apparently a Bill drawn on a foreign bank, but cashed on dry ground in Venice or Genoa.

Money-changing is now regulated by law, and no latitude is permitted to private enterprise. But financiers can capture the money market and impoverish a whole people in a short time. The dishonesty of it is the same as the dishonesty of an unjust monopoly, put into motion merely for individual avarice.

11. Monopoly

Definition

Monopoly is the exclusive act of selling certain commodities or services. If the monopoly is legal, it is the exclusive right of doing so. It is a *jus ad rem,* and infringement of monopoly rights is redressed by legal sanction, either by way of injunction, or by both injunction and damages.

A monopoly can effect great saving in overhead expenses, and can secure a profitable return on invested capital; it can sell cheaply and keep in check unlimited and ruinous competition. Some monopolies are good for the more effective service of the public, or for trade, or for private initiative. There are public and private monopolies. Telegraph and telephone services, postal services, and gas, water, transport, are usually public monopolies. Rail transport, and much of the motor bus transport in England, copyright, patent rights, and designs, are examples of private monopolies. Trade marks and trade names are monopolies of indications, which indicate that such and such goods may be obtained from a particular firm or person. Goodwill, when a business or shop is sold, has been called " property at its vanishing point." It is not a monopoly, though wrongly supposed to be so by the purchaser of the goodwill. It protects the purchaser from the seller, in that the latter cannot set up another similar business close to his former place, but it does not protect the purchaser against other competitors.

Infringement of monopoly rights is illegal. No loss to the monopolist need be proved, but, in cases of patents, trade

mark and copyright, damages will not be assessed against innocent infringement.

Principles

1. State and Municipal monopolies are usually reasonable, since they are a form of indirect taxation and rating. It is supposed that the monopolies are not jerrymandered, in order to enrich officials and Town Councillors. Infringement of public monopolies is not contrary to commutative justice and entails no restitution, until such is enforced.

2. Private monopolies granted by the State or a Municipality are nowadays defensible, since they serve the common good, and are an incentive to enterprise. Infringement of such monopolies is an offence against justice and entails restitution, except where the price of the commodities is entirely excessive and obviously unfair in case of the necessaries of life. Monopoly of curios and rarities and articles of luxury is not unjust, since no common price exists for these

3. Private monopolies are not contrary to justice, provided the articles are sold at the just price, even if it be the maximum just price. If they are sold above the maximum just price, the practice must be discontinued, and restitution must be made.

4. If all the sellers of a given commodity conspire to sell at a given price, they do not act unjustly, unless their price is above the maximum common price. But if their commodities are the necessaries of life, these people sin against charity, in that by their combination, they prevent poor buyers from buying more cheaply.

5. This is a very pressing moral question : Is justice violated by the formation of large business concerns, whose object is to concentrate the power of selling within the hands of a few, and then to establish a monopoly of the market. The biggest business concern would be the Socialist State. If such a State monopolized a few lines of business only, for very serious reasons—and the crushing of Capitalists could

not be one—rto harm might come of it, and no harm would be done. But when large businesses are nationalized, with the result that title to private ownership is abolished, as, v.g., the title to the private ownership of land, and with the added and inevitable result that all private enterprise worthy of the name is suppressed, then such monopoly is unjust.

6. Monopoly established by Trusts, Rings, Corners, and large companies, is ruled by the same principles as any other monopoly. But the tendency towards such monopolies is dangerous, for more and more capital is absorbed by these concerns, and little is left for private enterprise. To deprive men of independent action in business is a grave injustice, since personal profit is a great incentive to work, and a wage-system, in which the vast majority have no prospects of bettering their condition, takes away much that makes life worth living. This gravamen of the workers has given them

dependence—so dear and rightly so, to Trade Unions—is one that must be respected even in a Socialist State. The State monopoly of farming on a very large but, in the event, a very unprofitable scale, has killed the initiative of the Russian peasant. Trade Unions, too, in spite of their acknowledged merits, would wish to hold a monopoly of letting workers give their services to employers. Those who oppose their claims are called blacklegs, and peaceful picketing to prevent free men giving their services where and as they like has proved anything but peaceful. For the common good, the State is bound to protect both worker and employer, and is justified in setting up Courts of Arbitration, whose findings shall be, though in fact they are not, legally binding on the litigants. No Catholic theologian can object to Trade Unions establishing a legal monopoly of supply of labour, but legal benefits must be counterbalanced by legal obligations, else law becomes futile. From such monopolies either of labour or of work to be given for production, many evils, great distress and class opposition, unfortunately result. The State, therefore, must regulate monopolies with a firm and impartial hand.

7. The natural tendency *of* monopoly is to keep prices high, and indeed excessive. Prices are excessive, because very large dividends are paid to shareholders, much in excess of cost *of* production, distribution, depreciation and sinking fund. These prices will then be much greater than would rule if there were no monopoly at all, and if this prove to be the case—speaking only of private monopolies —then there is more than a presumption that someone is in the receipt of more profit than his invested capital warrants. In order to inflate prices, monopolists resort to unjust methods, such as crushing rivals, bribing officials, forcing railway companies to convey their freight at such low rates that the rest of the public has to make up the deficit; workmen are victimized by having to work for low wages; producers of raw materials are, as it were, blackmailed, and all sorts of fraud- are practised.

8. The just price of commodities is not to be determined by producers alone, nor by sellers, but buyers too have a right to estimate the utility value of what they require. The ordinary prudent and unprejudiced citizen will be the best judge as to what is a just price. If injustice is done, it must be repaired by lowering the prices of the monopoly. No one may benefit himself by injustice to others, and therefore no one may take part in business, such as the monopolies described, unless he satisfies himself that the business is carried on justly.

9. 'Rings' and 'Corners' in such commodities, necessary to life, as wheat, cotton, fruit, are particularly unjustifiable, because they cause the ruin of many innocent people, produce startling and sudden fluctuations—as they are intended to do—in the markets, and render trade uncertain and highly unstable. Their promoters do not desire to serve the public, but they aim at enriching themselves in the quickest way possible and to the greatest extent. These business methods are merely the servants of avarice. They cannot be defended on any grounds. The State has the right and duty to put a stop to their activities. Their inevitable result is to concentrate wealth in the hands of the few, and so to reduce the many to the state of serfdom.

12. Hiring

In the matter of the contract of hiring, the dispositions of English law are found to be, in all respects, in agreement with the principles laid down by Moral theologians.

This contract is entered upon by one, the letter, who allows another, the hirer, to use goods for a valuable consideration for a fixed time agreed upon.

The duties of the letter are to warn the hirer of known dangerous defects in the thing let, or such a defect, as will render the thing useless for its purpose, and if the hirer has suffered in consequence of not knowing what he should have been told, the letter is bound to make compensation, if the neglect was culpable.

The duties of the hirer are to pay the price agreed upon, to take reasonable care of the goods, such as a prudent man would take of his own property of the same kind, to use the goods only for the purpose agreed upon, to restore the goods at the time fixed, and in the condition they were when hired, except for reasonable wear and tear.

If the goods have deteriorated, or have perished, or have been lost, without fault of the hirer, the latter is not liable, unless he expressly agreed to this condition ; if he has culpably caused loss to the letter, he is bound to make the loss good.

The owner of a horse or carriage let for hire, is, in general, liable for accidents that may happen to either, when reasonably used by hirer, so that if the carriage break down on the journey the owner is liable. If the horse goes lame on the journey, the hirer may leave it at an inn or hostelry, and give notice to the letter of the fact.

13. Employment Contract

This section does not deal with contracts between workingmen and employers, but with those between master and servant. In this contract, the servant agrees to work, subject to the lawful orders of the master (or mistress) agreeing to employ him or her, for any valuable consideration, such as

wage, board and lodging, experience, gifts by his master's customers—tips, as they are called—or other similar consideration. By English law, the master need not provide his servant with medicine or medical attendance apart from agreement ; but this is usually done. If he do so, he may not charge the servant.

Principles

i. A master is not bound to give a servant a 'character' on his quitting service. If he give one, it must be truthful. It is a criminal offence for the servant to present a forged or counterfeit certificate of character, or to alter, efface, or erase any word contained in the certificate given him by a former master. A master or mistress who maliciously slanders a discharged servant is liable for the defamation. If a master knowingly gave a false good character of a servant to one about to hire him, and if the servant injure his new master, the latter may recover from the former master the damages suffered by reason of the false character given.

2. A master must indemnify a servant for all expense, loss, or liability incurred in his master's lawful service, and the servant must indemnify the master in case of liability to a third person in consequence of the servant's wrongful act.

3. Contracts of domestic service are normally terminable at a month's notice by either party, and by the offering of a month's wage by the master. A servant may be dismissed without notice or compensation for wilful or habitual neglect, gross incompetence, or misconduct. If a servant fall sick, or is incapacitated for a considerable time, he may be dismissed—though, of course, charity would suggest otherwise in many cases—but if not dismissed, the master must continue to pay the agreed wage. For wrongful dismissal, the servant may sue for compensation or to recover damages. Servants have no legal or moral right to appropriate 'leavings' or 'perquisites' without express permission.

4. A master may not legally search a servant's boxes on suspicion of theft ; if he do so, he is Hable in trespass. Masters may not legally deduct part of the wages of a servant for articles lost or damaged through the carelessness of the

servant, without express agreement. We believe, however, that a servant is morally obliged to make good such damage or loss to his master.

5. The liability of a master for the wrongful acts of a servant is so great and the matter is so involved, that he can be truly said to pay dearly for the luxury of having a servant at all. Even negligence on the part of servants, if arising during their legitimate work, may be legally imputed to the master. Though the law favours the servant, we believe that a glaring case of negligence on the part of a servant entails on him the duty of compensating the master's loss. But where law is on the side of servants, a confessor may rightly assume that masters know their legal liabilities, and, therefore, if they engage servants, they must be ready to conform to judgment given against them. The confessor may give the benefit of the law to the servant, except in obvious cases of gross and avoidable negligence.

14. Principal and Agent

1. An agent is one who has authority to act on behalf of another, who in turn is legally and morally bound by the conduct of the agent, within the limits of the contract of agency. Since the relationship is the outcome of a contract, it is obvious that both parties must consent to the relationship being established, and freely undertake its obligations, and know what they are undertaking. An agency may be created by deed, writing, verbally, by implication (as wife for husband), or by necessity.

2. A general agent is one appointed by the principal to act for him in all his affairs, or in all the affairs of a particular class. A particular agent has authority in certain specified matters, as, v.g., in selling a particular horse, motor car, etc.

3. The principal who employs a general agent is liable for all the acts of the agent within the limits of his employment. The general maxim applies—*Qui facit per alium, facit per se.* Thus, an agent can pledge the credit of his principal, as in the cases of wife and housekeeper.

4. An agent undertakes to execute his commission with

care and skill. He is bound to deliver exact accounts, and must keep his own accounts separate from those of his principal and others. He must be ready to pay on demand all that is due to his principal ; if he fail, he will be bound to pay interest from the date of demand.

5. No agent may make any profit in connexion with his agency, such as discounts with tradesmen, without the express consent of his principal. The Prevention of Corruption Act, 1906, attempts, with serious penalties (conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years, or a fine not exceeding £500, or both) to put a check on all secret commissions. Both the agent and the third party guilty of bribing or corrupting him are liable. Nevertheless, so far as moral conduct is concerned, he may keep such commissions as are due to his own extraordinary diligence, which he was not bound to exercise, and presents made to him, provided that his principal in no way suffers in consequence. This does not permit him to enter into any transactions in which he has a personal interest to the exclusion of his principal's interest. No such division of interests can ever be undertaken. The matter of personal gifts to an agent is so near the borderline of illegality, and it is so difficult for a confessor to know the circumstances, that *ante factum,* cases will be extremely rare in which approval could be given. *Post factum,* if it is quite clear that the principal's interests have not suffered, the agent can be allowed to retain personal gifts.

At the same time, a common agent may agree with his principal to receive a definite commission on all goods bought through the agency.

6. The agent on his side is protected against the principal, for if the latter, having authorized the agent to sell an estate at a certain price, and a purchaser has been found, the principal must pay the commission agreed upon, even though he declines to sell. House agents will be responsible to their principals, if they let a house to one known to be insolvent. Furthermore, they must inform the principal if offers are made at higher prices, and they cannot enter into binding contracts for the sale of property.

Principles

1. An agent must exercise reasonable care and skill in the business he is commissioned to do ; the amount of skill is that which is customary' in the matter. An agent cannot deputize another to act in his place, except by express agreement with the principal, unless it is immaterial who acts, or in sudden emergency, so that, apart from these exceptions, the agent is answerable for the acts and defaults of a sub-agent. The agent must act in the strictest good faith and for the benefit of the principal alone. If he is an agent to sell, he may not himself buy, nor may he buy from himself if he is an agent to buy.

2. An agent in sole employ, is one whose whole time and labour are due to his principal. In such a case, any profits made by the agent outside his ordinary agency can be claimed legally by the principal. Agents sometimes sell on credit. If one has authority to do so, he is not liable if the purchaser proves to be insolvent, unless the agent *{del credere)* has undertaken the duty of being answerable in such cases.

