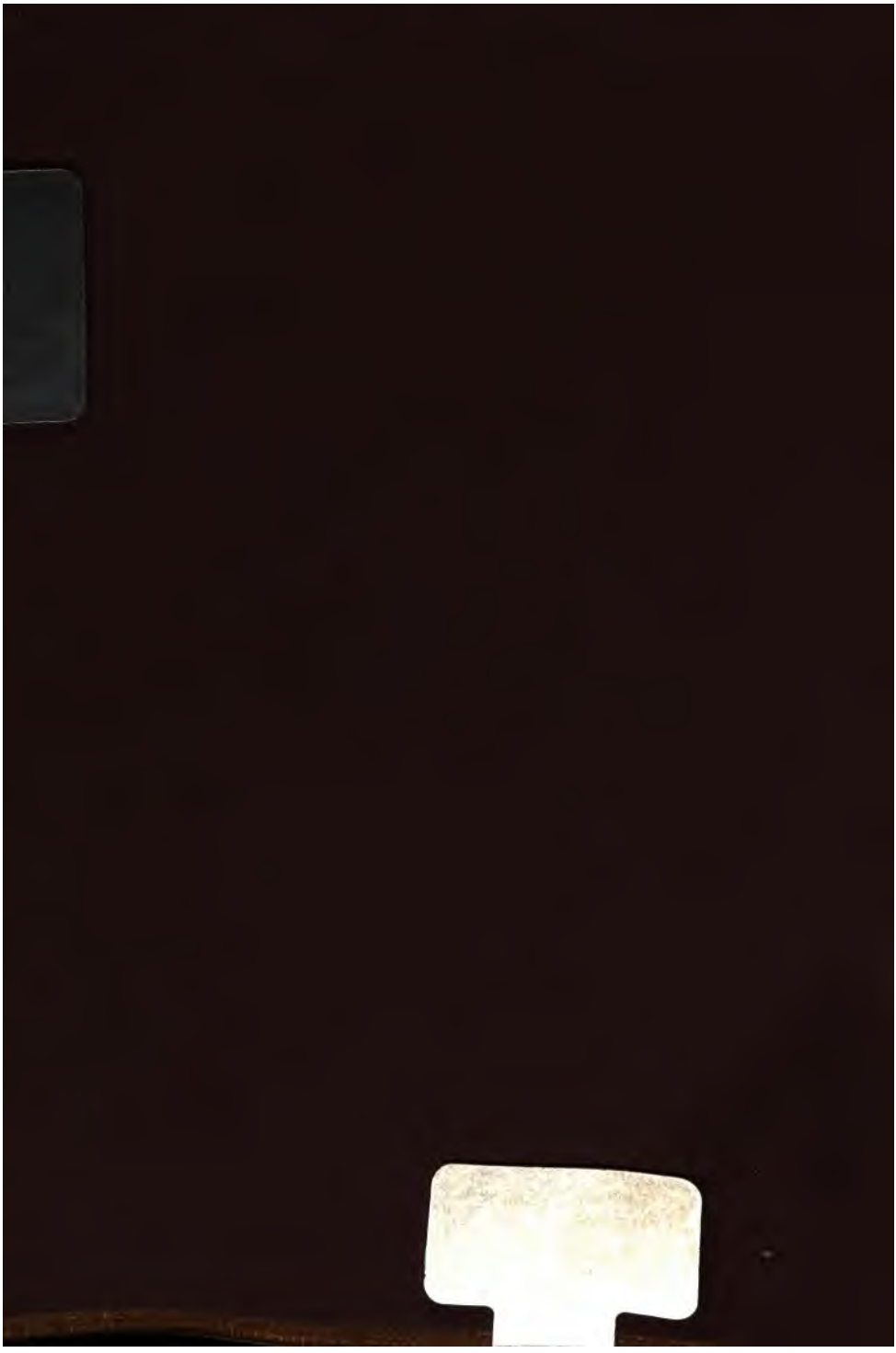

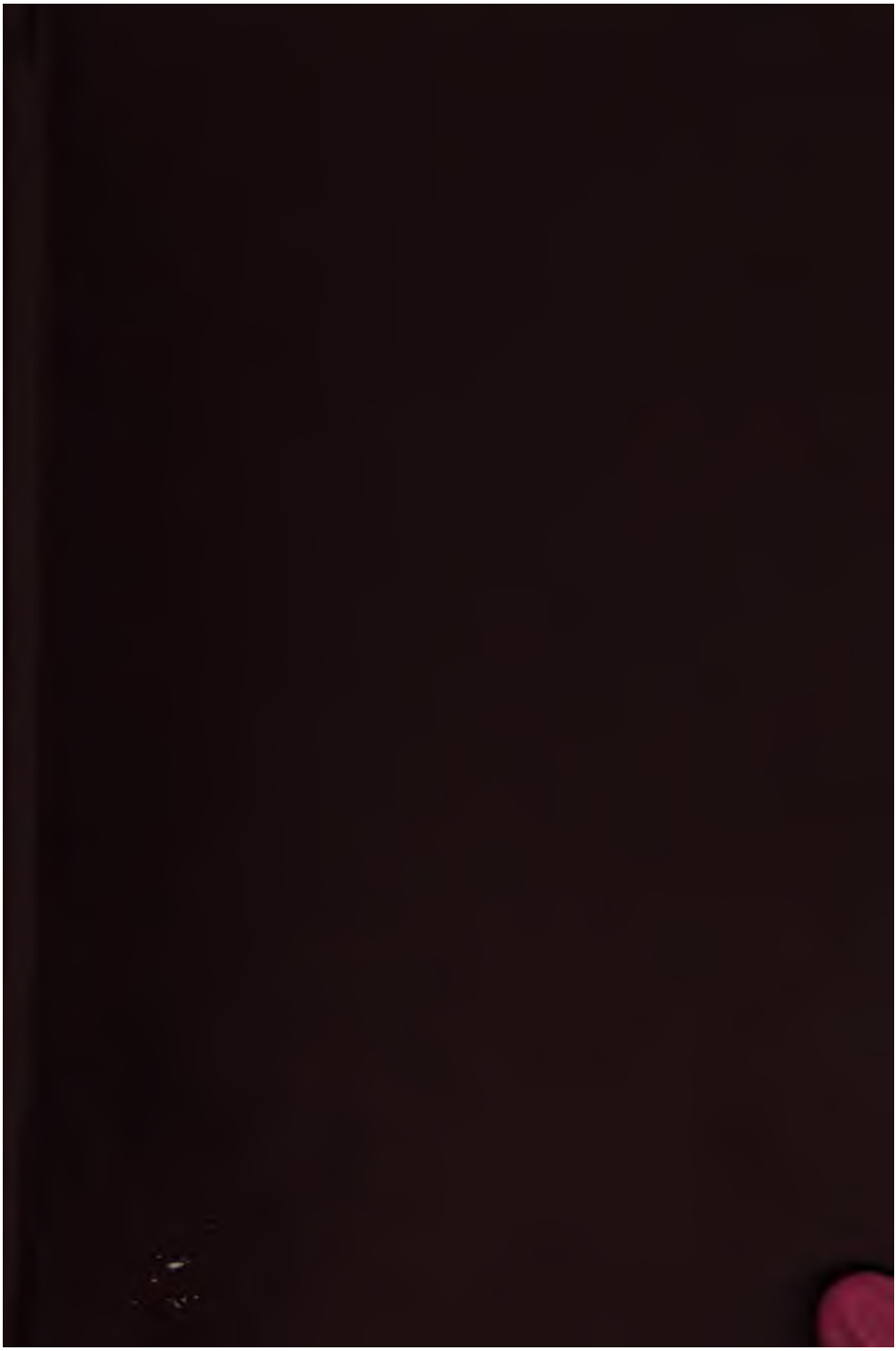

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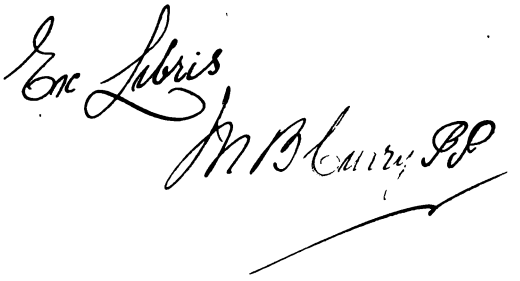

CONSCIENCE AND LAW.

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OR,

PRINCIPLES OF HUMAN CONDUCT.

BY

WILLIAM HUMPHREY, S.J.

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PREFACE.

A GLANCE at the Table of Contents will shew the intestinal connection of the following chapters.

The chapter on Conscience—as conscience is the *internal* rule of human conduct, and the chapter on Law—as law is the *external* rule of human conduct, have suggested the title of this volume.

Five of the chapters have in substance already appeared as articles in *The Month*. These have been extended and revised.

A sixth chapter on Restitution has been added; and this completes our present consideration of the subject.

WILLIAM HUMPHREY, S.J.

114, *Mount Street, W.*
Lent, 1896.

CONSCIENCE AND LAW.

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CHAPTER I.

Human Responsibility.

MAN has been so made as to be capable of having a threefold knowledge—a knowledge of himself, a knowledge of his fellow-creatures, and a knowledge of his Maker. Every human being has a mind, and every human being knows that he has a ***mind.*** He knows that his mind is made *for knowledge.* The human mind craves for knowledge. With possession of knowledge the mind is satisfied. The craving ceases when knowledge is had with certainty. The mind is then at rest.

Through knowledge of the true the human mind is intellectually perfected. Knowledge nevertheless exists in man's mind not merely in order to man's *intellectual* perfection, but in order also to the action of knowledge on another power of man's soul.

Every human being has a *will,* and every human being knows that he has a will. This will is of itself a blind power. It requires enlightenment from a source outside itself. This is derived to it from the mind, or the intellectual and rational power of man's soul. The will is

capable of movement and direction, and it is moved and directed by that which the mind supplies. That knowledge which exists in the mind, and which moves the will, is therefore called the *motive* of the will. It is the mainspring of its action. To act from an adequate motive is to act humanly, that is, in a human way, and as beseems a human being. To act without a motive is to act unreasonably, and an unreasonable act is unworthy of the name of—a human act.

An act which is done without a reasonable motive is the act of one who is a human being, but it is not the act of a man—*as he is* a human being. It is not in accordance with the constitution and law of man's *human* being.

When the human will is acting with an adequate motive, in knowledge supplied by the mind or reason, a man is being perfected not only intellectually, but also morally. As intellectual perfection is the perfection of the intellect, under its various aspects, or in its various faculties, as it is the understanding, the mind, or the reason, so all *moral* perfection is in the *will.* The will is the highest of all the powers of the human soul. Moral perfection, or perfection of the will, is the highest perfection of which the human soul is capable in the natural order.

Besides his understanding and his will, man has also memory, and memory is a spiritual

power, or a power which belongs to the human soul, as that soul is a spiritual being. The soul of man is not merely the principle or source of animal life to man's body. The soul has its own independent life, and it survives the destruction of the body. When disembodied, a soul retains and exercises its powers of willing, of understanding, and of remembering. Although the memory is a spiritual power, it is nevertheless the lowest in rank of the three spiritual powers which belong to every spiritual being. The memory is an ancillary power. It serves as the handmaid of the understanding, while the understanding in its turn subserves the will in order to rightly regulate human action.

For our present purpose we may set aside the memory, and along with it all lower powers which belong to man, such as his imagination and his animal appetites, and confine our attention simply to those two spiritual powers—the human reason and the human will.

It is through those two spiritual powers of his soul that man is master of his actions. His free-will is his faculty of reasoning and willing. Those of his actions, therefore, are properly *human* actions, which proceed from his deliberate will. Those acts of a man do not deserve the name of *human* acts, which are done without any

deliberation of the reason—such as are the very first movements of the passions—thoughts which precede deliberation—and actions which are done without advertence. By *human* acts, or the acts of a man as he is a human being, we understand therefore those acts only which proceed from a man as from an intelligent principle, who has mastery over his own acts. In other words, they are those acts which proceed from a man's will, with advertence of his reason and with freedom.

Such human acts alone are *moral* acts. All morality is in the will. Morality is rooted therein, and springs therefrom. Morality begins with the first act of dominion of the will which occurs in any action. The will is the royal and imperial power in man. It is the hinge and helm of all human and moral action. Moral actions alone deserve praise or blame, and alone merit reward or punishment. For moral actions alone is man responsible before God. In moral action the reason and the will are wedded. A *moral* act is the offspring of their union, for either good or evil.

2.

To command an exercise of the other powers which exist in man belongs to the imperial will alone. The acts which proceed from those powers, whether internal or external, at the command of

the will, are called *commanded* acts. This distinguishes them from acts of the will which proceed immediately from the will. These are elicited by the will itself. These are known in moral science by the name of *elicited* acts.

As the *true* is the proper object of the understanding—or that towards which the understanding of its nature tends—so the *good* is the proper object of the will. It is the function of the understanding to present the good to the will.

The principal functions of the will with regard to the good are six in number. It is said to will, to intend, to enjoy, to choose, to consent, and to use. A good which is set before the will by the understanding is either in itself an *end* which is desirable for its own sake, or it is a *means* which is desirable for the sake of the end, towards the attainment of which it is ordained. When a good is in itself an end, then the will is said to *will* or embrace that good which allures it, and which it follows. When, for the sake of this end, other goods are sought, as they are means towards that end, the will is said to *intend*, or aim at that end. When the will rests in possession of the good, it is then said to *enjoy*. When various means towards an end are set forth by the understanding, and one of these is selected, the will is said to *choose*. Apart from comparison, and simply as approving and embracing, the

will is said to *consent*, inasmuch as it agrees with the understanding. When the will employs the means approved and chosen, it is said to *use*. All other acts of the will may be reduced to those six: as *desire* to intention, and *love* to willing—if it may not rather be said that *love* both wills and intends, and also enjoys. *Hope* is an intending towards a good of the future which is difficult indeed of attainment, but which at the same time it is not impossible to attain to. *Delight* falls under joy, and from delight *joy* is scarcely to be distinguished.

3.

The will, instructed by the understanding, and thereby moved and directed, has its issue in action. Its acts may be either good or bad, natural or supernatural. *Good* acts are acts which are in conformity with a rule of the moral law, which either prescribes them, or counsels them. *Bad* acts are acts which are contrary to the prescription of a rule of the moral law. Acts which are neither in conformity with nor contrary to any moral rule, are called *indifferent* acts. These acts may however become good or bad, as they are done for a good or for an evil end, or, in other words, by reason of the motive. The goodness of an act may be derived from the fact that it has been counselled, but not

prescribed. In order to badness on the other hand, the act must have been prescribed and not merely counselled. If, however, the rule which even merely counsels an act is held in contempt, this contempt is in itself evil. It is contrary to a rule and precept of moral law which forbids such contempt.

Natural acts are acts which are elicited solely by the natural faculties. *Supernatural* acts are acts which are elicited with the aid of divine grace. These are called meritorious acts. They may be meritorious either as worthy of reward, and that of justice—or inasmuch as to reward them is becoming, although not of justice, but only of the benignity of God. Even if an act concerns an object which has been supernaturally revealed, it nevertheless remains a natural act, if it has been elicited by the powers of nature alone. In order that, on the other hand, acts should be supernatural, it is not necessary that the objects of the acts should be supernatural. It suffices that the acts themselves should be done with the aid of divine grace. They may in themselves materially be acts of natural virtues.

4.

Every *moral* act—that is to say, every act which is morally either good or bad—must have proceeded from the will, as from its intrinsic

principle. The will is the rational appetite. The will is called an *appetite*, because by a natural propension of it, and with an affection of its own, it rises and tends towards the object which is set before it as good. This appetite is called *rational*, because that object or end is set before it by the reason as good either in reality or in appearance. The end or object may not be in reality good, but it must present itself under at least the appearance of the good, if it is to attract and move the will. In the same way the object which presents itself to the understanding may not be really true, but it must present itself under the appearance of the true, if the understanding is to embrace it as truth. The understanding cannot possibly, or of its nature, accept as truth that which presents itself to it as untrue, or under the appearance of the untrue. In like manner, the will, of its very nature, cannot possibly be attracted or moved with affection towards that which is presented to it nakedly as an evil, and not as clothed with at least the appearance of some good. The false and the evil must come disguised if they are to commend themselves to the understanding and the will.

When a movement of the will which proceeds from previous intellectual knowledge is absolute, the idea of the *voluntary* is complete, and the act which results is a voluntary act. That act is the

legitimate offspring of the will, whose name *(voluntas)* it bears, as the will is not merely an appetite, but is the rational appetite. When the movement of the will is not absolute, but is as it were suspended, and dependent on some condition, there is then a *wish* rather than a *will.* It is then more—I would, than—I will. This wish, if it is to be called a will, must be qualified with some additional distinction. It must, in order to distinguish it from an absolute and efficacious will, be called an *inefficacious* will, or a will of mere *complacence.* An efficacious will proceeds to action, and takes the means towards the end which it desires, and which is represented to it as possible of attainment. If the end is not presented to the will as possible, the will does not adopt the necessary means, and therefore it is inefficacious. Inasmuch, however, as the will rests with pleasure on the thought of the end which it would have willed and sought after, if attainment of that end had appeared to be possible, or if that end could have been arrived at without use of the means in question as a necessary condition, this resting with pleasure on the unattempted end is called a will of *complacence.*

An object may be *willed* with a great desire of its existence, or through the will's resting with pleasure on its existence when it occurs, while

at the same time the existence or attainment of that object does not proceed from the will as an effect proceeds from its cause. So far as the object is concerned, it may be said to be *willed*, but since the existence of the object has not proceeded from the will, the act of willing is not said to be *voluntary*. Concurrence of the will and the will's use of means are both of them necessary to the idea of the *voluntary* in connection with that which is willed. The misfortune of another, through which some good accrues to one, may be *willed*, but the misfortune is not *voluntary* unless the will has in some way concurred to inflict it. This act of willing, whether as an evil desire of the misfortune, or as joy and satisfaction, is itself, however, voluntary, inasmuch as it proceeds from the will.

If there is adequate knowledge and full deliberation, the element of the voluntary is complete and perfect. If the knowledge has been imperfect, or if there has not been full deliberation, the element of the voluntary will be imperfect.

When two objects are set by the understanding before the will, and the will has an affection towards both of those objects, but—since it cannot embrace both of them—prefers one to the exclusion of the other, it *wills* both. It, however, more wills the one object, which it therefore

chooses, and it less wills the other object, which it therefore sets aside. Towards the one object the will rises efficaciously; towards the other object it also rises, but inefficaciously. With regard, therefore, to the one object there is a *will*, and with regard to the other object there is only a *wish*. The one will is absolute or simple. The other will is relative or conditioned. It is a will of *inefficacious complacence*.

There is a real difference between interpretative consent and tacit consent. In *interpretative* consent there is presumed the consent which *would have been*, if the matter had been brought forward. In *tacit* consent there is understood a consent which *really exists*, although it has not been expressed.

The common saying, that "silence seems to give consent," requires some interpretation. He who keeps silence with regard to matters which are in favour of himself, is held to give consent—because in cases of doubt that is rightly presumed to exist to which natural tendency or inclination leads. Again, one is held to have given consent by silence when he could have easily prevented his own loss, by means of express dissent, or when he could in the same way have easily prevented an evil which he was bound to prevent, and he nevertheless kept silence. Silence, however, never gives consent

when words or express signs of consent are demanded by law in order to the existence of legal consent. When there is adequate proof of dissent, it is clear that mere silence cannot then be held to have given consent.

5.

An effect which follows from an action or from an omission may be *voluntary*, not in itself, but—in its cause. We are not now speaking of an effect which is *intended*. Such an effect is voluntary in itself. It is in reality an end. The effect to which we refer is an effect which is not an end, and which does not move to action. It is not a motive of the action of which it is an effect. Although such an effect is not sought in itself, and is outside the intention, it nevertheless follows from the action. It is also a bad effect—for here there is no question of a good effect—since there cannot be moral goodness in any act if the will which precedes and causes that act is not good. By reason of a bad effect, which I do not intend or desire, but which I know will follow from a certain action, I am bound to abstain from that action, and I am responsible for this bad effect, if I do not abstain from the action which is the cause of it.

In order to induce this responsibility, however, three conditions are required. One must, in the

first place, have *knowledge of the evil effect*, since nothing is willed which is not foreknown. One must, secondly, be *free not to do* the action, and so place the cause which has the evil effect. One must, thirdly, be *bound not to do* the action, and bound, moreover, for this special reason—lest that evil effect should follow. Unless a man is bound not to act, he is free to exercise his right of action. Unless a man is bound to refrain from an action lest an evil effect of it should follow, he in placing the cause, by doing the action, does not will the evil effect. He only *permits* the evil effect. There is no affection in his will towards the evil effect, as towards an end. Where there is no such affection, the result is not willed, but only permitted.

Permission of an evil effect is lawful when a cause, which is in itself good or indifferent, has two immediate effects—one of which is good, and the other of which is evil—if there is a grave reason why one should do the action which is the cause of these two effects, and if in doing the action one has a right end.

There must, therefore, be four conditions, in order to lawful permission of an evil effect. The *end of the agent* in the doing of the action must be good, that is to say, he must not

intend the evil effect; for otherwise that effect would be voluntary on his part. Secondly, there must be a just, or at least an indifferent, *cause for the action*, that is to say, the action itself must not be in opposition to any law; for this is necessary in order that the agent should have the right to do the action itself, and should not sin by the doing of it. Thirdly, the effect which is good must follow at least *as immediately from the action* which is the cause of both effects, as does the effect which is evil. If the evil effect follows immediately from the action, and the good effect follows only *mediately through the evil effect*, then the action would not be lawful. It would be doing evil that good might come, and to do this is never lawful. Fourthly, natural equity demands the avoidance of evil, and the prevention of damage to our neighbours, when we can secure this without proportionately grievous damage to ourselves, or, still more, to the community at large. A *proportionately grave reason*, therefore, is required for doing an action, one of the effects of which is evil.

There is a difference between the non-voluntary and the involuntary. The *non-voluntary* arises simply from absence of an act of will. The *involuntary* proceeds from a contrary will. The *perfectly involuntary* is that

which is so displeasing to a deliberate will that it is not on any account willed. The will in that case resists, and resists efficaciously so far as depends upon the will itself. It in no way wills to consent, and, as a matter of fact, it does not consent. There is the *imperfectly involuntary*, when the will does not resist with all its might, or when it does not resist promptly and efficaciously, but resists only languidly and with some hesitation. The *truly involuntary* demands that the resistance of the will should be serious, efficacious, and persevering, and that consent should be entirely excluded.

6.

With regard to sins of omission, when a man gives, or determines to give, cause for an omission of a duty in the future, the sin of omission is then and there interiorly committed. He who wills to omit later on commits the sin in that moment in which he has this will. The external omission of the duty takes place when the time comes for fulfilment of the precept, and the precept is not fulfilled.

This subsequent external omission does not add any separate wickedness to that of the previous will to omit. The external omission of a duty has nevertheless the name of a sin

of omission, inasmuch as it is in opposition to law, and is voluntary. It has properly the character of evil, and is a sin, because it proceeds from an evil will, as from a cause between which and it there is a real bond of connection.

7.

Among those things which prevent or which lessen the *voluntary*, there is, in the first place —ignorance. *Ignorance* sometimes signifies privation or absence of knowledge. Sometimes it signifies that which is contrary to knowledge. The latter is the ignorance of a perverted disposition. It occurs when a man has a habit of false principles, or holds a set of opinions by which he is hindered from knowledge of the truth.

Error, which takes and approves the false for the true, adds somewhat over and above *ignorance*. There may be ignorance apart from any judgment about the unknown. When there is a false judgment about the unknown, then there is, properly speaking — error. While every false judgment is an error, it is not properly an ignorance. It is at most an effect of ignorance, if it proceeds from ignorance. The false judgment may proceed, however, both from ignorance and from rashness in making a judgment which is

not in accordance with the knowledge from which a right judgment might have been formed.

It is not every ignorance which is sinful. It is not sinful not to know those things which one is not bound to know. A man is bound to know those things without a knowledge of which he cannot rightly do an act which he is bound to do. Hence all men are bound to know the articles of faith and the precepts of universal law. Individuals are also bound to know those things which belong to their state and office.

Since ignorance — including inconsideration, inadvertence, and forgetfulness—may be either vincible or invincible, error may be either voluntary or involuntary.

There are two ways in which a man may be *invincibly* ignorant. The first way is when the thought of enquiry into the truth of a matter does not occur to his mind, or when, even if the thought of enquiry does occur, it is not of such a kind as to make him think there and then that he is bound to inquire. This is most properly invincible ignorance. Another way in which a man may be invincibly ignorant, is when, suspecting his ignorance concerning something which he is bound to know, he uses moral diligence—that is to say, such diligence as is fairly within his power, and such as the importance of the matter demands—and nevertheless he does

not succeed in dispelling his ignorance. Moral diligence does not mean all possible diligence, but such diligence as is usually exercised by persons of prudence. Moral diligence is to be measured not only by the importance of the matter, but also by the qualities and opportunities of the person, since all have not the same capacity, and all have not the same means for learning within their reach.

The ignorance of a man who wills to remain ignorant, in order that he may have an excuse for doing something which he suspects may be a sin, or in order that he may not be restrained in his pursuit of sin by farther knowledge, is called *affected* ignorance. Such ignorance is clearly voluntary.

Ignorance does not excuse when it is either directly or indirectly voluntary. Ignorance is *directly voluntary*, when one studiously wills not to know, in order that he may the more freely sin. Ignorance is *indirectly voluntary* when by reason of the trouble of inquiry, or through pressure of other occupations, one neglects to learn that which would have hindered him from sinning.

Affected ignorance is not simulated or pretended ignorance. Affected ignorance is a real ignorance which has been studiously sought. Ignorance is not affected when the reason why a

man does not use diligence to inquire further is because he thinks that he has already sufficient knowledge of the matter. He may in so judging be guilty of error, for which he is responsible on account of previous negligence, but his ignorance is not affected. Vincible ignorance is called *crass* ignorance when there has been no effort, or scarcely any effort, to inquire or learn. When this crass ignorance is long continued, there is said to be *supine* ignorance.

There is less of the *voluntary* in crass and supine ignorance than there is in affected ignorance. There may, however, be enough for grievous sin, while even affected ignorance may be in some cases a smaller sin.

The gravity of the obligation to learn is to be weighed by the standard either of the gravity of the positive precept by which one is bound to learn, or of the gravity of the matter in itself. This will be the case when absence of knowledge may entail grave evils, as, for example, in the practice of a physician or a confessor, who is bound to have at least sufficient knowledge of his profession.

With regard to the guilt of sins which are done through ignorance, such sins belong to the class of sins which are voluntary—only in their cause. The guilt of them is the guilt which there was in the placing of the cause. The guilt is derived

therefrom, and is measured by the voluntariness that there was therein. The guilt is contracted —like the guilt of all sins which are sinful in the cause of them—not then when the effect follows, but then when the cause was sinfully placed. The guilt is then contracted even if from circumstances the effect should not follow. Hence confessors, physicians, advocates, and judges are equally guilty if they labour under culpable ignorance, whether losses result or not.