3. A principal is, of course, bound to pay his agent the commission agreed upon, or fixed by usage, or a reasonable one, even though a transaction made by the agent fails through no fault of the latter. A principal is bound to indemnify his agent for all expenses and losses, and even hold himself responsible for unlawful acts if done in good faith and at the instance of the principal.

4. The contract of agency may be terminated by performance, by mutual agreement, by condition subsequent (agreement to terminate the contract on the fulfilment of a future condition), by revocation on the part of the principal,[1] and renunciation on the part of the agent with the consent of the principal, by the death or insanity of either principal or agent, by bankruptcy of the principal, except to complete a transaction already binding, such as a bankrupt would have been obliged to do.

[1] Unless by deed or for valuable consideration a benefit was secured to the agent. This is irrevocable.

15. Partnership

Definition

1. The contract of partnership is one in which several persons expressly agree to carry on business (trade, occupation, profession) in common, with a view to profit, the test of the partnership being that there is such a participation in profits as to set up the relation of principal and agent, as between him who takes the profit and those who carry on the business. The partners are called the firm.

2. A nominal partner is one who allows his name to be used, but who has no real interest in the business. A sleeping partner is one whose name does not appear as a member of the firm. Both are liable on contracts of the firm, and they are afforded no protection (Act, 1890) for money advanced, unless their relation to the partners is that of creditor and debtor. A contract for the remuneration of a servant or agent by a share of the profits, does not of itself make the servant or agent a partner ; nor are widow or child of a deceased partner, who receive in annuity a portion of the profits, themselves partners. Not more than ten persons in the case of bankers, or twenty in any other business, can form a partnership, unless registered in accordance with the Companies Act, 1862.

Principles

I. Anyone capable of making a contract may become a partner, but no one can be introduced as a partner without the consent of all the partners. Every member of the firm is an agent of the others for the purpose of the firm's business, and every act of each partner, done in the usual way of business of the firm, binds the firm and his partners, unless he has no authority to act in the particular matter by some express stipulation. Each partner is, therefore, liable for the contracts of the others to the full extent of his means, except in Limited Liability Companies, and " a partner may involve his innocent partners in unlimited amounts for fraud, which lie has craftily concealed from them " (Lord Justice James).

2. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner. They must also account to the firm for any benefit derived without consent of the other partners, for any transaction concerning the partnership, and if any partner carries on a business of the same nature as that of the firm, and competing with it, he must account for and pay over to the firm all profits. When a partner signs for the firm, being authorized to do so, he is not separately liable.

3. Death or bankruptcy of a partner dissolves the partnership, subject to any contrary' agreement.

The Act of 1907 provides that limited partnerships may be formed, consisting of general partners, who shall be liable for all debts and obligations of the firm, and limited partners, who shall be liable to the extent of the capital they subscribe. Limited partners do not take part in the management of the business, nor do they bind the firm. They may inspect the' books at any time. The firm is liable to the same extent as the partner himself, when, by any wrongful act or omission, the partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not a partner, or any penalty is incurred.

16. Lease

Definition

Lease is a contract by which one person, the lessor, allows another person, the lessee, the possession and use of real property for a definite rent-charge. An agreement to let a house, or even lodgings, is a contract for an interest in land (Property Act, 1925, sec. 40), and in order to be enforceable should be in writing and stamped, if it is to extend beyond a year. A lease of land or houses for more than three years must be by deed ; if for less, it may be by deed, or in writing, not under seal, or in words.

Principles

I. A tenant may not legally quit premises without giving notice. If he do so, the landlord may recover a term's rent,

beyond the time of occupancy, calculated from the rent day next after the tenant's departure.

2. A yearly tenant is entitled to half-a-year's notice to quit, and the notice must expire at the period of the year at which his tenancy commenced. The same rule applies to giving notice of intention to quit.[1] A tenant on sufferance is one who, after his lawful tenancy, continues in possession without the leave of the owner and without any objection raised by him. He may be ejected by the landlord after demand of possession. A tenant at will is one who lives in a house belonging to another rent-free. The landlord may eject him at any time after demand for possession.

3. At the expiration of tenancy, the tenant must deliver up possession of the premises, and of all buildings, erections, improvements, and landlord's fixtures. An under-tenant must be got out, for the landlord has right to complete possession. A tenant should remove his fixtures (those for ornament, convenience, or trade) before he quits. He cannot do so later, nor may he do so with material damage to the premises.[2]

4. If a tenant's premises are burnt down accidentally, and he has agreed to pay rent, he is bound to pay. To escape liability as soon as possible, he should give legal notice to quit. Even if the landlord has insured against fire and the premises are burnt down, the tenant is still liable for rent during the restoration. A tenant must use the premises in a reasonable way, as, v.g., in respect of fences, windows, drains. But he is not liable for mere wear and tear, nor is he bound to keep the premises in repair, unless the condition that he shall do so has been agreed upon, and if the condition has been added, he must repair even accidental damage, as by fire, unless that contingency is excluded in the agreement. To keep in repair does not mean to put into perfect repair, but into a reasonable state for tenancy, and it is held

[1] It has been held recently that notice corresponding to the letting is sufficient (Queen's Club Gardens *o.* Bignall).

[2] Very curious examples of removable and of irremovable fixtures are cited in law books. A tenant should, in doubt, seek legal advice.

that to allow a house to become infested with vermin is a breach of contract.

5. The landlord may or may not agree to repair the house, but when he lets it, it must be fit for occupation *if* furnished, or if let to the working classes, at the time of occupation ; if unfurnished, it may become defective during term, without any liability on his side. *If a furnished* house is found unfit for habitation, through vermin or bad smells, the tenant may rescind the contract and is not liable for rent.

6. The law is severe (penalty ^200 or imprisonment) on the landlord who lets a house without disinfecting it after tenancy by a person suffering from a dangerous infectious disease.

7. Lodgers and boarders must take care of their own property, for if it is stolen, the householder is not responsible, apart from agreement to that effect. They are not like inn-keepers in this respect, who implicitly contract to take care of the goods of their guests.

17. Insurance

Definition

The contract of Insurance is that by which one party, the insured, pays money, the premium, to another party, the insurer, who in consideration of the premium binds himself to pay the insured or his representative, a sum of money, conditionally on the death or on the happening of an uncertain event, calculated to cause loss or expense to the insured. The written form of the insurance is called the policy.

Principles

i. The insured must have a pecuniary interest in the event, which is the object of the insurance, except that every person is presumed to have a pecuniary interest in his own life. The term ‘ assurance ’ is strictly applied only to life insurance. In the case of life assurance, no regard is paid to loss accruing ; in the other cases of insurance, it is loss that is indemnified. In life assurance, the insured must have declared

all known material facts, since false representations or replies will avoid the policy, and it is just that this should be so. Concealment of material facts must also be precluded. Even innocent misrepresentation or erroneous statement, however innocent, may avoid the contract. Persons taking out a policy of Insurance, who conceal material facts, are guilty of fraud, and the contract is void, unless we say that the Companies willingly take the risks, a contention that may be doubted. When insurance money has been paid to a really fraudulent person he is bound to restitution of the whole insurance money, less the premiums paid, if the contract was void in consequence of a concealed substantial fact ; but, in a case where the premium would have been higher, but the Company would have insured, then the deficit in the premium must be restored. But as Insurance Societies reinsure themselves, it remains doubtful as to where the loss falls in bulk. Nevertheless, that doubt does not excuse from restitution. The insured, therefore, cannot retain his ill-gotten money. He must restore it in the best way possible, though he may retain what he has paid, together with the interest on it, less an amount for the clerical work of the Society. What that amount is, it will be difficult to say, but it is a tangible amount. If, however, he concealed a fact which was not material, being quite certain that it was not, then no injustice has been done. If he has been culpable in conscience for the loss to the Society, he must make good that loss. If his fault was merely a legal one, he may wait till he is sued. He will then be bound to abide by the decision.

2. Premiums must be paid at the fixed times. Insurance Societies allow days of grace, and payment within that period will revive the policy, even if the insured die in the meantime. But failure to pay within the definite period will extinguish the policy altogether.

3. The age of the insured is material. Deceit in this matter is an injustice to the Society, and the deceit should be rectified as soon as possible. To prevent subsequent trouble, it is well to pass in a birth or baptismal certificate on taking out a policy.

4. In cases of fire insurances—contracts *uberrima fidei*—the property insured and the building in which it is must be carefully and fully described, otherwise the contract may be avoided. The premises insured should not be altered, nor dangerous material put into them so as to increase the risk, without re-insuring. In practice, an agent examines the premises to be insured. Damage resulting from efforts to put out a fire is included in the insurance risks. One who takes out an Insurance policy can be compensated once only for actual loss, so that double insurance is of no avail.

5.The loss indemnified in Marine Insurances including the ship and its freight, is the loss due to ' perils of the sea.' The loss of a ship, scutded with the owner's connivance, was not considered as due to a peril of the sea. Marine Insurance policies are of various kinds, viz., valued, the value of the insured thing being determined ; open, when the value is left to be ascertained after loss ; voyage policy, and time policy. As in Fire Insurance, here too, an insurer is not entided to be indemnified twice ; he can recover only his actual loss.

Insurance Societies meet a real need. The premiums are small and the amounts paid up are very large. These Societies, therefore, have to hold a very large capital, which, if it increases rapidly, and pays a handsome dividend, also enables high salaries to be given—which are well-earned—and constant work to agents and clerks. The vast amount of the accumulated wealth of these Societies is due to the regular contributions of members, the very arduous visiting by those who hold books, and good business capacity in the managers. It is maintained that the large dividends paid to shareholders is excessive. But until the interest paid out reaches a high figure—which is very unlikely to be 10 per cent—we think that the benefits derived from Insurance are so great, the opinion of the public so decisive as to those benefits, the risks not small, and the business acumen so extraordinary, that the dividends paid are just. The outlay on buildings is immense, the liabilities very great. The capital, therefore, has to be invested in the best possible securities.

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18. Gaming and Wagering

Definition

1. The distinction between these two transactions is that in gaming, the event on which the stakes are laid is the result of skill, whereas in wagering, the event or fact on which a wager is laid is to be presumed to be beyond the power of the contracting parties to affect. In gaming, the elements of pastime and bet are essential ; in wagering, a bet only is involved.

2. In English law all gaming and wagering contracts are null and void as between the contracting parties, and no action lies for the recovery of a wager, but a stake may be recovered from a stakeholder before it is paid over to a winner. Contribution towards a prize to be won in any lawful game or sport is not a gaming or wagering contract. For money won at play, no action lies, or can be maintained, nor can a loser, having paid, recover.

Practical Applications

1. If A bets with B's stolen money, having nothing of his own to stake, the contract is null and void, and he cannot keep what he wins. If he loses, the other party may not keep stolen money, but must restore it.1

2. The agreement to lay a bet must be freely entered into, otherwise it is void.

3. If A induced B by.fear or fraud to make a bet, and B loses, A is probably not bound to make restitution, provided the chances of winning were equal, for it is to be supposed that B made the bet freely ; but fraud during a game of skill voids the contract.

4. It is sinful to risk money that is due to other purposes, as for the maintenance of the family.

5. Betting on a certainty is no contract at all, and the winner is bound to restitution. We prescind from the case where A persists in making a bet with B, who says that he is betting on a certainty ; in such cases, A is making a free gift.

6. Bets that are offered or taken on immoral matters are void *ab initio.* But when such bets arc won and the money has passed, there is probably no obligation to restore it ; the bet is a *contractus turpis.*

Notes on Betting

1. Betting is a luxury, but not in itself sinful. It becomes sinful, when it is inconsistent with our duties, or when carried on to excess, so as to become a passion, and, therefore, too engrossing for a dispassionate fulfilment of life's duties. But, regarded in itself, it is as morally blameless as playing a game of skill, or drinking a moderate amount of wine. Similarly, sweepstakes may be defended on the same principles.

2. Nevertheless, betting easily becomes an infatuation, and therefore the law in restraint of betting in certain defined places is a just law. Betting is especially deplorable in the young—and unfortunately even schoolchildren lay bets—for they are easily carried away by their inexperience, and in the vain hopes that they will succeed in getting something for nothing.

3. The State has a right to tax bets ; whether or not it is wise to do so, is a matter of opinion. It is maintained, on the one hand, that a State duty on betting would be an implicit approval of what is wrong, an unsound contention, for a duty on alcohol is not an approval of excessive drinking, nor a duty on motor cars an approval of furious driving. The matter has to be judged on its ethical merits. Betting is not ethically wrong ; it is the abuse of it that leads to evils. Where abuses are prevalent, the State should make betting illegal. If, however, all betting is not made illegal, opportunities for betting should be very strictly limited.

19. Lotteries

Definition

i. A lottery' is a transaction in which' prizes are distributed to some of those who have paid a premium, the winners being determined by lot, usually by the drawing of

written names from a receptacle, such as a hat, an urn, a cylinder. The lottery is a good contract, by which a valuable consideration, the premium, is given for the chance of drawing a prize. A lottery does not offend against justice if the chances of all are equal, if there is no fraud in the drawing of the names, and if the premium paid bears some reasonable proportion to the chance of winning a prize. Lotteries for the benefit of the State are in accordance with Natural law, however great the profit, if the excess is necessary for the upkeep of the State. Lotteries for the benefit of charitable purposes are also legitimate. Lotteries conducted for private gain are just, but it is held, though not unanimously, that an individual should not derive a greater personal profit from a lottery than if he had put his money into a successful business.

2. Lotteries are dangerous transactions, for they induce people to buy beyond their means, they foster cupidity and avarice, and even, in the simple, encourage superstition and magic. We believe, therefore, that repeated lotteries —sweepstakes, coupon competitions, missing word competitions—encourage the spirit of betting and the greed of money.

3. State lotteries serve a useful purpose in extracting from the people—for their expectation of gain—sums of money which could not be derived from taxation, and if they are not frequent, are carefully supervised, so that fraud is excluded, and the chances are fair, they need not be condemned in principle. Where they are illegal, as in Great Britain and the United States, the law is founded on a good presumption that they are harmful for the people. But this law is penal only and its spirit is, as a fact, circumvented in many ways, though its letter is generally strictly observed. It may be maintained that lotteries are not wrong in themselves; it is their abuse, and the dangers to which they lead, that render them wrong in the sense that drinking of alcohol is wrong. In recent years, the spirit of gambling has permeated every class, and it finds its way into the primary schools. Amongst the vast army of the unemployed, great numbers waste most of their money on betting, and certainly they

spend hours every day discussing the favourite. State lotteries will encourage this spirit, and for that reason they should be kept within very narrow limits.

4. In England, lotteries are public nuisances ; the penalties inflicted on persons exercising or opening or even taking part in any lottery are very severe. The sale of packets of tea, with ‘ prize coupons ’ attached, of uncertain value, has been held illegal. A mutual benefit society which draws by lot a beneficiary who receives a large sum of money contributed in small periodical sums by its members is not illegal. Missing word competitions are as illegal as lotteries. Newspaper coupons, to be filled with the names of expected winners of horse-races and returned with money payments by competitors, have been held to be illegal (Reg. *o.* Stoddart, 1901) ; this is a reversal of previous rulings (Stoddart *v.* Sagar, 1895).

5. An Art Union lottery constituted under a Royal Charter or in accordance with regulations approved by the Board of Trade is not an illegal lottery.

20. Futures, Options, Differences

Definition

As a transaction on ‘ Change,’ dealings in ‘ futures/ ‘ options,’ and ‘ differences ’ are refined and specialized gambling. A ‘ future ’ is the contract to buy or sell commodities, such as cotton, wheat, bacon, which do not yet exist but which, theoretically, have to be delivered at some future date. The transaction is opposed to cash or ‘ spot ’ transactions settled immediately. ‘ Option ’ is a privilege given to a purchaser to conclude a bargain at some future time and at an agreed price. ‘ Option ’ is a ‘ put,’ if it is a right to sell within a specified time at a price now fixed ; it is a ‘ call,’ if it is a right to buy within a specified time at a price now fixed. The ‘ put ’ is a hedge against falling prices, the ‘ call ’ is a hedge against rising prices. The ‘ straddle ’ is a speculation on the difference between the prices of nearer futures and those of a more distant future. Thus, a broker may, in June, 1928, buy January next (1929) futures in cotton, and sell them as the succeeding May (1929) futures.

If cotton rises between January and May he will make a profit. His profit is the difference, and that difference will be paid to him by the broker who bought from him. In the case of cotton, for example, 'forward deliveries' can be purchased six or seven months in advance, and the seller is said to sell forward. If all goes well, the buyer gets his cotton and the seller makes his profit. But if crops fail, a shortage occurs. The seller then becomes 'cornered,' and is unable to deliver unless he buys elsewhere. Traders,, therefore, buy large quantities of the article, and establish a 'corner' which results in great loss to some, and not infrequently to themselves, if, as often happens, they have a large supply on their hands which they must get rid of by selling, and in the event they may lose as much as they have previously gained.

In these transactions, speculation by highly trained brokers is rife and dominates the market. Fortunes are made and lost by gambling in 'futures.' The operator for the fall of prices, or the 'bear,' is said to sell what he has not got ; the operator for the rise, or the 'bull,' is said to be one who endeavours to make a profit out of the necessities of others.

An example of 'squeezing' may be taken from spinning. If a spinner has to quote prices of yarn for delivery six months hence, he may buy cotton at once, and give his quotation. But he may run the risk of not getting the contract, for others who speculate on future prices will quote a lower figure. If, on the other hand, he does not buy cotton at once, but gives his quotation on the assumption that prices will remain steady for six months, he may be mistaken, and may have to buy at a high price and deliver at a low one. Consequently, the business is done through brokers, at whose mercy he must remain ; the brokers themselves may be mistaken, and they may have to buy back the 'futures' on the basis of the price of 'spot' cotton at a definite time.

It is obvious that immense risks are taken in this kind of gambling, but so far as the gamblers themselves are concerned it is a straightforward game, honourably conducted, and every merchant and broker on 'Change' takes the risks willingly. The morality of the business from their point

of view has to be judged as betting is judged, and under the conditions that justify betting as a pastime, gambling on 'Change' can be justified. But the moralist has to look to the results of gambling on others as well as on the gamblers. It may be confidently said, we believe, that transactions in 'futures' are an element in steadying market prices, for from day to day there is not much fluctuation in prices. But producers and consumers, as opposed to the merchants and middlemen, appear to think that gambling in 'futures' is bad for their trade, for competition between producers is certainly multiplied, the area of competition is enlarged, producers in countries where overhead charges are necessarily high are forced to compete with producers where labour is cheap, so that wages have to be kept low by the former, with consequent dissatisfaction and extensive poverty, and prices are kept low instead of finding their own level in accordance with supply and demand. The brokers create quite a fictitious demand for the commodity. They do not want it, they could not sell it, they just gamble with 'differences' in order to make their money quickly. It is the fictitious character of these transactions that condemns them on moral grounds. The big financier will force the market down to the ruin of the producer, or he will corner vast quantities of the commodity, and force the market up to the great distress of the poor consumer. It may be replied, that if producers brought their commodities to market, they would be in exactly the same case, for competition would then drive out of business the small producer, or in a scarcity, the consumer would still be penalized. This is true, but the 'bears' and 'bulls' add another factor to the situation, and make it still more certain that producers and consumers will suffer. Their object is to make money at the expense of one or the other, each of whom is powerless to compete against them. In other words, the odds are against everybody else, and the odds are created by the gamblers. Furthermore, great distress and sometimes ruin are inflicted on many people who have nothing whatever to do with these transactions, and of course it is not business for the gamblers to give a thought to such contingencies.

They reply that they themselves lose : no doubt they do, but they take care to keep their bank balance on the right side. It is precisely the fictitious nature of the dealings, and the duress which the brokers employ against the producers, that condemn gambling in ' futures ' as morally wrong. It will not do to make money anyhow : the principles of charity as well as of justice have to be maintained.

CHAPTER IX

EIGHTH CONINLXNDMENT

SECTION 1. The Precept

Commandment is : " Thou shalt not bear false witness against thy neighbour " (Exod. 20, 16).

This Commandment explicitly forbids lying in giving testimony about another ; implicitly it forbids all that would lead to such lying. Therefore it includes in its prohibition lying, unjust injury' by word or act of another's good esteem or honour, all rash judgment and every unjust revelation of secrets.

The virtue of truthfulness inclines us to employ signs in social intercourse in their accepted sense, so as to express faithfully and accurately the thoughts of our mind. By it we reveal to men what we are and what we think. We reveal, says S. Thomas, what we are and what we think by external signs.1 These may be words or acts. If we signify otherwise

what we are, we are hypocrites. We fail in truthfulness by excess if indiscreet ; we fail by defect if we lie. The virtue of truthfulness, in its social aspect, procures the common good, and it is, therefore^ a part ofjustice inasmuch as we are bound to pay regard to what intercourse demands. It is also, like every virtue, an imitation of some divine Attribute ; in this case, of the divine Attribute of veracity.

As truthfulness is a social virtue, it must be exercised with sincerity and prudence. A man may be entirely truthful though absurdly secretive. Intercourse requires us to manifest our thoughts on occasions, without falling into the excess of dissembling or indiscretion.

SECTION 2. Lying

Lying is the expression of thoughts that are contrary to intellectual conviction. Therefore the essence of a lie is the

contradiction between the outward expression and the interior conviction. The social effect of the lie is to deceive. Its primary and essential immorality is not, however, based on the violation of the rights of others to the truth nor on the social harm that lying inflicts. A lie is intrinsically, and necessarily, by its very nature, contrary to the law of Nature and is, therefore, a morally evil act. The essence of the evil of lying consists in the abuse of the faculty of speech, for the primary purpose of speech is to reveal what is in the mind, whereas, in lying, that purpose is frustrated in the very act of speech. Holy Scripture forbids lying : " Lie not one to another " (Coloss. 3, 9) ; " Wherefore, put away lying and speak truth every man with his neighbour " (Ephes. 4, 25) ; " All liars shall have their portion in the pool burning with fire and brimstone "-(Apoc. 21, 8). This last text refers to harmful lies or to the lie in the heart of those who are inwardly Christians but outwardly the followers of Antichrist.

2. That a lie is never permissible was the common teaching of the Fathers, and their teaching has been followed by nearly all subsequent theologians, relying both on the clear expressions of Sacred Scripture and on the principle that in lying the faculty of speech is abused.1 This reason is the palmary argument of S. Thomas, for 'since words, he says, are the natural expression of thoughts, it is unnatural and unbecoming that anyone should express what is not in his mind.2

3. Since speech is a gift for social use, if it were used in such a way that the hearer is deprived of some necessary truth, and that irreparably, if, furthermore, all the other faculties in the speaker are so subordinated to the faculty of speech, that a particular act of untruthfulness destroys or

1 A few modern theologians, Bolgeni, Martinet, Berardi, Dubois, Fiat, attempt to distinguish between a formal moral lie—which is sinful—and a *falsiloquium,* which is not. cf. Tanquercy, Prümmer, and Vcrmeersch in *Gregorianum,* 1920, p. 25.

2 *S.,* 2. 2, q. i to, a. 3, *c.* cf. Prümmer, II, n. 169, for some obscure passages in the Greek Fathers ; S. Aug., *c. Mend.,* II, 15, n. 31 : Quando nobis de Scripturis sanctis mentiendi proponuntur exempla aut mendacia non sunt . . . aut si mendacia sunt, imitanda non sunt.

attempts to destroy the order of Nature and seriously violates the relation of man to God and other beings, then, indeed, a lie would always of its nature be a grievous moral evil. It is on such a ground as this that suicide is seen to be a great evil and the practice of contraception a grave abuse of a faculty. These two evils are so opposed to the order of Nature, that right reason condemns them both as grievously evil. It is not so in the case of lying, and we must therefore say—and this is the teaching of all Catholic theologians—that a lie is not in itself a grievous sin nor a grievous inordination against nature nor a grievous abuse of a faculty', though it is certainly an abuse. It will become grievous only' from some accidental circumstance, as when a grave injury is done by lying or great dishonour done to God, or a necessary truth of great moment is wrongfully withheld by falsehood.[1]

Now as speech is for social use, it is obvious that a lie is not possible unless one speaks in such circumstances as to be rightly thought to be speaking in a human way and to be communicating one's actual thoughts, or to be rightly appearing to be doing so. Thus, if one is unjustly forced to speak under undue pressure, speech is not then human; no one could think it so. If the hearer thinks it is he deceives himself.

4. A lie is said to be a jocose he if it is spoken to give pleasure or provoke merriment. It is not then human speech but the patter of a clown. A lie is said to be profitable if uttered to benefit the speaker or another. A lie is said to be harmful or injurious if the harm of another is intended and accomplished by it.

A he can be expressed in words, by act, by behaviour, or by a nod. He does not he who acts in a way that does not in itself signify what is false, though a false conclusion may be drawn from the act through want ofjudgment. Such action is dissembhng ; it leads to deception and would not be permissible without a good reason. The jocose and the profitable hes are not, in themselves, grievous sins, because the he is not, of its nature, a grievous sin. The harmful lie is

[1] The true concept of the malice of lying, as we understand it, is fully set forth by Vcnneersch in *Gregorianim,* 1920.

a grievous sin if grievous harm is done by it. But the gravity depends on the extrinsic circumstance of injustice.