A man who remains culpably ignorant of those things which he is bound to know, remains in a habitual state of the same sin. His case is similar to that of a man who has not made restitution, when he is bound to restore; or to the guilt of a man who does not satisfy an obligation, under the pressure of which he continues to live. There is not, however, in him a continuousness of *actually* sinning. He sins actually only so often as he voluntarily either formally or virtually wills to be ignorant. This he does whenever a fitting occasion of learning or inquiry offers itself to him, and he adverts to his being bound thus to dispel his ignorance, and he nevertheless there and then neglects to learn, or to resolve to learn.

When, through repentance, the guilt of a culpable ignorance is gone, the ignorance which remains is merely a material sin. It has the

name of sin, since an ignorance which is in opposition to a precept is in itself objectively evil, as is every omission of an act which has been prescribed by lawful authority.

8.

Another thing which prevents, or which lessens, the *voluntary* in an act is—a movement of the sensual appetite. By this appetite a man is, by reason of his animal nature, inclined towards the seeking of some sensual good—which is apprehended by means of the imagination. The seeking of some sensual good includes avoidance of something which is unpleasing to the senses. This inclination is called concupiscence, and it may be either antecedent or consequent.

Antecedent concupiscence is that which is naturally excited by its object when it presents itself and appeals to the senses. The animal appetite for this object rises up and anticipates all deliberation, and all action of the will. It is, therefore, *not voluntary.*

Consequent concupiscence is that which follows from a previous act of the will. It is, therefore, voluntary. Concupiscence will be consequent when the movement of the will redounds to the animal appetite. Concupiscence is also consequent when one directly excites this appetite,

or fosters it when already excited, as, for example, by studiously keeping the thoughts fixed on an enemy, or on injuries received, so as to excite or increase hatred or desire of revenge.

Antecedent concupiscence interferes with judgment of the reason. It, therefore, lessens both merit and demerit, since both merit and demerit depend on a choice which proceeds from the reason. Passion clouds and sometimes fetters the judgment of the reason, and consequently diminishes the voluntary element in an act. If the act is a sinful act, the sinfulness of it is thereby lessened.

Since all the powers of the human soul are rooted in the one essence of the soul, when one power is intense in its own action, another power must be remiss, and may even be wholly hindered in its action. When, therefore, a movement of the animal appetite is intense, the movement of the rational appetite, or deliberate will, is correspondingly affected, and is lessened, if not wholly prevented. Passion concerns and concentrates itself upon, not the universal, but a particular object. Knowledge concerns the universal, and knowledge of the universal is not proximately the principle of any act. It is the principle of an act only as it is applied to that particular act. When

a passion is intense, it repels the contrary movement of knowledge with regard to the same particular act.

When any one of the passions is very intense, a man sometimes wholly loses the use of reason, during the continuance of that intensity. When this is the case, there is no judgment of the reason. There is, therefore, no voluntary element in the act. In the act there is consequently no moral value, or sinfulness. If this concupiscence was voluntary —having been the consequence of a previous act of the will which excited it—the sin in the act will be voluntary—in its cause. If the concupiscence was not voluntary, but natural and spontaneous—as movements of the animal appetite in those creatures which are merely animal are natural and spontaneous—the subsequent act will not be voluntary, and so there will not be in it any sinfulness.

In any case, when passion diminishes exercise of judgment, and consequently diminishes the voluntary to the same extent, the sinfulness or moral value of the act is diminished in proportion to the vehemence of the passion.

The principle of the voluntary is in the agent, and in him this principle is his deliberate will. The more this *interior* principle is active, the more grievous the sin is which is willed. The

more an *exterior* principle is active, the less the sin is, since there is in it less of the voluntary element. The act of sin is less willed, and less deliberately willed. Passion is a principle which is *extrinsic* to the will itself, while the deliberate movement of the will itself is an *intrinsic* principle, than which there cannot be any principle which is more intrinsic. The stronger, therefore, the deliberate will is in its movement towards the sinful act, the greater the sin is. The stronger the *passion* is which gives impulse to the will towards the sinful act, the less the sin is.

Consequent concupiscence—or a movement of concupiscence which is consequent on a previous act of will—does not diminish sin. The act of will preceded the act of concupiscence as a cause precedes its effect. When that act of will was sinful, sin preceded the movement of concupiscence. The sin was already perfected before that movement of the animal appetite arose. In the mere movement itself there is no sin. It belongs to human nature, and was implanted in it and ordained by the Author of nature. The evil that may come to be in it is derived to it from an evil will, and it is this already existing evil which is now, and by means of the evil act made manifest. The movement of the animal appetite is a sign of the intensity of the will,

which in this case excited the movement towards the act of sin.

When the movement of the animal appetite has not been studiously excited, and is only indirectly voluntary, through negligence in repressing spontaneous or naturally excited movements, the guilt is similar in its character to the guilt of a man who through negligence is culpably ignorant of those things which he is bound to know.

Sometimes the dominion or mastery of the will is complete, and sometimes it is incomplete. The dominion of the will is complete in those acts which are caused by command of the will, and which follow deliberation of the reason. The dominion of the will is incomplete in those acts which do not proceed from a dictate of the reason, but which nevertheless the will has it in its power to prevent. These acts are so far subject to the mastery of the will that the will might possibly hinder them. The inordination in those acts is therefore sinful, but not being completely voluntary, the sin is venial.

The very first movements of the animal appetites have nothing of sin in them. There begins to be sin then only when the will can resist and does not resist in obedience to a law. When the will begins to resist, the man merits.

In relation to unlawful movements of the animal appetite, the reason and the will may be

either resisting — prescribing — or simply not hindering. When the deliberate will resists with displeasure, and effort to repress, there is then no sin in those movements. When the deliberate will prescribes or excites the movement as of set purpose, the sin is mortal, if the disobedience to the law is mortal of its kind. When the deliberate will can resist and does not resist the unlawful movement, there is venial sin. There must be some sin, since a man is held as doing that which he does not hinder, when it is in his power to hinder that which is in opposition to a law.

9.

A third thing which prevents or which lessens the voluntary element in an act is—force. There is force when a man is compelled by some agent, so that he cannot do the contrary of his act. This is that necessity which is called *necessity of coercion.* In order to the existence of coercion through force, it is required, in the first place, that the principle of action, or that which moves towards the act, should be outside the agent. It is also required in order to the existence of coercion through force, that he who is compelled to act, or who is forcibly prevented from acting, should not only not contribute in any way to the external principle of action, but should resist

and strive against it with all the forces at his command.

Coercion is absolute when in spite of every effort the force cannot possibly be repelled. The coercion is not absolute, but is only partial, when it is possible to break the force, or at least to weaken it. It is not therefore wholly without will that the coercion is in that case suffered.

It is impossible for coercion to fall on elicited acts of the will, that is to say, on acts which proceed immediately from the will itself, as these are distinguished from acts which proceed from powers other than the will, at the command of the will. A thing cannot be at one and at the same time both compelled and voluntary, and all elicited acts of the will are supremely voluntary.

Coercion can fall on acts which have been commanded by the will, and which are exercised through other human powers. Acts of internal human powers are not—as regards that particular power by which they are exercised — the subjects of coercion. Those acts are not in opposition to the inclination of that power. They are not, moreover, done from any principle which is extrinsic to that power. They are in conformity with the natural appetite by which that power is inclined towards its acts. Those acts are coerced or forced *morally*, or as regards the

will. The will is unwilling and resists, while the acts themselves proceed naturally and spontaneously from their own powers of which they are acts.

Absolute force destroys the voluntary element in an act, nay, it causes the involuntary, since violence is directly opposed to the voluntary, as it is also opposed to the natural and spontaneous.

Incomplete or partial coercion does not wholly destroy the voluntary. It however more or less diminishes it. The less the impetus of the violence, and so the easier the resistance to the violence, the less involuntary, or the more voluntary, the suffering of the violence will be. It will be less voluntary, the greater and stronger the force is, and the more difficult it is to repel.

It may be that a man is able to resist the force in itself, and that with the opposing forces which he has at his command, while he is at the same time deterred from exerting those forces on account of consequences. In this case, his consent is given more from fear than from force.

When a man suffers, but not unwillingly, force which is absolutely invincible, there is in him the voluntary. Although he does not contribute to the act by action, he contributes

by his willing to suffer the force which results in that act.

10.

A fourth thing which affects the voluntary element in an act is—fear. Force affects the body, and also those powers of the soul which are not the will. Fear affects the will. *Slight* fear is the dread of some slight danger; or, if it is a dread of a great danger, it is dread of a danger which does not seem to be impending. *Grievous* fear is the dread which springs from a certain, or at least reasonable and prudent expectation of some great evil which appears to be imminent either to oneself or to one's own. It is such a fear as affects a man of constancy. *Absolutely grievous* fear is that fear which arises from the nature of the dreaded evil in itself. Fear may also be *relatively grievous* from the individual character of the person who is afraid. There are many evils which do not, as a rule, disturb a man of constancy, which would very grievously disturb a man of less strong character, or a man who is given to imagination and credulity.

A man is then compelled by fear when he does something which, if he were free from this fear, he would not do—and when he does it in order to avoid an evil which he dreads.

A man of constancy differs from an *inconstant* man as regards the kind of danger which may be feared. The man of constancy always follows right reason, and knows what ought to be done or to be left undone. Since it is always the less evil or the greater good that ought to be chosen, the man of constancy is borne towards the bearing of a less evil by the fear of a greater evil. He is not compelled to the doing of a greater evil for the avoidance of a less evil, as the inconstant man is. The man of constancy cannot, for example, be compelled to sin by fear of bodily suffering, since the greatest bodily suffering is a less evil than is the very smallest sin. A *pertinacious* man is a man who cannot be compelled to the doing of even a less evil for the avoidance of a greater evil. The man of constancy stands, therefore, midway between the inconstant man and the pertinacious man.

The man of constancy differs from the inconstant man also in his esteem of the danger which is imminent. The man of constancy is compelled only by a strong case, while the inconstant man is compelled by a weak case. The man of constancy is an intrepid man. It is not that he is not open to fear, but he does not fear what, or where, or when he ought not to fear.

The dread of offending, or of losing the approbation of those whom, by reason of their position, a man ought to love or reverence—such as parents, masters, or other superiors—is called *reverential* fear. Reverential fear also may be either slight or grievous.

Intrinsic fear may arise from infirmity of either soul or body. Those who are suffering in body are more prone to fear, than are other men who are not so suffering. Fear which is induced by the progress of disease, or by the approach of death, is intrinsic. The cause of the fear is within the man himself who has the fear. *Extrinsic fear* is a fear which has an extrinsic cause in some person or thing outside the man himself who fears. Even in a man who is affected by this extrinsic fear, there may, however, be also an intrinsic fear, as far as regards the excess of fear in him over and above that fear which the extrinsic cause is calculated to produce.

Fear caused by man may be either simply the reason why one wills a thing, or it may be directed towards extorting assent. In the first case, the consent is not extorted. In the second case, the consent is directly extorted by the fear.

Those things which are done from fear—induced either by a natural cause, or by some

person as a cause, are in themselves, and as a rule, *absolutely* or simply *voluntary*. To the merchant who casts his cargo into the sea to save his ship, *knowledge* is not wanting, nor is *will* wanting. Loving his life better than his goods, he *wills* to throw his goods overboard.

Acts which are done from fear may be *partially involuntary*, since that which is done from fear alone is not in itself pleasing to the will. It is not eligible. It is not chosen because it is pleasing. It is merely *allowed* for the avoidance of a greater evil. If this greater evil had not impelled towards the act, the will would never have inclined towards it. In this case, it is not the fear which properly causes the involuntary. It is the affection towards the object abandoned. This object would not have been abandoned, except through terror of a greater evil.

An evil deed done from fear is in a manner more pardonable, and the evil-doer is condemned more as weak than as wicked. If fear should wholly obliterate all use of reason, the evil act will not be voluntary. Even if the fear should only very much disturb the reason, the evil act will, in virtue of this hindrance, in so far fall short of its voluntary element.

II.

The liberty or freedom which is necessary in order that the acts of a man should truly and properly be *human* acts, and have a *moral* value, is a faculty of the soul which—given all things which are required in order to acting—has it in its power either to act or not to act. If any of those requisites for action is absent, the omission of the act is due, not to the free choice of the will, but to the impossibility of acting. If, with all the requisites for acting, a man had not the power not to act, his act would be necessary, and —not free.

Human acts are *moral* acts from their relation to the rule of morality or rightness. This rule of rightness is wider than is law. Law does not prescribe everything which is right in itself. There are many good acts which are not prescribed. This of course supposes the fact that in a sense or way all acts fall under law. Even as regards right actions which have not been prescribed, but which a man of his own accord and spontaneously wills to do, law prescribes that those actions should be done in accordance with the standard of reason.

The *material* goodness of an act is the accordance of that act with the rule of rightness, without regard had to the agent. The *formal*

goodness of an act has regard to the agent, and is—the conformity of the act with the rule of rightness, as the act proceeds from the free-will of the agent, and with his previous knowledge of that rule of rightness.

The elements and principles of a *moral* act, or those sources from which morality flows to a *human* act, are—the object of that act—the circumstances of that act—and the end of that act.

The *object* of an act is that with regard to which the will is concerned, as it is the matter of the act, and towards which the will primarily tends. The *circumstances* of the act are also set before the mind, but towards them the will does not *primarily* tend. If it did, the circumstances also would form an object of the act.

The *material object* of a moral act is that—whatever it may be, whether thing or action—with regard to which the act is concerned. The *formal object* of a moral act is the same, but as the act is subject to the rule of rightness as regards the agent, or as—with advertence by the agent to the rule of rightness — the action is knowingly and freely done by him.

The object of an act is in itself or objectively good or evil, as that act is in accordance or in disagreement with the rule of rightness. If an act has not in it anything whatever which belongs to

the order of reason—that is to say, anything in virtue of which it is reasonably sought after, or reasonably avoided—then it is indifferent, and neither good nor evil.

Some things are good in themselves and not merely inasmuch as they have been prescribed. They are prescribed because they are good, and that inasmuch as they are in accordance with necessary order. Some things are evil in themselves and not merely inasmuch as they have been forbidden. They are forbidden because they are evil, inasmuch as they are opposed to that necessary order which springs from the nature of things. The things thus prescribed or forbidden are *intrinsically* either good or evil. Those things which, being indifferent in themselves, and neither good nor evil, become good because they have been prescribed, or become evil because they have been forbidden, are said to be *extrinsically* good or evil.

There is one order which has its foundation in the nature of things, and this is an order which God Himself cannot alter. There is another order which is subject to the Divine disposal, and this order, since it is not absolutely necessary, it is possible for God to change. Thus the evil in taking away the life of another or the property of another ceases, if the right to take either of them has been given by God to him who takes them.

The *end* of an act is that by reason of which the act is done. The end is really included among the circumstances of the act. On account, however, of the principal place which the end of an act holds in morals, it is usually treated separately.

Not only the means towards the end of an act are subject to that end, but the object of the act, when that object holds the place of a means, is also subject to the end of the act.

The end of the act is proximately intended by the agent, and it is the formal object or scope to which the act in itself tends. Besides the end of an act in itself, there is also *the end of the agent.* This is superadded by the agent, when he adopts the act as a means towards the attainment of some end which he has in view. The two ends are identified when the agent has no end in contemplation which differs from the end of the act itself. Several ends may be superadded to the same act, when the end of the agent differs from the end of that act. He may take to an object which is in itself formally intended for some other end, and in so doing that other end is sometimes entirely set aside by him.

An *objective end* is—the thing which one aims at getting through the object, as that object is a *means.* A *formal end* is—the attainment and

possession of the objective end. An *ultimate* or *last end* is—that end which is not itself ordained towards any other end. It is simply an end, and is in no way a means, as is an end which is ordained towards another end. Such an end is not only an end, but it is also itself a means. An end may be the last in a series of ends, but if that end is ordained towards some other end outside this series, it is said to be only partially or intermediately a last end. A *positively last end* is an end which either in itself, or of the intention of the agent, excludes any and every ulterior end. An end which is not actually ordained as a means towards another end, but which is capable of being so ordained, is called a *negatively last end.* Of this we have an example in acts of virtues, other than charity, which are capable of being ordained, but which are not actually ordained, towards the ulterior and nobler end of charity.

A *primary end* is an end which not merely has the first place among ends, but which is of itself sufficient to move the agent towards the act which he has in contemplation. The primary end may be manifold. There may be several ends of an act, any one of which is in itself sufficient to move the agent to the doing of that act. Hence a primary end is distinguished from an end which is *the total cause of*

an act. When an end is the only and complete reason for an act, this end is said to be the total cause of that act—by totality of *cause.* When the whole of the act depends from one end, but might have equally depended from another end, the end from which the act actually depends is said to be the total cause of the act —by totality of *effect.*

A *secondary* end of an act merely *impels* towards that act, along with another end.

By the *circumstances* of a human act are to be understood any conditions which exist outside the substance of the act, but which are, nevertheless, in some way in touch with the act itself. The circumstances of an act suppose the act as already constituted in its nature, and as having its species from the object to which it tends. Hence the circumstances of human acts are called *accidents* of those acts. As accidents give to the substance to which they belong some perfection, or as they lessen the perfection of that substance, so do circumstances to the acts of which they are the circumstances. The circumstances of human acts may be reduced to seven, and these are indicated by the interrogative words Who ?—What ?—Where ?—By what aids ?—Why ?—How ?—When ?

Who ? denotes not an individual as such, but

a man of some particular class or state, cleric or layman—married or single—or bound by vow. *What?* regards the accidental quantity or quality of the object, or effects which follow. *Where?* refers to the character of the place in which the act is done, except in a case when from the character of the place the whole of the substance of the act of sin is derived. *By what aids?* has regard to the instrumental cause, or to the means used. *Why?* indicates an extrinsic end. *How?* has reference to the mode of the act, and also to full or partial advertence—to a right conscience or to an erroneous conscience—to the remissness or the intensity of the act—and to force used in the doing of the act. *When?* refers to the circumstance of time, and may refer either to the duration of the action, or to a circumstance which is extrinsic to the action, such as the sacredness of the time at which the act was done.

A circumstance may be in touch with the act of which it is a circumstance, either as regards the act itself—or as regards the cause of the act—or as regards the effect of the act—as will appear on consideration of the seven classes to which all circumstances of human acts may be reduced.

The *primary* is that which gives to a thing

its *species*. A natural thing has its species from its *form*. An act has its species from its *object*. Motion has its species from its *terminus*, towards which it tends, and in which it ends. The primary goodness or badness of moral acts is derived from the *object* of those acts. The chief circumstance of those acts is the end or reason for which they were done.

The acts of a man are properly *human* acts, as they are voluntary or, in other words, as they are acts which proceed from deliberate will. The motive and object of the will is the end which is set before the will. Hence that is the chief of all the circumstances of an act which is in touch with the act as regards its *end*, for the sake of which it is done. That is a secondary circumstance of an act which is in touch with the substance of the act, or that which is done by the act. Other circumstances are more or less *principal* circumstances, as they more or less approach to these.

Circumstances produce certain effects on the acts of which they are circumstances. A *new species* is given to an act by a circumstance, when the nature of the goodness or the badness which is derived from the circumstance is of a different order or species from the goodness or badness of the object of the act. St. Thomas says that

such a circumstance is then a specific *differentia* of the moral act, and so loses the character of a circumstance, and constitutes a *species*. We, however, commonly speak of certain circumstances as *circumstances which change the species* of a moral act.

This is the reason why a single sinful act may be manifold in the species of it. One act of sin may, for example, be contrary both to justice and to religion. To a wickedness of one order in an act, a circumstance of that act may add another wickedness of a different order.

When, moreover, the sinfulness of an act, which would have been grievous by reason of the object of that act, becomes slight in virtue of a circumstance of the act—or when, on the other hand, the sinfulness of an act which is slight by reason of the object of that act, becomes grievous through a circumstance—the circumstance in either case transfers the act to another *theological* species. *Theological* species have reference to the grievousness or slightness of sins. *Moral* species are diversified in accordance with the various objects of them. Theological species may therefore have place within the same moral species, that is to say—there may be both grievous and slight sins in acts of the same species of wickedness.

The imperfection of an act as a *human* act

or act of deliberate will, effects a change of theological species, inasmuch as it excuses from grievous sin. So also does smallness of matter in sins which of their kind are grievous sins. These sins must, however, be such as may of their nature admit of smallness of matter. A sin which of its kind is slight never becomes grievous in virtue of a circumstance of the sinful act, unless when that circumstance adds a deformity of another kind, and that other kind is a grievous kind.

A man then directly intends *the good*, when he wills the good *under its idea* of the good. This is not as if reflection were necessary in the mind of the agent in order to intention, but inasmuch as he wills the good, being allured by its goodness. It matters not whence this goodness may be derived, whether from the object of the act, or from the circumstances of the act. In order to the badness of an act, on the other hand, it suffices that the badness should be *indirectly* voluntary, since a man is not only bound not to will badness, but he is also bound to hinder and avoid badness. Recollection of this is of practical use with regard to sins of omission.

12.

In morals it is the *object* of an act which constitutes the *species* of that act. This the object

does, not as it is in itself materially, but formally as it is apprehended by the reason, as being either good or bad. Hence a man who with deliberate will does an act which he thinks to be a sin—although erroneously, since in reality there was no sin whatever in the act—commits a sin. In the same way, when a man does an act in which he thinks there is no sin—although he is mistaken, since in reality there was sin—he does not by that act commit a sin.

An act which is good in virtue of its *object*, and which is also dictated by the will for a good *end*, has a two-fold goodness. Besides the essential specific goodness of the object, the act has an accidental goodness derived to it from its end. Each of those goodnesses is intended by the will, and the one kind of goodness does not interfere with the other kind of goodness. The two kinds of goodness are compatible, and may be found in the same act. For the same reason, an act which is evil in its object will, if it is directed towards an evil end, have in it a two-fold wickedness.

An act which is indifferent as regards its *object* takes its goodness or its badness from its *end*. An act which is either good or indifferent in itself and as regards its object, may become bad both from its end and from its circumstances. An act which is bad in itself is not

made good by the goodness of its end. end which is only slightly evil is the *total* of an act which, apart from that end ai itself, is materially good, this end totally vit that act. He who so acts wills the good u the idea of the evil, and it is for the sake of evil alone that he wills the act. His wil therefore wholly evil.

When an act, of which the object is not mei materially good, but formally good—that is say, apprehended as good by the reason—has, the end for which it is done, an end which slightly evil, and this end is not the total ai immediate reason why the act is determine on, that act is partly good and partly bad. Suc an external act is single in its nature, as it i an act, but it is manifold in the moral order If it were single in the moral order, it could not be at once both morally good and morally bad. An act of will which is slightly evil may be subsequent to an act of will which was previously good, and may not vitiate that previously good act. It may even precede, but if it does not inform the act which reason dictates, it will, nevertheless, not vitiate it. The evil act of will is, in that case, so *extrinsically* present as to be an *occasion* rather than a *cause* of the subsequent act. Much less is an act which is not only materially but formally good in its object,

corrupted, if that act should have something which is indifferent as its secondary end, unless that end were the total cause of the act. Neither is the goodness of an act wholly corrupted by a badness which attaches to the act accidentally through one of the circumstances which surround it. That circumstance is extrinsic to the act. It neither dictates the act, nor does it infect the will which tends towards the goodness which there is in the act. That intrinsic goodness remains in the act, or at any rate it has not wholly departed from it.

13.

Supernatural acts are human acts which are done by a man with the aid of God's grace. This grace is supernatural, inasmuch as it is superadded to the powers, the faculties, and the forces of nature. Acts which are supernatural are also in some way ordained towards the eternal salvation of those who do them. Such acts cannot be indifferent acts.

Certain acts are *morally* good which, nevertheless, do not merit eternal reward, for this reason that the men who do them are not in the state of grace. There are also certain acts which are *morally* good, and which, nevertheless, in no way merit in the supernatural order. Among these are the good works of infidels. Those works may be

pleasing to God, although they are not meritorious of supernatural reward. Even among supernatural acts, there are some acts to which, although they are good acts, the reward of eternal life is not due. Such are acts done with the aid of actual grace by those who dispose themselves for entering or for re-entering the state of habitual grace, which is that sanctifying grace which makes men holy. Acts which are not meritorious are not, therefore, to be confounded with acts which in themselves are evil.

There are different degrees of moral goodness, and these degrees are so related the one to the other that when one is subtracted the other does not thereby vanish, although the act to which it belongs becomes less perfect. It is sufficient in order to the existence of *moral* goodness, that an act should be such as befits a man. There must be in the act nothing which is opposed to the good which beseems a man, in accordance with right reason. There should be in the act no sin, either by way of excess, or by way of defect.

That man should spontaneously tend towards good things which are in accordance with his nature, is in consequence of his nature. He is inclined towards this end by the Author of nature. The office of man's reason is to see that in so tending there should be nothing

inordinate, but everything in due measure. When there is neither excess nor defect, his tendency is right. Practically, therefore, that is to be reckoned by a man to be good which does not appear to him to be evil.

If that which reason dictates is apprehended as not directly falling under either precept or prohibition, it is not, when it is done, done directly *contrary* to the conscience. It is done *beside* the conscience. In this case a man does not sin mortally. If he sins, he sins only venially. It may be that he does not sin at all. When, for example, a man's conscience dictates to him that it would be good to do a certain work of counsel, he does not sin by not doing that work of counsel. He has not apprehended it as a work which is due from him and necessary to his salvation, as it would be if it fell under precept with obligation under pain of mortal sin.

If the omission of a good act is simply and solely an omission—that is to say, a will not to do an act which has not been prescribed—and the end of this omission is reasonable, the omission will be good. If the end of the omission is not reasonable, the omission will be a venial sin, not as if the act omitted had been prescribed, but because it is of precept to have in every act—and so in every deliberate voluntary omission—a right end.

Every individual act must have some circumstance by which it is drawn either towards good or towards evil, at least as regards the intention of the end. Inasmuch as it belongs to the reason to give order to human acts, an act which proceeds from deliberate reason is, if it is not ordained to a due end, thereby opposed to reason. It has, therefore, in it the idea of evil. If the act is ordained towards a due end, it is in conformity with the order of reason, and hence it has in it the idea of moral goodness. Every human act must necessarily be either ordained or not ordained towards a due end. It must, therefore, be either morally good or morally evil.

14.

It belongs to the precept of charity, whereby God is to be loved with the whole heart, that all things should be referred to Him. Unless all things are so referred, that precept cannot be fulfilled. In order that a human act should be meritorious of eternal reward, nothing farther is required than that the man who does the act should be in the state of grace. By this is satisfied the obligation of referring all his acts to God. If a man is in the state of grace, he has habitual charity, and by an act of charity he refers himself—all he has and all he is—to God. In virtue of this first act, all his subsequent

human acts are sufficiently ordained towards God, so as to be meritorious of eternal reward. This his acts will be even if, while doing them, he is not thinking either of God or of charity. It is sufficient if his will is merely borne towards the action as it is a right action. If a man does deliberately an act which with reason appears to him to be morally good, although he is not moved to acting, or is not directed in his action except by the motive of the rightness of that virtue which he is then exercising, it is sufficient. Nay, it is sufficient if he is moved to act solely by a general apprehension of moral good. That apprehension comes to this, that in the act he does not apprehend sin.

Virtual reference of acts to God in the present is constituted by one act of theological charity in the past. There is no need that that act should have had explicit reference to any series of acts of the future comprehended under any one particular end. All a man's future acts were comprehended in the man's dedication of himself to God and His service. By that one act of charity he individually and voluntarily accepted God, who is by Divine right the last end of all things, as his own last end. That ordination by him of himself and of all his acts perseveres so long as the man retains the habit of charity. This he does so long as he remains in the state of

that habitual grace which sanctifies or makes him holy. All the acts which he does in this state of grace remain, in virtue of that ordination in the past, ordained or referred to God. The ordination towards God continues and endures until it is retracted or excluded by a contrary act, or in other words by a mortal sin. Until this takes place, every human act of his either is meritorious, or is at least a venial sin. No human act of his is indifferent. Every act of his which is morally good springs from that charity which every one has who is in the state of grace. The only good acts of a man which can be indifferent as regards merit, or can be neither meritorious nor demeritorious, are the good acts of one who is not in the state of grace.

An act of any moral virtue tends towards its proper object by reason of its own rightness. It nevertheless, implicitly, and of its own nature, and without any other act, tends at the same time towards God. For this there is no need that it should be again *expressly* ordained towards God.

An act is sufficiently informed by charity to be meritorious, even if it is done for the end of another virtue which is not charity. Not only are acts of charity itself meritorious, but acts of other virtues also are meritorious, as they are informed by grace. They cannot indeed be meritorious

except as they are reduced to the end of charity. There is no need however that they should always be *actually* reduced to that end. It is sufficient to make them meritorious that they should be reduced to the ends of other virtues. Those acts of other virtues tend towards that Supreme Good who is the object of charity, and all virtues are reduced to the end of charity. Charity stands related to all the other virtues as their mover—as their end—and as their form.

Charity is the *mover* of the other virtues, inasmuch as the good, which is the object of charity, is the end of all virtues. Charity is the *end* of the other virtues, for the end of an inferior power or habit is ordained to the end of a superior power or habit. Hence charity is called the "end of the precept." Charity is the *form* of the other virtues, and perfects every one of them in its idea as it is a virtue. An inferior power has not perfection of virtue, except as it participates in the perfection of a superior power. All virtues which are meritorious of eternal reward are in powers which are subject to the will. These powers participate in the perfection of the will, and the will itself is perfected by charity. Charity is, therefore, the form of all the other virtues, and it becomes the form of them as it is the mover and the end of them.

To offer one's principal actions to God—to

renew this intention several times a day, or at least at the beginning of every day—to act in every separate work from a distinct supernatural motive—and to act always from perfect, or at least initial, charity—is very excellent by way of counsel, for God's greater glory, for the greater perfection of our works, and for their more abundant merit; but it is in no way of precept. Then only are men bound to re-dedicate themselves to God, and by that act to refer all that is theirs to the glory of God, when the obligation presses upon them of eliciting an act of charity itself. The law of referring one's works to God is not more binding than is the precept of charity itself. This truth—the sufficiency of one act of will which issues in an act of charity—displays in clearest light the fact that the will, that noblest of human powers, is stable in its operation. It is not volatile, nor does it vacillate. It is not moved without a motive. Its intention is not interrupted, nor does it evaporate or evanesce through lapse of time. When the will is once set in one direction, it remains so set, until from a motive of equal efficacy it turns itself away.

From our analysis of human acts we discern the measure of human responsibility. The central standpoint is the truth that all morality is in the deliberate will. All sin is rooted in,

and springs from the will. There is no such thing as a sin of imagination, or a sin of thought. The sin is in the willing to imagine or to think. A man cannot deliberately will to imagine or to think without his knowing, and with certainty, that he is so willing, and that he has so willed. In the absence of this certainty, he has the comfort of believing, and with solid reason, that whatever may have been his frailty, he has not set his will in opposition to the will of Him who made him. He has a right to that peace which belongs to men of good-will.

CHAPTER II.

Conscience.

THAT act of the human intellect by which a man judges that something ought here and now to be done by him—as being good, because it has been prescribed—or to be left undone by him as being evil, because it has been forbidden, is called—conscience.

Conscience differs from that law which is imbedded in human nature, and which is therefore called—the natural law. Knowledge of the first principles which are contained in this natural law is the natural heritage of every human being. It belongs to him in virtue of his possession of human nature. He enters on this knowledge when he becomes capable of knowledge. He has not to learn it. He needs no teacher. He has not to find it out. It is identified with himself in so far as that, apart from his possession of it, he would not be completely human, or all that a man may naturally be.

This natural law consists of universal principles of law. It is a natural habit of speculative principles.

The human intellect is, in its functions, both speculative and practical. As *speculative*, the intellect apprehends truth. It does not concern itself with the bearing of truth on action. It contents itself with arriving at a knowledge of truth. In that it rests. The same intellect, as it is *practical*, ordains this speculative knowledge towards action. It bears upon the human will. As moving the will to action, knowledge is the *motive* of the will which issues in a human act.

Conscience is the application of the natural law, by the practical intellect, to an individual act which presents itself as either to be done, or to be left undone. The application is made by way of reasoning, as a conclusion is deduced, or brought out from the premisses in which it is contained. Conscience thus applies general principles to a special case. This is what is meant when it is said, by way of definition, that—conscience is a practical dictate of the human reason.

Colloquially men speak of conscience as if it were a power or faculty of the soul which is distinct from the intellect or reason. Conscience is, nevertheless, neither a power, nor a faculty, nor a habit. Conscience is an act.

Conscience is an act of the human intellect, as that intellect is practical, and applies its speculative knowledge of general principles to

particular cases of human acts which present themselves to the mind as either to be done, or to be left undone—as they are good or evil, because prescribed or counselled on the one hand, or forbidden on the other.

Besides the judgment which precedes an act, with regard to the rightness of that act, there may also be a judgment of conscience with regard to the rightness of an act which has been already done. This judgment is a practical dictate of the reason which gives guidance with regard to the rightness of similar acts in the future. It does not react upon the act of the past. The formal goodness or badness of that act, was determined by the conscience which *preceded* that act. When that act is recalled by the memory to the mind, and brought under review, conscience declares its material goodness or badness. Conscience does not alter the formal goodness or badness which the act had at the time when it was done. This, conscience can neither add to, nor take away. It does not and it cannot make that act to be other than that which it then was in virtue of the conscience which preceded it.

St. Thomas assigns to conscience various functions or offices, as it either precedes or is

subsequent to a human act. These functions follow from an application of that which a man knows to that which he has done, or is about to do. When he recognises that he has done or not done some particular act, conscience *bears witness*. When he judges that something ought to be done by him, conscience *instigates* him to do it, or *binds* the doing of it as a burden upon him. When he judges that something done by him was well done, or was ill done, conscience either *excuses* or *accuses*. Conscience blames also, and conscience causes remorse.

2.

Conscience is usually right, and dictates that which is true. It is sometimes, however, not right, and dictates that which is in reality at variance with fact. It is then called an *erroneous* conscience.

Conscience is vincibly, and therefore blameably erroneous, when an error of judgment which ought to have been avoided, could have been avoided. Conscience is erroneous invincibly, and therefore involuntarily and blamelessly, when the error could not possibly, in the circumstances of the case, be avoided. Such a conscience, although it is in itself erroneous, is relatively right. It is right in relation to him who judges.

Conscience is *speculatively* true, when it is in conformity with fact, or with the truth as it is in reality. Conscience is *practically* true, when it is in conformity with a right will. This it is, even when a man acts in obedience to an invincibly erroneous conscience. Conscience is then speculatively (or physically) false or erroneous, but it is nevertheless practically (ethically) true.

Erroneous conscience can have place with regard to matters both of precept and of counsel. It cannot take place with regard to the first principles of the natural law, which are known by nature.

In speculative knowledge, there cannot be error in particular conclusions which are drawn directly from universal principles in the same terms. It is a universal principle that—the whole is greater than its part. If that—this thing is a whole—is an admitted fact, there cannot be error in the conclusion—this thing is greater than its part. In like manner, there cannot be error in the immediate application of first principles of the natural law, that is to say, in immediate conclusions which are drawn directly from those first principles of law, which are known by nature. It is a first principle of natural law which is known to every man, in virtue of his possession of human nature, that—injury is not to be done to any man. That—this

person is a man—is an obvious or admitted fact. There cannot, therefore, be error in the conclusion that—injury is not to be done to this person.

Conscience is always to be obeyed by doing the act which it prescribes, and that not only when the conscience is right, but also and equally when the conscience is invincibly and therefore blamelessly erroneous. This obligation endures as long as the erroneous conscience continues to exist. If conscience is in either case disobeyed, sin is committed. He who acts contrary to conscience—whether the conscience is erroneous or right, it matters not—has a will to violate the law of God. In this will the sin consists, even if in reality there is no such law of God to be violated. If the minister of a king lies in representing his own command which, as a matter of fact, is contrary to the will of his master, to be the precept of his master, that king's subjects are nevertheless bound to obey the edict which has been falsely intimated to them, so long as they erroneously believe it to express their ruler's will. In so doing, they are truly exercising their loyal obedience to their sovereign. In like manner, that which an erroneous conscience dictates, although it is not in reality in conformity with the law of God, is nevertheless conceived as if it were a law of God. If this dictate is disobeyed, there is opposition of

the will to the will of God, which is supposed to be expressed thereby. The sin of the act is of that species which the mind there and then apprehends as belonging to the act, and which would, in reality, belong to the act, if it were done in defiance of a right conscience, and so of a true Divine precept.

The *object* of the human will is that which constitutes the species of sinfulness in an act, not as that object is materially, or in itself, but as it is apprehended, or known and intended. The object of the will is formally good, or formally evil, as it is imagined or understood to be either good or evil. It is from this apprehension, and the will which follows upon this apprehension of the mind, that a human act derives its moral value.

A dictate of conscience is more binding than is the precept of a superior or a sovereign. It binds with the force of a Divine precept, which it is conceived to be. It must, therefore, be obeyed, even if it is contrary to the precept of any or of every human superior.

There is no difficulty in conceiving the co-existence of a good-will with an act which is not good, when the will is regarded as formally or morally good, and the act as only materially or physically not good. The act is not deprived of the moral goodness which is derived to it

from the will, by an error of judgment with regard to fact. Hence, as St. Thomas says, acts which are evil in themselves, but which are done from an erroneous conscience, are virtuous acts, and they merit.

If a man's conscience with regard to an act is vincibly and therefore *blameably* erroneous, he is not free from sin, whether he acts in accordance with his erroneous conscience, or acts contrary thereto. If he disobeys his erroneous conscience, he sins inasmuch as he then wills that which he thinks to be a violation of the law of God. If he obeys his erroneous conscience, and so violates that which is in reality the law of God, his ignorance or error being blameworthy, he is not excused from sin. He is in no way, however, to be regarded as subject to the necessity of sinning either way, either in the one way or in the other. His ignorance being his own fault, since it could have been avoided, and ought to have been avoided, his error of conscience can and ought here and now to be disposed of. His blameable ignorance is in itself a sin, as it is a voluntary ignorance of a thing which he is bound to know. This sin, moreover, remains always present, whether he acts in accordance with his erroneous conscience, or acts contrary thereto. The sin in acting in accordance with that blameably erroneous conscience, is not then

committed in the moment when he so acts. It was committed in the past, but it perseveres in the present. His guilt is therefore the guilt only of his previous sin of blameworthy ignorance. If, on the other hand, he disobeys his erroneous conscience which sprang from that ignorance, his sin is two-fold. In this way the man sins more grievously who acts *against* his erroneous conscience. The previous sin of ignorance is common to both obedience and disobedience. There is in the latter the added sin of violation of that which he believes to be a law of God.

If the previous sin of ignorance has been repented of, and if in the interval there has been sufficient diligence to dispel the ignorance, although his efforts have not resulted in success, his present error will be equivalent to an ignorance which is invincible. It is no longer voluntary and blameworthy. In the effect of it there will not therefore now be any sin.

3.

A *doubt* is a suspension of assent with regard to a matter which is under consideration. A doubt may be either speculative or practical. A doubt is *speculative* and universal, when a man doubts in general whether certain things are lawful. A doubt is *practical* and particular, when he doubts whether this particular act is lawful, under these particular circumstances.

Since a doubt is a suspension of assent, it is opposed not only to certainty, but also to any assent or *opinion.* A doubt is likewise to be distinguished from an inclination to assent, which constitutes—a suspicion.

There is *certainty*, when the assent is firm, and when there is no dread of the opposite turning out to be true. This alone is *assent*, properly so called. When there is some assent, but it is not altogether firm, and there exists along with some assent some dread of the opposite turning out to be in reality the truth, then there is—opinion.

It is not the same thing to have a *doubt* as it is to have an *opinion.* An opinion has some inclination or leaning towards both sides of the question in a controversy. A doubt does not incline to either side. It is a suspension of assent. An opinion is borne towards one side, although there is in it a dread that that side may possibly be the wrong side. A doubt fluctuates between the two sides. An opinion adheres to one of the two sides so long as it remains an opinion. It ceases to be an opinion, when the uncertainty which attaches to it is dissipated by the certainty which either confirms it or destroys it. If confirmed, it ceases to be a *mere* opinion. If destroyed, it ceases to be *even* an opinion.

When a man understands a truth, and knows with certainty that it is true, he says, It is so.

When he has only an opinion, he says, It appears, or seems to me to be so.

Doubt may arise from defect of motives to justify or to compel assent. It may also arise from the seeming equality of the motives which present themselves to the mind. The one motive seems to counterbalance and neutralize the other. This is equivalent to an absence of motive, and assent remains suspended.

A *suspicion* differs from an *opinion*, at least in degree, if not in kind. It also differs from a *doubt*. A suspicion is an inclination, not of the will, but of the judgment. Although a suspicion is an inclination, it cannot be called an assent or adhesion. In this as in other matters, that may incline towards a thing which does not adhere or cleave to that thing. A suspicion, therefore, differs from an opinion, inasmuch as it is not an adhesion to that which is suspected may be the truth, but only an inclination towards it. In virtue of this inclination of the mind, a man cannot say—It seems so to me. He can only say—Perhaps it may be so.

A *suspicion* differs from a *doubt* inasmuch as doubt is suspension of assent to either side of a question. In a suspicion there is not a mere suspension of assent, but a true inclination of the mind towards one side, on the ground that perhaps that side may be the right side. This

inclination however is not such as to result in even that adhesion of the mind which there is in an opinion.

The human mind can be occupied in two distinct ways with regard to a *practical* truth, or a truth which is the motive of an action. The mind may rest and remain in contemplation of the truth itself, and simply as it is a truth. The mind may also regard this truth as it is a directive model and standard, or rule of action. In the first case, the mind concerns itself with that truth *speculatively*. In the second case, the mind considers the same truth under its *practical* aspect. It is not as if there were two distinct truths—the speculative and the practical—before the mind. There is one truth, under two different aspects. The speculative truth is a practical truth when it is reduced to practice in action. The difference between a speculative truth and a practical truth—to use terms which are commonly employed—is therefore in the attitude of the mind towards the same truth, as that truth is or as it is not directive of an act which is in contemplation. Hence, as a doubt is a suspension of assent with regard to a truth, the doubt may be either a *speculative* doubt, or a *practical* doubt.

Conscience is then *practically* doubtful when a man is in doubt whether he is doing well or not

well in the doing of a particular act. His conscience is *speculatively* doubtful, when, apart from any question of action, he is in doubt whether certain things are lawful or are not lawful. He may also be called speculatively doubtful even in the doing of the act, so long as his conscience does not direct the act.

Doubt is not mere suspension of assent, but suspension on account of the perceived insufficiency of the reasons for a judgment on either side. Doubt is, therefore, founded on a judgment with regard to the uncertainty or obscurity of the matter.

He who acts with a *practically* doubtful conscience, sins. He sins, moreover, with that species—both theological and moral—of sin concerning which he is in doubt. He sins because he exposes himself to the peril of sinning formally. It is wrong to expose oneself to the peril of even materially violating a law. To this peril one exposes himself who acts not knowing whether his action is in conformity with, or is in opposition to, the law of God. He who has a practically doubtful conscience, knows that he is in ignorance of the law which concerns the act which he has in contemplation. He is, therefore, bound to inquire into this law before he acts. He is guilty if he neglects to dispel his ignorance, when he has the means or power to do so.

He who is bound to observe a law is bound to have knowledge of that law. He who is bound to know, and knows not, is bound to inquire.

4.

In order that a man should have a right will in any action, it is necessary that he should follow the judgment of a conscience, which is *practically certain* with regard to the rightness of the act which he has in contemplation. If he has made diligent inquiry, and then comes to a judgment which is such as becomes him as a man of prudence, this judgment is of itself sufficient to exclude all possibility of sin for which he should be responsible in the act which he proceeds to do. When he is thus certain that there is no risk of his sinning by his act, he is thereby certain of the rightness of that act as done by him.

A man is acting with prudence who acts in accordance with the knowledge which he finds within his reach, when he cannot arrive at farther or fuller knowledge.

It is a certain principle, moreover, that a man who uses the utmost diligence that can in fairness, and considering the circumstances, be demanded of him, is not bound to farther investigation. He is, therefore, not responsible even if it should turn out that in reality he was

in error. If, after such diligence, he has sufficient reason in prudence for believing that the act which he is about to do is right, there comes in the principle of law, that laws do not bind, unless they are known with certainty to be laws. The existence of a law is not known with certainty when there is a grave and prudent reason to suggest the non-existence of it, and that what is imagined or said to be a law is in reality not a law.

Disobedience is wilful transgression of a known law. A man cannot be responsible for any error in his knowledge, if in him there has been no defect as regards his obligation to inquire. There cannot, therefore, be disobedience on his part when, as the result of his inquiry, he has no certain knowledge that any law exists to forbid his act.

When a man finds an opinion obtaining among his fellow-men—and he has sufficient reason to assume that it is a prudently formed opinion—that an act, which is the same in kind as that act which he proposes to himself to do, is not evil, he is at liberty to form a practical conscience, and to act in conformity with that opinion. So long as he thus prudently judges that no law exists which either forbids or prescribes, as the case may be, the act in question, such a law, if any there be, has not been sufficiently promulgated or brought home to him.

An opinion which is prudently formed is an opinion which rests either on the grave authority of the men who hold it, or, apart from their authority, on some solid reason of its own.

The certainty of conscience which justifies an act, and which he who does the act ought to have, is not a speculative, but a *practical* certainty. A man can rightly and prudently follow the opinion of others, as against his own opinion. He is not to regard the reasons for his own opinion as if they were evident demonstrations. If they were, the question of rightness would be no longer matter of—opinion. The reasons for the opinions which are contrary to his would, in that case, be destitute of all foundation. With these reasons those opinions would fall to the ground. They would be no longer opinions, but evident errors, or transparently false judgments. The security of an opinion which is reduced to action consists in this, that he who acts upon it is in no way offending God. A man cannot be offending God by acting on an opinion which he has sufficient reason to assume has been formed with prudence. Hence among any such opinions, there is no one of them which is formally safer or formally more secure than is another. All are equally secure.

It is an axiom, indeed, that—in doubtful matters the safer side is to be chosen. But

here there is no question of *practical doubt.* That man is *practically certain* who has been able to gather from certain practical principles, that either side is in practice safe. Even if he is speculatively doubtful, he is practically certain, since where there is absence of undoubted evidence, the only obligation which lies upon him is that of acting with prudence. This he most certainly does when he acts on an opinion which he can suppose with reason to have been prudently arrived at by other men.

An opinion for the formation of which the motives are fewer in number, or are of less weight than are the motives for an opinion which is contrary to it, is, nevertheless, not thereby deprived of all weighty motive. It remains, therefore, worthy of a man of prudence. It rests on a solid, although not wholly certain, foundation. There is no convincing reason against it, which is sufficient to overthrow it. It must rest upon a motive, otherwise it would not be an opinion. There would be nothing to induce that assent which constitutes an opinion. A weighty motive is such a motive as is sufficient to determine a man of prudence. If it is a reason which is weighty in the estimation of men who are reputed as men of skill in the matter which it concerns, it ought to have weight with other men, if their minds are rightly disposed.

An opinion has weight *from within*, when the motives for it are derived from the nature of its object, and its properties, its causes, its effects, or its circumstances. Weight *from without* may also be derived to an opinion from the testimony or authority of public teachers, who have held or taught that opinion. It is prudent to follow an opinion which has weight from either source. Usually, however, an opinion which has weight from within has also added to it the weight of authority from without. Authority always supposes a weighty reason from within. If it could be shown to demonstration that there is no reality in the reason—as in the case of the reason alleged being proved to be spurious—the authority would, thereby, be deprived of all its weight.

It is prudent to follow the opinion of even one public teacher, whose opinion is contrary to the common opinion, if that teacher is noted as skilled both in natural and in positive law—and is known, moreover, to be in the habit of resting his judgments on solid reasons—and has, further, the reputation of being a lover of truth and not of novelties—and appears to have thoroughly threshed out the question, and to have at least weakened the arguments of his opponents.

The prudence of an opinion is *certain* when it

is generally regarded as prudent by authors of reputation, and so long as the Church tolerates it, and has not condemned it. The prudence of an opinion is *doubtful* if there is general doubt among the prudent with regard to the solidity of the reasons which support it—or with regard to the authority of the public teachers who hold and defend it—or if it is a singular opinion of an individual author who has not shown sufficient reason for holding it.

Among contrary opinions, the prudence of acting on any one of which is certain, there are degrees of difference with regard to the weight of the reasons on which the opinions severally rest. Sometimes that weight is equal. In the case of two opinions, one of which has greater weight from within, while the other has greater weight from without, the first opinion is regarded as having the more solid foundation of the two. The force of authority is itself founded on presumption of the weight of the reasons for the opinion which the author or authors have adopted.

When an opinion has a greater weight of reasons for it, and although it, being supported by these reasons, thus rests on a more solid foundation, it nevertheless, and from the very fact of its being an *opinion*, includes at the same time a prudent dread of the opposite opinion

being possibly true. The better supported opinion does not therefore deprive that contrary opinion of all foundation, nor does it lessen the true weight which belongs to the reasons by which that also is supported. An opinion may, however, rest on reasons which are so weighty as to cause the contrary opinion to have but slender foundation. Nevertheless, even then when an opinion has for it the most weighty reasons — whether in comparison with other opinions on the same matter, or simply as it stands by itself—that opinion never rises above the level of an opinion, nor has it ever more than the force of an opinion. It holds the principal place among opinions, but so long as it does not absolutely exclude all prudent fear that the contrary may possibly be true, it remains—merely an opinion. When all prudent fear is excluded, the judgment has ceased to be an opinion. It has passed out of the region of opinion into the sphere of absolute certainty.

5.

We have seen that it is a principle of law that —a doubtful law does not bind. A man who has a prudent doubt with regard to the existence of a law, is certainly not bound by that alleged law. The existence of a law has to be proved. Arguments have to be sought and found not for

freedom, but for obligation. A man remains certainly free, until he finds himself and as certainly bound. Whenever a law does exist which forbids an act, an opinion which favours freedom is of course untenable. There has however first to be proved the existence of that law. A prudent opinion in favour of the freedom of a man to do an act which he has a mind to do, militates—not against a law, but—against the opinions of those who assert that there exists a law which hinders him. Laws are to be observed as laws. Opinions are to be dealt with as opinions. Opinions can never have the force of law.

We must make a distinction between two sets of eternal laws. One eternal law is absolute in itself, and *antecedent*, and disposes matters independently of all error in the human mind. Another eternal law is *subsequent*, and ordains matters from the point of view of God's observation of human error of judgment. That which God prescribes by *antecedent* law He does not will those men to be bound to, who are in invincible ignorance of the existence of that antecedent law. They are not comprehended under that law. God wills men to be bound by His laws in proportion as the knowledge of these laws exists in their consciences.

The man, therefore, whose conscience, availing itself of a prudently formed opinion, dictates to him that in a particular case he will be acting lawfully, does not even materially act in opposition to the eternal law of God. The will of a lawgiver is the soul of his law. To sin against a law is to contravene the will of the lawgiver. When the Divine will does not forbid an act, then there does not exist any Divine law which can be opposed to that act. The man who does that act is not thereby acting in opposition to the Divine will. When a man is acting in conformity with God's *subsequent* law, he cannot possibly at one and the same time be acting in opposition to God's *antecedent law*. He is simply not comprehended under that antecedent law. Hence he does not even materially act contrary to the eternal law of God.

The Divine law is the *remote* rule of rightness in human action. The *proximate* rule of rightness in human action is the practical dictate of the human reason, which is conscience. The proximate rule depends on the remote rule, and should be conformed thereto. The goodness of a human act is nevertheless measured not by the remote rule of rightness, but by the proximate rule of rightness. The human reason is the rule of the human will, by which the goodness of the human

will is measured. A human act is reckoned to be virtuous or to be vicious in accordance with the good towards which the will is borne, as that good has been *apprehended by the reason*—and not in accordance with the material good which is contained in or constitutes the object of the act. Hence a man whose conscience is invincibly at variance with a law which prescribes or which forbids an act, is either bound under sin, or is excused from guilt, according as he believes that his act is in opposition to, or is in conformity with, the eternal law.

Given that action is to be conformed to conscience — as to the proximate internal rule of human action—a man must, in order that he may act lawfully, be morally certain that his *practical* judgment is in conformity with the eternal law. It is not necessary that he should have certainty with regard to his *speculative* judgment. It is sufficient that he should have reason for prudently supposing that his act is in conformity with the eternal law, even if it should at the same time appear to him that the opposite view is speculatively more likely. For example, a soldier may think it more likely that a particular war is an unjust war (speculative judgment), but he is at the same time certain (practical judgment) that he is bound to obey his sovereign, when the injustice of the war is not certain. Even if it

should afterwards turn out that he was right in his opinion of the unjustness of the war, he did not, in acting on his practical judgment and going to the field, sin even materially against the *antecedent* law of God—that no man may engage in an unjust war. He was not comprehended under that law. He could not therefore transgress it.

It is true that God is in possession antecedently to all human dominion, and it is undoubted that possession by God, or by Divine law, has precedence of man's possession of freedom, when it is *clear* that an alleged law, which would restrict that freedom, really exists. When, however, the existence of the alleged law is *doubtful*, and there is a prudently formed opinion to the effect that no such law exists, then the man to whom, as to every man, God has certainly given dominion of his freedom, is in no way bound. He cannot possibly be bound by an alleged law, the existence of which is doubtful.