SECTION 3. Mental Reservation or Restriction

I. When a secret must be kept and when, at the same time, one must speak out lest silence should disclose a secret, it is almost universally taught by Catholic writers that a lie may not be told. Then, as always, a lie is an abuse of the faculty of speech. The plea often urged, namely, that the questioner has not always a right to the truth, and that, therefore, a lie may be told, is a plea that would justify the violation of the primary and indeed the essential purpose of the faculty of speech. A questioner's importunity is never a reason for my abusing a natural faculty. The plea is a dangerous one, for it would base the divine veracity on our rights, whereas it must be based on something prior in thought to our rights, namely, on the necessary identity between the Divine Word and the Idea. Since, therefore, a lie is never permitted under any circumstances, there must be a legitimate means of guarding secrets when silence is impossible. That means is the use of a form of words which express the interior thought and could be known to express it, if the hearer were sensible, prudent, reasonable and knew the circumstances. It is precisely because the words employed can express and indeed do express the truth as it is in the mind of the speaker, and as it could be gathered from circumstances, and because the hearer could understand the words in their intended meaning if he had the sense to do so, that the speaker tells no lie. In other words, the expression used can be understood in two senses, one of which the speaker means, the second of which the hearer takes. There are numerous examples of this procedure in everyday life. When one does not wish to see an importunate visitor, the phrase 'not at home' has certainly two meanings, the one an obvious and *prima facie* meaning, viz., that the person is actually not at home, the other, that the person is not at home to the caller. It is admitted by everyone that this form of speech is not a tie because it is a conventional way of

expressing a truth. But it is to be observed that even if the caller were ignorant of the convention, the form of words would still not be a lie ; if not a lie, then the words express the truth, but the truth is hidden from the caller, not by the form of words but through his own ignorance. This is an example of broad mental restriction, namely, of restricting the words to a meaning which they certainly can legitimately have. The words can express two thoughts ; the speaker restricts the meaning to one of them, and in doing so acts quite morally. The hearer is deceived ; not by a lie, but by his own interpretation of the words used.

2.A speaker, therefore, who uses a reasonable kind of mental restriction, does not lie ; he may perhaps deceive, and may even intend to deceive, an intention that is never necessary, for deception may be left to the hearer himself. Nevertheless, a too free use of mental restriction is wrong, because the unjustifiable deception of others is wrong, but this is deceit, not lying. Deceit is a result ; lying is an act. On the other hand, a too free use of the lie, when, according to the other view, a lie is theoretically permissible, is wrong, but it is wrong both because others are intentionally deceived and because the faculty of speech is misused. It might be urged that the results are the same in both cases, and that it does not very much matter how the result is achieved. But in the concrete, it matters very much how a resùlt is achieved. We may never produce a result by immoral means.

3.It has also to be observed that when we use a form of words such as ' not at home,' or ' I don't know,' the most punctilious teller of the truth does not condemn such expressions, when there is a legitimate reason for using them. Since that is so, the narrow convention that settles what few phrases may be used with complete truthfulness has no right to settle that those are to be the only possible phrases. In other words, in admitting such examples of mental restriction, the principle is accepted, and it is highly illogical to reject the principle of legitimate mental restriction, seeing that it is invoked daily in business and society. Ultimately, one is driven back to definitions, and if the definition given

here is not accepted, another must be found that will stand the test of criticism. It appears reasonable to maintain that one who would defend the lie direct in difficult contingencies, as most non-Catholics do, should admit the lawful use of broad mental restriction, as everyone does in daily conventions.

4. It will be evident, therefore, that when a secret has to be kept, some form of words may be employed that express the veiled truth and at the same time occasion the deception of the hearer. Though for our own part we prefer to defend the procedure on the clear principle of mental restriction, others defend it on the ground of legitimate self-defence in the following way. The employment of words that appear to be untruthful is an act of self-defence against unjust wordy aggression, and it is legitimate in the circumstances, though in other circumstances it would be to tell a lie. This self-defence takes the expressions out of the category of lying, for as in legitimate self-defence, one's defensive action, which in other circumstances would be homicide, for example, is here and now an act of legitimate self-defence, so, too, words that would otherwise be lies, are, if used in defence of a secret, defensive words, and as such are alone chosen and intended. If they result in deception, the deception is allowable, it is not intended primarily but is merely permitted. Some would go even farther and maintain that the deception may be intended.[1]

There is another species of mental restriction in the use of words which is called strict mental restriction. This is the restriction in the mind of the speaker of the sense of the words to a particular meaning which no one, however wise, could understand. That is a lie, and such restriction is never permissible. It has been condemned by Pope Innocent XI (ppr. d. 26, 27).

5. For the legitimate use of broad mental restriction, two conditions must be fulfilled, namely, there must be a sufficiently good reason for its employment and for the permitted deception of the hearer, and secondly, the hearer

[1] This argument is set forth in great detail in *Diet. Apol. de la Foi Cath.* s.v. *Restriction Mentale,* p. 978.

should have no right to the information which he seeks. Consequently, mental restriction is not permitted when one is legitimately interrogated by a judge or a Superior, nor on entering into just onerous contracts.

6. Since broad mental restriction is permissible for a sufficient reason, so it is permissible to confirm it by oath. God is then called to witness to the truth of what one says. Since what one says is true, God is not invoked to witness to falsehood ; He is asked to witness to the truth of what is true. But if an oath is not necessary, to take an oath would be sinful, though not grievously so. On the other hand, in the wrong and strict kind of restriction, to invoke God to witness to a falsehood would be a grievous sin.

Pastoral Note

Though the doctrine of broad mental restriction as explained above is defensible on grounds of reason and has in its favour the tradition of the Catholic schools, it is one of those doctrines better adapted to the study and more applicable to extreme cases than for application in the affairs of daily life. Uneducated people will not readily understand the difference between it and lying. It would be entirely out of place to attempt to explain it to penitents and very inexpedient to advise its use. It will be best to urge penitents to avoid all deception. A too facile employment of broad mental restriction will inevitably lead to a habit of deception and perhaps to positive lying. In the case of the young, especially of boys and girls at school, since they are bound to consent to the reasonable correction of their faults, broad mental restriction is entirely blameworthy when they resort to it in their endeavours to avoid just punishment. They should be exhorted to admit their faults without any ambiguity and take the punishment imposed. But there is a code of honour amongst boys at school which never allows them to reveal the faults of their friends. This code of honour—though sometimes unreasonable and foolish-should be respected. Neither pastor nor master should drive the boy into a corner, for the boy will usually tell a lie rather than lose the good esteem of his school-mates.

SECTION 4. Detraction and Calumny

i. Detraction is the unjust violation of the good esteem of another by making known to others some true but hidden fault of that other. Calumny differs from detraction only in that what is said of or imputed to another by calumny is false in fact and is known to be false. Good esteem is the good opinion which one person has formed and entertains of another. That esteem may regard moral qualities, as when we say of a man that he is honest, and this esteem is connatural, in so far as we should not depreciate anyone who is not proved to deserve depreciation, that is, we should assume a man to be honest until he has proved himself to be dishonest. Esteem is positive when entertained for a man who has proved his virtue in act. Esteem may also regard physical and intellectual qualities or attainments. Good esteem is an object of acquired right, so that to take it away or to diminish it is an act of injustice. The dead retain their right to the good esteem of posterity, for every man wishes to live in the grateful memory of mankind, and such an expectation leads men to achieve great exploits. But good esteem is no part of our personality ; it is subject to our complete dominion like the goods of fortune, so that we may forfeit it if we wish, without prejudice, however, to the rights of others, if they have any, namely, so that the forfeiture of our good esteem do not redound to their disgrace. The State has also the right to take away the good esteem of one who has committed crime even secretly. Not only has the individual a right to good esteem, but a similar right is enjoyed by a community, a society, a State, a city and every organized body of men.

2. Detraction is a grievous sin if defamation has been serious and unjust. It is more grievous than theft, since a good name is better than wealth. It will be serious if it is the cause of great harm, or if a slight matter revealed does serious harm owing to circumstances. Indirect detraction, which is detraction foreseen but not intended, if voluntary in its cause, is of the same moral character as detraction that is direct. Calumny adds the guilt of lying to that of injustice,

and, consequently, calumny will differ specifically in the moral order from detraction.

It is commonly held that detraction in one matter does not differ morally from detraction in another, unless some accidental circumstance, such as dignity, office, or duty makes it so.

Since restitution of violated good esteem is a matter of obligation, the gravity of the harm done is to be judged by the character, position, office of the detractor and the detracted, as well as by the circumstances of the hearers.

It is obvious that a man can retain the good esteem of others in one matter though he may have forfeited it in another. It would, therefore, be unjust to condemn a man roundly because he has transgressed in one point only.

3. When the revelation of the fault of another is necessary or very useful, as in defence of oneself, or of others, no injustice is done by revealing it. This will be the case when the faults of others are made known to their parents or Superiors, or for the purpose of seeking counsel or help, or to prevent harm to others, at least commensurate with the detraction, as in cases of choosing another for office, dignity, marriage, medical adviser, teacher, servant. Again, one may reveal another's fault in self-defence, to anticipate unjust harm to oneself in the Law Courts, or to seek the consolation of a friend by revealing injustice done.[1]

Furthermore, it is not detraction to make known what has become juridically notorious, since the culprit has lost his right to esteem in that matter, and it is conducive to public security that criminals should be known for what they are. Nor is it detraction to reveal what is well known in point of fact, for it is well that people should be safeguarded against evil.[2] It does not follow that the public crime of a person in a small community may be revealed outside that com-

[1] Care must be taken to choose a friend who will not divulge the secret. Even that amount of revelation was condemned by authors of great authority, cf. S. Alph., lib. 3, n. 973.

[1] This opinion (Lugo, *dt Just.,* d. 14, n. 59) is not admitted by all. Many authors do not permit even the notorious crimes of another to be revealed, if no judicial sentence has been passed, in a place to which the knowledge will not come for some loog time.

munity, for a society has a right to its own good name, and each member of it would suffer reflected disgrace for the fault of one of its members. To reveal the hidden fault of another to the knowledge of which one has come by unjust means, as by unjustly opening and reading letters, is a sin against justice, and the unjust act carries the obligations of making reparation where possible and of refraining from further injustice. It is certain, however, that the use of such knowledge is permitted if one is, at the moment, allowed to acquire it in self-defence or in defence of a third innocent person who is extremely likely to suffer harm from the person whose character, fault, or crime has been thus discovered.

To listen to detraction is not the same as to overhear it. To take pleasure in listening to serious detraction out of hatred is a serious sin against charity ; curiosity or levity in a hearer would excuse from grave sin. To listen to serious detraction without making an effort to stop it, from human respect or carelessness, would usually be a venial sin ; there would be no sin if the hearer walked away, or changed the topic, or showed that he took no interest in it. But the office of Superior imposes an obligation in charity to prevent and check detraction by his subjects or concerning them.

4. It is not seriously sinful against either justice or charity to defame oneself, but it is a venial sin to do so without any just reason, and is the sin of prodigality. Humility and charity are just and sufficient reasons for doing so. If, however, it is necessary for one's own sake or for the sake of others to preserve one's good name, it would be sinful against charity or justice not to take positive means to preserve it, and still more sinful to defame oneself positively.

There is no immediate obligation to repair another's loss of esteem if that other has defamed us and will not make reparation. This is rightly compared to cases of refusing to pay a debt to one who is our debtor. We are speaking of strict obligations not of what would be the more virtuous act.

Pastoral Note

A penitent asks : " Is it a sin to listen to detraction or calumny ? " On the assumption that the penitent has no

duty by reason of office to check it, it will usually be sufficient to say : " Yes, it is a sin if you join in the detraction, or if you interiorly approve of it, or if you encourage it. It is, on the contrary', no sin to be an unwilling hearer of detraction." Detractors should be checked if possible, though interference may sometimes make matters worse. To encourage detraction or calumny is a sin, at least against justice, and entails the duty of reparation. People are singularly unconscious of this duty and seldom attempt to make reparation. How and when it is to be made is explained in the section on restitution.[1]

SECTION 5. Rash Judgment

I. A judgment is an undoubting mental assent. A rash judgment is one that is formed with the knowledge that the grounds for it are not valid. Others have a right to retain the good esteem we have of them, if having merited it they have not forfeited it. Since the possession of the good esteem of others is a positive good, we realize in our own case that if another expels his good opinion of us from his mind without any reason, we have suffered an injustice. Rash judgment is a sin against justice and has its foundation in contempt : "Who art thou that judgest thy neighbour?" (Jas. 4, 13) ; " Who art thou that judgest another man's servant? " (Rom. 14, 4).

2. Rash judgment is a serious sin if the matter of the rash judgment is serious, but here, three conditions are necessary, namely, that grave injustice is done, the interior assent is certain, the judgment is consciously a rash one. Suspicions and opinions that are not determinate judgments, and doubts that are unfounded, are usually not grave sins, for thereby our good esteem for others is not extinguished but diminished. It is, indeed, reasonable sometimes to suspend judgment, and a prudent man will guard himself against the probàble ill-will of another though he may have no clear proof of it. Parents are justified in keeping their children from talking to strangers whom they meet in the streets, but this is a measure of prudence not a manifestation of any rash judgment.

[1] *Supra,* vol. II, p. 332 sqq;

SECTION 6. Contumely

1.Contumely is the unjust violation of the honour clue to another. We are bound to love and esteem others and to exhibit the honour that is their due : " Loving one another with the charity of the brotherhood, with honour forestalling one another " (Rom. 12, 10): " Render to all their due . . . honour to whom honour is due " (Rom. 13, 7).

Contumely is a sin against justice and charity. Everyone has a certain excellence and has a right that it should not be exteriorly contemned. Honour consists in the external recognition of another's excellence. Every man, however low his station in the social scale, has some excellence, perhaps even great excellence, which he exhibits in human society as a part of it. To withhold honour that is due is negative contumely ; positive contumely is the infliction of dishonour by word, writing, or deed. Contumely is a grave sin, if the dishonour shown is grave, for a man esteems honour more than the goods of fortune : " Railers shall not inherit the kingdom of God " (1 Cor. 6, 10 ; i.e., raillery of others to their face, or open contumely).