It is true that every Divine law is—inasmuch as it was constituted by God from eternity—necessarily anterior to man's freedom in time. The *obligation* of a Divine law is nevertheless posterior in time to man's freedom. The law is not promulgated, or made known to a man before the man is already constituted in possession of his freedom. It is false to say that God has

forbidden to man that which He has not expressly permitted to man. God has created man free, reserving to Himself at the same time power to restrict that freedom as He wills. Hence it is that God has given to man commandments. A man is not therefore to be despoiled of his God-given freedom of action, by—a doubt.

6.

In order that a law should bind, there must be certainty of its existence. Since a law is constituted to be a directive rule for subjects, it does not suffice that the law should exist in the mind of the lawgiver. It must be applied to his subjects through the promulgation of it. It would not otherwise avail to bind them. It could not therefore be called—a law. Laws are said to be instituted then when they are promulgated, and even Divine laws require promulgation of them. That promulgation of a law is sufficient whereby the existence of the law is made known with certainty to the subjects of the lawgiver. No man is bound by any precept except through his knowledge of that precept. A man who is not capable of this knowledge cannot possibly be bound by that precept.

It is certain that a law cannot be said to be promulgated, or sufficiently intimated, so long as a prudently formed opinion is possible, that that law does not even exist.

The promulgation of a law is of the essence of that law. When therefore there is doubt with regard to the promulgation, there is equal doubt with regard to the existence of the law itself. Hence, as the law must be certain so as to bind, so must the promulgation, which is constitutive of the law, be certain.

7.

It is certain that a law should have regard to the good not only of individuals, but of the whole community. It is for the good of the community that the observance of a law should be uniform in all its members. This is necessary for the avoidance of dissensions, perplexities, and danger to consciences, to say nothing of scandal. To promote this uniformity, either all men must be bound to follow those opinions which have the most weighty reasons to support them, or all men must be left free to act on opinions which, although they do not rest on reasons of the same weight, are nevertheless not unsupported by solid reasons, and have been formed with prudence. If all men were bound to follow the opinion which is said to have the greatest weight of reasons in its favour, there would be endless diversity of observance. Of these reasons some would be deduced from one principle and some from another, and such is the variety of minds

among men that the reasons which appeared to one man to have the greatest weight might seem to another man to have less weight. This diversity of view is possible even to the same man at different periods of his life. If there is to be uniformity of observance, therefore, all men must be left free to act with regard to an alleged law, the existence of which has been prudently questioned, on an opinion in favour of freedom which may be prudently assumed to have been prudently formed.

It might indeed happen that there should exist diversity of judgment with regard to the solidity of the foundation of this opinion in favour of individual freedom. It is nevertheless certain that an opinion which rests on solid reasons—and of no other opinion are we speaking—will commend itself as at least a prudently formed opinion to the majority of the wise. If perchance it should not so commend itself to individuals, there still remains the principle that that which is of rare occurrence does not destroy uniformity.

8.

In matters which are obscure, superiors are to be obeyed by their subjects; that is to say, they are to be obeyed when it is not *certain* that there is sin in the act which they prescribe. If a subject were not justified in obeying, or if a

subject were not bound to obey whenever he had a *doubt* with regard to the rightness of that which had been prescribed, the whole order of the commonwealth would be disturbed. When the precept of a superior is founded on a prudently formed opinion of the rightness of that which he prescribes — even if the contrary opinion may seem to have for itself the greater weight of reasons—it is undoubtedly not certain that in his precept there is sin, and when sin is not manifest the subject is bound to obey. A subject could not, on the other hand, obey, unless he knew or supposed that the superior was prescribing prudently. If he knew with certainty that the superior was himself in doubt with regard to the rightness of that which he prescribed, he would not be bound to obey him. The precept would in that case be rash, and his submission would not be rational. It is not merely the fact of superiority in him who prescribes which makes the action of a subject to be right. If this were so, the subject ought to obey even if he knew for certain that the superior was prescribing in doubt of the rightness of his precept.

When therefore there exists a prudently formed opinion in favour of the rightness of an act, that act cannot possibly be manifestly unlawful.

9.

If there were an obligation to follow those opinions for which there may be adduced the greatest weight of reasons, or the greatest number of authorities, there would then be the obligation of investigation with regard to both. This would involve the weighing of the intrinsic reasons of every opinion, and the measuring of the authority of every expert and teacher of repute, and the determination of the question whether or not the weight of their authority was to outweigh the weight of the various reasons which presented themselves. This would be a morally intolerable burden. It would give rise to innumerable scruples, perplexities of conscience, and spiritual dangers. A very great number of confessors and professors and authors would be deterred from hearing confessions, from giving advice, and from teaching and writing on moral questions. That yoke would be rendered unbearable to them and to others which Christ has declared to be light and sweet.

When, instead of this, we are once certain of the fact that there exists an opinion in favour of freedom of action, which we may prudently assume has been prudently formed, we are not bound to use any further diligence in investigation. We have then—and in virtue of the mere

fact of the existence of such an opinion—no longer any moral and well founded hope of arriving at *certainty*, as regards the obligation of the law in question. If it should therefore turn out that in reality we had been in the wrong, we should at the worst have been invincibly and therefore blamelessly in error. To condemn, on the other hand, and forbid an act as a mortal sin, when it is not certain that it is a mortal sin, is itself a sin. The consequences might be disastrous, in plunging men deeper in the mire of sin, and exposing human souls to peril of damnation.

10.

That it is lawful to act on an opinion in favour of freedom of action, which has been prudently formed from solid reasons, setting aside contrary opinions which may rest on reasons of still greater weight—is itself an opinion which has for it the greatest weight of reason. In the wide sense of moral certainty, this judgment may even be said to be—morally certain.

In addition to the six reasons which we have already considered, there is the exceeding likelihood that if an opinion in favour of freedom of action were false, it would not have been, as it has been, commonly recognised, as at least a

prudently formed opinion, by experts, by authors of weight, and by teachers of repute. The Church, moreover, would not have tolerated it.

All these arguments avail to form a moral certainty. They are all and every one of them convincing, even when they are taken singly. Their weight is crushing when they are taken together.

The truth of an opinion is one thing, and the truth of the rightness of acting on an opinion is another. We are bound to follow that for which there is most reason with regard to the truth of the rightness of acting on an opinion—but we are not bound always to follow that which appears most likely with regard to the speculative truth of an opinion. The very fact that it is an opinion is sufficient to negative such an obligation. Hence certainty with regard to the rightness of acting on an opinion is quite compatible with some dread of the possibility of an opposite opinion turning out to be in reality the truth, when it ceases to be any longer an opinion. There may often seem to be graver reasons *for the existence* than for the non-existence of an alleged law, while at the same time there are graver reasons *against the obligation* of that law. It is from this that we form a practical judgment with regard to the lawfulness of an act which that law is supposed to concern.

The dread and the certainty do not, in this case, regard the same object. The *dread* regards the *speculative truth* of the opinion. The *certainty* regards the rightness of availing oneself of that *freedom of action* which the opinion, as it is a prudently formed opinion, gives.

A man has a right to regard himself as free to act until he is bound by some law not to act. Till then—his freedom is in possession. When it is certain that a law exists which binds him—that law is then in possession. In both cases the principle of law applies—"The condition of him who is in possession is the better condition." As a doubtfully existing law does not bind a man, so neither does it disturb a man in his possession of his freedom of action. When the obligation of a law is doubtful, the fact of that law's being in possession is also doubtful. That the man's freedom is in possession is therefore clear. When promulgation of a law is doubtful, that law does not bind, because the presumption of possession is not for a law, but for freedom from a law. The making or promulgation of a law is a matter of fact, and a fact is not presumed. A fact has to be proved.

A man who is certain that he has committed a particular mortal sin, and who is in real doubt whether he has ever confessed that sin, is bound by a clear law to confess it. The obligation to

confess is certain, while the fulfilment of that obligation is matter of doubt. The law is in that case in possession. The doubt must, however, be such a doubt as is properly so called, and not an *opinion*, which is a very different thing. If the man has a prudently formed opinion that the sin in question was not mortal, or that he did not sin mortally, he is not bound to unfold the doubt in confession. If he is certain that he did sin mortally, but has a prudently formed *opinion* that he has already confessed it—an opinion which rests on a reason which he has for holding that he did confess it—although he has at the same time some dread of the possibility of his not having confessed it, he is in that case not bound to confess it. If he were to confess it, he would be taking "the safer side," so far as to avoid all peril of the possibility of even material transgression of a certainly existing law, but he is not bound to confess it, and he would not by confessing it be making *himself more safe*. His freedom is in possession, and it is not disturbed by the uncertainty which attaches to his opinion, as uncertainty attaches and must attach to every other opinion. The doubtful and the uncertain are not one and the same thing. A *doubt* is, as we have seen, a suspension of assent by reason of the perceived insufficiency of motives for inclining to either

side. *Uncertainty*, on the other hand, is simply absence of certainty. In this case the man is not in *doubt*. He is merely uncertain with regard to his fulfilment of that which was once a certain obligation—while he is at the same time *certain* that he is acting prudently, and with a safe conscience, in his exercise of his freedom of action, to which he has a right.

CHAPTER III.

Law.

THE rule and measure of all human acts is human reason. Reason is the first principle or mainspring of human acts, and supplies the motive of them. To the reason of a man it belongs to ordain his acts towards the end which he has in view in the doing of his acts.

An ordinance — or formulated ordination— which has its root in reason, and which has been decreed for the promotion of the common good, and which has, moreover, been promulgated or publicly proclaimed by that man who has supreme charge of a true community, is that which is called—a law.

By means of a *law*, a man is ordained as he individually is a part of that whole which is the community of men of which the man is a member. The *end* of this ordination of the individual man is the common welfare of the community to which he belongs.

To ordain an individual member for the benefit of the whole community, either belongs to the community itself, as it is one body, or belongs

to some one man, as he is the head of that body of men.

The man who is the lawful head of a rightly constituted body of men, represents that body. He personates it. He is therefore something more than is a mere private person—or a human individual in his private capacity. He is called, and he is *publica persona*—a public person.

Every law, in order that it should have existence, as a *law*, must have force to bind. It must avail to bind the men on whom it is laid. In order that it should have force to bind them, it must be brought to their notice. This is done by means of promulgation, which applies a law to those whom it concerns.

There are six conditions which are intrinsic to every law. They belong to the essence of a law. They are required in order to constitute a law. They are not mere circumstances outside a law. They are inward vitals of a law. A law must be right[1] and just,[2] and observance of it must be possible.[3] A law must be of use,[4] and it must have regard to the common good.[5] A law must also be lasting,[6] or intended to endure as long as its motive or the reason for the existence of it endures, and not merely to continue for a time.

A law must be *right*, in this sense, that it is

not contrary to right reason, or to any Divine positive law, which adds to that which reason dictates.

A law must be *just*, or in accordance with the standard of distributive justice. This standard must take into account the capacities of subjects.

A law must be *possible of observance*, and observance of it must be not only physically possible, but morally possible. The possibility of its observance must, for instance, have regard to time and place, to circumstances, and to the custom of the country for the inhabitants of which the law is made.

A law must be *necessary* and *useful*, for otherwise the lawgiver would be restricting the God-given liberty of his subjects without reasonable cause. He has not any lawful power to do this. Such power has not been derived to him from the community, and it has not been bestowed on him by God. The uselessness of a law, which has once been made, is not however to be presumed. Its uselessness has to be proved. Till it is proved to demonstration, the law, once made, is in possession.

A law is made, not for the private advantage of an individual, as such. It is made for the *common welfare*, or the welfare of all those individuals who taken together compose that

community or body of which each one is a member, and in which he is only one member. A law must be, if not immediately and directly, at least mediately, indirectly, and ultimately or in its result—for the common good.

In order that an ordinance should have all the essentials of a *law*, it must be made *in perpetuity*. It must be lasting of its own nature, and of the intention of the lawgiver. Accidentally a human law may be recalled by the lawgiver, or by his successor, or it may be abrogated by the prevalence of a custom which is in contradiction with it, and which arose when the necessity or usefulness, which was the *end* of the law when it was instituted, had passed away. Apart from this, a law, to be a law, must have in itself a principle of perpetuity.

If any one of those six necessary conditions or essential properties of a law is absent in an ordinance, that ordinance falls short of the idea of a true *law*.

2.

There is a difference between a true law and a simple *precept*. This difference regards both the lawgiver and the subject on whom the law is laid. A precept is given to individuals, and can be given by *private* persons. A law is given by a *public* person, and for some community, or

society, or definite class of persons as these persons taken together form one whole. It has regard to the regulating of those persons, in order to the good of the whole community, of which they individually are parts. A law, therefore, has in view the common good, while a precept contemplates the good of the individual.

There is another difference between a law and a precept. This difference has reference to place. A law directly affects the territory in which the community is located, and indirectly affects the persons who compose the community. A precept affects individuals directly. Hence a precept binds a subject even outside the territory of him who gives it. It is said to—"cleave to the bones." This a law does not. A law is localized, and restricted in the sphere of its force of obligation.

Further, a precept ordinarily expires on the death, or on the removal from office, of him who prescribed it. A law does not so expire.

There is a difference also between a law and a *statute*. The difference consists chiefly in this, that, of the intention of the lawgiver, a law is to be lasting. A simple statute is a temporary ordinance.

A law differs from a *counsel* in this, that even if the giver of the counsel should have power to bind him to whom he gives the counsel, he, as

matter of fact, does not bind him. The giver of a counsel only makes manifest his own judgment, or his good pleasure. By a law, and even by a precept, a superior binds his subjects.

There is a difference between a law and a *lawful permission.* A law cannot prescribe anything which is not right, or which is either unjust or sinful. Some kinds of evil may, however, be *permitted* for a lawful cause. This permission may even be established by public decree, for the avoidance of greater evils. Such permission is not approbation of the lesser evil. It is only a hindrance of the suppression of that evil by private individuals on their own authority.

In case of doubt with regard to—not the existence, but—the justice of a law, the subject remains bound by that law. He is bound even if there should exist an opinion against the justice of the law, and such an opinion as may be prudently supposed to have been prudently formed by wise and prudent men. The law is in possession. The lawgiver had the right to make a law, and for the making of it he may possibly have had reasons which were not, or could not, or even ought not to have been placed by him within the knowledge of the subject.

3.

It may happen that an actual ruler is a tyrant.

A ruler may be a tyrant in either, or both, of two ways. He may have usurped the power which he exercises, or he may be abusing a power to which he really has a right. In this latter way a lawful ruler, who is in possession of lawful power, may nevertheless be a tyrant.

When a usurper has succeeded in establishing himself in peaceable possession of the power to rule, he is to be obeyed by individual subjects. There is then as matter of fact no longer any real resistance of his usurpation on the part of the commonwealth, or of its rightful ruler.

A usurper has sinned already by his unjust invasion of a territory, to the occupation of which he had no right. He may sin again, and in a different way, by his oppression of those persons whom he has compelled by force to be his subjects. Even a usurper is bound to promote and to secure the common good of the invaded province. No effort of an usurper, however, in this direction, and no success on his part will excuse the original sin of his previous usurpation.

The subjects of a usurper do not, through their obedience to the usurper, co-operate with him in his usurpation. The obedience of subjects is necessary in order to the existence of that social order without which human society could not

possibly hold together. Subjects can not only lawfully obey, but they are bound to obey. Human society could not continue to exist without laws—without the power to enforce those laws — and without judicial authority for the administration of laws.

In the case supposed, the only laws, police, and judges, that can possibly be had, are those of the usurper. The law of nature prescribes observance of some order, and, under these circumstances, it prescribes that particular order which is for the time being the only possible order. In all this there is no approbation by subjects, who are suffering as victims, of the usurpation of the tyrant.

Some of the services of subjects, in matters which are in themselves indifferent, may as matter of fact happen to be for the advantage of the usurper. If those services, however, were refused, the refusal would in no way promote the cause of the rightful ruler, while the refusal might be to the damage of the subject who refused them. In this case the enforced services of subjects are lawful. The rightful ruler—who may be assumed to have at heart the welfare of his faithful subjects—is with solid reason presumed to consent to his subjects rendering such services.

It is otherwise with regard to acts which

amount to a gratuitous and needless exhibition of homage to a usurper, as if he were the rightful ruler, or which promote and consolidate his unjust usurpation. Still worse would be any resistance, armed or otherwise, on the part of subjects to their rightful ruler, if he should be at that time attempting to recover his just rights, of which he had been unjustly deprived. All such actions would be intrinsically unlawful. They would be wicked of the very nature of them.

4.

Every law must necessarily be promulgated. A law must be so proclaimed as to be brought to the knowledge of the subjects whom it concerns. Promulgation of a law is so essential, that without promulgation there is no obligation on the part of subjects to observe that law. It is an axiom of the Canon Law — that "laws are instituted then when they are promulgated." They then begin to have the true character and real force of law.

A law is not a private rule but a public rule of moral action. A law is laid down by the social or civil ruler, as he is not a private person, but a *public* person. A rule of human action is formally constituted as a *public* rule—or as a rule for all the members of a human society — by

means of the promulgation of it, that is to say, by means of such public and solemn proclamation as shall place that rule within possible reach of the certain knowledge of all and of every one of those whom it concerns.

Promulgation is an external intimation of a law—which is made to the community on which that law is laid—and that with all the due solemnities. The intimation of a civil ruler when he sets before his ministers a law which he has it in his mind to make—or his subscription of that law, when he has made it—or his subsequent command that this law should be promulgated—is not formal promulgation of that law. Promulgation of a law must be made in the name of the ruler and lawgiver, and that with certain fixed public ceremonies, in accordance with either the custom of the country, or an ordinance of the lawgiver—and this in order that the fact of the existence of the law should be manifest and certain.

It is not of necessity, and it is not of the essence of a law, that the promulgation of that law should be made in writing, if it can be made sufficiently by word of mouth, or otherwise by some clear sign of the existence of the law. There is a difference, therefore, between *solemn promulgation* of a law, and *mere knowledge* of the existence of that law. There is a difference

even between solemn promulgation of a law and that divulgation of a law—which may be called a secondary promulgation — and which is a subsequent proclamation of the law in various localities within the territory of the lawgiver, in order that that law may with greater security come under the notice of all his subjects.

Mere knowledge by subjects of a law does not induce obligation before that law has been duly promulgated. That law has not as yet the force of law. It has not even as yet strict right to the appellation of—a law.

5.

Pontifical laws under ordinary circumstances bind all the faithful throughout the world, as soon as they have been promulgated at Rome, which is that city which is the centre of the Christian world. Pontifical Bulls, by which a book is condemned, or by which an opinion of an author is censured as scandalous, as rash, as heretical, or as forbidden in practice, bind the faithful even before publication has been made of those Bulls by the local bishops in their respective dioceses. Every one of the faithful who has knowledge of the tenor of those Pontifical Bulls is bound by them. He is so bound even if the tenor of the Bulls should entail penal consequences. If any one of the

faithful has certain knowledge that a saint has been canonized by the Vicar of Jesus Christ, he is straightway bound to recognition of the fact that that soul is a saint. Pontifical Constitutions, by which jurisdiction is taken away, or by which certain sins have been reserved, or by which a privilege of absolving from reserved sins has been recalled, do not invalidate absolution during the continuance of *bona fide* ignorance of the promulgation of those constitutions. The same ignorance prevents such laws as invalidate contracts, from invalidating contracts, if those contracts are lawful in themselves, and if they would otherwise—and apart from any law which declared them to have been from the beginning null and void—be valid.

6.

Affirmative precepts are precepts which prescribe that which is good. Negative precepts are precepts which forbid that which is evil. Affirmative precepts are always binding, but even affirmative precepts do not bind here and now at every moment. A man is not bound every day, or at every hour or moment of any day to be doing that which the affirmative precept has prescribed. Negative precepts are not only always binding, but they are binding at every moment. There is no moment at which it is

lawful to do that which *a negative* precept has forbidden. Men are at all times *bound* to abstain from that which is evil—but men are *not bound* at all times to be doing everything which is good.

The Natural Law is a participation in rational creatures of an eternal law. This eternal law is the divine idea, or that will of God which bids the order of divinely constituted nature to be observed, and which forbids that order being disturbed. This eternal idea of the Divine Wisdom is directive of all acts and of all movements in created intelligences. Intelligent creatures are subject to this law, inasmuch as there is in them a natural propension, whereby they are moved and directed and ordained towards those things which are becoming to that nature which they, as intelligent or reasonable beings, possess. Intelligent creatures are capable, and they alone are capable of moral direction and of moral obligation.

Knowledge of the natural law is derived to men both through the light of their natural reason, and through the light of the faith, which gives to men knowledge, and that with certainty, of Divine positive laws. These last form the Divine Law, in the inadequate, or restricted sense of that term. This law is distinguished from the Divine Law, in the adequate or fullest sense of the term, only by the promulgation of

the Divine Law in time. The Eternal Law is therefore the foundation of the natural law, which is a participation of the eternal and Divine Law in the rational creature.

The eternal law is the foundation of all human laws. It is this as it is the exemplary cause of them. It is the foundation of them also, and chiefly, because all human laws are as matter of fact truly laws, and have power to bind subjects, inasmuch as they prescribe or forbid that which the eternal law approves as to be prescribed or as to be forbidden.

In order that they should be truly laws, human laws must also have been laid down by those superiors of subjects to whom the eternal law prescribes obedience. Natural law is said to be a transcript of the eternal divine law in the human mind.

That which, in the natural law, holds the place of one who prescribes, is an actual dictate of the reason. It is a judgment whereby, through the God-given light of reason, a man knows that those things which are right are to be done, and that those things which are not right are to be abstained from.

There are two dictates of the reason. One dictate is a representation of the rightness or of the wrongness of the object. The other dictate is a representation of the will of God, which

prescribes or approves that which is good, and which forbids that which is evil. It is in this second dictate of the reason that the force of the natural law chiefly resides. This dictate prescribes as it is a judgment of the human reason with regard to the will of God, Who, as He is the supreme Governor of every created rational nature, forbids that which is evil, and prescribes that which is good.

The *material* object of the Natural Law embraces all the principles of rightness, whether those principles are primary principles or whether they are only secondary principles. Secondary principles are those which are either proximately or remotely deduced, by exercise of the reason, from primary principles.

All the principles of the natural law may be reduced, as to one supreme principle, to—that which is good is to be done, and—that which is not good is to be left undone.

Whatever is evil in itself, or of its own nature —antecedently to and apart from any prohibition of positive law—is expressly forbidden by the natural law. That law does not, on the other hand, prescribe the doing of everything which is in itself and of its own nature good. It prescribes only those good acts which the condition of man necessarily demands with regard to his

Maker, to himself, and to his neighbour. All other good acts, which are not thus necessarily exacted, fall under the natural law only as they are fitting or becoming, or approved by that law. The only way in which those good acts can become necessary is through the intervention of positive law.

The *formal* object of the natural law is not to be found in its agreement with the rational nature, or in its accordance with any perfection which is due to that nature. Neither is it to be found in any thing which is necessary to, or in accordance with a blissful state of human nature, considered as existing either in human individuals or in human society. It is found in the idea of a *precept*, which has been imposed by God on man. The dictate of the reason, in which the natural law consists, is therefore to be regarded as a promulgation of a Divine ordinance. It is a sign of the Divine will, as that will either prescribes or forbids.

A positive law can be recalled, either wholly or in part, inasmuch as the end of that law, for which it was made, may either wholly or partially cease to exist. There cannot be any change in the natural law, with regard to things which are intrinsically or in themselves either good or evil. The only change that is possible

in the natural law is a change of the matter to which that law extends.

There are positive precepts both of Divine law, and of human law. The positive precepts of the Divine law are divided into the precepts of the Old Law, and the precepts of the New Law. The Old Law consisted of moral, ceremonial, and judicial precepts. The New Law contains precepts with regard to the faith, or revelation of Jesus Christ, and the sacraments which were instituted and are ministered by Him in His Church.

Positive precepts of human law are divided into precepts of ecclesiastical or canon law, and precepts of civil or political law.

7.

Declarations of Roman Congregations, such as those of the Holy Office—the Council—Bishops and Regulars—Sacred Rites—Indulgences—and the Penitentiary, have the force of obligatory law as regards the particular cases for which these declarations have been given. Decrees and declarations of the Sacred Congregation of Rites, even if they have been given without consultation or approbation of the Vicar of Christ, are nevertheless to be held as being—oracles of that Pontiff. They have the same authority that they would have had if they had emanated immediately from His Holiness.

A *comprehensive* declaration is a declaration which explains a law which has been already made and duly promulgated. Such a declaration does not require special and solemn promulgation. It does not constitute a new law, and it has from the first the force of that law which it unfolds.

An *extensive* declaration is a declaration which goes beyond the words of an existing law in the proper and common acceptation of those words. Such a declaration has not the force and authority of a law, unless it has been made by special mandate of the Pontiff. It is equivalent to a new ecclesiastical law. As such it requires legislative power in him whose declaration it is. This power does not belong to a Roman Congregation, in virtue of its constitution as a Congregation.

8.

Along with law we must consider *custom*, both in itself and in the side-lights which custom throws on law. A custom is an unwritten law, which springs from the long-continued, free, and public usage of the whole, or at least the greater part, of a community, along with the approbation of him who as head has charge of that community.

A custom differs from a law. A law has its

binding force from the express and publicly promulgated ordinance of the public authority, or of him who, personating that public authority, is called and is a public person. Custom has its binding force from usage, or long-continued frequency of practice on the part of the majority of subjects, which has also been tacitly approved by their ruler and legislator.

Customs differ from *traditions*, properly so called. Traditions have sprung not from usage, but from institution. They have been instituted, either by Christ Himself, or by His Apostles, or by His Church. They do not spring from usage, but are only preserved or handed down by means of usage.

A custom differs from a *stylus curiæ*, as does that which includes from that which is included within it. A *stylus curiæ* is a particular custom, and one which is limited to judicial transactions. It sets forth that mode which has to be observed in judgments, in the conduct of causes, and in giving sentences.

Custom differs from *prescription*, and in more ways than one. Custom, as it is an unwritten law, which has force of law, binds or looses the community of which it is a custom. Prescription affects private persons. In affecting communities, it affects them as they are in some way private persons. Prescription requires good

faith on the part of him in whose favour it runs. Good faith is not necessary in order to the existence of a custom. Prescription, moreover, does not require the consent of him against whom it runs, while custom always supposes some consent to it on the part of the lawgiver whose law it modifies.

That custom is called *general*, in the widest sense, which extends to the whole world, as, for instance, the law of nations. A custom is called *general*, in a less wide sense, which is observed by the whole of one empire or kingdom, or by the whole of one nation or province. A custom is called *special*, which obtains only in one city or town or village. The custom is said to be more *special* still when it belongs to only some small portion of a people, such as a church or a monastery, or a college, or similar society.

Among customs, some are *in accordance* with law—others are *beside* the law—while others are *contrary* or in opposition to a law. That custom is in accordance with law, which by long usage confirms or interprets a law already made. That custom is beside the law, which brings in a new law, and prescribes or forbids something with regard to which there was formerly no law. That custom is contrary to a law, by which there is introduced the opposite of that law.

In order that a custom should be a custom *of*

law, and not merely a custom *of fact*, four conditions are required. The custom must, in the first place, be reasonable. It must, secondly, have endured for the time which is necessary in order to form a custom. Thirdly, there must have been the required frequency of acts, and those acts must have been of the right kind. Fourthly, there must have been some consent to the custom on the part of the lawgiver whose law the custom modifies.

Since a custom is a merely *human* unwritten law, there cannot be a true custom which is in opposition to Divine or natural law. There cannot be a *valid* custom which is to the damage of the Church, or of religion, as against ecclesiastical freedom or discipline, or the rights of spiritual pastors. Neither can there be a valid custom which is dangerous to the commonwealth, or to the rights of parents. There cannot, in short, be any *valid* custom with regard to any matter which could not have been established by a true law, introduced by a ruler who was in possession of true legislative power.

A custom which is *contrary* to a law may nevertheless be a *reasonable* custom. This is clear, inasmuch as a later law, which takes away a former law, may be a reasonable law. A custom which is contrary to a law will be unreasonable, and will therefore be invalid, so

long as that law endures in its validity. A custom becomes reasonable then only when the contrary law ceases to be reasonable. This that law does when, after the continued violation of it for the time that is required to form a custom, it becomes useless as a law. It then conduces to the common good that that which was at some time a law should be no longer of obligation. This is necessary in order to put a stop to continuance of guilt in those who break a law. Custom derives its force of abrogating law chiefly from the consent of the lawgiver, which is supposed in every custom. Even if actions, which were contrary to a law, were sinful before the practical abrogation of that law, similar actions, or actions of the same kind, are no longer sinful when abrogation has been accomplished through the existence of a rightly completed custom.

The formation of a custom may, however, be interrupted. It is interrupted if the lawful ruler should punish the transgressors of his law. It is interrupted also if the community, or the greater part thereof, should act in opposition to the gradually growing custom, and this even if only on one occasion.

No private individual can effect a custom by means of his own action, even if he is the lawful ruler and lawgiver, who is acting however in his private capacity as he is a private person, or

single individual. Private persons are capable of the possession of rights, and so, by means of prescription, they can acquire rights. Private persons are not, on the other hand, capable of the making of a law, and so they are not capable of the making of a custom, which has the force of a law.

With regard to the consent of the ruler or lawgiver, which is required in order to the introduction and ultimate existence of a true custom, that consent suffices — and no other consent is required than that consent—which is known as *legal* or *juridical* consent. It is within the power of every ruler and lawgiver not only to have the will, but to sanction by means of a law, that whenever the people subject to him shall continue, for the time required for the formation of a custom, in any reasonable usage which is at variance with a previous law of his, that usage should be recognized as a custom which has the force of a law. This is the only approbation by the lawgiver which is necessary in order to the existence of a true and valid custom.

There are at least four effects of which a true custom is the cause. A custom has force to bind. It has force also to abrogate an already constituted law. It consequently avails for the

interpretation of that law. A custom has force also to invalidate any acts which are in opposition to that which it has itself established.

In order that any custom should be obligatory or binding, it must concern a matter which is grave in itself, and which is at the same time difficult of observance. The custom must also have been of common observance by the whole people, speaking generally, that is, by the majority of those who compose it. These would not have been uniformly agreed in observance of the custom, unless they had come to suppose that they were bound by that custom. It would be a secure sign of a true custom if prudent and God-fearing men should not only themselves observe it, but should blame those who contravened it. Still more would this be the case if the people in general should be scandalized by those who did not conform their conduct to the prevailing custom. The greatest of all signs would be that the custom was evidently such as greatly to benefit the commonwealth, or if superiors should disapprove of and punish all violators of the common usage.

If these circumstances are not apparent in the case of any usage, then, in any real doubt with regard to the force of that usage, it is to be presumed that the frequency of unlawful acts was merely the outcome of self-will. For whatever

time the usage may have continued, it is to be regarded merely as voluntary and supererogatory, and not as obligatory. It will not bind the conscience of any one. Even a law is not presumed. Its existence has to be proved. No man is presumed to have the will to impose on himself a new burden.

9.

A later law has power to abrogate a former law. The force of a custom is the same as is that of a law. A law can therefore be abrogated by means of a completed custom which prevails against it.

No custom can derogate from the natural law, since that law is unchangeable. Neither can any custom avail against a Divine positive law, since every custom has at most the force of a merely human law. A custom, moreover, cannot obtain against the Law of Nations. That law has its foundation in the laws of all nations, or of at least the practical majority of civilized nations, and on observance of it depend the common interests of nations in their intercourse and commerce.

An ordinance of the *civil* law can be abrogated by a contrary custom. Custom can also abrogate an ordinance of the *canon* law, with regard to sacramentals and such ceremonies in the ministration even of sacraments themselves as are

not of the substance of those sacraments, and have not been prescribed by Christ. These ceremonies are of merely human institution.

Custom may have force to abrogate as regards the *guilt* of the transgression of a law, while at the same time the transgressor's liability to *punishment*, in virtue of that law, remains. There are certain laws which are merely penal laws. If the punishment enacted by a law is, however, such as to suppose real and proper guilt in the breaker of that law—as in the case of censures—there cannot remain any liability to punishment when through force of custom an obligation which had results in guilt has ceased.

Custom may also abrogate a law as regards only the *punishment* which that law decreed, leaving untouched the obligation under *guilt* to the doing of the thing which that law ordains. A ruler and lawgiver has power to abrogate a punishment laid down in his law, without abrogating the binding force of that law. Whatever a ruler has power to do by means of a law, that a completed custom, which has the force of law, has power to effect.

No custom can abrogate or derogate from a law which itself condemns a particular custom as in opposition to Divine or natural law. In the case of *human law*, if those circumstances still exist which supplied the reason why a

custom, which was adverse to a particular law, was condemned by another law, custom cannot prevail against this law. If these circumstances have ceased to exist, the custom can then exert its force of law. The lawgiver himself could in that case have reasonably abrogated his own law. With equal reason he can be supposed to have consented to the abrogation of his law by means of custom.

An invalidating law — or such a law as prescribes that which is necessary in order to the substance and validity of an act, or disables certain persons as regards the making of certain contracts, or elections—can be abrogated by means of a subsequent law. It can therefore be abrogated also by means of custom which succeeds in place of law.

10.

A third effect of custom is to interpret law. There is a well-known axiom—"Custom is the very best interpreter of law." If custom has force to introduce a new law which overrides a previous law, with still greater reason is it to be said that a custom has power to interpret law. This effect of interpretation is even more necessary to the welfare of the community at large than are the other effects of custom. Laws are often obscure and ambiguous as regards both

the binding force of them, and the matter to which they extend. In both ways custom avails to the clearing up and to the unfolding of the law.

If a custom has been lawfully constituted, its interpretation of a law is *authoritative.* It is to be regarded as itself a law. It is to be observed as a law. It is truly a law.

If a custom has not been lawfully constituted and completed, the authority of it will be merely *doctrinal.* Its doctrinal authority will however be higher in proportion to the number and weight or character of the persons who have observed that custom.

If a custom has not acquired all that is necessary in order to its being a lawful custom, and if that custom of fact is in opposition to the clear disposition of a law, then it is not to be regarded as an interpretation of law, but as a corruption of that law. It is not to be held as being even a doctrinal interpretation.

In virtue of that power of interpretation which belongs to a completed and lawful custom, contracts are to be regulated in accordance with custom. Contracts are to be understood as made in accordance with custom, unless there exists a law which expressly declares the contrary.

Judgments are also to be regulated by custom. Judges must judge in accordance with the laws.

Of these laws the most solid and secure interpreter is a completed custom.

Custom cannot add to or take away from Divine law, but a custom which prevails in a Divine society—such as is the Catholic and Roman Church—avails as an index of that which was in the mind of the Lawgiver when He made His law. This happens in many traditions and general customs of the Catholic Church with regard to the ministration of the sacraments. Those customs which obtain in the one Body with the one Spirit, the ever-abiding and indwelling Holy Ghost, avail as a sufficient declaration of the mind of Jesus Christ, in His institution of those sacraments.

II.

A fourth effect of custom is to invalidate acts which would otherwise be valid in law. A later law may invalidate acts which were valid under the previous law. A supervening custom can do the same, since a true custom has the force and effect of a law. Hence custom may introduce impediments which will invalidate matrimony. Impediments which at one time invalidated matrimony may also be taken away by force of custom.

It is not necessary in order to its effect that the Pontiff should himself have knowledge of

the existence of such a custom. It is sufficient that the custom should itself be reasonable, and that it should have attained to the term of prescription which law demands. The consent of the Pontiff is rightly assumed for such a custom. It is this consent which gives its force to that custom. In order to the existence of a custom which creates an impediment which will invalidate matrimony, it is not necessary that there should be consent on the part both of priests and laymen. The unanimity and constant practice of the laity is sufficient to induce a custom, even in ecclesiastical matters which affect the laity, when there exists along with it *legal* consent on the part of the Pontiff. He is held, as a general rule, to will to give force of law to every custom which has been lawfully introduced and constituted. It is not therefore necessary that it should have been the practice of priests to refuse to marry persons who presented themselves with such an impediment.

It is a *special* effect of *immemorial* custom that all those things can thereby be acquired, which can be acquired by means of a Privilege or Indult, granted by a lawful ruler. A custom which goes back beyond the memory of man is held as being equivalent to a Privilege. It takes the place of a title which has been lawfully constituted and

approved. When the fact of the existence of a custom from time immemorial is granted, or has been proved, there is no better title that can be pleaded. Hence a clause in a law which forbids or invalidates any custom which is in opposition to that law, does not include an *immemorial custom.*

He, however, in whose favour prescription or immemorial custom is pleaded, must not have been himself incapable of possessing. He must moreover have been capable of possessing apart from the enabling efficacy of a Privilege. Prescription cannot proceed without possession. He therefore who is in himself incapable of possessing is incapable also of acquiring through prescription or custom.

A custom cannot be introduced if there is a law which resists and reprobates it as an abuse and corruption. This is clear from the fact that custom and prescription owe all their force to law, in accordance with which they have been introduced and approved.

12.

Since the whole of the force of a custom is derived to it from the at least tacit will of the ruler and legislator, an existing custom can be abrogated by an express law. No law, however, abrogates a custom, unless it is clearly and diametrically in opposition to that custom.

Universal custom is abrogated by an equally universal law. It is abrogated even if no mention should be made in the universal law of that universal custom, or without the addition of any clause which derogates therefrom. The ruler is not to be presumed to be in ignorance of a universal custom. When, therefore, a ruler makes a law which is at variance with a universal custom, he is understood to have the will to derogate from that universal custom.

A particular local custom is not held to be abrogated by a universal law, unless in that law the local custom is mentioned, or unless a clause is added which is derogatory of every contrary custom whatsoever. This is founded on the fact that the ruler and lawgiver may be, not without reason, presumed to be in ignorance of the existence of that particular custom.

It is not by means of a law only that a custom can be abrogated. A custom can be abrogated by means of succeeding custom. This follows from the fact that a true custom has all the effects of a law. The later custom must, however, be opposed as contrary to the previous custom.

A universal custom requires for the abrogation of it an equally universal custom. A particular custom cannot abrogate a universal custom. It can only derogate from it in the particular place where the particular custom prevails.

The same lapse of time is required for the efficacy of a derogating custom, as was required for the constitution of the pre-existing custom.

When acts which could or ought to have been done in accordance with an existing custom, are left undone, the omission of those acts, if it is to have any derogating efficacy, must have been free. It must have been the omission of free agents, and an omission made at a time when occasion offered itself for action. In the absence of such occasion, simple *non use* cannot abrogate a constituted custom, which—to sum up in the fewest of words—has all the effects and force of law.

13.

In the case of ecclesiastical laws, it is certain and of faith that power to make a law exists in ecclesiastical superiors. This power, as it exists in them, is entirely independent of the will of their ecclesiastical subjects. If ecclesiastical superiors make a law, that law derives the whole of its force from them. Its force is in no way dependent on the acceptance of it by their subjects.

This is true also in the case of civil laws. These have of themselves force to bind. This force is in no way dependent on the acceptance of them by the subjects of the civil ruler.

It is true that the binding force of a law may cease through desuetude. It is also true that a law may be abrogated through the prevalence of a contrary custom. If this custom has continued to the end of the necessary period of prescription, and has thus secured the *legal* consent of the lawgiver, it has all the force of a later law to abrogate a previously existing law. It does not, however, follow that acceptance by subjects is in any way required in order that a law should have binding force.

A law, as soon as it is rightly and duly promulgated, binds the subjects of the lawgiver to receive it. If a lawgiver had not this power to bind his subjects, apart from their assent, they would in reality have greater power than the power which he himself possesses. This they would have inasmuch as it would be in their power to hinder any exercise by him of his legislative power. He could not in that case compel them to submit to a promulgated law. If acceptance by subjects were required as an essential constituent of a law, their ruler would not really rule. He might nominally reign, but in reality he would himself be ruled, and that by his own subjects. The truth is that, although a ruler may receive his power to rule through intervention of the commonwealth which designates him for investiture with his power from

God, when he has once received that power, he is then the one and only ruler of all his subjects.

It is a dictate of the natural law that the God of order wills and demands order in every society of rational creatures. This order could not possibly exist if subjects were not bound to obey their rulers by observance of their laws. It is therefore of natural law, as well as of divine positive law, that those persons who in the providence of God—whether by divine disposition or by divine permission or toleration—have power to rule, have power to prescribe. By the same law there lies on their subjects an obligation to obey.

14.

There are certain laws which are called *invalidating* laws. These are of two kinds. One kind may determine that a certain act was from the beginning null and void. The other kind may decree that henceforth an act which was not in itself and from the outset null and void may be invalidated and nullified through intervention of the sentence of a judge.

It is certain that both to the Church and to civil rulers it belongs to make invalidating laws. Such laws conduce towards the common good of the community at large. They supply in many

cases the only way in which that good can be secured.

An invalidating law does not always suppose guilt on the part of subjects. This supposition is not necessary in order to justify the existence of such a law. The demands of the common good afford sufficient reason for a law which promotes that good.

There is a wide distinction between an invalidating law, and a *merely penal* law, although an invalidating law may be also and at the same time a penal law. It is in the power of a ruler to impose a precept, which is merely penal in its effects. This precept lays no obligation of guilt on the breaker of it. It merely renders him liable to punishment and subjects him to the obligation of submitting to that punishment when it is lawfully inflicted. Subjects are not bound in conscience to avoid transgression of a *merely penal* law. They are bound only to submit to the punishment, of which they take their chance. It is true that they may be bound by the law of charity towards themselves and bound thereby in conscience to avoid even the risk of a very grievous punishment. It is, however, at the same time true that this obligation of charity does not arise from that merely penal law.

It does not follow that, because a certain act is nullified by an invalidating law, that act has been forbidden, or that it was in itself an evil act. An act is forbidden then only when, along with the law which invalidates it, there is a law which forbids it.

When an act is invalidated, there arises an obligation in conscience to submit to the effects of the invalidation. This is clear. If the act was null and void, then certainly no *right* can have been acquired by means of it.

If an act is not *ipso facto* invalidated by an invalidating law, but may only possibly be invalidated through intervention of the sentence of a judge, then until that sentence is pronounced, the act remains a valid act. Whatever the reason may be for which sentence has been delayed, an act which was not from the beginning invalid in itself is and remains valid, until it is lawfully invalidated.

When an invalidating law is not at the same time a penal law, even invincible ignorance will not hinder invalidation. Such ignorance in no way stifles the demands of the common good. Private loss must, moreover, give way to public benefit.

If an invalidating law is at the same time a penal law, it follows the rule of penal laws. Ignorance, or any cause which is such as to

excuse from guilt in the transgression of a law, as that law is penal, will also hinder the effect of that law, as it is invalidating.

15.

Certain laws concern tribute. *Tribute* is a payment imposed on subjects, to be paid by them to the civil ruler, in order that he may be able to provide for the maintenance of his own dignity and state, and for the needs and welfare of his community. Subjects are bound by legal justice to contribute towards the common good of the civil society to which they belong.

Three things are required in order to the rightness of a law which imposes tribute. There must exist in the first place *lawful authority* in the lawgiver. This authority is that which belongs to a man who is not a mere deputy or subordinate ruler, but who is supreme within his own sphere of rule. This a lawgiver may be, even if he is subject to some more universal ruler. The magistrate of a municipality, whose duty it is to provide for the public needs of a particular place, has the right to make a law of tribute. A municipality is in itself a stable society and corporate body, although it is at the same time a part of a larger society.

The right of a ruler to impose tribute on his subjects is in no way to be confounded with the

right of *altum dominium*. Even if this latter right had no existence, there would remain the right and the duty of a civil ruler to ordain the community, of which he has charge, towards its end, by all suitable and necessary means, and among these means by imposing a law of tribute upon his subjects.

A second requisite in order to the rightness of a law of tribute is a *just cause*. This is required in order to the rightness of any and of every law. With special reason is a just cause demanded in the case of a law which is burdensome to subjects, and which divests them of a portion of their property. That the cause of the law should be just, the tribute must contribute either immediately, or at least mediately towards the common good. The common good of course includes provision for and maintenance of the due state and dignity of the common ruler.

The third requisite in order to the rightness of a law of tribute is due distribution of the burden. The burden must, in the first place, not be excessive, but moderate. The criterion of moderateness will be the judgment with regard to it of ordinarily prudent men. The burden of taxation should also be distributed with geometrical proportion. The poor ought not to be burdened in such wise that the burden should fall on them more heavily than it falls upon the richer members of the community.

A law which imposes tribute is not a penal law, but a *moral* law. It is a law which is directive of moral conduct. It prescribes an act of the virtue of legal justice. Such a law does not *create* the duty of subjects to contribute towards the common good, and to bear their share of the common burdens. It finds this duty already incumbent on them. All that it does is to determine the way and measure in which the duty is to be fulfilled, and to provide for its fulfilment being carried into execution.

A law of tribute is, therefore, a law which binds in conscience, as does every law which prescribes an act of justice.

Looking at the obligation in itself, the whole of the obligation to observe the law by payment of the tribute exists before payment is demanded. This, however, may be tempered or interpreted by lawful custom, so that in some places there should be no obligation to pay before payment is demanded. When a civil ruler appoints officials who are not only receivers but also exactors of the tribute, this points to his intention with regard to the method of collection. In this case payment is not due till it is demanded. This will not, however, excuse fraud in evasion of the duty which the law supposes, and of which it imposes the fulfilment.

16.

Subjects alone, and among subjects those only who have use of reason, are bound by a law, so as to sin through transgression of that law. A precept, since it is directive of moral conduct, supposes use of reason in those to whom it is given. Obedience also is possible to those only who have use of reason and freedom of will.

An absolute lawgiver—that is to say, a ruler who, in virtue of his own authority, has power to make a law which shall bind the community of which he is the head—is not bound by his own law, so far as regards its coercive force, and under pain of punishment. No man can properly be said to compel, or to be compelled by himself, and it is from the lawgiver himself that his law derives the whole of its coercive force. But besides its *coercive* force, a law has also its *directive* force, as it is a rule of moral conduct. It is therefore, to say the least, becoming, and even in accordance with a certain equity, that a ruler should conform his conduct to that which he has ordained to be the necessary conduct of the members of that body of which he is the head. The law of nature prescribes that inferiors should obey the orders of those who are, in the Divine providence, their superiors. There would otherwise be dissonance in a commonwealth

between the members of it and their common head. It is in like manner a conclusion of the natural reason that a ruler ought, in his moral conduct, to be in conformity with his subjects, through his own observance of those laws which he has laid upon them.

Short of this, it remains true to say that—a lawgiver is above his own law. This is clear, since it remains in his power, if he should deem it expedient, to alter that law; and he can always dispense from observance of the law which he himself has made.

17.

Some laws are *local*, and are binding only within the limits of a particular place. Other laws are *universal*, and are binding everywhere. These last constitute *common* law.

Persons who come to a particular place with the intention not to settle there, but to sojourn only for some days, or at most for the lesser part of a year, are called—pilgrims.

If a man comes to a particular place with intention to settle there, so as to acquire a domicile in that place, he is, and he is from the outset—not a pilgrim.

A *domicile* supposes an intention to remain in perpetuity. A *quasi-domicile* requires only the intention of remaining for the greater part of a

year. A person who has right to the name of *pilgrim* must have neither domicile nor quasi-domicile.

Vagrants differ from pilgrims. Pilgrims have a domicile somewhere. Vagrants have nowhere any domicile. They are not truly subjects. No one becomes a subject otherwise than by reason of his place of origin—or his domicile, or quasi-domicile—or in virtue of either some contract into which he has entered—or some crime which he has committed within a particular territory. Vagrants, therefore, are not subject to such laws as do not either concern contracts or punish crimes.

A pilgrim may be bound to observe certain local laws, not on the ground that he is a subject of the local ruler, for this he is not, but in virtue of a tacit convention or condition of his remaining in the place. He may be permitted to set foot in it only on the understanding that he is to observe laws, violation of which is, in the interests of the inhabitants of the place, not permitted to any one within its bounds.

Local exemption from common law ceases as soon as one leaves the exempted territory. A law which is universal is binding everywhere, except in those places in which it has been derogated from by custom or privilege.

Local laws are not binding on those persons who are absent from the place where those laws obtain, even if they have left that place with the express intention of thus exempting themselves from the obligation of its local laws. There is not in their departure any defrauding of those laws. They had a right to leave the place, and no one can commit a fraud who is acting in exercise of his right.

18.

Human laws prescribe the *substance* of an act. They do not prescribe the manner in which that act is to be done, unless the manner of doing it is of the intrinsic idea, or very nature of the act. The manner of doing the act would, in that case, along with the act itself, fall under the law. A law binds only to that which it prescribes, and a law prescribes only the *matter* on which it falls. It does not prescribe the *end* for which the law is made. If the matter of the law has been carried out into execution, then the law has been observed. There may be sin in the subject who has done no more than this, but his sin was not sin through transgression of that law. That alone is prescribed which is expressed in the law by way of command, and a human law does not command that *this* should be done for the sake of *that*, but only that *this* should be done.

If the *end* of the law—or the reason why the law was made—is sometimes expressed in the law itself, it is not so expressed as if it were the *object* of that law. It is expressed only as manifesting the reason or motive of the lawgiver in his making of that particular law.

For fulfilment of precepts, intention to satisfy them is not required. A law prescribes only execution of the external work which it indicates. The only intention, therefore, which is necessary, is the intention to do that which has been prescribed. It is not necessary, in order to the keeping of a law, that one should by a special act will or intend to satisfy the precept which prescribes the act.

Precepts do not bind subjects to *formal* obedience—that is, that a thing should be done because it has been prescribed. Precepts bind only to *material* obedience—that is, that the act which has been prescribed *should be done.*

The obligation of a precept is fulfilled by the doing of that which it prescribes, unless he who does it has applied the doing of it for another end which is incompatible with observance of the precept. Nay, he satisfies the precept who, in doing the act which the precept prescribes, expressly intends not to satisfy the precept by the doing of that act. The precept binds only to the substance of the act which it enjoins.

When that has been done, it is no longer in the power of him who has done it to will not to satisfy the precept by the doing of it. The precept has been already satisfied.

A *negative* precept is given with regard, not to the doing of an act, but to the refraining from an act. A negative precept does not, therefore, require the doing of an act, but only the refraining from an act, in order to the fulfilment of that precept. In this refraining a positive will to refrain from the doing of the forbidden act is not necessary in order to fulfilment of the precept.

By one and the same act, various and diverse precepts may be fulfilled at one and the same time. This will not, however, be the case if simultaneous manifold fulfilment has been forbidden by the lawgiver.

19.

Ignorance, if it is invincible, excuses transgression of a law. No man can possibly sin except by a voluntary act. A voluntary act of transgression supposes knowledge of the law which is transgressed. If the ignorance of the law is vincible, and blameworthy, it does not excuse transgression of the law. Ignorance of a law is then vincible when it is in one's own power to arrive at knowledge of that law, and

when one is at the same time bound to possess himself of that knowledge by means of inquiry. The knowledge may be in itself and absolutely possible, and the man may be in reality bound to acquire that knowledge, but in order to make him blameworthy, the thought of his obligation and of the possibility of his fulfilment of it must have occurred to him, and have entered his mind at least by way of doubt.

If it is from fear that a man does a thing which is in itself and absolutely evil, he certainly commits a sin. The wickedness of that sin is however lessened through the lessening of his freedom of will. His sin may be a sin of weakness rather than of stiff-necked wickedness.

Certain precepts are not binding on subjects when observance of them would entail grievous inconvenience. If through dread of such inconvenience a man fails to do that which these precepts prescribe, he does not sin. The precept in that case does not bind him. It is consequently not within his power to transgress it.

It is never lawful, even under pressure of fear of death, to violate a *negative* precept of the law of nature which forbids that which is in itself and intrinsically evil.

It not seldom happens that grievous fear excuses from fulfilment of a *positive* precept—whether Divine or human—that is, a precept which

prescribes some particular good action. Grievous fear sometimes also excuses non-observance of an *affirmative* natural precept.

There are cases, however, in which even grievous fear does not excuse. A man is bound to succour his neighbour who is in the last extremity of need, and that even at the risk of his own life. There may be a similar obligation in the case of one who is officially bound to come to the rescue of another who is under his care, and who is in grievous peril. If observance of a human law is necessary in order to the safety of the community at large or in order to the avoidance of damage to it, it is binding on individual members of the community, even at the risk of their lives.

Short of this, no human precepts—and not even ecclesiastical precepts in themselves—are binding with risk to life, or at a loss which may be regarded as equivalent to loss of life.

No man is at any time bound to the impossible. When observance of a law is impossible to a subject, he cannot sin by non-observance of that law. The impossibility of observing it may be a result or consequence of a former sin, but it does not beget a fresh sin.

In determining the obligation of subjects to fulfilment of a law, three distinct principles have to be kept in view. It is one thing—not to have

been *bound* by a law. It is another—to be *withdrawn* from the obligation of a law. It is a third—to be *excused* from transgression of a law, while still remaining under the obligation of that law.

20.

A law may cease to exist in several ways. It ceases wholly by the *abrogation* of it. The lawgiver or his successor in office, may recall and annul his law in its entirety. A law ceases partially by *derogation* from it. The lawgiver, or his successor, may alter or modify some part of his law. A law may also cease through the *invalidation* of it, if it is the law of a subordinate superior. A higher superior may decree the invalidity of the law of a legislator who is subject to him.

A new law which is in contradiction with a previous law annuls that law, even if in the new law no mention is made of the former law. Since a lawfully constituted and completed custom has the force and obligation of a law, such a custom also avails to the undoing of a law with which it is in contradiction.