2.The gravity of the sin will depend on relative status and on the degree of dishonour, measured in accordance with common estimation. It will be a grave sin if it is the outcome of serious hatred, and in this sense our Lord said : "And whosoever shall say, Thou fool, shall be in danger of hell fire " (Mt. 5, 22).

3. All dishonour shown is of the same species and is formally opposed to the one object, namely, the honour due to another. It is not necessary, therefore, to distinguish between the different ways in which dishonour is shown, unless some injury of another nature ensues, such as foreseen injury to material goods. The opprobrious language that,is common amongst persons of lower social conditions and of persons in violent temper is not taken seriously, as a rule, and is not thought to inflict dishonour.

Since contumely is an offence against justice, it carries an obligation of restitution. If honour is taken away, it must be

restored. How this restoration is to be made is treated under the subject of particular restitution.

Men and women in drink are addicted to outrageous and foul expressions. Children listening to them learn this language so as to be more conversant with words they should not use than with the prayers they ought to say. Parents are guilty of scandal by allowing their children to be present at street rows and in permitting the innocent mind to be so early besmirched. But the conditions of life in cities do not permit of children having easily available play centres, so that parents must try to undo the harm that is done in the streets by correcting their children sharply if they use the evil words which they have heard.

SECTION 7. Violating Secrets

1. A secret in the present context is a hidden fact which cannot be revealed without injustice or uncharity. There are three kinds of secrets, the natural, the promised, and the entrusted. The knowledge communicated to a confessor in confession is in a class apart, for the obligation of not communicating that knowledge to anyone is derived from divine precept by the very fact of the institution of the Sacrament, as well as from Natural and from Ecclesiastical law.

2.The natural secret is so called because the obligation of secrecy arises immediately from Natural law, since in such cases the nature of human fellowship and intercourse demands secrecy. No convention or agreement is required to make it binding. Its object is the knowledge that we acquire concerning another, which cannot be communicated without causing harm or reasonable displeasure to that other.

3.A promised secret is one in which the obligation to secrecy arises primarily from a promise, binding in fidelity or justice, after the secret has been either discovered or communicated. If the secret has been discovered and a promise of secrecy given, the obligation of secrecy is twofold, arising from Natural law and fidelity to a promise.

4. An entrusted or committed secret is one in which the

obligation to secrecy arises primarily from an agreement before communication of the secret that secrecy shall be preserved. The agreement may be explicit or tacit, the latter in cases of advice sought from confessors and professional men. The professional secret is the most binding of all, excepting that of the confessional. It must, however, be understood that a professional secret is possible only where one party holds an office which, of its nature, invites secret and privileged communications. It is usually held that medical secrets are highly privileged, but a doctor's claim to privilege in a professional matter was disallowed in the Courts. Mr. Justice McCardie said : " In a Court ofJustice there are higher considerations than those which prevail in regard to the position of medical men." As far back as 1776, judges have ruled against the contention of medical privilege, as Lord Mansfield did in the Duchess of Kingston's case. Nevertheless, the law has no power to override conscience, and there may very well be medical secrets which must be kept. Similarly the secrets of clergymen are not privileged in the Civil Courts, at least in England, whereas State secrets and professional secrets of lawyers are.

Principles

1. The natural secret binds under grave sin if the subject matter be grave, absolutely or relatively. The obligation is always one of charity and may be one ofjustice also. Thus, it would be a grievous sin to reveal a natural secret of grave moment, without a just reason, to the grievous harm or displeasure of another. A just reason for revealing such secrets that bind in justice would be the harm that silence would cause to him who holds the secret, or a third innocent party, or the common good. If the secret binds only in charity, the considerable inconvenience of the person holding it must be taken into account in urging the obligation. When the secret has become public there is no further obligation.

2.A promised secret that is not also a natural secret binds in virtue of a promise, and this being an obligation of fidelity not of justice, it does not usually bind under

grievous sin, for no one wishes normally to undertake such grave obligations. The promisor, however, could, if he wished, bind himself under serious obligation, if the matter were sufficiently important. Nevertheless, on other grounds, a promised secret may bind under serious sin, as when the revelation would cause great reasonable offence or great positive harm to the other. Where a secret of great moment is held under promise to keep it at the risk of life, probably so serious an obligation is null from the beginning. It is not intended to include secrets of State nor war secrets, for then the common good may require life itself to be sacrificed. No promise can oblige one to offend against any virtue; the obligation, therefore, lapses if the secret cannot be kept without sin. If a Superior or a judge has a right to interrogate, the promisor has an obligation to reveal. But the right must be obvious and certain.

3. An entrusted or committed secret binds under grave sin, if the matter is of sufficient moment. The obligation is one of justice, and if the secret is professional, the obligation is also derived from the need of maintaining the common good. It is, however, permissible to reveal such secrets:

(a) When consent to do so can be reasonably presumed, as would be the case if continued secrecy worked harm to him who had entrusted the secret.

(α) When revelation is necessary to avert serious harm from a third innocent party, the harm being unjustly caused by the person who entrusted the secret, because an innocent person has the right to be defended against unjust aggression; no entrusted secret can prevail against such a right. The case is verified when professional secrecy is the occasion of an innocent person suffering for an imputed crime, and the imputation has been caused by the real culprit. The representative body of the British Medical Association passed a resolution (July, 1920) affirming the obligation of secrecy between doctor and patient. A comment on the resolution was made in the Press, that in the case of an infected patient about to marry and to bring untold misery on a healthy woman and her unborn children, the duty of professional secrecy does not apply, after the necessary warning to the

man not to marry had been given and went unheeded. It seemed outrageous that a doctor, willing to take the responsibility of exercising what seems to many a plain duty, should be liable to any criticism on the part of his fellow practitioners.

(c) When revelation is necessary to avert a grave danger to the public good.

(J) When revelation is necessary to avert a grave danger from him to whom the secret has been entrusted ; the common good of the State may not, however, be imperilled to avert personal danger. But apart from the common good, it must be admitted that no one accepts secrets under every risk to himself. The matter must be judged both by the gravity of the secret and by the intention in accepting it. It is reasonably held that one may reveal an entrusted secret to one prudent counsellor who wall keep the secret, unless the person who entrusted the secret objects reasonably even to that amount of revelation.

SECTION 8. The Opening of Letters

1. Apart from duty to others or office, it is sinful to open and read another's letters, as also to read letters that have been lost or hidden, for there is always the risk of violating another's right to secrets or of causing reasonable offence. The husband as head of the family has the right to open his wife's letters, if he suspects her of incurring debts for which he has not pledged his credit, or of undesirable friendships. The wife may open her husband's letters only in self-defence.

2. The letters of another may be opened and read with the reasonably presumed consent of either the writer or of the recipient of the letter. The letters of subjects in Religious Societies may be opened and read by Superiors, if the rules permit this to be done, but not if the letters contain matters of conscience, or if written to" higher Superiors. Letters may also be opened and read to safeguard subjects. In time of war, the State may censor letters if it is necessary or prudent to do so.

3. Where letters have been torn up into small fragments and thrown away in some open place where they can easily be gathered, it will usually be an offence against charity to piece the fragments together and read the letter. It is not certain that this would be against justice, since the recipient might have burned them. By neglecting to do so, he has knowingly risked his secrets becoming known. However, if, by reading the gathered fragments, a secret has been discovered, there will arise the obligations set out above. English law gives the receiver of private letters a joint property therein with the sender. It is not permitted to any other person to publish them. But they are not privileged at law and may be required to be produced in Court.

SECTION 9. Historical Writing

Historians and biographers are allowed great latitude today, since the records are more accessible than they were. Though the dead retain the right to their good name, if they had one, and though some facts were better buried in oblivion, an honest historian is justified in forestalling the work of schools of historians who comb the monastic records with a fine muckrake. It is better to unmask unpleasant facts than allow a bigoted historian to mingle an ounce of truth with a ton of misleading generalisations. Injustice is not done by revealing facts for a good cause, as the defence of the innocent or the public good. But care must be taken not to offend the susceptibilities of living people, unless the interests of historical truth render this inevitable. *It is,* however, unjust to relate the evil actions of the dead, and at the same time to be silent as to their change of heart and conversion. For such writing allows posterity to pass judgment on the dead that is untrue. The evil actions of the living may be recorded if the facts are not wholly secret, and if revelation is necessary in defence of others.

TREATISE VII

CERTAIN PRECEPTS OF THE CHURCH

CHAPTER I

PRECEPTS IN GENERAL

In a restricted sense, certain precepts of the church law have been called the precepts of the Church. Traditional usage has sanctioned the term, and the usage is still justified, for there are a few particular precepts which bind all the members of the Church, not being precepts for particular states of life, and which more directly regard the virtues of temperance, religion, and faith. The Catechism of Christian Doctrine enumerates six precepts. These regard Sundays and holy days of obligation, fasting and abstinence, annual confession and Holy Communion, the support of pastors, the prohibition of marriage within certain degrees and the solemnization of marriage. Here, only one of these precepts is dealt with at length, namely, that of fasting and abstinence. The other precepts are dealt with in the course of this work, but the obligation of supporting one's pastors by contributing tithes and first fruits finds no place now under the positive law of the Church, with the exception of the one canon (1502) which says: "In regard to the payment of tithes and first fruits, particular statutes and praiseworthy customs are to be observed in each place."

The obligation of supporting our pastors is one of Natural law, because pastors, being appointed by legitimate authority, which no Catholic may repudiate, have a right in justice and by implicit contract to be supported. The obligation is also one of positive divine law: "The Lord ordained that they who preach the Gospel should live by the Gospel"(i Cor. 9, 14); it is also a precept of the Church, for the Church exacts and has the right to exact from the faithful that which is necessary for divine worship, for the

honourable maintenance of clerics and ministers, and for other ends peculiar to the Church (c. 1496). The method of fulfilling the obligation was early determined by the Church in the payment of tithes,[1] and today it ordains (c. 1502) that the special provisions and laudable customs to that effect should be maintained in each country.[2] This obligation is serious, but its incidence and gravity depend on the means of the individual and the needs of the pastor.

The State has not the power to confiscate church offerings nor to abrogate them nor to substitute its own usually parsimonious measures for clerical sustenance. When, by a Concordat, the State does so, the faithful do their share sufficiently by paying taxes. When the State ceases to do so, the faithful are under an obligation. In these countries, the faithful contribute by free door money, bench-rents, where allowed, Christmas and Easter offerings, collections, stole fees. Parish priests should—in prudence and moderation—remind the people occasionally of their duty. Even children may be wisely induced to give, that they may grow into the habit of giving.

[1] *Dtcr.t* lib. 3, tit. 13, c. I in 6°.
[2] 1 i West., d. 23; 2 West., d. 8; 3 Plen. Balt., tit. 9.

CHAPTER II

FASTING AND ABSTINENCE

SECTION 1. The Law of Fasting

The law of fasting prescribes that only one full meal be taken on a fast day, but does not forbid the taking of some food, morning and evening, in accordance with approved local custom, in respect of the amount and the nature of the food. Furthermore, when meat is allowed to those bound to fast, fish also may be taken at the same meal. It is permitted to fasters to interchange the times of the evening collation and dinner (c. 1251). There is a growing opinion, which, we believe, may be regarded as probably correct until the matter is officially settled, that the quantities allowed at breakfast and collation may be interchanged.

2. Liquid, as such, is not excluded by the law of fasting. Therefore, wine, beer, tea, cocoa, coffee, do not violate the fast, though some of these are slightly nutritious. But soup, oil, thick chocolate, fruit and whole milk, are foodstuffs and violate the fast. As liquid does not violate the fast, it may lawfully be taken even to relieve the feeling of hunger. Sweets, in small quantities, for the aid of digestion or as antiseptics for the mouth, throat, or breath, do not violate the fast. It is also permitted, when drinking outside the times of meals, to take a very little food once or twice only in the day. To act often thus during the day would render the fast nugatory.

3. The one full meal that is allowed on fast days may not, according to common opinion, be extended beyond two hours, unless there is a very good reason for doing so, and unless custom sanctions light dessert or lighter foods to be taken at the end of dinner. The extraordinary length of three to four hours for dinner was stated by Elbel and Gobat as an occasional custom in Germany. Some authors maintain that in such extreme cases of very protracted dinner, the evening collation should be omitted. The view may be

probable. Furthermore, the one full meal may not be so interrupted as to develop into two meals. An interruption of little more than half an hour would be contrary to the spirit of the law, unless a faster were obliged, for a good reason, to interrupt his meal. He might return and finish the meal, even several hours after, if such delay were unavoidable, for the Church allows the full meal. Readers and servers at table may take some food before their dinner to enable them to read or serve, for this amount is part of then-dinner. So, too, if one has risen from table, it is permitted to return shortly after, if some dessert is put on the table.

4. Although, as stated above, the interchange of the quantity allowed at evening collation with the few ounces allowed at breakfast is probably lawful, if this change is found necessary, there is no strict obligation to fast.