A law may cease to exist, either by way of *the contrary*, or by way of *the negative*. A law ceases to exist by way of the contrary—when by reason

of change in the matter of the law, or in the circumstances of the law, that law becomes either unjust—or morally impossible of observance—or at least utterly useless, so far as the good of the community at large is concerned. A law ceases to exist by way of the *negative*—if, searching the whole of the matter of the law, there cannot be now any longer found that reason for which the law was made. Apart from this the matter of the law may in itself be neither evil—nor impossible of observance—nor useless. It may nevertheless remain true that the reason for the making of that law has ceased to exist.

When the end of a law has ceased by way of the *contrary*, the law itself ceases *ipso facto*, since it now concerns that which is unjust, impossible or useless. But when the end of a law has ceased by way only of the *negative*, the law itself does not *ipso facto* cease. The matter of the law, being right in itself, can still be observed, as it remains useful and possible of observance, even if that end for which the law was originally made has ceased to exist.

If the *end* of a law does not apply in the case of some particular person, the obligation of that law nevertheless remains even for that person. It is for the public good that common laws should be observed by all and every one of the members of the community. A law has in view

not individuals and exceptional cases, but the community at large on whom it is laid.

21.

The interpretation, or declaration of the sense and meaning of a law, may be either authoritative —or through usage—or doctrinal.

An *authoritative* interpretation of a law is a declaration of the meaning of it which has been given either by the lawgiver himself—or by his successor in office—or by his superior.

An authoritative interpretation may be either comprehensive—or extensive. A *comprehensive* interpretation is one which merely declares something which was already and really contained within the law, although the fact of its being therein contained has been hitherto obscure.

An *extensive* interpretation extends the law to some case which was not in the contemplation of the lawgiver, or which was not comprehended by the law as it was made by him.

A *comprehensive* interpretation does not require promulgation to give it force of obligation over subjects. This interpretation is not in reality a new law. An *extensive* interpretation is, as regards that which it adds to existing law, equivalent to a new law. It therefore requires such promulgation as is necessary in the case

of every law, in order to give to it force of obligation.

The interpretation of a law which is said to be *from usage* is that which is supplied by custom. It is an axiom that "custom is the very best interpreter of law." If the custom is such as to have already obtained the force of law, the interpretation which it affords will not merely be *from usage.* It will be—authoritative.

Doctrinal interpretation is the interpretation of skilled persons, or persons who are noted both for learning and for experience. This interpretation is to be found in the opinions of recognised teachers, approved authors, and others who have the reputation of being learned in the law. Doctrinal interpretation does not in itself have force of obligation as has the interpretation of a lawgiver, or of an established custom. When there exists, however, a unanimous consent of learned experts, this unanimity renders the matter which has been in question morally certain. It is at the same time a testimony to custom. It may thus result not merely in the interpretation which is called interpretation *from usage,* but in an interpretation which is authoritative or equivalent to an authoritative interpretation.

In the formation of a doctrinal interpretation,

that which has chiefly to be looked to is the mind of the lawgiver in the making of his law. The lawgiver's mind in making it was and is the soul of his law. His mind is to be gathered not from the naked words alone by which he has expressed it in his law, but from those words as taken in connection with the whole of their context, and taking into consideration both the matter of his law and the end of his law, along with the reason for which it was made, and the circumstances which accompanied the making of it.

If the mind of the lawgiver has once been clearly ascertained, the interpretation of his law which it presents is to be preferred before all other interpretations, and it is the only interpretation which can be rightly sustained and held. This is evident since that which we seek by means of interpretation is knowledge of that which the lawgiver had the will to prescribe. Even the proper signification of certain words in a law is to be set aside, if the ascertained mind of the lawgiver is clearly opposed to the sense which those words by themselves would otherwise convey. Words subserve the intention to which they give expression. The intention is not to be made subservient to the words which are used to express it.

Apart, however, from clear and certain knowledge of a contrary intention in the lawgiver,

the words of a law are to be interpreted in accordance with their own proper signification, and especially with that meaning which belongs to them in and from common usage. If the words are legal terms, they are to be understood in their legal sense, or in accordance with the custom of the court.

Doctrinal interpretation cannot be other than a *comprehensive* interpretation and cannot possibly be an *extensive* interpretation, since an extensive interpretation is equivalent to a new law, and a doctrinal interpreter is not invested with the authority of a lawgiver. Doctrinal interpretation of a law may, however, while still remaining merely comprehensive, be wider than is another and narrower interpretation of which that law is susceptible. Although a law might without injustice or incongruity be interpreted as comprehending a larger number of matters, it might at the same time be also interpreted as comprehending only a smaller number of matters, without failing to satisfy the demands of justice and rightness—the proper signification of the words by which it is expressed—and the reason for which it was given. All matters contained within this narrower comprehensive interpretation are necessarily, and not merely congruously, to be held as included by the law. Matters which are outside

the narrower and within the wider comprehensive interpretation, are not necessarily, but only with congruity, interpreted as falling within the sphere of the law.

A law which is burdensome to subjects—such as is a penal law, or a law which invalidates contracts, or a law which imposes tribute—is of strict interpretation. A burdensome law admits and demands the necessary wideness of interpretation, but it does not admit of that wideness of interpretation which is only congruous. A law which is *in favour* of subjects demands, on the contrary, the wideness of congruous interpretation. The interpretation of such a law is to be widened to the comprehending of all matters which can possibly be comprehended under the words of it, taken in their proper signification, that is, in their natural meaning—or in the meaning derived to them from usage—or in their juridical meaning, as the case may be.

Doctrinal interpretation of a law cannot be widened solely by reason of similarity, or by parity of reasoning, to a similar case which is in no way comprehended under the signification of the words of the law. Such a widening would be in reality an *extensive* interpretation, and that belongs to a lawgiver alone. From the fact that a lawgiver has prescribed some one particular

thing, it does not follow that he had the will to prescribe all things that are similar to it. *Identity* of reason, which differs from mere similarity of cases, gives good ground for widening interpretation of a law to a case which, although not comprehended under the words of the law, lies under the same reason—if it is clear that this reason was the *adequate* reason of that law, or the only motive in the mind of the lawgiver for his making of that law.

22.

When we form a judgment that a universal law ceases, or is not binding in some particular case, we are exercising that special and private interpretation of a law which is known in moral science as *Epikeia* (equity), and we are judging in accordance with equity. Epikeia is a restriction of the verbal law, through interpretation of that law as not extending to this particular case.

A law is given in universal terms, and contemplates that which is of almost universal occurrence. It may happen therefore that in some particular case, which is itself comprehended under the words of a law, it would be an evil, or harmful to observe that law, so that the lawgiver himself, if he were present, would except that case from the obligation of his law. In such a case, equity of its very idea demands that we

should form a judgment and act in opposition to the words of the law. We are not thereby going against the mind and will of the lawgiver. That case was not present to the lawgiver's mind when he made his law, and he had not the will to place that case under the obligation of this law.

CHAPTER IV.

Dispensations and Privileges.

A DISPENSATION is a relaxation of a law—or an exemption from the obligation of a law. Dispensation can be made only by the lawgiver, or by one to whom the lawgiver has given power to relax or exempt, and so to dispense from his law.

A dispensation differs from a permission. A *permission* does not suppose any law which forbids that which the permission permits. A dispensation, of the very idea of it, supposes an existing law which it relaxes, or from the obligation of which it exempts.

A dispensation differs also from a license or leave. A *leave* is not contrary to a law, nor does a leave exempt any one from the obligation of a law. A leave is the handmaid of a law. It supplies a condition which is required by that law. The condition demanded is that a particular thing should not be done *without leave.* The doing of the thing is not forbidden. The law forbids only that it should be done without intervention of the judgment and will of a superior.

A dispensation differs also from a privilege. A *privilege* is a private law which grants some particular benefit. A privilege, moreover, is not always in opposition to a law. A dispensation is always a relaxation of a law, or an exemption from the obligation of a law.

Still wider is the difference between a dispensation and an *absolution*, whether from sin, or from a censure.

In order to clearness of thought, there must be kept in view the most precise distinction between a dispensation from a law—an invalidation of a law—and a declaration of exemption from the obligation of a law. It is one thing to *dispense*. It is another to *invalidate*. It is a third to *declare* exemption.

To *dispense* from a law, belongs to the lawgiver who made that law. His power of dispensation is exercised through an act of jurisdiction. He who has power to bind, has power also to loose. He who dispenses from his law is exercising the same power in virtue of which he made his law.

Power to *invalidate* belongs to one who has dominion, or dominative power over the will of another. A ruler who is supreme within his own sphere of rule, has power to invalidate the law of a subordinate superior. Certain acts done

by subjects can be invalidated by their superiors. Certain persons are disabled from making valid contracts against the will, or even apart from the will of those to whom their wills are subject. The contracts made by them may either require the ratification of their superiors in order to their validity, or they may, while valid in themselves and apart from invalidation, be rendered null and void by subsequent invalidation of superiors. Such invalidation does not require power of jurisdiction, as does dispensation from a law. It requires only dominative power. This power may belong to persons who are not even capable of jurisdiction.

Declaration of *exemption* from the obligation of a law belongs to recognized teachers, approved authors, or skilled experts in the law which it concerns. This declaration is merely doctrinal. There is not in it any exercise of power, whether jurisdictional or dominative.

2.

A dispensation which has been granted without just cause is nevertheless valid. The bond of obligation of a subject to a law depends on the will of the lawgiver. If the lawgiver wills any one of his subjects to be exempted from the obligation of his law, that subject is thereby made exempt. When a cause ceases, its effect

ceases. The will of the lawgiver to bind by means of his law is the cause of that law's force to bind. When that will ceases in a particular case, the binding force which is the effect of it ceases at the same time. It ceases along with its cause.

Although a dispensation which has been granted without just cause is valid, the lawgiver has nevertheless sinned by his reckless relaxation of his law. He has acted, not as a faithful dispenser, but as a scatterer and squanderer of the goods committed to his charge.

A subject who begs for a dispensation without just cause sins, and if he succeeds in inducing his superior to grant the dispensation, he shares in his superior's sin. His sin and the sin of his superior are of the same species.

The reason why there exists in a lawgiver the power of dispensation from the obligation of his law, is because some precept which exists for the welfare of the majority of his subjects, may possibly not be for the welfare of certain individuals among them. Observance of that precept might happen also to be inexpedient in a particular case. If the determination of this question were left to the judgment of the individual concerned, it would always be open to the bias of self-love, and to the hallucination

which self-love begets. It belongs, therefore, to the office of a lawgiver to dispense from the obligation of his law, when in a particular case there is not to be obtained or hoped for that good which it was the object of his law to produce. In the making of his law it is impossible for a lawgiver to have in view all individuals among his subjects, and all particular cases which may at any time occur. He looks to the majority of his subjects, and to the cases which are of general occurrence. This law, therefore, he rightly dispenses when he judges that the relaxation of it, or exemption from the obligation of it, will be for the promotion of a greater good than is that which would result from observance of the law, or for the avoidance of a greater evil than is that of its non-observance. Dispensation with just cause is a prudent and expedient exercise of power in a lawgiver, since it is not expedient that an individual subject should take the law into his own hands, and be judge in his own case.

If observance of a law should at any time, or in a particular case, become morally impossible, or excessively difficult, there then exists a cause which in itself excuses from observance of that law. That law is no longer of obligation. There is then, therefore, no need for dispensation.

It is sufficient, by way of just cause for a

dispensation, that the difficulty of observance should be less than excessive, or that the moral impossibility or excessive difficulty of observance should be doubtful. It is for the common good that, in a case of difficulty—so long as it is a real and true difficulty, although not such a difficulty as would of itself exempt from observance of the law—the lawgiver should be able to relax or exempt from the obligation of his law. It may even sometimes happen in a particular case that the result of non-observance may be better than is the merely good result of observance of a law.

A cause of dispensation which is directly opposed to, and hinders observance of a law, and which is founded in some difficulty which renders observance more than ordinarily burdensome, is called an *intrinsic* cause of dispensation. When the cause of dispensation is derived from the circumstances of the person dispensed—his personal need or advantage, his signal virtue, and meritorious character, his rank and dignity, or the like—it is said to be an *extrinsic* cause of dispensation. A dispensation may be lawfully granted apart from an *intrinsic* cause. A dispensation cannot be lawfully granted without some, at least, *extrinsic* cause. This might be the exhibition of benignity and indulgence or

mercy on the part of the lawgiver at a season which is such as to suggest this, and to cause it to be fitting and prudent.

When a dispensation has been given without cause, and there was at the same time imposed in the giving of the dispensation some work by way of satisfaction, or a fine, or an almsdeed for the promotion of a pious work, or some act which contributes towards the common good of the Church at large, or the like, this of itself constitutes a cause for dispensation. The dispensation is, in this case, made by way of *commutation.* One obligation is commuted, or changed, into another. The obligation of the subject to observance of the law is not simply relaxed. It is *changed into* the obligation which takes its place.

A dispensation which is granted merely of liberality, or from a motive of mercy, apart from any grave necessity as regards the subject, is said to be *just*, but *not due.* Such a dispensation is, from its gratuitous character, and for the sake of distinction, called—a grace. If a dispensation which is "just but not due" has been asked for by a subject, and refused by his superior, the subject cannot act in opposition to the law. There is no cause to exempt or to excuse him from the obligation of the law, or which is sufficient to effect relaxation of the law. Even

if the superior has been unjust in his refusal of that grace, this will not justify the subject in his non-observance of the law, since it is the *will* of the superior, and that alone, and not his injustice which removes the bond of obligation of his law.

A dispensation granted by an inferior is not even valid without a just cause for the granting of it. The reason is because an inferior has power of *administration* only. A mere administrator can never dispense without just cause, any more than an administrator of goods, which are the property of his master, can make a gift of those goods.

When a superior dispenses his community he—since he as its head is himself a part of that body—shares in the relief which he imparts to the members of it. It would be contrary to equity that, when an obligation has ceased for the whole community, the head of it alone should remain bound thereby. When, apart from this case, a superior gives power of dispensation to another, and then asks actual dispensation at his hands, he can most certainly obtain it. It is clear that a superior, of all men, ought not to be in worse case than are his subjects.

It is true that dispensation is an act of jurisdiction, and it is also true that certain acts of jurisdiction involve, and that of their very

nature, personal distinction between him who exercises jurisdiction, and those on whom jurisdiction is exercised. These acts are, however, restricted to those acts of jurisdiction which require coercion, or a sentence, properly so called, as between parties, and which therefore of the very nature of them demand the existence and intervention of a third person. A man cannot coerce or compel or sentence himself, but he may certainly have it in his power to do something which will be for his own benefit.

3.

If, in a petition for a dispensation, there is a narrative or statement which is false, there is said to be *obreption.* If it is the truth that is suppressed in the petition, there is said to be *subreption.* A rescript or dispensation is null and void which has been obtained in either way. The grant in either case may have proceeded from ignorance or error in the granter, and where there is ignorance or error there cannot be true consent. Consent therefore cannot be presumed as existing in the granter of a dispensation which has been thus obtained.

It is not, however, every reticence with regard to the truth which will vitiate a dispensation. There must be in order to its vitiation a suppression of that kind of truth which has to

be expressed in accordance with the *stylus curiæ*, or that method of procedure which is demanded by the court in order to the validity of proceedings which are taken before it.

In the same way, it is not every falsehood in the petition which will vitiate the dispensation which follows upon it. The falsehood must be of that kind which has this effect from law or custom, or from the *stylus curiæ*.

A dispensation can be applied for on behalf of one who is in ignorance of the fact that the dispensation is being asked for, and even, in case of need, on behalf of one who is unwilling that the application should be made. There is an exception as regards the Roman Penitentiary, unless the dispensation is asked for by a blood-relation within the fourth degree of kindred, or at least by a confessor. In this case, however, the dispensation requires subsequent acceptance by the principal. If a confessor were, therefore, without the knowledge of his penitent, to apply for and to obtain a dispensation from an impediment in order to validate a matrimonial contract, this dispensation would be of no avail if it were not accepted by the penitent.

It is always in the power of a lawgiver of his own accord, and apart from the petition or

intercession of any one, to grant a dispensation in favour even of those who are unwilling to receive it. This is clear, since it is always in the power of a lawgiver to relax his law or to exempt his subjects from the obligation of his law, and this apart from their consent. Their consent was not necessary in order to the making of the law. It is equally unnecessary in order to the lawgiver's undoing of his own law.

Among causes of dispensation, some may be only *impulsive* and less principal causes. Others may be *motive*, or principal and final causes. The *final* cause of a dispensation is that for which the superior grants a dispensation which he would not have granted if that cause did not exist. Similarly, that is a *final* cause for which, if its existence had been notified to the superior, he would have refused the dispensation, or would at least not have granted the dispensation so absolutely, but with restriction, or with certain clauses and limitations.

The *impulsive* cause of the granting of a dispensation is that which—in the case of a false and obreptitious narrative or statement—moves the superior towards more easily granting that which is asked. Similarly—in the case of a surreptitious suppression of the truth—it is that which would have moved the superior to feel

greater difficulty in granting the request. He would have granted the dispensation in either case, but not so readily.

The *final* or *motive* cause of the granting of a dispensation is that which induces to the *substance* of the grant, or to the dispensation being granted. An *impulsive* cause conduces only towards the *mode* of the grant, or to its being *more easily* granted.

Silence in a petition for dispensation with regard to a particular quality of the case which the law has expressly decreed should be set forth in the petition, renders the grant surreptitious and invalid. This is so, even if the superior would in reality and with equal facility have granted the dispensation, if the truth had been expressed in the petition. It is of no avail that the silence has sprung from ignorance in the petitioner. When a law has decreed the setting forth of certain qualities of the case in the petition, by way of legal form, which has to be observed to the letter, and in the smallest particulars, then, if that form is not complied with, all that follows falls to the ground. The presumption is against the existence of real intention in the granter, and this intention no ignorance in the petitioner can supply. All that his ignorance can effect is to excuse him from the guilt of conscious subreption.

This effect of a law holds equally as regards the *stylus* of the Roman Court, in accordance with which certain qualities of a case have to be set forth in the petition. The *stylus curiæ* has the force of a custom which has the effect of law.

Even if it has not been determined either by law, or by the *stylus curiæ*, that a certain quality of the case has to be set forth in the petition which concerns it, yet if that quality is of such a nature that if it were known to the superior he would not have granted the dispensation, or would not have granted it absolutely, but only with certain modifications or limitations, his grant will be vitiated, and null and void.

It is otherwise if the superior would in any case have granted the dispensation, although with greater difficulty, if the truth had been set before him. If the unmentioned truth is one that is notorious, and such as the superior is believed to know, reticence will not then induce subreption. The reticence does not in this case occasion ignorance, and so, through ignorance of the state of matters, affect the intention of the granter.

In the case of obreption, or expression of the false—and not merely of subreption, or suppression of the true—the dispensation will be invalid only when the false allegation was the

final, or *motive* cause, apart from which the superior would not have granted it. The dispensation will not be invalid when even the final cause is merely *extrinsic*. In doubt as to whether the false allegation was the *final* cause, or only an *impulsive* cause of the grant, it is presumed to have been impulsive only, since law is in favour of the validity of an act. This would not be so if the false allegation was the *sole* cause of the dispensation. It is then only when along with a false cause there has existed a true cause that the dispensation can subsist. A cause may be in existence apart from the existence of a con-cause, but an effect cannot possibly exist without a cause. When the only cause is false, there is not, and there cannot then be, any true cause.

When an *impulsive* cause of a dispensation ceases to exist, the dispensation of which it was the cause does not thereby cease to exist. The dispensation rested not on the *impulsive* cause for granting it, but on the *final*, or *motive* cause. So also when the *motive* cause has ceased partially, but not wholly, the dispensation does not cease to exist. So long as any part of the motive cause endures, the dispensation will endure. If doubt should exist with regard to total cessation of the motive cause, the doubt is to be given in favour of the dispensation. The

dispensation is in possession. The cessation of the dispensation is not to be presumed. It either has to be proved, or it must be evident.

The cause of a dispensation ought to be already in existence at the time when the dispensation is given. If the cause has ceased to exist before the dispensation is granted, the dispensation will be invalid. If the cause did not exist at the date of the petition for dispensation, but did exist at the date of the concession of it, the dispensation will be valid.

If a dispensation has already issued in an act which is irrevocable, then that dispensation does not lose its force, even if the cause of dispensation has wholly ceased to exist.

4.

There are three stages in dispensation, one when faculty is given by the superior to dispense —another when the dispensation is actually given—and the third when the dispensation, which has been granted, is put in execution.

If the matter of the dispensation is one single whole, and that whole is unalterable, then the dispensation cannot be recalled. If the matter of the dispensation is divisible, or successive in the parts of it, the dispensation, even if it has already been put in execution, can be recalled

so far as regards acts of the future, for which it gave permission. By means of a dispensation no special right has been acquired by a subject. The subject has only been set free from the binding of a law. To this his superior can again subject him. A superior can restore his law to its former state, so that it should bind all his subjects indifferently and without exception. This a superior can, in any case, do validly, and with a just cause he can do it also lawfully.

A dispensation which has been granted absolutely does not cease on the death of the dispenser, even if the dispensation is then only in the second stage, and has not yet been put in execution. An absolute dispensation is a grace, and a grace does not expire with him who granted it. If a superior in dispensing has fixed the duration of the dispensation, as *during his pleasure*, or *at his will*, and if at his death the matter of the dispensation remains still untouched, or if, that matter being successive, it has only partially been affected, the dispensation expires with him. When he is dead, he cannot any longer either have good pleasure, or make manifest his will. If a dispensation has been given to endure *until recalled*, it does not expire with the dispenser. To recall the dispensation is then no longer within his power, and his death was not an act of revocation.

If a dispensation has been granted during the will and pleasure *of the Apostolic See*, it does not expire with the Pontiff. While individual Pontiffs pass away, the Apostolic See continues to endure.

Delegated power to dispense may either spring from law, or be granted by a ruler. It may spring from law, as annexed by law to some office or dignity. It is in this case equivalent to *ordinary* power of dispensation. When delegated power to dispense is derived—not from any existing law, but—by means of a particular act of the individual lawgiver, it may have been granted either by way of commission, or mandate, in favour of a certain cause or person—or by way of grace in favour of the delegate himself. In the first case, the delegation ceases at the death or deposition of him who delegated. In the second case, it does not, supposing it to have been granted absolutely, expire with the granter.

5.

A subject can renounce a grace which has been granted to him, so long as that grace has not been put in execution, so that the effect of it has not yet followed. To this there are, however, three exceptions. There cannot be renunciation if renunciation of that grace should redound to

the damage of a third party, or to the damage of the community in favour of which the dispensation was granted. Neither can there be renunciation by a subject, if the superior who dispensed commanded the subject to make use of the dispensation.

Renunciation may be either express or tacit, but mere non-use of the grace in question is not in itself to be reckoned as renunciation. Even the doing of an act which is incompatible with use of a dispensation during the time that that act is being done, is not equivalent to renunciation—since side by side with that act, there remains in the subject power to use the dispensation. Petition for a fresh dispensation with regard to the same matter as that of a previous dispensation, does not involve renunciation of the previous dispensation. The petition might be made for other reasons.

In order that renunciation by a subject of a dispensation which has been executed should be valid, that renunciation must be known to the superior who dispensed, and it must, moreover, have been at least tacitly approved by him. A law cannot revive for the subject who has been exempted from it. A subject cannot impose upon himself a law. A self-imposed obligation is not the obligation of a law. It is in the power of a superior alone to replace his subject beneath

the obligation of a law, under which he alone had power to place him.

The powerlessness of a subject to renounce exemption, and the power of a lawgiver to grant exemption, or even to impose exemption, shed twin rays of light on the rights of a lawgiver, and on the force and obligation of a law.

6.

A Privilege is a private law, which grants to a subject something which is over and beyond the general public law. It is not necessarily in opposition to that law. It may lie simply beyond that law. A Privilege means something more than does a mere *benefit*, such as is a dispensation from irregularity, or an absolution from censure. He who obtains benefits such as these, is acting in accordance with common law. He is not acting in virtue of privilege, which lies beyond that law.

A Privilege is called a *private* law, because the benefit, or the right, which it conveys is granted to some one person or private individual. If it is granted to several persons, it is granted to them in a private capacity, and as they together form only a part of the general community. A public law affects the whole of the community, that is to say, it affects the community as it is one single and undivided whole.

Although a Privilege fails of the full idea of a law—inasmuch as it is private, while a law is public—it is nevertheless with reason called a law, inasmuch as it shares in the idea of a law. By means of a Privilege the lawgiver not only makes manifest his will that the privileged person should enjoy the privilege which he has bestowed on him; but he also binds the whole of his subjects to observance of the privilege which he has granted in favour of the privileged person. To this extent that private law has a public character. It is thus entitled to be called a *law*.

In order that a Privilege should avail there is required *acceptance* of it by the person who has been privileged. A privilege is a *donation*, and a donation is not completed until it has been accepted. An unaccepted offering is not a *gift*. It is of the idea of a gift that it should have been not only offered by the giver, but also accepted by the receiver.

A Privilege differs from a dispensation. The whole of a dispensation is not given on the spot and at once, when the effect of the dispensation is divisible and when the dispensation may be successive in its operation. That which a Privilege conveys is always by way of a *right* or of a *power* which is *straightway* conferred by means of the Privilege.

All those persons, and those persons only, who have power to make a law, have power to grant a Privilege. This is evident on the face of it, if the Privilege should be in opposition to a law of the lawgiver. But, even if the Privilege should be, not in opposition to, but only beyond his law, the lawgiver alone has power to grant such faculty as should be *juridical.* The faculty is then juridical when it binds the whole community to observe the Privilege towards the privileged person.

In order that a Privilege should be *lawfully* granted, there must be some just cause for the granting of it. If the Privilege is in opposition to a law, legal and distributive justice must not be violated through the granting of it. If the Privilege is not in opposition to a law, but is only beyond the law, there must nevertheless be a cause for the bestowal of it. The grant ought not to be an act of prodigality on the part of the lawgiver. Liberality is one thing, and prodigality is another. The one, as reasonable, is praiseworthy. The other, as unreasonable, whether as contrary to reason or as without reason, is blameworthy.

Although every Privilege is granted in favour of some person or persons, yet a Privilege may be granted with direct reference to some thing, or place, or office or dignity, to which the

Privilege immediately attaches, and from which it redounds to the person privileged. In this case it is called a *real* Privilege. If, on the other hand, the Privilege is granted directly and immediately to a particular person, and as a personal favour to him as he is nakedly a private individual, it is called a *personal* Privilege. The distinction between *real* and *personal* is a correlative of the distinction between a thing *(res)* and a person.