5. Besides the one full meal, some food at breakfast and at an evening meal is allowed. But local custom as to quantity and nature of the food then taken must be observed. At breakfast, in this country, two or three ounces of bread with a little butter may be taken by virtue of a papal induit (June, 1923). Coffee and light chocolate do not rank as food, and a small quantity of milk may be added.

6. The evening meal may consist of about eight ounces of solid food, not flesh meat.[1] In colder regions, a little more may be taken, as also by any who require a little more, up to about ten ounces in all, if so much is necessary in order that the law of fasting may be observed. But if a full meal of over twelve ounces is then necessary, the law ceases to bind. S. Alphonsus thought that eight ounces of bread cooked in water and oil could not be taken, but modern authors allow this.[2] On the same principle, it appears that eight ounces of dry oatmeal may be taken as porridge, though when cooked its weight would be very considerable. The addition of wfater does not change the nature of the uncooked meal. Some authors however, would not allow more

xWhen a fast day is not a day of abstinence, fasters are allowed to eât meat only at the chief meal. Those not bound to fast may eat meat as often as they wish (P.C.C.J., Oct. 29, 1919).

* *Theol. Mor.,* lib. 3, n. 1029.

than four to five ounces of dry meal made into porridge; certainly a considerable amount. Some authors make a very subtle distinction, to the disadvantage of fasters, between dipping bread into water or wine, and cooking bread in water or wine so as to make a pulse. They maintain that in the second case the food is not merely bread and water (or wine), and that it is very much more satisfying. The distinction may, we believe, be dismissed, as repletion is not a deciding factor in the law of fasting, and eight ounces of bread are not increased though cooked into a pulse. On the vigil of Christmas *{jejunium gaudiosum),* additional cakes and lighter foods may be taken, so that the quantity in all is doubled.1

7. The quality of the food at the evening meal depends on local custom. In some places, eggs are allowed, in many, white meats, in others, not even fish is allowed. In this country, we believe that it was customary to take fish but not eggs, cheese or milk puddings, though small quantities of egg in salad, or a little cheese with macaroni or spaghetti or vermicelli have been allowed by way of condiment. Now, by virtue of an induit granted first to Australia and extended later to Great Britain (1923), the collation may consist of about eight ounces, at which butter, cheese, eggs, or fish may be taken in small quantity. We believe that in England it is not customary to drink milk at collation.

8. The time of the one full meal on fast days is normally about midday, in accordance with custom. The time may certainly be anticipated by one hour ; to anticipate it by much more would require some slight just reason. It is obvious that, if the chief meal is taken in the evening on a day of fasting, the collation which is normally taken as supper may be taken any time about or after midday.

SECTION 2. The Days of Fasting

The days of fasting, prescribed by common law, are as follows : The days of Lent, except Sundays, to noon on Holy Saturday ; the vigil of Pentecost, and the vigils of the

1 Verm., III, n. 873.

Assumption, AU Saints and Christmas, except when any of these feasts fall on a Monday ; Wednesday, Friday and Saturday in the four Ember weeks. The law is universally dispensed on allSun days andalsoon all holy days of obligation outside Lent (c. 1252). The vigils, inrespect offasting, are not anticipated (c. 1252), as when the Assumption falls on Monday. Where a holy day of obligation is not atually observed owing to dispensation,if it falls on a fast day, the law of fating is to be observed.1

SECTION 3. Subjects of the Law of Fasting

All the faithful are bound to fast, unless dispensed or exempted, from their twenty-first year of age completed to their fifty-ninth year of age completed. The exemption from fasting that was claimed by some authors for women of fifty years of age was founded on the presumption of their weakness at that age. The opinion was doubtless a probable one, and the value of the opinion was that a woman of fifty was exempted unless she was, as a fact, proved to be strong enough to fast. The law makes no distinction, but imposes the precept offasting on all up to the age of fifty-nine years completed. If, therefore, women of fifty are still judged to be unfit to fast, they are obviously exempt. But it is not proved now, nor was it proved before the publication of the *Codex,* that women of were or are, in general, incapable of fasting by reason, of age alone.2

SECTION 4. Dispensation from the Law of Fasting

Dispensation can be given by local Ordinaries and parish priests in individual cases to their subjects severally, and to individual families subject to their jurisdiction, and that, even outside their dioceses and parishes, and also to strangers within their territory (c. 1245). Superiors in a clerical exempt

1 S.C.C., Aug. 28, 1911, ad Arch. Mechlin ; P.C.C.J., Feb. 17, 1918.

* For a long account of the matter, cf. Ubach, I, n. 371, note 6, who admits that women of fifty years are presumed to be exempt, unless they are certainly proved to be able to fast. S. Alphonsus did not venture to think the opinion probable (lib. 3, n. 1037). A reply (P.C.C.J., Jan. 13, 1918), appears to be decisive.

Order can similarly dispense their professed subjects, novices and all those who live in the religious house day and night by reason of service, education, hospitality or sickness (c. 1245, 3). Furthermore, local Ordinaries can dispense the entire diocese or any part of it for the special reason of a great concourse of the people or of public health

SECTION 5. Violation of the Fast

If the law has been completely violated on a given day because one obliged to fast has had a second full meal, the law cannot any longer be observed on that day. But before it has been completely violated, partial violations of it are possible, both grave and slight. Thus, small quantities of food beyond what is permitted can coalesce and constitute, at last, a grave violation. Four ounces are probably required to constitute a grave violation of the law, but this will not excuse one from continuing the fast on that day, for it is one thing to have taken a second full meal, which completely violates the fast, and another to take small extra quantities or a large quantity short of a full meal. If, inadvertently, eight ounces of food or a little more have been taken at breakfast, probably the usual amount may be taken at supper, since no one is strictly bound to invert the order of the meals.

SECTION 6. Causes that excuse from Fasting

I. Hard work on the part of manual workers or artisans. As this excuse is valid for all persons of these classes, it applies also to those who could, on a day of fasting, omit their work, for the omission is so much productive work lost to the common good. The excuse is valid also for strong workers, since custom excuses the whole class. They are also excused even on the odd days when they rest, for they require rest and must refresh their vigour for future work. But this excuse does not avail for work that is light.

1 The Ordinary may dispense a whole town if there is to be, v.g., a great concourse of people at one particular parish church (P.C.C.J., March 12, 1929).

2. The presumption of exemption favours those who arc engaged in continual work of piety or charity, as preachers in Lent who preach almost daily, lecturers in higher studies who lecture for one hour daily, unless the lectures require practically no serious preparation, schoolmasters who teach the young for four or five hours daily, as this is undoubtedly a severe strain on bodily strength, those who serve the sick with considerable fatigue, whether freely or from duty, soldiers and sailors on sendee.

3. Physical impossibility exempts from the law, as is obvious, and also moral impossibility. Thus, exemption extends to the sick, the weak, the convalescent, women in pregnancy or giving the breast, and those who would suffer notable inconvenience. The poor, too, are excused, whose only food is bread and little else, as this is not sufficient for real sustenance, for though the poor may have become inured to their hard life, their vitality is gradually sapped for want of nourishment, to the detriment of their offspring. Those, too, are excused who, by fasting, would suffer any considerable harm in body or mind, or think they are likely to do so.

4. Work that does not of itself exempt from fasting, such as the light labour of typing, copying, study, painting, may easily do so if other factors accompanied with fasting would render the work imperfect or perfunctory. Thus, a student may find his mind too easily tired on a fast day, or a preacher cannot prepare his sermon, or a confessor cannot sit long hours in the confessional, without notable inconvenience. Another reason not usually included by authors is valuable time lost to work in consequence of fasting. In all cases, a notable inconvenience—but not merely the inconvenience of feeling hungry—excuses.

5. A wife will be excused if, by fasting, she so annoys her husband that he gives way to violent temper and makes her life unhappy.

6. A journey on foot or vigorous physical exercise for three consecutive hours may be considered a sufficient tax on strength to excuse. If the person is weak, or the roads bad, or the weather inclement, the relative inconvenience must

be considered in individual cases. Servants, shopkeepers, messengers, waiters, porters, and all who, by reason of their occupation, cover many miles in the day, or are very fatigued, as they often are by standing all day in shops, are certainly exempted. In almost all servile and manual occupations where competition is keen, and where the weak and the inefficient are dismissed, the Church cannot be supposed to put a heavy handicap on Catholics. As stated above, these people can very often keep the law of abstinence, and in that way can exercise the virtue of temperance, practise penance and edify their neighbours.

7. To undertake certain occupations that are incompatible with fasting may or may not be wrong. Much depends on motive and necessity. To undertake freely the service of the sick is a good work and if it is incompatible with fasting it excuses. To undertake labour that is really useful and profitable, and where it cannot reasonably be deferred, as in cases of more than ordinary profit, and where, by deferring it, valuable time of some moment would be lost, will be a sufficient excuse for undertaking it, if incompatible with fasting. The mere pleasure of hunting, walking, riding, playing, will occasionally, though not more than occasionally, excuse from fasting, since one is not bound to abstain from reasonable recreation of a very exhilarating sort, good for mind and body alike, on every fast day.

SECTION 7. The Law of Abstinence

1. All the faithful are bound to observe the law after the completion of their seventh year of age.

2. The law of abstinence forbids the eating of flesh meat and meat soup, but not of eggs, milk foods and condiments from animal fats (c. 1250). By condiment is meant that which is taken—whether liquid or solid—in a small quantity with food to make it more palatable. Butter made from animal fats, and margarine from palm kernel are allowed. Jellies also which arc made from fish or animal bones are not meat. Lard, the rendered *fat of hog,* and dripping, the grease that has dripped from roasted meat, may be taken

as condiments and also suet, the fatty tissue about the kidneys and omentum of ox and sheep, though an integral part of the animal and really flesh meat. Therefore suet pudding, made of flour and shredded suet, is forbidden if the suet is more than a condiment, that is, more than a small fraction of the whole.

3. What precisely is an animal, within the meaning of the law, cannot be completely determined. We need not take scientific definitions, but may have recourse to the common usage of the term. In case of doubt, the rule laid down by S. Thomas may well be taken, namely, that by the term are meant animals that are born on land and breathe.[1] S. Thomas meant, we believe, animals that are bom, live and mature on land. In the case of amphibians, their similarity to land animals must decide. In case of doubt the law does not bind.

4. Under fish are included frogs, snails, tortoises, oysters, lobsters, otters, beavers, crabs. In some villages, owing to long established custom, gulls, ducks, teal, coot, and all water-fowl are so treated. It is credibly stated that the villagers are tenacious of an old privilege, arising more from an abuse than from an induit or legitimate custom.

SECTION 8. The Days of Abstinence in England and Wales

All Fridays, except those which are actual holy days of obligation outside Lent, and except December 26th ; the Wednesdays in Lent ; the Ember Wednesdays ; Ember Saturday in Lent ; the vigils of the Assumption, All Saints and Christmas Day, but not if any of these feasts falls on a Monday. The Wednesdays in Lent are enumerated because in England there is an induit to substitute the Wednesdays for the Saturdays. The Saturdays of the Ember weeks are not days of abstinence—outside Lent—in virtue of an Apostolic letter[2] which dispensed from the abstinence on any day that immediately precedes or follows a Friday or another day of abstinence.

Strangers coming into England from other countries are

[1] 2. 2, q. 147, a. 8. [2] Jan. 27, 1911 : A A.S., 1911, p. 58.

bound to abstain on either the Wednesdays and Fridays, or on the Fridays and Saturdays of Lent,[1] but scandal must be avoided if the latter alternative is adopted, the reason being that the substance of the precept is that there should be two abstinence days in each week in Lent.

SECTION 9. Dispensation from the Law of Abstinence

Dispensation from the law of abstinence can be given by those who can dispense in the law of fasting. When dispensation is given to eat meat on certain days of Lent—which are fasting days—those who are bound to fast may eat meat at the chief meal only, others as often as they wish.[2] If this relaxation of the law is given with an obligation of reciting certain prayers, this precept binds under venial sin and ceases with the day for which dispensation was granted. The same is true if an alms was enjoined.

SECTION 10. Violation of the Law of Abstinence

The violation of the law is in itself a grave sin, and the law is violated on each separate occasion (not necessarily with each separate piece) on which meat is taken. The law of fasting can be substantially and completely violated only once on a fast day, whereas the law of abstinence can be seriously violated any number of times on a day of abstinence. But it is possible to commit a venial sin by violating this law when, for example, a very small amount of meat is taken. Authors generally tliink that two complete ounces of meat, not less than that, is a grave amount, but if meat soup is taken, the grave amount would be double.

SECTION 11. Persons Excused from the Law of Abstinence

Those are excused who are under seven years of age or who have never come to the use of reason; those who cannot get abstinence fare, or who cannot keep the law without considerable difficulty, whether of health, occasion,

1 S.C.C., Feb. 9, 1924.

3 No distinction need be made between the exempted and the dispensed (cf. *I.E.R.*, May, 1930, p. 508).

time or expense, for example, the sick, the convalescent, the very poor; those who require meat for health's sake, as women near and after childbirth ; those who have to undertake considerable manual labour ; those who journey and cannot get abstinence fare without considerable difficulty ; wives and children who by abstaining will incur the serious anger of the father of the family ; those who by abstaining would not secure sufficient nourishment. Servants are excused who are unable to get abstinence fare, though, if conveniently possible, they should try to find another place. Vagrants who live by what they can beg are excused, as also soldiers and sailors who are fed, during service, by the State.

Practical Applications

1. Those on shipboard are bound to fast and abstain in accordance with the general law of the Church—unless a Company has received special privileges for its passengers,[1] —for the high seas are in no diocesp, and therefore particular territorial law's do not enforce obligations nor convey privileges as soon as a ship quits territorial waters.

2. If an invited Catholic guest finds meat fare and nothing else prepared on a day of abstinence, he will greatly edify his hosts if he asks for maigre fare, but if considerable offence would be given by his request, and if there is not serious scandal—which can always be forestalled by explanation —he is excused from the law.

3. If, by accident, meat fare has been prepared on a day of abstinence, and maigre fare cannot be got without considerable trouble, meat may be taken. This is particularly the case with poor families.

4. Wife, children and servants are not dispensed from the law merely because the master is dispensed, but they will usually be exempt owing to the grave difficulty of preparing a double dinner.

Pastoral Note

The law of abstinence from flesh meat is more generally observed, and can be more easily observed, than the law of

[1] cf. Ferreres, II, n. 1393.

fasting. Both laws have been mitigated in recent years, but the law of abstinence on the actual days of abstinence remains almost identical with what it was formerly. Great numbers of the faithful are unable to fast, owing to conditions of work, but comparatively few are unable to abstain. In the case of those who are unable to fast, the pastor will rightly urge the importance of performing some penance, corporal or spiritual, and even of keeping the fast partially, though he cannot impose any strict obligation. It is chiefly by some voluntary penance, even if slight, that we can retain the proper sense of the sinfulness of sin, and try to bring the sensual appetites under the sway of reason and law. In the case of many, the very conditions of life are a perpetual penance, which they can offer to God in satisfaction for sin, uniting these trials with the penances of the Saints and the sufferings of Christ our Lord. Although, therefore, fasting may be impossible for many of the faithful, the pastor will do well to urge a strict observance of the law of abstinence. A little foresight and trouble are needed on the part of the mother of the family in providing abstinence fare, and it is generally the mother's fault if her husband and children do not observe the law. The faithful should be exhorted to pay great attention to this law of the Church, so easy to observe with a modicum of care. An instruction, several times in the year, especially in Ember weeks and before Lent, will be well-timed and helpful. At the same time, the pastor will try to take the mean between severity and laxity. He should not allow his people to be carried along on the flood of pleasure and indifference to all restraint. By the loss of self-restraint, sin becomes easy and desirable.[1]

[1] Videsne quid faciat jejunium? Morbos sanat, distillationes corporis exsiccat, dæmones fugat, pravas cogitationes expellit, mentem clariorem reddit, cor mundum efficit, corpus sanctificat, denique ad thronum Dei hominem sistit. Quisquis igitur ab immundo spiritu vexatur, si hoc animadvertat, et hoc pharmaco utatur, jejunio inquam, statim spiritus malus oppressus abscedet, vim jejunii metuens. Valde enim dæmones oblectantur crapula et ebrietate et corporis commodis . . . Jejunium enim Angelorum cibus est et qui eo utitur, ordinis angelici censendus est (S. Athan. *de Virg.*, in 2 *Noct. Dom.* 3 *Nov.*).

TREATISE VIII

CHURCH LAW ON BOOKS

CHAPTER I

CENSORSHIP OF BOOKS (cc. 1384—1394) [1]

SECTION 1. Reasons for Censorship

The Church, guardian of the deposit of Faith and divinely appointed teacher of Christian morality, is bound to safeguard the faith and morality of its members. It has the right therefore and explicitly urges that right (c. 1384), of imposing laws on its children regarding the previous censorship and the prohibition of books. It forbids the faithful to publish books of certain specified classes, which it has not previously examined and approved, or to read books which it has condemned (c. 1395).

SECTION 2. Previous Legislation

The previous positive legislation of the Church dated from the first Nicene Council (325), and through succeeding centuries, as occasion demanded. It has issued particular and general prohibitions against certain specific books and classes of books. There were forbidden the writings of Arius, Origen, Pelagius, the apocryphal penitentials, books on magic. Popes Paul IV and Pius IV issued an Index of forbidden books, the latter of which has formed the basis of the present Index, with the additions and corrections of Popes Sixtus V, Clement VIII, Alexander VII, Benedict XIV ; and finally Pope Leo XIII revised previous legislation and issued in 1900 a reformed Index, promulgated to the whole world, new editions of which were published by order of Pope Pius XI in 1922 and 1929.

The previous censorship of books had been the subject

1 The sense of the canons is derived from the *Index of Prohibited Books,* revised and published by order of His Holiness Pope Pius XI (Vatican Press, 1930).

of Church legislation from the time of Pope Innocent VIII (1487). This legislation has also been extended and is embodied in the *Codex Juris.*

SECTION 3. Present Legislation

The whole matter of the censorship and prohibition of books has been fully treated in the *Codex* and therefore previous legislation has been supplanted by it (c. 22). The *Codex* (c. 1384) has extended ecclesiastical censorship and prohibition to all publications, including papers and periodicals, unless from the text and context of the canons the contrary is evident. The several canons closely define the precise meaning of the terms, v.g., cc. 1386,1399, nn. 1,5,12.

SECTION 4. Books to be Censored

The following matters must be censored before publication. The law applies both to clerics and laypeople (cc. 1385-1394) :

1. Books of Sacred Scripture and annotations or commentaries on them ; these include texts, versions, translations, notes, exegeses and treatises. Books whose main purpose is to deal with Sacred Scripture, sacred theology, church history, Canon law, natural theology, ethics, religious or moral science. Social and political theories bear very directly on religious and moral science, so that books thereon may be subjected to censorship by the local Ordinary. Censorship is also required for books of prayers, smaller books or pamphlets included, for books of devotions, doctrine, catechism, morals, asceticism, mysticism and others of like sort, even though they may seem to conduce to the fostering of piety ; and generally speaking, all writings that contain anything directly bearing on religion or morality, that is, such as professedly do so, not merely in brief passages here and there. Leaflets which deal with religious or moral matters are included.

2. Holy pictures, however printed, with or without prayers added, must be censored, but it is thought that medals, statues, oil paintings, water colours, specimens of

fine art and old masterpieces reproduced are not included in these particular canons, but arc regulated by canon 1279.

3. Faculty may be granted for the publication of the books or pictures enumerated above by the local Ordinary of the author, or the Ordinary of the place of publication or of printing, but if it has been refused by any of these, it may not be asked from any of the others without mention of the previous refusal. Members of Religious Orders require also the faculty of their higher Superior.

4. Books which treat of secular matters, and written contributions, notable or frequent, to newspapers, magazines, or periodicals, require previous consent of their own Ordinary in the case of secular clergy, and of both higher Superior and local Ordinary in the case of Religious.1 Permission is also required to act as director or editor of such publications. Neither clerics nor Catholic laypeople may write anything at all for newspapers, magazines, or periodicals that are wont to attack Catholic religion or good morals. To be allowed to do so, they must have just and reasonable grounds to be submitted and approved by the local Ordinary'.

5. Anything that deals with actually pending causes of beatification and canonization of the Servants of God may not be published without faculty from the Congregation of Sacred Rates.

6. Books, summaries, booklets, leaflets, that set forth the grants of indulgences may Yiot be published without faculty from the local Ordinary—probably of publication—but express faculty from the Holy See is required to publish, in any language, an authentic collection of prayers or pious works to which are attached papal indulgences as also a catalogue of Apostolic indulgences, or a summary of such. The canon takes care to point out that this faculty must be obtained, even though the summary has already been put together but never approved, or although it is now made for the first time.

1 The local Ordinary for Religious appears to be the Ordinary' of the residence of the Religious. The more extensive meaning of Ordinary, as above, is considered probable (Verm.-Creus., *Epit.,* II, n. 728).

7. Faculty must also be obtained for publishing collections of the decrees of the Roman Congregations, and such conditions as are laid down in the grant must be fulfilled.

8. The liturgical books, and any parts of them, as also the litanies already approved by the Holy See, must be guaranteed before republication to accord with approved editions. This guarantee is to be given by the local Ordinary of the place of printing or pubheation.

9. Versions of the Sacred Scriptures in the vernacular may not be published unless either approved by the Holy See, or published under episcopal supervision, and unless notes are added taken chiefly from the writings of the Fathers of the Church and learned Catholic writers. It is to be carefully observed that translations and new editions of a work already approved require a new approval, for the approval of the original text of a work does not apply to these, but reprints of chapters taken from periodical publications and separately published do not rank as new editions and need no new approbation.[1]

10. The Sacred Congregation of the Council (June 7, 1932) has urged, with great insistence, the censorship of a certain class of religious magazine which is published at the more renowned sanctuaries of the world. Whilst commending the purpose of such magazines, the Congregation disapproves of the publication, vrithout sufficient authentication, of stories recounting divine favours received. It especially deplores accounts of drvine favours, the reception of which often appears to be connected with offerings of money.

SECTION 5. The Form of Censorship and its Force

In every episcopal Curia there must be official censors—though the Ordinary may select a censor of his own choice—who, in discharging their duties, must lay aside all personal bias and have before their eyes only the dogmas of the Church and the common Catholic teaching, embodied

[1] The version of the Epistles and Gospels which is read to the people in church must be a version made from the text approved by the Church for the sacred Liturgy' (Bibl. Comm., April 30, 1934).

in the decrees of General Councils, Apostolic Constitutions and Prescriptions, and the consensus of approved divines. Censors should be selected from both the secular and the regular clergy, and should be men recommended by their age, learning and prudence ; they should adopt a standard that is safe, inclining neither to excessive severity nor laxity. The censor must give his opinion in writing. If this is favourable, the Ordinary shall give faculty to publish *(^Imprimatur},* which is to be preceded by the censor's approval (ΛïZ. *obstat}* and name. The censor's name may be omitted in exceptional and rare cases, if the Ordinary prudently thinks fit. Before a favourable verdict of the censor, his name should never be made known to the author. Faculty to publish is to be given in writing, and must be printed at the beginning or end of the book, pamphlet, or representation, with the name of the grantor, place and time of the faculty. In case faculty is withheld, the reasons for doing so are to be indicated at the author's request, unless some serious reason demand otherwise.

A censor's approval is not official ; it is private and informative, and extends only to the teaching of the Church current at the time. Thus, a book favouring cremation would at present be refused approval by the censor, and many years ago, books on hypnotism might have failed to pass censorship. Approval by censor, and faculty by Ordinary are no guarantee against the book being subsequently put on the Index.

Excommunication is incurred by authors and publishers of books of Sacred Scripture or of notes or commentaries thereon, if due permission to publish has not been obtained

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The Holy Office has declared (March 29, 1941) that the censors of books must be truly competent *(yere periti}* in the matters submitted to their censorship.

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CHAPTER II

PROHIBITION OF BOOKS (cc. 1395—1405)

SECTION 1. General Rules

All men are forbidden to read books that are contrary to faith in God, good moral conduct and Christian virtue. This is immediately evident from the fact that without faith no one can be saved, acts against rational nature are offences against God, and since we live under a Christian dispensation, Christian virtue must be esteemed and practised.

2. The Church has issued positive laws against the reading of certain books, for it has to safeguard the faith and morals of its children (c. 1384). It, therefore, lays down general rules concerning certain classes of books, and has issued an Index or catalogue of books that are forbidden by name. A book that is forbidden *under censure* is to be understood literally, as one that is printed and published for general sale, and such that it has a certain unity and size.[1] The size is estimated as 160 pages octavo, and a corresponding bulk in any other format,[2] but this estimate should not be taken too literally, for a smaller bulk may well be considered a book in the general estimate of people. A book, too, must have a certain unity in itself, and therefore periodicals, daily papers, magazines, calendars, collections of pictures, anthologies, are not books, unless in the latter case a very lengthy excerpt is equivalent to a book, or unless the anthology, taken as a whole, is contrary to Faith or morals. So, too, encyclopedias that contain Catholic as well as non-Catholic articles, do not come under the prohibition against books, unless single articles are so long as to be equivalent to a book. Periodicals, scientific, philosophical,

[1] The reason being that when an excommunication is incurred for the reading or keeping of certain classes of books, books are meant, not periodicals or papers, for the *Codex* itself makes the distinction inasmuch as it speaks of books, periodicals and all printed matter, in the section on censorship, but in the section on censures it speaks of books only (c. 2318).