Besides physical persons, or single individuals, there are *moral* persons. Moral persons consist of several physical persons as these together form one individual *moral* whole. Hence a Privilege which is granted to one particular man is called a *singularly* or *individually personal* Privilege. A Privilege which is granted in favour of a particular kind or class of men is a *personal* Privilege which is *common*. A Privilege which is granted to some corporation, or corporate body of men, which has its place within the commonwealth, is called a *corporately personal* Privilege.

A *real* Privilege, since it attaches to a thing (*res*), passes with that thing to all who obtain that thing. With that thing it also ceases. A *personal* Privilege cleaves to the person

privileged, and with him it also expires. Since things (*res*) unlike persons, may endure in perpetuity, *real* Privileges—which attach to things directly, and to persons only indirectly, and through the medium of those things—are called *perpetual* Privileges. Both *personal* Privileges *in common* and *corporately personal* Privileges approach in this respect to *real* Privileges, since they pass to heirs and successors.

There are some Privileges which are in opposition to a law, and there are other Privileges which are beside and beyond the law. A Privilege which is *in opposition to* a law derogates from that law. It gives leave and right to do something which that law forbids, or to leave undone something which that law prescribes. A Privilege which is merely *beyond* a law is a grant of a favour which is not expressed in that law.

Privileges may be granted either of the granter's own accord—or at the petition of the grantee—or at the instance of a third party. Some Privileges are gratuitous benefits which proceed solely from the grace and favour of the granter. Other Privileges are not mere graces, but are either *remunerative*—as granted by way of reward for meritorious service—or *conventional*, as granted by way of covenant, when along with the grant of the Privileges there is imposed on the grantee some fine or burden.

7.

In interpretation of a privilege the first and chief point which has to be considered is as to whether the only result of the Privilege is the benefit of the person in favour of whom it has been granted—so that it in no way redounds to the grievance of other persons who have not been similarly privileged. If this is the case, the Privilege is called a *favourable* or *gracious* Privilege. If, on the other hand, the Privilege should be in opposition to a law—or should be burdensome to other persons—its technical name is that of an *odious* Privilege.

A favourable or gracious Privilege—which is purely a benefit to the person privileged—demands largeness of interpretation. It is not, however, in its interpretation, to be extended to other persons or causes, from similarity of reason. To those persons and causes, the will of the lawgiver cannot be presumed to extend, and it is his will which alone is operative in this matter. Largeness of interpretation must, moreover, always be confined within the limits of the proper meaning or the juridical signification of the words by which the Privilege is expressed.

An *odious* Privilege, or a Privilege which is burdensome in its effect on others, is—so far as

it is thus burdensome—of strict interpretation. It is an axiom that while "favours are to be widened, or enlarged, burdens are to be narrowed, or restricted." A Privilege, however, which seems at first sight to redound to the grievance of individuals, may at the same time be for the welfare of the community at large, and therefore for the welfare of all the individuals who compose that community. It is often in the interest of the common good that certain favours should be bestowed on particular persons, or on classes or bodies of men, or on particular causes. This has to be taken into consideration in the interpretation of such a Privilege. In any case, a Privilege must never be so interpreted as thereby to be rendered nugatory. A Privilege must always be so interpreted as to have some result, and to confer some benefit, since this is of the essence and very idea of a Privilege.

8.

A Privilege does not cease on the death of the granter. A distinction has, however, to be kept in view between a grace which has been *already made*, and a grace which has yet *to be made*. A grace is then *made*, when the faculty or leave is granted to the person privileged, even if execution of this faculty or leave should remain

dependent on a third person. Such grants or graces, when they have once issued from the public authority, are held to have been *made*, and perfected, so far as the granter is concerned. They do not, therefore, expire with the granter, even if at the date of his death they have not yet been put in execution. But if the granter himself has not directly granted the grace, but only given a mandate or commission to some third party to confer the grace, and at his death the grace has not been conferred, the commission to confer it expires with him. There is in that case no question of cessation of a privilege. The privilege contemplated had never been granted. The Privilege had no existence.

A Privilege ceases when the *time* has elapsed for which it was granted—or when the *condition* ceases under which it was granted—or when the *final cause* for which it was granted ceases. A Privilege will also cease if it should result in grave damage to the community at large, or to third persons, or to the person privileged. Through change of circumstances, a Privilege may come to be contrary to equity. In that case the Privilege either ceases of itself, or it may certainly be annulled by sentence of a judge.

Privileges which are burdensome to persons other than the person privileged may be lost through prescription against them, in cases

where prescription has place, and when the necessary conditions of prescription are fulfilled. Privileges which are not to the grievance of others, and which are simple favours to the person privileged, are not lost through non-use of them. Non-use is not adverse to a Privilege or to a right in itself. Non-use excludes only use, and the *use* of a thing is not necessary in order to the continued *existence* of that thing. In this case there is no place for prescription.

A Privilege ceases on the revocation of it by the granter, or by his successor. This revocation may be either express or tacit. *Express* revocation may be either specific, or through intervention of a general clause inserted in a law —"notwithstanding all Privileges whatsoever." This clause, however, is not regarded as revoking such Privileges as are contained in the *Corpus juris*. Unless there is a clause which is specially derogatory of these, they are not revoked. Privileges which are not contained in the *Corpus juris*, but in which there is a clause that they are not to be regarded as revoked, unless there is special mention made of them, are not revoked without such mention, unless there is in the law some such clause as—"notwithstanding all Privileges whatsoever, under whatever form of words they may be conceived, or even if mention ought to be made of them, word for word."

Tacit revocation of a Privilege is made by means of an act of the lawgiver which is adverse to the existence of the Privilege. It must, however, in this case, be presumed with reason that the lawgiver had knowledge of the existence of the Privilege, so as to be capable of having the intention to revoke it.

Finally, a Privilege ceases through renunciation of it by the person privileged, if the Privilege was in favour of him alone. In the case, however, of Privileges which have been granted principally in favour, not of an individual, but of a church, or community, or order, private persons have no power to renounce those Privileges even for themselves as individuals.

Our consideration of this subject of Privileges completes our view of the nature and force of a law, and of the rights of the man who is invested with the power to make a law.

CHAPTER V.

Justice and Right.

JUSTICE may, for the purposes of this paper, be defined as—a persevering habitual intention of giving to every person every thing to which he has right—or which is due to him as a thing to which he is entitled. Other virtues perfect a man in matters which concern himself. Justice directs a man in matters which concern persons who exist outside himself. It is proper to justice, as justice is a virtue, to establish a man in the due order of his relations to other persons, as these persons are possessors of *rights*.

RIGHT is a word to which either of two meanings may attach. *Right* may denote that which justice has in view, and which is called the *object* of justice. In another sense *right* may denote the *title* of a person to that thing which is due to him.

When that which is a called *a right* is the *object* of justice, we mean by a *right* something which is just or equitable, and due to another. When on the other hand, that which is called *a right*, is the *title* of a person to that which is

due to him, we mean by a *right* a faculty or power in that person either of possessing some particular thing, or of doing some particular action. We speak of the property of an owner as being *a right* which belongs to him. We speak also of the reason why it belongs to him, or of the ground of its belonging to him, as being his *right* or *title* to it. A man is said to have a *right to do* that which he is free to do. The *ground* of his freedom of action is also called his *right.*

Injustice is the violation of justice. An injury is a violation of a right.

2.

Justice, among men, sets a man in due order in his relation to another man, either as the man is an individual, or as he is a member of a community of men. All men who are included in any community are related to that community, as are the parts of any whole to that whole of which they are the parts. The good of any and of every part is ordained towards the good of that whole of which it is a part. Hence the good which results from the exercise of any and of every virtue—whether that virtue sets a man in order as regards himself individually, or whether it sets him in order in his relation towards other men—redounds to the good of the whole

community of which he and they are parts. It follows that acts of all virtues may in this way belong to justice. They fall under the justice which, in view of the common good, gives to the commonwealth or community that which is its due. This justice is called *general justice.* It is not so called as if it were a compound of the other virtues, so that in essence it should be identified with them. *General* justice is so called inasmuch as it ordains the acts of other virtues towards its own end. That end is the general or common good.

It belongs to law to ordain towards the common good. This justice, therefore, is called *legal justice.*

The virtue of charity is a *general* virtue, inasmuch as charity ordains the acts of all virtues towards that good which is God. Charity is at the same time, and in its essence, a *special* virtue, as it regards the divine good as its special object. Legal justice is, in like manner, a *general* virtue, inasmuch as it ordains the acts of all virtues towards the common good. Legal justice is at the same time, and in its essence, a *special* virtue, as it regards the common good as its special object.

3.

That which is called *distributive justice* is the justice which properly and formally belongs to

the ruler of a community. He has both power and right to distribute both the common goods and the common burdens in accordance with the circumstances of individual members, or classes of members of his community. *Distributive* justice is for the ordering of the commonwealth, in its relation towards the subjects of the ruler. *Legal* justice is for the ordering of those subjects towards the commonwealth itself. That which is called *commutative justice* is the justice which sets in order one private person in his relation towards another private person.

It is, therefore, in the ruler of a community that *legal* justice principally and, as it were, architectonically resides. It is for him to prescribe the mode in which the common good of the community at large is to be procured. Legal justice resides in subjects secondarily only, and, as it were, administratively.

If in virtue of a constitution of government, or of some at least implicit covenant, the nominal ruler is practically the mere minister of the commonwealth, that ruler is bound by *commutative* justice also to promote the common good.

4.

Distributive justice does not bind the ruler to restitution, since it does not suppose a strict and proper *right* in subjects. By violation of

distributive justice on the part of a ruler, a man is not deprived of his *property*, any more than he is deprived of his property by a violation of obedience or of charity. That is not a man's property to which he has not *right*. It is then only that the obligation of restitution emerges when the *property* of an owner has been taken from him. Property or true ownership supposes a *right* properly so called, or a strict *title* to that which is possessed.

When distributive justice has the character also of *commutative* justice, there arises from the violation of it an obligation of restitution. This occurs in the case of a competitive examination. That implies a covenant to give the reward to him who is the most worthy.

A vice which is opposed to distributive justice is that which is known as *acceptance of persons*. It consists in this, that in the distribution of common goods, regard is not had to that which would make the favoured person the most worthy to receive the goods assigned to him, but is had to some other circumstance of that person.

In order that acceptance of persons should be really sinful, there are two previous conditions, which must be found in combination. The first of these conditions is that the goods which are being distributed should be truly common goods. They must be the property, not of any private

individual, but of the community, and entrusted to the ruler of the community for the faithful dispensation of them to members of that community, as these members are parts of one whole. The second condition in order to a sinful act of *acceptance of persons* is that the ruler should be really bound to make the distribution in recompense of the deserts of persons who are parts of that particular community. He may be so bound either by the nature of the case—as when the individual deserts of a member or a part of the community have redounded to the welfare or renown of the whole community—or in virtue of some covenant by which he has promised to bestow the common goods in proportion with the particular good contributed by any member to the general good of the whole community.

5.

In order that a man should have *right* to a thing, this alone is required, and therefore suffices, that in him there should exist a just *title*, in virtue of which he can exact possession of that thing. There are many titles which beget right. It may be a *law* which grants the right. There may also be a *fact*, from which the right arises.

Right *to* a thing does not give legal action over that *thing itself*. The thing is not as yet one's

own. Right *to* a thing gives action only over the *person* who retains it, or who is hindering its owner's possession of it. That person ought to give up the thing, or to cease from hindering possession of it by the owner of it.

A right *to* a thing, as it is distinguished from a right *in* a thing, is sometimes called an *inchoate* right.

A right *in* a thing has the thing itself bound up with the right, as it is a right. It gives action over the *thing*, and not merely over the person who retains that thing, in defiance of its owner's right. As distinguished from inchoate right, it is called *full* right.

In order to acquire right *in* a thing there is required the existence of the thing—lawful title to possession of the thing—and delivery of the thing. Until the thing has been delivered, the dominion of its previous owner has not yet been transferred. There may exist a right *to* the thing, but, until the thing itself has been actually made over, the new right *in* the thing has not yet been made complete.

There are four kinds of rights. There is right of dominion—right of use—right of usufruct—and right of servitude. We are now speaking of *dominion* in the sense of dominion of property or ownership, and not in the sense of dominion of jurisdiction.

Dominion is a right of perfect disposal of some corporeal thing. It is a lawful faculty to dispose of a thing as one's own—at one's will, unless in so far as the full and free exercise of this faculty has been restrained by law, by covenant, or by the will of a testator.

He who has dominion has power to dispose of his own, on his own authority, and not merely by commission from another. At his own will he can dispose of his own to any use whatsoever, whether by selling it, or giving it away, or even by causelessly destroying it. He may, in the last case, be committing a sin, but this will be for another reason. He has not in his wanton destruction of his own property violated that *commutative* justice which concerns the rights of others.

Dominion is to be distinguished, therefore, from merely naked or *bare possession.* There may be lawful possession of a thing apart from and without dominion over that thing. One has not dominion over a pledge in one's possession, since one cannot dispose of it, as if it were one's own.

Under the feudal system, and as peculiar and proper to that system, the dominion of a feu lay both with the feudatory, and with the king. The feu was a right of property granted to a

subject by his superior. In return for this, and in token of his vassalage, some service was to be rendered by the inferior owner to his over-lord. This was his feu duty. The idea survives in the law of Scotland at this day. The dominion of the feudatory was called the *low* dominion. That of the king or over-lord was called *altum dominium*, or the *high* dominion. We are not to confound with this dominion the right which belongs to a commonwealth over the persons and goods of subjects. This is a right the existence of which is demanded by the public good. It is, nevertheless, not a dominion of property and ownership. It is not dominion properly so called. It is a right to *prescribe* to subjects something which is expedient for the public good. The loss to private persons which results from an exercise of this right must be made up to them from the common goods. The right itself must not be exercised without necessity, or in excess of the demands of the public need. It is akin to the right to relief, and of relieving themselves, which, within the same limits and restrictions, exists in private persons, when they find themselves in the last extremity of need.

Full or *perfect* dominion is the right both to the *ownership* of a thing, and to the *use* of it. *Imperfect* dominion is a right either to the

ownership of a thing,—or to the use of it,—but not to *both together*. The dominion which is called *direct* dominion regards ownership alone. Dominion *of use* regards emolument alone, whether it arises from the use of a thing, or from the usufruct, or fruits which spring from the right to use a fruitful thing.

6.

The *objects* of dominion—or those things to which dominion extends, and which may be possessed and owned by man—are all those external things which are called *goods of fortune*, and which are capable of being used by man. Of these some are corporeal, while others are incorporeal. Of the latter we have an instance in possession of a *right*.

Among such goods there are some which are called *moveable goods*. They are those which do not form part and parcel of the soil, but either are easily moved from place to place, or are themselves self-moving. Of this latter class are cattle. There are also certain goods which rank among moveable goods, not of their own nature, but through determination of law.

Those goods are called *immoveable goods* which are not self-moving, or which cannot be transferred from place to place, either of their own nature or because of their being destined always

to remain in the same place, so that they could not be removed without damage to the soil, or without frustration of the purpose of their existence.

A man's own life is not an object of his dominion. Dominion over human life has been reserved by the living God who gave life. It is not so a man's own that he can dispose of it on his own authority, or at his own will.

A man has dominion *of use* over goods which are *intrinsic* to him, whether of soul or body. These are truly his own, and they can be used by him for his own advantage, if without injury to others. He is injured and suffers wrong, if he is unjustly hindered in the use of them. A man has dominion also over his own reputation. He is therefore injured if he is deprived of his good name.

A man may have dominion over his fellow-man. This dominion is not full or perfect dominion. It is dominion *of use*. He has right to that man's labour, and to the fruits thereof. If he sells him, or gives him away, he sells or gives away not the ownership of the man, but his right to that man's labour. We are not now discussing the question of slavery on its merits.

Among creatures all rational and intelligent beings, and these alone, are capable of dominion.

Brute animals are not capable of dominion. They are not the subjects of *right*, and therefore there cannot be done to them a *wrong*. A man may sin through his wanton treatment of brute animals, but his sin is not an injury to them. There cannot be any invasion of right where no rights exist. No one can suffer *injury* who is not possessed of a right, interference with which will be a wrong.

Moreover, he alone is capable of suffering *injury* who has the power to *will* not to suffer injury. He must be unwilling, not only with the will wherewith he wills a thing to be his own—for this a thief can will—but with the will wherewith he wills to retain his *right* to that which is his own. This is a will to bind others not to take that thing away, and so to deprive him of his right of ownership.

The most perfect of all dominions is that dominion which belongs to God. God has supreme and universal and absolute dominion over all persons and over all things inasmuch as He is the one Creator and Preserver of all of them. God's dominion over all His creatures is essential and necessary, and so He cannot alienate it. It is not in His power to abdicate, and to release His creatures from their allegiance. He can no more give them independence of Himself than He can alter the fact that He

created them, and is therefore their Lord and Master, and that they were created by Him, and are therefore His servants, His handmaids, or His property. Deal with them as He pleases, He cannot do them *wrong*. Those cannot receive *injury* at the hands of God who have no *rights* before God. The powerlessness of the Almighty to do that which does not fall within the sphere of power, does not derogate from but, on the contrary, completes the idea of the perfection of the divine dominion.

7.

From the outset of the human race it was a natural demand of human society, and therefore of human nature, that there should be partition of goods among human persons. If all things were strictly in common among human beings, there would not exist any adequate motive for diligence on the part of individuals in the cultivation of the common soil, or in provision of the necessaries of human life. That which might be regarded as every man's work would soon in practice be accounted as no man's work. Quarrels and fighting would ensue. Every individual man would appropriate in accordance with his own requirements and desires. The strongest would take by force. The weaker would go to the wall. The result would be

incompatible with order. Nature demands order, and the demand of nature is a demand of nature's Author. Hence it is prescribed, and of necessity, and by the law of nature itself, that there should exist among men individual dominion over particular goods. This is a right of ownership which no man can justly violate. The rights of property are not the result of any social compact, or agreement between man and man, or between men and men. The rights of property were necessitated by a need of nature. They emerged as soon as men began to increase and multiply upon the earth.

At the beginning of the human race, nature did not allot any one thing to any one man as his own individual property. Men were introduced into an already furnished world, and it was for every man to take, and taking to make his own, that which before was common. Further, if a man, by his own industry, should form a flock or, through his own cultivation of the soil, should found a farm, then, apart from any decree, that flock or that farm was his, by the law of nature. It belonged to him. It was his property. He owned it. He had dominion over it.

A need of nature, inasmuch as nature demands order, introduced dominion and ownership, and such a *right* of ownership as ought not to be

violated. The same need of nature also induced that in course of time the existence and maintenance and defence of this right should be decreed by statute.

It was impossible that every man should be able to appropriate for himself all the things of which he might at some time stand in need, and some of which had already been taken possession of by other men. Hence nature itself introduced barter or exchange of goods, along with various kindred contracts. Moreover, man is mortal, and generation succeeds to generation, and so there must be provision against disturbance of dominion. Since the law of nature prescribes that parents should provide for their children, that law also indicated transmission of dominion. Human laws, which explain and apply the law of nature, have rightly laid it down that dominion can be transferred by those who possess it, to certain persons apart from any acceptance, or even knowledge on their part. Dominion can be transferred to infants, or to insane persons, and provision can be made in favour even of persons who as yet have no existence. Provision is thus made by parents in view of possible children. When these are born there is a right of dominion which at once belongs to them.

When it is said that "all goods are common by the law of nature," this is true—not in the

sense that the law of nature forbids the right of ownership, which, on the contrary, it demands as necessary to the due order of human society —but only in the sense that the law of nature did not from the first determine any particular goods to be the special property of any particular person.

8.

All modes of acquired dominion may be reduced to four in number. These are occupation,—accession,—prescription,—and contract.

Occupation is the laying hold of a corporeal thing which has as yet no owner, and that with the intention to acquire that thing for oneself, and to possess it as one's own. It is an axiom that "a thing belongs to its first occupier," that is, when the thing has never had, or has ceased to have an owner. If a thing has already an owner, it cannot be acquired by occupation.

There is *accession*, when a thing accedes or comes and cleaves to another thing which is already one's own, and thus becomes also and equally one's own. It is an axiom that "the accessory follows the principal."

Prescription is a peremptory exception which excludes legal action, on the ground that action has not been taken within a certain time defined by law. Prescription may be either acquisitive

or liberative. Prescription is called *acquisitive*, when it is by means of it that a thing or a right is acquired. Prescription is called *liberative* when it is by means of it that one is set free from some burden or servitude. That man cannot prescribe who cannot possess. Every man, on the other hand, who can acquire dominion and possess, can also prescribe. Prescription does not run *against* those who cannot possibly appear in court, and take action or safeguard their rights, or administer their goods, or alienate them. Prescription is a species of alienation, when by means of it previous owners have come to lose their property or their rights.

Contracts are covenants or bargains with regard to transference of ownership or of rights. Bare *delivery* of a thing never transfers the ownership of that thing. The thing might possibly have been delivered by way of deposit or of pledge. In order to transfer ownership, the delivery must have been preceded by a sale, or other contract, on which delivery follows as an effect or consequence. Delivery then fulfils the contract, and completes the transference of ownership.

9.

Injury may be done by one man to another in either of three ways—in his goods of soul

or body—in his goods of reputation and honour, —or in his goods of fortune, which are extrinsic to him, or outside him.

An *injury* differs from a simple *offence*. An offence is wider in its sphere. An offence is an interference with the reasonable good pleasure of another, without of necessity interfering with any other *right* than his right to that good pleasure. There is a reasonable irritation in an intelligent will, when a man is annoyed against his will. This gives him ground for indignation and resentment, even when there has been no abstraction of a right, in the strict sense and properly so called. Where no such right exists, there cannot be any injury. Where no right has been invaded, no injury has been inflicted. But apart from *injury*, there may have been *offence*, just as apart from *right*, there may exist good pleasure.

An injury may be either formal or material. There is *formal* injury when the right of another is blameably interfered with. The injury is *material*, when the interference has taken place without fault of him who was the cause of it.

An injury may be either personal or real. The injury is *personal* when it is done directly against the person in those goods which are *intrinsic* to a man, whether of body or of soul. The injury is called *real* as distinguished from

personal, where it is done with reference to goods (*res*) which are *extrinsic* to a man, or are possessed by him outside himself.

An injury may be either merely an injury, or it may be also and at the same time a *damaging* injury. The first injures simply a *right* which belongs to another. The second has a further result in *loss* to him.

A man cannot possibly do injustice unless he has the will to do injustice. In like manner, a man cannot suffer injustice unless he has either an express or an implicit will not to suffer injustice. He has this will *expressly* if he has knowledge of that which he has the will not to suffer. He has the will *implicitly* or *interpretatively* if, while he has no actual knowledge of the injustice, he is in the disposition that, if he did know of it, he would not have the will to suffer it.

If a man wills to submit to that which would otherwise be an injustice, and still more, if he positively permits it, no injustice has been done. The man has abdicated, and given up his right or, to say the least, he has placed his right within another's power.

It is an axiom that "to him who with knowledge has the will to submit, injury is not done." But in order that a man should truly have this knowledge, there must be complete absence of

every error which would in any way prevent consent. In order that he may be held to truly consent, his will must be so free that he would not be suffering *injury* even in the extorting of his consent. He must not be the victim of unjust fear, or be subject to the pressure of such necessity as would drive him to the enduring of a loss to which, apart from that necessity, he would never have submitted.

An *injury*, properly so called, cannot possibly be done by a man *to himself*. He who kills himself, or who kills another man with that man's consent, or at his request, is unjust indeed, but not to himself, or to that other man. The right which has been violated is the right of the Creator, who has reserved to Himself dominion over human life. Matrimonial rights cannot be transferred by those who possess them. They are real rights, but they are *inalienable* of their own nature. Consent cannot therefore be given by the possessor of them to the exercise of them by another. No kind of consent can alter the wrong which is done by violation of an inalienable right.

10.

Among other injuries there is that of *theft*. Theft consists in secretly taking away the property of an owner, who is reasonably unwilling

to be deprived of it. Unjust detention of a thing which belongs to another is equivalent to the taking of it away. A man is stealing who takes away that which he has deposited with another in pledge, although that which he takes away has never ceased to be his own property. He has violated the *right* of retention which belonged to him who held the pledge.

Theft is distinguished from *mere damaging*, which brings no gain to him who inflicts it.

Theft is a hidden injury, as compared with robbery, which is an openly inflicted injury, accompanied with violence. A theft may indeed be committed in presence and sight of the owner; but if it is done without violence, it remains a theft, and it is not a robbery. In this sense it is that theft is said to be a hidden injury. The term signifies the absence of violence in surreptitious stealing.

If property is taken away in sight of its owner, and the owner keeps silence from fear or shamefacedness, there is theft, because the owner has not the will to be deprived of that which belongs to him. If a man may, however, in the exercise of his prudence presume that the owner is content that the thing should be taken from him, and would most certainly give the thing if he were asked for it, a theft is not committed by the taking of it. The owner is

in this case supposed to consent, so far at least as the *substance* of the act is concerned, even if he should at the same time object to the *mode* in which the act is done. If he who took the thing should afterwards come to know that the owner had a positive will not to part with it, the thing taken cannot be retained. In the light of this knowledge, the presumption ceases which excused the taking of the thing.

Robbery is, therefore, an unjust taking away of the property of another, along with the use of force either to the owner or to the lawful guardian of that property. Regarded theologically, robbery differs from theft in species. It superadds to theft injury to the person of the owner. By the force which makes stealing to be robbery is to be understood not only violence or assault on the body of the owner, but also grievous fear which has been unjustly caused in him, as well as threatening of some still greater damage.

Robbery is, as regards its species, a species of unjust deprivation of property. It is not a species of theft, since theft itself is opposed to robbery.

The species of *sacrilege* may attach both to theft and to robbery. Sacrilege may occur in three ways: either when a sacred thing is unjustly taken from a sacred person,—or when a sacred thing is unjustly taken from a person

who is not sacred,—or when a thing which is not sacred is unjustly taken from a sacred person.

II.

In the necessity which is called *extreme*, it is lawful for a man to appropriate something which is the property of another, if and so far as the use of it is absolutely necessary to him in his present need. This is common doctrine, which is without question. It rests on the ground that the rights of human persons are subordinate to a right of human nature. The rights of ownership which, as we have seen, emerged in the primeval distribution of the goods of nature, and which are founded in the law of nature, must yield to a right of nature itself. This is that right which every man in virtue of his nature has to use the goods of nature for the preservation of himself. Such appropriation has not in it the nature of theft. Through the taker's necessity the goods taken are made the taker's own. To this, however, there is one exception. If the previous owner is himself in extreme necessity, it is not lawful for one who is in the same necessity to appropriate goods of which both have need. This is forbidden by the axiom of law: "Better is the condition of him who is in possession."

But what is the precise nature of that necessity

which will justify appropriation of some part of another's property?