[2] So Ubach, Vcrmecrsch, Noldin, Ferreres, Arregui, adopting the view of Schmakgrueber ; cf. Ubach, I, n. 374, note 2.

theological, when taken in single numbers, are not books ; they would be equivalent to books if bound together, provided there is a certain unity of treatment in them, and most of all, if they are designed to form a collection.[1]

Manuscripts are not books, nor are type-script, nor lithographs, though multiplied, unless they are published as such and put up for general sale. Booklets and pamphlets which consist of only a few pages are not books. The foregoing remarks are to be understood of books forbidden under censure. What is forbidden by the Church in the matter of books, is forbidden also in the matter of daily papers, periodicals and other published matter of whatever sort (c. 1384, 2). An exception appears to be made in not including printed matter, not periodicals, of an insignificant amount.[2]

3. The right to prohibit certain books is exercised by the Sovereign Pontiff, directly or through the Sacred Congregation, and also by Ecumenical Councils. Local Ordinaries and particular Councils can also forbid in their respective territories those books which they judge to be harmful, and indeed they are obliged to do so (cc. 1395, 1397). Such law binds only the subjects of the local Ordinary within his territory. The right can also be exercised over all their subjects by Abbots of independent jurisdiction, by Superiors General of exempt clerical Religious Orders, after consultation with their Chapters, and by other higher Superiors in cases of urgency after seeking the opinion of their consultors. Recourse may be had to the Holy See against these particular prohibitions, but the prohibition is not suspended meanwhile.

4. Books forbidden by the Apostolic See—a title which includes the Sacred Congregations—are forbidden everywhere and in every version (c. 1396), as also are books proscribed by common law (cf. c. 1399)· The Holy Office issued such decrees for about three centuries ; the Congregation of the Index is now affiliated to it (c. 247, 4). Other Congregations have issued similar decrees, where the matter

[1] cf. S.O., 1880 ; 1892 ; cited by Cappello, *de Censuris,* n. 226.

[*] Arregui, n. 451, note 2 ; Ferreres, I, n, 625, *centra* Noldin, II, n. 696.

of their respective offices has been concerned, as the Congregations of Sacred Rites and of Indulgences.

5. The binding force of decrees on forbidden books varies with the source of the decrees. A decision of the Pope himself, or one issued by him through a Congregation, does not necessarily contain a definition of Faith, that is, a pronouncement that is infallible as to the doctrine of the forbidden book. But all such decisions must be received by Catholics with submission, both interior and exterior.

6. The effect of a prohibition is that the forbidden book may not, without due permission, be published, read, sold, kept, translated, or lent to another person (c. 1398). To read a book means to read a not insignificant part of it so as to understand it; to hear a book read is not to read it. Such forbidden books may not be read, even if objectionable passages are deleted.

SECTION 2. Particular Prohibitions[1]

The following publications are specifically forbidden:

I. Editions, published by non-Catholics, of the original text and of the ancient Catholic versions of Sacred Scripture, as well as those of the Oriental Church; also translations of the same, made or published by non-Catholics (c.1399,1). The reasons for the prohibition are the danger of perversions, omissions, false criticism, and the whims of so-called modern scholarship. As an example, we have the Protestant Authorized and Revised versions, which offer to their readers a mutilated Bible.

2. Books by any writers which defend heresy or schism, or attempt in any way to undermine the very foundations of religion (c. 1399, 2). The defence here meant is a defence by alleged proofs. The foundations of religion are the existence of God, the possibility and the fact of Divine Revelation, the spirituality and immortality of the soul, the

[1] The writer aims at giving the meaning of the canons rather than a literal translation of them. The student should refer to the original text of the canons throughout and to the translation officially published to which reference has been made above.

possibility and the fact of miracles, free will, the motives of credibility.

3. Books which, of set purpose, attack religion or good morals, i.e., religion, cither natural or revealed, and morality in accordance with Natural law ; not books which only indirectly do so, or do so in passages here and there incidentally.[1]

4. The books of non-Catholics (baptized or not) which professedly treat of religion, unless it is clear that they contain nothing contrary to Catholic Faith (c. 1399, 4). The books must have as their purpose the treatment of religion, and that, from any point of view, ethnical, comparative, historical.

5. If not duly approved, Bibles or parts of the Bible, biblical annotations, commentaries, biblical versions, books that deal with sacred theology, Canon law, natural theology, church history, ethics, religious or moral science, books of prayers, devotions, religious doctrine, instruction, moral, ascetical or mystical, and others of a like nature, though they appear to foster piety, and in general, any book which specially deals with religion or morality ; books and pamphlets that record new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even on the pretext that they are private (c. 1399, 5). Reports of such occurrences in papers are probably not forbidden.

6. Books which attack or hold up to ridicule any Catholic dogma, such as the creation of man, original sin, the infallibility of the Pope ; books which defend errors proscribed by the Holy See, such as a defence of Modernism ; books which disparage divine worship or attempt to subvert ecclesiastical discipline, or are intended tobecontumeliously offensive to the ecclesiastical hierarchy, the clerical or the religious state.

7. Books which teach or favour superstition, fortune-telling, divination, magic, necromancy, dealing with the devil.

8. Books which defend duelling, suicide, divorce, and

[1] So authors generally ; some think that natural religion alone is here meant (Venn.-Creus., *£pil., II,* n. 733). On sensual-mystic literature, the Holy Office has issued an Instruction, May 3, 1927. The English version is given in Bouscaren, *op. oil.,* p. 687 sqq.

those which maintain that Masonry and similar societies, which are secret and plot against Church or State, are useful and not harmful to the Church and civil society. All books, therefore, which affect to prove that true divorce is permissible in the case of adultery'.

9. Books which professedly treat of, narrate, or teach matters that are lewd or obscene, such as the defence of methods of birth control.

10. Any editions of the liturgical books approved by the Holy See in which any change has been made, so that they do not accord with the approved authentic editions.

11. Books which publish apociyphal indulgences, or such as are proscribed or revoked by the Holy See.

12. Images, however reproduced, whether on paper, in metal or wood, or in any way, of our Lord, our Blessed Lady, the Angels, the Saints, or other Servants of God, that are not in keeping with the mind and the decrees of the Church.

Notes

1. The Index of forbidden books, published by order of Pope Leo XIII, was always in force from the date of publication, and was not withdrawn by the *Codex Juns.* It was in force everywhere, England not excepted. The revised Index, published by order *of* His Holiness, Pope Pius XI, binds everywhere. There can be no doubt about its authority, for it was issued from the Palace of the Holy Office by the Cardinal Secretary.

2. When a book is forbidden, every edition and translation of it is also forbidden. Subsequent volumes of a work, of which the first volume is forbidden, are suspect.

3. The phrase '*Opera omnia*' of an author in a prohibition refers only to the particular books of that author which treat professedly of religion, unless the other books of the same author are prohibited on other particular or general grounds, as they may be by canon 1399. Other books of the same author, published after particular decree, are not forbidden by that decree, but they may, of course, be forbidden on general grounds.

Where a part only of a book is forbidden, if it be deleted or torn out, the rest of the book is not *ipso facto* forbidden.

SECTION 3. Exceptions

1. The books mentioned above (section 2, n. 1), and versions of the Sacred Scriptures in the vernacular may be used by those who in any way are engaged in theological or biblical studies, if the editions are faithful and complete, and if they do not attack Catholic dogmas in introduction or annotations (c. 1400). This permission, therefore, extends to priests who continue their studies. Ancient non-Catholic versions, if accurate, may be included.[1]

2. Cardinals, bishops (titular included) and other Ordinaries are exempted from the positive law against forbidden books, if they take the necessary precautions (c. 1401), namely, that faith and morality should not be imperilled, that obscene books should not be read except by those officially obliged to do so, nor should get into the hands of others not entitled to read them.

3. Ordinaries may give permission for particular forbidden books, but only to their own subjects and in urgent cases. Thus, they cannot give general permission, unless empowered to do so by the Holy See (c. 1402), and then only with discretion and for a just reason.

4. The general papal permission to read and keep forbidden books does not extend to books forbidden by the Ordinary unless such is expressed (c. 1403).

5. Booksellers are not allowed to sell, lend, or keep books professedly obscene—medical and surgical manuals are not professedly obscene—nor to have for sale any other forbidden books, unless with Apostolic faculties, nor to sell them to anyone except those who are prudently thought to have faculty to read them (c. 1404). Such books are to be kept in a secret place and may not be exposed for sale, nor their titles printed in catalogues.

[1] All priests should certainly continue their clerical studies; the study of Sacred Scripture is a life-long occupation, and if it is, even intermittently taken up, students may use the exemption.

6.Permission to read forbidden books exempts no one from the Natural law, which forbids one to expose oneself to proximate spiritual danger (c. 1405).

7.Local Ordinaries and others who have the care of souls must warn the faithful of the danger and harm that are caused by the reading of bad books, especially of such as are forbidden.

SECTION 4. General Applications [1]

1. The Natural law forbids the reading of all dangerous books, and the danger must be judged like all other occasions of sin. Positive law also admits of venial violation, but it would usually be a grave sin to publish or defend a forbidden book. The gravity of the violation of the positive law, so far as reading is concerned, may be measured by what would be *perse,* or in general, grave against the Natural law owing to proximate danger of sin ; and such a standard applies to all.

2. The amount read, to constitute a grave sin, would have to be fairly considerable ; probably the reading of six pages is serious, if the book is dangerous to faith or morals, and even less than six if the book is exceedingly dangerous or very obscene, for in some cases, one page of a book may be as dangerous as fifty pages of another book by reason either of its obscenity or of its attack on the Faith. The case is different where actual dangerous matter is not set out in express terms, but where the book has an immoral tendency. These, though dangerous, are less so than the other class of book, and therefore probably a good deal more than six pages (perhaps ten to fifteen) would be required to constitute a grave amount. If a book is forbidden only on account of certain chapters in it, it is obvious that the other portions of it are not forbidden.

3.The English Press has, of late, been cleansed from full reports of divorce proceedings. That amount of dangerous reading, therefore, has been removed, and the residue in the reputable papers is usually clean ; nor are there now in general the abusive attacks on Catholic dogma—except in

reports of heretical sermons—which used to appear, But there are defences of false social and economic theory which should not be read. Newspapers which contain only occasional articles against the Catholic Faith or good morals do not fall under the ban of the Church at least as newspapers. A Catholic, however, who regularly reads all that appears against Faith or morals, sins by exposing himself to danger and no one can say that he is immune from danger.

4. In the case of bad papers, a grave sin will be committed by habitual reading of them, by reading even one article specially offensive to religion or morality, and by scandalizing others. But the reading of the other matter that is harmless is not sinful, nor, indeed, is it sinful to look at one or two issues of such a paper without evil intent or probable danger.

5. The keeping of forbidden books is a grave sin, if there is danger of their being read without permission. It appears that retention beyond a month would be a grave sin. But if there is no danger of the book being read, or if it is used for irrelevant purposes, or if kept for binding, repair or tooling, for necessary livelihood, no sin is committed. The pastor will urge a penitent who has borrowed a forbidden book, most especially if it is obscene, to destroy it if he can do so without injustice, and with the presumed consent of the lender. Parents who find objectionable books of any sort in their home should destroy them. One bad book the less in circulation is an immense gain.

6. A Catholic bookseller need never stock forbidden books. He may get them to order for a legitimate reader. It will be difficult for him to decide who can legitimately ask for such books. As he should wish to observe the law in the spirit as well as in the letter, and as co-operation in disseminating bad books is easy, he will take the safe course and keep no forbidden books at all.

7. Permission granted to read forbidden books in general, for purposes of study or refutation, is to be interpreted in a broad sense, so that the reader will not offend against positive law by reading them even from curiosity, though, of course, the Natural law may still operate against him. If

permission is given only for purposes of refutation, it must be interpreted strictly.

8. All the faithful, and those especially who are clerics, or who hold high positions, or who 'are learned, should denounce any book which they consider dangerous. Denunciation is to be made to local Ordinaries or to the Apostolic See. This duty is especially laid upon Legates of the Holy See, local Ordinaries, and Rectors of Catholic Universities. In denouncing a book, its title should be given and the reasons set forth why the book is thought to be deserving of condemnation. The names of those who denounce books should be kept secret. Local Ordinaries are urged to keep a close watch, personally or through the help of suitable priests, on the books published or on sale in their respective dioceses.

Those books should be submitted to the judgment of the Holy See, which require a rather careful scrutiny, or against which the decree of the supreme authority would seem to be necessary for the sake of a more salutary effect.

Pastoral Note

In the Catholic household, if a Sunday paper is needed, as it may be for the news or for recreation, the paper should be a reputable one, not one that panders to sensual excitement, as some do. On the table or bookshelf, there should be a selection, however small, of good Catholic literature, to be renewed and augmented from time to time, for the children of the family should be attracted by new pamphlets. The Catholic father wall spend a little of his time on Sundays—as was the custom in old Catholic families—in reading aloud to his children some Catholic book or paper. The pastor will urge his people to take up without delay so good and holy a practice.

SECTION 5. Ecclesiastical Penalties (c. 2318)

Excommunication, specially reserved to the Holy See, is incurred, *ipso facto,* by the publisher of any book written by apostate, heretic or schismatic, in defence of apostasy, heresy

or schism ; it is also incurred by those who defend the said books or any other books prohibited by express mention and by name by Letters Apostolic. Furthermore, the same excommunication is incurred by those who knowingly read or keep such books without due permission.

Writers and publishers who, without due permission, arrange for the printing of books of Sacred Scripture, or annotations or commentaries thereon, incur excommunication *ipso facto*. This excommunication is not reserved.

The books here meant are those of definite size and unity, not separate sheets, papers or periodicals that deal with various subjects.