There are various kinds and degrees of necessity in which a man may find himself. The necessity which is called *extreme* is that from which there is imminent danger of death, or at least of long and grievous sickness. When a man is in danger of some calamity which is so grievous as to be almost equivalent to death, such as is mutilation, or perpetual captivity, or total wreck of honour, his necessity is said to be *quasi-extreme*, or *most grave*. Imminent peril of a grievous evil, such as is some loss of reputation, or liberty, or goods, or state and dignity, constitute what is called *grave* necessity. These are the main divisions of extraordinary necessity, but as in their circumstances they frequently overlap each other, we find them variously stated in works on moral science.

The necessity which is ordinary, and is called *common* necessity, is that of a man who suffers inconvenience with regard to the necessaries of life, or the demands of his station in life, but not such misery as to render his life utterly wretched and unbearable. This necessity has, of course, to be measured by the standard of his station in life. A man of rank would suffer more than would a street beggar.

The appropriation of some portion of another's

goods, which is lawful in *extreme* necessity, is lawful also in *quasi-extreme* necessity. It is not lawful to appropriate any portion of another's property in merely *grave* necessity. Still less could this be considered lawful in a case of *common* or ordinary necessity.

If a man who is in extreme necessity can beg from the owner that of which he stands in need, he ought to do so. He will not be justified in surreptitiously appropriating it. Appropriation is an extraordinary, and in his case unnecessary, means in order to his relief. The man, moreover, is not as yet subject to extreme necessity if he still has hope of getting for the asking the necessary succour.

If the mere *use*, as distinguished from the ownership, of a thing will suffice for relief in extreme necessity, he who takes the thing does not thereby become the owner of it. Hence he is bound, when his extreme necessity is at an end, to restore the property to its owner.

As the law of nature has not imposed on a man the obligation of preserving his life through the use of extraordinary means, so neither has the law of nature given right for the appropriation of extraordinary means, but only for the appropriation of that which is an ordinary means for the preservation of life.

The obligation to relieve—not necessarily to *give*, if lending or selling will suffice—a man who is manifestly in extreme necessity, is founded in the law of *charity*. The power of the indigent man to take is founded in the law of *nature*, which gives him the *right* to take. To this natural right in him there corresponds in an owner an obligation of *justice* not to hinder the taker in the exercise of his right to take. There may, therefore, exist in a man who is in extreme necessity the *right to take*, even if an *obligation to give* should not lie upon the owner, who is not bound, at grave inconvenience to himself, to the succour of his neighbour, as an act of charity.

That which seems at first sight to be a limitation of the rights of ownership, serves to set forth more clearly the reality and justice of the rights of property.

CHAPTER VI.

Restitution.

THAT to which a man is entitled in justice at the hands of his fellow man is called—his *right.* If this right is interfered with, an injury is done to that man. Violation of a right is infliction of an *injury* or *wrong.*

The wrong done may or may not be accompanied with loss of goods to the person wronged. If the wrong is not accompanied with loss, it is a *simple injury.* If the wrong results in loss, it is a *damaging injury.* Apart from damage done, there is no question of restitution. Restitution has no place.

A simple injury for which satisfaction has to be made is the object of *vindictive* justice. This is that justice which avenges by means of punishment. A simple injury is not the object of *commutative* justice, or that justice in accordance with which a man renders to his fellow man that which is *due to him,* and which therefore is *his own.*

Distributive justice is that justice which

regulates the conduct of a ruler in his relation to his subjects.

Legal justice is that justice which is exercised in making provision by means of law for the common welfare or the welfare of the community at large.

The obligation of restitution does not arise from violation of either distributive or legal justice.

The root therefore of *restitution* is not to be found in every injury. It is found only in such an injury as is contrary to *commutative* justice, or justice between man and man among men who are equals as fellow subjects. This injury must also be accompanied with loss or damage to the person injured. Restitution is—reparation of loss sustained.

Restitution differs from satisfaction. *Satisfaction*, in its widest sense, signifies observance of a precept. He who observes a precept is said to satisfy his obligation with regard to that precept. In this sense, he who restores the property of another which he has unjustly taken, satisfies an obligation of the law of justice.

Satisfaction, in its special sense, is either compensation for an offence, even if the offence was against charity only, and not against justice —or it is payment of a debt of punishment which has been contracted by an offender as due to his offence.

2.

An injury may be either a merely *material* injury, or it may be a *formal* injury. A merely material injury is done when a man destroys, or takes away and retains the property of another *in good faith*. A man is in good faith if he has reason for believing that it is lawful for him to do so, so that in so doing he is dealing with his own. A formal injury is done if a man destroys or takes away and retains the property of another *in bad faith*. A man will be in bad faith if he actually knows, or if it is possible for him to know and he ought to know that what he is doing is not lawful, or that in doing it he is dealing with that which is not his own.

There exist, therefore, two roots of restitution, and those two are the only real roots of restitution. To these two all other so-called roots of restitution may be reduced. One root of restitution is imbedded in the *thing taken*—the other root springs from the *unjust taking* of that thing. By reason of the *thing taken* the taker of it is bound to restitution, even if it is without any fault of his that he has taken that which is the property of another, and by his possession of which he has been—*enriched.*

By reason, secondly, of *unjust taking* the

property of another, the taker is farther bound to restitution, or is bound to restitution by more than one bond of obligation.

A man who has done to another man a merely *material* but *damaging* injury which, however blamelessly, has inflicted loss, is bound to restitution by reason of the *thing taken*, if that thing is still in existence, and remains in his possession.

If the whole of the thing taken is no longer in existence, or no longer remains in his possession, but part of it still exists and is possessed by him, the taker is bound to restore that part.

If the thing taken still exists *in its equivalent*—and this it does if by means of that equivalent the taker has been made richer—he is bound to restitution.

If no part of the thing taken exists any longer—or if it does not now exist in his possession, either in itself or in its equivalent—the taker is not bound to restitution. There exists nothing to restore. The whole of the foundation of restitution—the retention as one's own of that which is the property of another, and is not one's own—is entirely gone.

A man, on the other hand, who has done to his fellow man an injury which is a *formal* injury, and which is at the same time a *damaging* injury,

or an injury which has resulted in loss to the person on whom it was inflicted—is bound to restitution—and that whether he still has or has not in his possession the thing which was unjustly taken. He remains bound to reparation, to the extent of the loss or damage which he has unjustly caused.

In the case of the second of the two roots of restitution, which consists in *unjust taking* of the property of another—to which *unjust damaging* may be reduced—there are four elements which are necessary in order to constitute this root.

The unjust action must, in the first place, have been an *injury*, properly so called. It must have been a violation of the right of another person, and this a right which belonged to him of *commutative* justice.

Secondly, the unjust action must have been bound up with the loss which resulted from it, by way of *cause* and *effect*, either physically or morally. There must have been a real inflow from the action to the loss, so that the action should have been the true *cause*, and not a mere *occasion* of that loss.

Thirdly, the injury must have been a *formal* injury. It must have been done with all that knowledge and advertence of the understanding, and with all that intention of the will which is

necessary in order to make an action *voluntary*. Apart from this condition, he who was the doer of the damaging action would not have been blameable as guilty of an injury. He would not, therefore, on the ground of *unjust taking* be bound to restitution. He might indeed be bound to restitution by reason of the *thing taken*, if he had been enriched and remained richer through his retention of that which continued to be the property of another and was not his own—but this is an entirely different question. This concerns the other root of restitution.

Fourthly and finally, the injury must have been culpable in the doer of it, as accompanied with theological guilt.

Theological guilt is that which is regarded as sinful in the court of conscience. It may be either grave or slight. *Juridical* guilt is that which is regarded as culpable in the external court. This guilt arises ordinarily from some omission of diligence in the custody and care of a thing of which one has charge. Of this diligence there are various degrees. There is *common* diligence, which is the diligence which all men are wont commonly to use. There is *great* diligence, which is the diligence which the more careful among men are wont to use. *Extraordinary* diligence is that diligence which only the most careful and painstaking among men would think of using.

A grave obligation to restitution arises when grave theological guilt attaches either to a *damaging action*, or to an *omission* of that *common* diligence which is due *in justice*. A man is not bound to restitution for a loss which has occurred without any guilt or fault—either theological or juridical—on his part.

In a case in which there has been *juridical* guilt, but in which there has not been any *theological* guilt, restitution is not due until restitution has been ordered by sentence of a court.

All persons who have been in any way inflowing or influencing and efficacious *causes* of loss, through cooperation in an unjust action, are bound to reparation of the loss which they have concurred to cause.

If a man should be bound *in justice* to prevent or to preserve from occurrence of loss to some other man, he will be equally bound to repair the loss which has resulted from his unjust negligence. He may be bound in both ways either in virtue of a contract by which he has bound himself—or by reason of an official relation in which he stands towards the person who has been injured.

Justice binds a man to render to every other man that which is his own, and so justice binds every man to refrain from violating any right which belongs to his neighbour.

Justice does not, however, bind a man either to undertake the preservation of the right of another man—or to promote that right—or to prevent violation of that right by a third party —unless he has so bound himself by *previous contract*—or unless he is already under *official* obligation. Acceptance of office contains an implied contract. It is a quasi-contract.

Apart from justice, charity may bind a man, more or less, both to procure and to promote the good of his fellow man, when this can be done without grave inconvenience to himself. Charity may also sometimes in like manner bind a man to take pains to safeguard the rights of others.

Charity does not however bind a man to restitution—or to reparation of any loss which has occurred through any failure of his in charity. Charity is one thing—and justice is another thing. It is *justice* alone which lays upon a man the burden of *restitution.*

3.

A man is said to be *enriched*, or to have been *made richer* from the property of another man

when through retention of that property he possesses something which he would not have otherwise possessed. This may be either the price for which he sold that property—or the equivalent for which he exchanged it—or the fruits which it bore to him while it remained in his possession—or the sparing of his own goods through consumption of his neighbour's goods.

If the *thing taken* is still in existence, and is still in the taker's possession—either in itself or in its equivalent—the taker is bound to restitution of it to its real owner. He is so bound even if at the time that he took the thing he was in good faith, and even if during all the time that he has been retaining it, and up to the present moment he has been in good faith, sincerely believing that he had real right to take it, and to retain it, and that the thing was *his own*. He will be bound to restitution by reason of the *thing taken*. He will not be bound to restitution on the ground of *unjust taking*. There was no unjust taking in the case supposed.

If the thing taken no longer exists in the possession of the taker—either in itself, or in its equivalent—so that the taker is no longer enriched or made richer by his taking and retention of it, he will not be bound to repair the loss which has emerged. He is not bound to

restitution on account of the *thing taken*, since that thing no longer exists in his possession. Equally and most certainly he is not bound to reparation on the ground of *injustice* in the taking of the thing. Injustice is excluded by the supposed fact that when he took it he was then in good faith.

A retainer and possessor of another man's property is not bound to give up that property unless he is *morally certain* that it is the property of another, and not his own.

If he has any reasonable doubt with regard to the ownership of the thing, then that doubt lays upon him the obligation of investigation. The doubt does not, however, counterbalance and still less does it outweigh the fact of present possession, and the presumption which is begotten of possession that the property is the possessor's own.

Until honest inquiry results in moral certainty that a thing possessed is not the property of its possessor, there is no sound and solid reason why he should regard that thing as the property of another. Consequently there is no sound and solid reason for his surrendering the thing to another man of whom he has no certainty that he is the undoubted owner of it.

The *fruits* of a thing may be of various kinds.

There are, for instance, the *natural* fruits of a thing. These are the fruits which may spring from the thing itself, as begotten or produced by it, without any care or cultivation on the part of man. Lambs and the wool of sheep, and the spontaneous products of the earth, such as grew thereon before man's creation are—natural fruits.

Industrial fruits are those which correspond to man's labour and diligence or other industry, of which these fruits are the offspring.

Fruits which cannot be produced, on the one hand, by *nature alone* or, on the other hand, by man's *industry alone*, but only by means of both of these in combination, are called *mixed* fruits.

In the widest sense of the word "mixed" there is scarcely any fruit that is not nowadays a mixed fruit. In the production of even natural fruits there is nearly always some exercise of industry or cultivation on the part of man, by means of which these fruits are at any rate multiplied, or brought to greater perfection, or by means of which there is secured a greater certainty of crop or yield. By *mixed* fruits, however, as that term is usually applied, we mean those fruits to the production of which man's industry has contributed in some notable degree or measure, as in the production of wine, or the oil of commerce, or bread or cloth, or other manufactured goods.

As there are some fruits which are purely natural, so are there also certain fruits which are purely industrial. The work of an artist, done with a tool which does not belong to him, is attributed, and rightly, not to the tool but to the industry of the artist. To the owner of the tool there is due only the value of the use of his tool, or compensation in reparation of the loss or damage which he has sustained through being deprived of his tool.

This distinction of fruits into the various kinds of them—as natural, industrial and mixed—is more a distinction of effects than it is a real distinction of the fruits themselves. It is *effects*, therefore, which here have chiefly to be kept in view. Hence, whatever corresponds by way of effect or fruit to the labour and diligence or industry of man, is to be reckoned as an *industrial* fruit.

Besides *natural* fruits of property there are also fruits of property which are called *civil* fruits. Civil fruits are those fruits which are accounted in the civil courts as being fruits of a thing, although as matter of fact they are not the natural offspring of that thing itself. They are fruits of the thing in the sense that *by occasion* of that thing a right to possession of

them is acquired. The rent of a house which has been let—the interest of money—a salary—payment due for work done—are all of them instances of civil fruits.

Following the analogy of other fruits of property, civil fruits are divided into quasi-natural fruits—industrial fruits—and mixed fruits.

If it is from the thing by itself alone—such as a house, a meadow, or money—that the fruits are derived, apart from and without any expenditure of labour or other industry, these fruits are called—quasi-natural fruits.

Should greater profit accrue from a property through the painstaking or labour of the possessor of it—or should a rent be increased—or should a sum of purchase money over and above the ordinary price be got by bargaining—these fruits will in so far be *industrial* fruits. The sum total of those fruits will be a *mixed fruit*, since it is composed of that which is partly quasi-natural, and partly industrial.

A possessor *in good faith* of the property of another man is not bound to restore the *industrial* fruits of that property. These fruits belong to him, inasmuch as they are the offspring of his own labour or painstaking.

The *natural* fruits and the *quasi-natural* fruits of another man's property are—if they are still

in existence, and in his possession—to be restored to the owner of that property. To the owner his property continues to bear its fruit. Expenses are, however—reasonably and rightly—to be deducted. To the expenses to which he has been put, the possessor in good faith of another's property has as really right as has the owner himself to actual possession of the property which belongs to him.

With regard to the *natural* fruits of another man's property which a possessor in good faith has already consumed, he is to make compensation in so far as—after deduction of expenses—he has been enriched or *made richer* through his consumption of them as saving expenditure of his own goods.

4.

There is a real difference between the taker of another man's property—whether in good faith or in bad faith—and the *damager* of another man's property.

In the case of him who merely takes and retains property which is not his own, the measure of obligation to restitution is reckoned from the amount of that which remains with him either in itself, or in its equivalent. It is not reckoned or measured by the injury done to the owner's right.

In the case of a *damager*, on the other hand, the measure of obligation to reparation of loss or damage is the measure of the loss inflicted or the damage done. This holds good, and equally, whether the property abstracted still remains with the damager, or is no longer in his possession.

It is one thing to have money in hand and actually in one's own possession, and it is another thing to have only *right* to that money. It is one thing to have wheat in one's barn, or to have wine in one's cellar, and it is another thing to have merely the expectation of a harvest or a vintage from one's fields or vineyards. Things therefore which are already actually possessed, and things possession of which in the future is as yet more or less doubtful, are not of the same present value. Hence there is a difference in the rating or reckoning of the restitution which is binding on the damager of a *right* IN a thing, and that which is binding on the damager of a *right* TO a thing. In the latter case the loss sustained is to be measured in accordance with the right of expectation of which the injured person has been defrauded. In proportion with the value of the expectation which is regarded as reasonable in the judgment of men of prudence reparation is to be made.

If the person damaged had a right IN the thing of which he has suffered loss, the whole of the value of that thing has to be restored.

A possessor *in bad faith* of another man's property is bound to restore not only the property itself, but also the fruits of it. He must replace the fruits which the owner would have got, even if he the unjust possessor, through his negligence did not himself actually get them. Further, he must make reparation for the loss of fruits which he has consumed, or which he has allowed to perish. Further still, he must surrender fruits which he has succeeded in getting, even if the owner himself would not have got them. This follows from the principle that—"property bears fruit to its owner."

Even a possessor in bad faith can, however, in making restitution, deduct the value of his own industry, and any either necessary or useful expenditure on the property while it remained in his possession. He is justified in deducting at least those expenses which were necessary for the preservation of the property, and for the ingathering of the fruits of it. He can even deduct expenditure on improvement of the property which has rendered it more valuable.

The owner can then only object to such deductions when he can lawfully enrich himself

with a fine which has been imposed as a penalty on the defrauder by sentence of a judge. Until such a sentence has been pronounced the owner cannot on his own authority disallow expenses which have been necessary or useful for the advantage of his property. Expenditure is to be reckoned as *useful* in accordance with the return of it in actual profit to the owner, and not in accordance with any and every mere possibility of usefulness. The owner cannot be bound to allow deduction of expenses as useful, unless there is a correspondence of real and proportionate profit to himself. Expenditure in making the property more beautiful and enjoyable may not seldom be regarded as useful expenditure as rendering the property more valuable. On account of mere enjoyableness, however, and apart from any actual profit, no compensation is due. The unjust possessor of the property has right, nevertheless, to take his improvements away, and they ought to be given up to him, if this can be done without damage to the property, or loss to the owner of the property.

An *unjust damager* is most certainly bound to repair the loss of which he has been the cause. The loss must, however, have been at least in some way *foreseen*. The loss must, moreover, have been an *ordinary* loss, or such a loss as may

commonly occur. Even an unjust damager is not responsible for extraordinary or unlooked for losses. He cannot be held responsible for losses of the likelihood of which he could not possibly have had any previous knowledge, at any rate until he is compelled to repair those losses by sentence of a court.

When the property of another man has perished without fault on the part of the unjust detainer of that property, and when the property would equally have perished in the care of the owner of it himself, as in the case of a flood, a shipwreck, or a general conflagration of the city in which the property is situated—there is no obligation of restitution.

The unjust detainer is not bound to restore by reason of the *thing taken*, since that thing no longer exists in his possession. It is equally clear that he is not bound to restore on the ground of *unjust damaging*, since it was without fault of his that the property perished.

The obligation of restitution which was originally contracted through unjust taking of another's property has been extinguished through the common calamity, so that no loss has really occurred to the owner which can be laid at the door of the unjust detainer of his property.

The principle, stated briefly, comes to this, that—reparation of loss has not to be made,

unless the previous injury was an *efficacious cause* of the subsequent loss, which followed from it as an *effect* follows from its *cause.*

If property, unjustly taken away from the owner of it, would not have perished had it remained in the hands of its owner—or if that property perished because the unjust detainer of it lost it, or had it stolen from him—or if it perished in the burning down of his own house, and not in the common calamity of a general conflagration—the unjust taker of the property will be bound to restitution.

If the property of another has perished in the hands of the unjust detainer of it, and through his fault, or because he has consumed it, or given it away, or destroyed it, he will be bound to restitution, even if he should know for certain that, as matter of fact, the property would have perished otherwise in the possession of the owner of it. The unjust taker and detainer of the other man's property is, in this case, the *actual cause* of that loss, and he was the unjust doer of the original injury.

5.

When that restitution which *commutative* justice demands—and which comes to this that the injured person ought to have restored to him that

which is his own, and of which through injury he has been deprived and defrauded—is *impossible*, restitution cannot, of the nature of the case, be due.

By no payment of any sum of money whatsoever can it be effected that a man should have his life restored to him, or that he should have an amputated limb replaced. The man might prefer the sum of money to possession of his limb, but it would nevertheless remain always true that the payment of this sum did not effect that equality which *commutative* justice demands.

An unjust murderer or mutilater is, therefore, bound in conscience to make reparation only for loss of *goods of fortune*, that is to say, for loss of goods which were external to the injured man, and of the loss of which the murderer or mutilater was directly the cause. He is not in strictness bound to restore anything for the life which he has taken, or for the member which through his fault has had to be amputated, or for a wound which he has unjustly inflicted. These are goods of another order, and of a higher order, and they cannot be valued at a price in money.

Restitution of goods of a higher order with goods of a lower order cannot be demanded, or be due, inasmuch as it cannot be made.

Compensation for loss of spiritual goods cannot be made with temporal goods. Injury to honour cannot be repaired with money.

Hence it follows that, when restitution is of the nature of the case impossible, the sin of the damager is all the more grievous, inasmuch as the injury is irreparable.

It is indeed very fitting, and of counsel, that when restitution cannot possibly be made by means of anything which is equal to the loss which has been sustained, compensation should be made as far as it can be made by means of money, or by payment of special honour to the person injured, having regard always to the relative positions of the parties. This is however of counsel only, and not of precept.

Virginity cannot possibly be valued at a price in money. Hence he who has unjustly destroyed virginity through force or fraud—but apart from any promise of marriage—can only be bound to repair the loss of external goods, which has been the result of an injury for which there cannot possibly be any restitution *in kind.*

If consent to loss of virginity has been secured by means of a promise of marriage—whether meant or only pretended—the damager is bound to fulfil his promise. He is bound to do so not merely to repair the loss which he has caused, but also in order to satisfy his obligation in an onerous contract. He will not satisfy this obligation by an offer of some other compensation.

He was *bound in justice* to have a sincere intention to bind himself in making his promise of marriage, and he is bound, therefore, not only by reason of the injury which it remains possible for him to repair in species, but by reason also of his promise and contract.

6.

If goods which have been unjustly abstracted from the owner of them cannot possibly be restored from goods of the same order, there is no obligation to restore them from goods of a different order.

Reputation is to be restored with reputation. When this is impossible there is no obligation to repair loss of reputation by means of money payment, at any rate before sentence of a court which has decreed money payment by way of damages or consolation.

If a man has disclosed the actually committed, but hitherto hidden and unknown evil deed of another man, he ought to undo, as far as lies within his power, the bad opinion of the evil-doer which he has created in the minds of those who heard his statement. This he can do by throwing it out incidentally that he had spoken of that man unadvisedly—or that he might perhaps have

done him some injury in his talk—or that he might possibly have been mistaken with regard to him. If this cannot be said with truth, or in the circumstances, he can always extenuate his neighbour's fault, or he can praise him with reference to some other matter. In this way the injured man's reputation will gradually and in course of time revive and rise to the level from which it had been cast down.

If a man has *falsely* fastened the shame of an evil deed upon another man, he is bound to retract his accusation.

A man who has injured the *honour* of another man, by means of contumely or exhibition of contemptuous scorn, is bound to repair it, even if the *reputation* of the person scorned has not been injured.

This reparation of honour may be made by means of subsequent friendly or respectful salutations—or by an invitation to dinner—or by begging his pardon. Ordinarily civil salutations are not sufficient by way of reparation for injured honour. They are rather, on the contrary, an insinuation, if not a profession, that the offender owes the person whom he has dishonoured nothing more than ordinary civility.

An offender is not bound to beg pardon for his offence, if the person whom he has offended has taken his revenge, or if the injury done him has already been avenged by sentence of a court. The person who has been offended is, in that case, held to have already had satisfaction made to him for the offence which he has suffered.

If a man has, in good faith, and without anything which amounts to a formal lie, said something about his neighbour which is in reality false, he will be bound to reparation when he comes to know the material injury which he has done. He will not, however, be so strictly bound as is the man who has defamed his neighbour by a formal lie. The latter is bound to repair the injury even at the cost of an equal damage to his own reputation. The former is bound to reparation only in so far as he can effect it without notable damage to himself.

A man who has disclosed the evil-doing of a particular person, but whose hearers have erroneously supposed him to be speaking of quite another person, is bound *in charity*—although he is not bound *in justice*—to repair the damage which has been done to the reputation of the person of whom he was not speaking, or even thinking, and whom perhaps he did not even

know. He could not be bound *in justice*, inasmuch as the cause of the damage was not his action, but the error of his hearers. He is nevertheless bound *in charity*, inasmuch as it lies within his power to undo damage to his neighbour without notable damage to himself.

7.

Reparation is due by a man who has been the unjust cause of loss to his neighbour in the goods of his spiritual life. If one man has induced another man by persuasion or by example to commit a sin, he is bound to induce him, as far as he can, to undo the evil of that sin. He is not, however, *in justice* bound to do this. It is only *in charity* that he is bound to do it.

Apart from force or fraud there cannot have been any *injury*, since injury cannot be done to a man who suffers with his own consent, and when this consent proceeds on sufficient knowledge of that which he is to suffer. When force or fraud has been used, an injury has been done to a human being who has *right* to have no evil done to him by either force or fraud. From this there emerges an obligation *of justice*.

When a man has been unjustly induced to sin through force or fraud or fear, but the sin itself is as yet in the future, he who induced him to sin is bound in justice to undo that force or fraud or fear.

If, on the other hand, the sinful act has been already completed, and if he who has been unjustly induced to do that sinful act takes no pains to repair the spiritual evil which has been done to him, either because he is ignorant of the existence or of the gravity of that evil—or because he does not advert to the evil—or because he has no knowledge of the means of remedying it—he who unjustly induced him to sin is bound *in justice* to call his attention to the necessity of a remedy, and to point out to him the necessary means of remedy.

The tempter is bound to come to his rescue in the same way as he would have been bound if he had fraudulently induced him to swallow poison.

If, on the other hand, the man who has been unjustly induced to commit a sin has full knowledge of the nature of the sin which he has committed, and is not ignorant of the necessary means of spiritual remedy, there will be no obligation *in justice* on the part of him who induced him to commit the sin, either to instruct him with regard to the heinousness of the sin, or to urge him to seek the necessary remedy. He who has clear knowledge of the existence of an evil, and who has it freely in his power to deliver himself therefrom, and who nevertheless fails to do so, is himself voluntarily remaining in or cleaving to that evil.

If it is by reason of a sin to the commission of which a man was unjustly induced by force or fraud or fear, that this man has suffered either loss or damage—whether in temporal or in spiritual matters—that loss or damage is to be imputed to the man who unjustly induced him to the commission of the sin. The loss or damage sprang from his injustice. He is therefore bound, and he is bound *in justice* to come to the relief of the man whom he has thus injured. This will be the case if, for instance, the man who has been unjustly induced to sin has in consequence of his sin been expelled from a religious family, or from a pecuniarily profitable association, or from the house of a friend or kinsman who supported him, or if he has been turned out of a situation.

A man sins *against justice* who induces another man to commit a sin of injustice.

8.

When restitution is due restitution ought to be made forthwith. Restitution ought moreover to be made in that way which the right and interest of the injured person demands, if this can be done without grave detriment to property or rights which are the debtor's own, apart and isolated from the debt in question.

There are two principles which have to be kept constantly and clearly in view in the urging of restitution.

The first principle regards the right and interest of the person who has been injured.

The second principle concerns the condition and the circumstances—considered not merely physically but also morally—of the man who is bound to restitution.

The demands even of a creditor ought not to be unreasonable.

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